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PAGES
8139–8359

federal register

WEDNESDAY, FEBRUARY 9, 1977

highlights

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

The free weekly workshops on how to use the FEDERAL REGISTER will resume on Wednesday, March 2, 1977, in Room 9409, 1100 L Street N.W., Washington, D.C. These free sessions begin at 9:00 a.m. and end at approximately 11:30 a.m. Each session will cover the following:

1. Brief history of the FEDERAL REGISTER.
2. Difference between legislation and regulations.
3. Relationship of the FEDERAL REGISTER to the Code of Federal Regulations.
4. Elements of a typical FEDERAL REGISTER document.
5. Introduction to the finding aids.

RESERVATIONS REQUIRED: DEAN L. SMITH, 202–523–5240

PART I:

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

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

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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

federal register

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Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227

PRESIDENTIAL PAPERS:

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

PUBLIC LAWS:

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

HIGHLIGHTS—Continued

contents

list of cfr parts affected in this issue

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

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

12 CFR

PROPOSED RULES:
311 8146

13 CFR

PROPOSED RULES:
121 8148

14 CFR

385 8139

PROPOSED RULES:
371 8151
378 8151
378a 8151

17 CFR

211 8139
276 8140

24 CFR

1917 (27 documents) 8272–8289
1920 (62 documents) 8289–8303

PROPOSED RULES:
1917 (50 documents) 8304–8324

25 CFR

41 8140

28 CFR

0 8140

29 CFR

PROPOSED RULES:
1209 8155

30 CFR

PROPOSED RULES:
211 8156

32 CFR

PROPOSED RULES:
724 8156

39 CFR

3001 8141

43 CFR

3040 8144

PROPOSED RULES:
4700 8157

47 CFR

0 8326
1 8327
2 8328
5 8329
15 8329
23 8329
25 8329
73 8330
74 8330
89 8330
91 8330
93 8331
95 8331
99 8331

PROPOSED RULES:
21 8157

49 CFR

99 8144
230 8144
1125 8145

CUMULATIVE LIST OF PARTS AFFECTED DURING FEBRUARY

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

FEDERAL REGISTER PAGES AND DATES—FEBRUARY

Pages	*Date*
5967-6362	Feb. 1
6363-6575	2
6577-6786	3
6787-7120	4
7121-7917	7
7919-8137	8
8139-8359	9

reminders

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

Rules Going Into Effect Today

DOT/FAA—General Electric Company CT64–820–4 model engines; airworthiness directive..... 3828; 1–21–77

Next Week's Deadlines for Comments On Proposed Rules

AGRICULTURE DEPARTMENT
Commodity Credit Corporation—
Determinations on 1977 crop honey price support program; comments by 2–14–77..... 2980; 1–14–77

CIVIL AERONAUTICS BOARD
Employee responsibilities and conduct; comments by 2–14–77..... 2999; 1–14–77
Energy Policy and Conservation Act implementation; comments by 2–14–77. 56669; 12–29–76
Public access to board meetings; comments by 2–14–77.... 2995; 1–14–77
Rules of practice in informal nonpublic investigations by the Bureau of Enforcement; limitation of confidentiality; comments by 2–14–77.... 56669; 12–29–76
Standards for determining priorities for hearings regarding applications for competing operating authority; comments extended to 2–16–77.... 3180; 1–17–77
[First published at 41 FR 52698, Dec. 1, 1976]

CIVIL RIGHTS COMMISSION
Privacy Act amendments of 1974; comments by 2–14–77.... 2708; 1–13–77

DEFENSE DEPARTMENT
Engineers Corps—
Mississippi River Commission; implementation of Sunshine Act; comments by 2–14–77..... 2572; 1–12–77

ENVIRONMENTAL PROTECTION AGENCY
Implementation plans; requirements; preparation, adoption and submittal; comments by 2–15–77..... 55558; 12–21–76
Nonferrous metals manufacturing point source category; interim regulations; comments by 2–14–77..... 54850; 12–15–76
Washington plan, approval and promulgation of implementation plans; comments by 2–14–77.... 2705; 1–13–77

FARM CREDIT ADMINISTRATION
Sunshine Act; open meetings; comments by 2–14–77..... 55; 1–3–77

FEDERAL COMMUNICATIONS COMMISSION
Cable TV systems; frequency channeling and monitoring for signal leakage; reply comments by 2–15–77. 54512; 12–14–76
FM broadcast stations in West Virginia; comments by 2–14–77, reply comments by 3–7–77..... 3186; 1–17–77
UHF television receivers; noise figures; comments by 2–15–77 ..... 56210; 12–27–76

FEDERAL ELECTION COMMISSION
Sunshine Act; comments by 2–18–77. 3810; 1–19–77

FEDERAL ENERGY ADMINISTRATION
Foreign supply information, collection; reporting requirements; Foreign oil supply agreements; comments by 2–15–77..... 3652; 1–19–77

FEDERAL HOME LOAN BANK BOARD
Sunshine Act; implementation; comments by 2–14–77.. 2503; 1–12–77

FEDERAL TRADE COMMISSION
Mergers and acquisitions; extension of comment period to 2–18–77, with the exception of Transitional Rule which comment date remains 1–19–77..... 3655; 1–19–77
[First published at 41 FR 55488, Dec. 20, 1976]

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Public Health Service—
Professional Standards Review Organizations; interim confidentiality and disclosure of data and information; comments extended to 2–16–77..... 2994; 1–14–77
[First published at 41 FR 53215, Dec. 3, 1976]
Social and Rehabilitation Service—
Medical Assistance Program; intermediate care facilities, institutions for the mentally retarded; comments by 2–17–77..... 3325; 1–18–77

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Community Planning and Development, Office of Assistant Secretary—
Community development block grants; eligible activities; comments by 2–18–77..... 3292; 1–17–77
Office of Assistant Secretary for Housing, Federal Housing Commissioner—
College Housing Program for FY 1977; comments by 2–14–77. 3112; 1–14–77
Low income housing; lease and grievance procedures; tenant maintenance; comments by 2–18–77. 3181; 1–17–77

INTERIOR DEPARTMENT
Geological Survey—
Geological and geophysical exploration permit; submission of data; comments by 2–17–77.. ..... 3321; 1–18–77
National Park Service—
Climbing; Devils Tower National Monument, Wyo.; comments by 2–18–77 ..... 3655; 1–19–77
Immobilized, inoperable vehicles; Grand Canyon National Park, Arizona; comments by 2–18–77. 3656; 1–19–77
Snowmobile use; Olympic National Park, Wash.; comments by 2–18–77..... 3656; 1–19–77

INTERSTATE COMMERCE COMMISSION
Meetings of the Commission; order; comments by 2–15–77..... 56340; 12–28–76

LABOR DEPARTMENT
Office of the Secretary—
Worker adjustment assistance, certification of eligibility to apply; comments by 2–14–77. ..... 5372; 1–28–77
[First published at 42 FR 2981, Jan. 14, 1977]

LIBRARY OF CONGRESS
Copyright Office—
Cable systems; regulations pertaining to recording of certain notices; comments by 2–18–77..... 5109; 1–27–77
Termination of transfers and licenses covering extended renewal term; comments extended to 2–15–77..... 4134; 1–24–77
[First published at 41 FR 50300, Nov. 15, 1976]

NUCLEAR REGULATORY COMMISSION
Distribution of applications for environmental statements to local officials; comments by 2–16–77..... 3178; 1–17–77

POSTAL SERVICE
Government in the Sunshine Act, bylaws of board of governors; comments by 2–14–77..... 2699; 1–13–77

SECURITIES AND EXCHANGE COMMISSION
Disclosure of brokerage placement practices by investment managers; comments by 2–14–77.... 3312; 1–18–77
[First published at 41 FR 53356, Dec. 6, 1976]
Registration statement and definitional rule; expansion; comments by 2–15–77..... 52701; 12–1–76
Short form registration for certain primary financing; comments by 2–18–77..... 56331; 12–28–76

TRANSPORTATION DEPARTMENT
Federal Aviation Administration—
Airworthiness directives; British Aircraft Corp. and Hawker Siddeley Aviation Ltd.; (2 documents) comments by 2–17–77. 1268, 1269; 1–6–77
Extension of low altitude VOR Federal Airways; comments by 2–16–77. 3179; 1–17–77
Transition areas in Minnesota and Michigan; comments by 2–16–77. 3180; 1–17–77
Federal Railroad Administration—
Construction of railroad employee sleeping quarters; comments extended to 2–17–77..... 2994; 1–14–77
[First published at 41 FR 53028, Dec. 3, 1976]

National Highway Traffic Safety Administration—
Brake hoses; modification of labeling requirements; comments by 2–14–77..... 56835; 12–30–76
Highway safety program standards; motor vehicle tilting and theft; comments by 2–15–77.... 51426; 11–22–76

TREASURY DEPARTMENT
Comptroller of the Currency—
Fiduciary powers of national banks and collective investment funds; authority to invest trust funds in variable amount notes; comments by 2–17–77..... 55717; 12–22–76
Internal Revenue Service—
Classification of organizations for purposes of Federal taxation; unincorporated organizations; comments by 2–18–77.. 1038; 1–5–77
Political organizations; returns; comments by 2–17–77..... 57; 1–3–77

Next Week's Meetings

AGRICULTURE DEPARTMENT
Agricultural Marketing Service—
Shippers Advisory Committee, Lakeland, Fla. (open), 2–15–77. 5738; 1–31–77
Forest Service—
Manti Division Grazing Advisory Board, Ephraim, Utah (open), 2–17–77..... 4876; 1–26–77

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
Accessible Environment National Advisory Committee, Denver, Colo. (open), 2–13–77..... 5389; 1–28–77

ARTS AND HUMANITIES, NATIONAL FOUNDATION
Architectural and Environmental Arts Advisory Panel, Washington, D.C. (closed), 2–17 and 2–18–77.... 6433; 2–2–77
Arts National Council, Washington, D.C. (partially open), 2–13–77..... 5147; 1–27–77
Education Programs Panel, Washington, D.C. (closed), 2–14–77..... 4222; 1–24–77
Literature Advisory Panel, Santa Fe, N. Mex. (partially open), 2–18 and 2–19–77..... 6433; 2–2–77
Music Advisory Panel, Washington, D.C. (open with restrictions), 2–15 thru 2–17–77..... 6433; 2–2–77

CIVIL RIGHTS COMMISSION
New Hampshire Advisory Committee, Concord, N.H. (open), 2–15–77. 4186; 1–24–77
Indiana Advisory Committee, Indianapolis, Ind. (open), 2–13 and 2–14–77. 4185; 1–24–77

COMMERCE DEPARTMENT
Census Bureau—
Census Advisory Committee on the Spanish Origin Population for the 1980 Census, Suitland, Md. (open), 2–17 and 2–18–77..... 5118; 1–27–77
Domestic and International Business Administration—
Numerically Controlled Machine Technical Advisory Committee, Washington, D.C. (partially closed), 2–16–77..... 5991; 2–1–77
National Bureau of Standards—
Federal Information Processing Standards Task Group 15, Computer Systems Security, Gaithersburg, Md. (open), 2–16–77.. 2334; 1–11–77
Visiting Committee, Gaithersburg, Md. (open), 2–14 and 2–15–77. 2335; 1–11–77
National Oceanic and Atmospheric Administration—
Caribbean Fishery Management Council, Ponce, Puerto Rico (open with restrictions), 2–14 thru 2–17–77. 4882; 1–26–77
New York Bight MESA Advisory Committee, Advisory Panels, Stony Brook, Garden City, and Highlands, N.Y. (open), 2–16 thru 2–18–77. 5993; 2–1–77
North Pacific Fishery Management Council and North Pacific Fishery Management Council's Advisory Panel, Anchorage, Alaska (open), 2–17 and 2–18–77.. 6378; 2–2–77
Pacific Fishery Management Council's Anchovy Advisory Panel, Long Beach, Calif. (open), 2–16–77. 5499; 1–28–77

DEFENSE DEPARTMENT
Air Force Department—
Scientific Advisory Board ad hoc Committee on EF–111A, Kirtland AFB, N. Mex. (closed), 2–14 and 2–15–77 ..... 4517; 1–25–77
Scientific Advisory Board ad hoc Committee on Aeronomy, Pentagon, Washington, D.C. (open), 2–18–77..... 4517; 1–25–77
Scientific Advisory Board Space and Missile Systems Organization Advisory Group, Los Angeles, Calif. (closed), 2–14 and 2–15–77. 4516; 1–25–77
Scientific Advisory Board, Marietta, Ga. (open), 2–17 and 2–18–77. 3343; 1–18–77
Navy Department—
Naval Research Advisory Committee, Norfolk, Va. (closed), 2–16 and 2–17–77..... 5746; 1–31–77
Office of the Secretary—
Defense Intelligence Agency Scientific Advisory Committee (closed), 2–15–77..... 3343; 1–18–77
Defense Science Board, Arlington, Va. (closed), 2–16 and 2–17–77. 4188; 1–24–77
Defense Science Board Task Force on Nuclear Proliferation, Arlington, Va. (closed), 2–14 and 2–15–77. 4188; 1–24–77
Electron Devices Advisory Group, Working Group A, New York, N.Y. (closed), 2–15–77.. 4517; 1–25–77
Electron Devices Advisory Group, Working Group C, Arlington, Va. (closed), 2–16–77.. 4517; 1–25–77
Wage Committee, Washington, D.C. (closed), 2–15–77..... 54212; 12–13–76

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
High Energy Physics Advisory Panel, Washington, D.C. (partially open), 2–18 and 2–19–77.... 5996; 2–1–77

ENVIRONMENTAL PROTECTION AGENCY
Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel, Arlington, Va. (open), 2–17 and 2–18–77..... 5746; 1–31–77
Science Advisory Board, Environmental Pollutant Movement and Transformation Advisory Committee, Arlington, Va. (open), 2–14 thru 2–16–77. 5395; 1–28–77
Science Advisory Board, Technology Assessment and Pollution Control Advisory Committee, Washington D.C. (open), 2–18–77..... 5395; 1–28–77
Solid waste management program discussions, various cities (open), 2–15 thru 2–18–77..... 6620; 2–3–77
Toxic Substances Control Act; discussion of Act and review of implementation plans, Dallas, Texas, 2–15–77 and Atlanta, Georgia, 2–17–77. 5756; 1–31–77

FEDERAL COMMUNICATIONS COMMISSION
Radio Technical Commission for Marine Services, Washington, D.C. (open), 2–16 and 2–17–77.. 5758; 1–31–77

FEDERAL ENERGY ADMINISTRATION
East Coast Natural Gas Distribution, Washington, D.C. (open), 2–15–77. 3207; 1–17–77
Electric Utilities Advisory Committee; Washington, D.C. (open), 2–18–77. 4886; 1–26–77

FEDERAL HOME LOAN BANK BOARD
Alternative Mortgage Instruments Research Study Advisory Committee, Washington, D.C. (open), 2–16–77. 5719; 1–31–77

FEDERAL POWER COMMISSION
Gas Policy Advisory Council, Washington, D.C. (open), 2–15–77..... 5418; 1–28–77

FEDERAL PREVAILING RATE ADVISORY COMMITTEE
Meeting, Washington, D.C. (closed), 2–17–77..... 3711; 1–19–77

GENERAL SERVICES ADMINISTRATION
Architectural and Engineering Services Regional Public Advisory Panel, Chicago, Ill. (closed), 2–17–77.... 6000; 2–1–77

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Aging, Federal Council—
Economics of Aging Committee, Washington, D.C. (open), 2–14 and 2–15–77..... 3899; 1–21–77
Senior Services Committee, Washington, D.C. (open), 2–15 and 2–16–77..... 3900; 1–21–77
Alcohol, Drug Abuse and Mental Health Administration—

Advisory committees, Rockville, Maryland (partially open), 2–14 thru 2–18–77..... 1514; 1–7–77

Education Office—
National Advisory Council for Career Education, Washington, D.C. (open), 2–17–77.... 6004; 2–1–77

Food and Drug Administration—
Advisory committees (open), 2–14 thru 2–19–77..... 3348; 1–18–77
Endocrinology and Metabolism Advisory Committee, Rockville, Md. (open), 2–18–77.
[First published at 42 FR 3348, Jan. 18, 1977]
Health Care and Services Ad Hoc meeting, Washington, D.C. (open), 2–16–77..... 6002; 2–1–77
Radio-Frequency and microwave radiation sources; biological effects and measurements; open symposium, Rockville, Md. (open), 2–16 thru 2–18–77..... 6002; 2–1–77

Health Resources Administration—
National Health Planning and Development Council, Washington, D.C. (open), 2–14–77.. 2720; 1–13–77

Health Services Administration—
Migrant Health National Advisory Council, Rockville, Md. (open), 2–15 thru 2–17–77..... 56398; 12–28–76

National Institutes of Health—
Cell Biology Study Section, San Diego, Calif. (open), 2–17 thru 2–19–77. 3213; 1–17–77
[First published at 42 FR 6412, Feb. 2, 1977]
Dental Caries Program Advisory Committee, Bethesda, Md. (open), 2–14 and 2–15–77..... 857; 1–4–77
Diagnostic Research Advisory Group, Bethesda, Md. (partially open), 2–17–77..... 4541; 1–25–77
[First published at 42 FR 859, Jan. 4, 1977]
Endocrinology Study Section, San Diego, Calif. (open), 2–14 thru 2–17–77..... 3213; 1–17–77
Fetal Endocrinology Workshop, San Diego, Calif. (open with restrictions), 2–17 and 2–18–77.... 2357; 1–11–77
Human Embryology and Development Study Section, San Diego, Calif. (open), 2–14 thru 2–17–77. 3213; 1–17–77
General Clinical Research Centers Committee, Bethesda, Md. (open), 2–14, 2–15–77.. 56399; 12–28–76
Neurological Disorders Program—Project Review A and B Committees, Miami, Fla. (open), 2–17 thru 2–19–77..... 858; 1–4–77
Physiology Study Section, Washington, D.C. (open), 2–4 thru 2–16–77..... 3213; 1–17–77
Research Contract Proposals, Review Committees, Bethesda, Md. (closed), 2–15 and 2–16–77. 859; 1–4–77

Office of the Secretary—
National Commission for Protection of Human Subjects of Biomedical and Behavioral Research, Bethesda, Md. (open), 2–13–77.... 4904; 1–26–77

Public Health Service—
National Immunization Policy Work Groups, various cities (open), 2–13 and 2–14–77..... 4903; 1–26–77

INTERIOR DEPARTMENT

National Park Service—
National Capital Memorial Advisory Committee, Washington, D.C. (open), 2–14–77.. 4910; 1–26–77
Sleeping Bear Dunes National Lakeshore Advisory Commission, Glen Arbor, Mich. (open), 2–18–77. 6432; 2–2–77

JUSTICE DEPARTMENT

Federal Bureau of Investigation—
National Crime Information Center Advisory Policy Board, Washington, D.C. (open), 2–16–77..... 56870; 12–30–76

Law Enforcement Assistance Administration—
National Advisory Committee for Juvenile Justice and Delinquency Prevention, Atlanta, Ga. (partially open), 2–16 thru 2–18–77. 6014; 2–1–77
Law Enforcement/Private Security Relationships Committee, Arlington, Va. (open), 2–17 and 2–18–77..... 6433; 2–2–77

LABOR DEPARTMENT

Occupational Safety and Health Administration—
Occupational Safety and Health National Advisory Committee, Washington, D.C. (open), 2–17–77. 4554; 1–25–77

MANAGEMENT AND BUDGET OFFICE

Business Advisory Council on Federal Reports, Washington, D.C. (open), 3–17–77..... 6434; 2–2–77

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Research and Technology Advisory Council Panel on Aviation Safety, Moffett Field, Calif. (open), 2–15 and 2–16–77..... 4563; 1–25–77

NATIONAL SCIENCE FOUNDATION

Engineering Chemistry and Energetics Advisory Panel, Washington, D.C. (partially open), 2–13 and 2–14–77. 6647; 2–3–77
[First published at 42 FR 5147, Jan. 27, 1977]
Genetic Biology Advisory Panel, Washington, D.C. (closed), 2–17 thru 2–19–77..... 5499; 1–28–77
Research Advisory Committee Task Group No. 16, Washington, D.C. (open), 2–18–77..... 5765; 1–31–77
Systematic and Ecological Sciences Panel Joint Meeting, Washington, D.C. (closed), 2–17 and 2–18–77. 5499; 1–28–77

NUCLEAR REGULATORY COMMISSION

Subcommittee on Sundesert Nuclear Power Plant Units 1 & 2 of the Reactor Safeguards Advisory Committee, Blythe, Calif. (closed), 2–18–77..... 6648; 2–3–77

OCEANS AND ATMOSPHERE, NATIONAL ADVISORY COMMITTEE

Washington, D.C. (open), 2–14 and 2–15–77..... 4918; 1–26–77

PRIVACY PROTECTION STUDY COMMISSION

Discussion of education records, research and statistics, and implementation of the Privacy Act of 1974, Washington, D.C. (open), 2–17 and 2–18–77..... 5159; 1–27–77

RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS NATIONAL COMMISSION

Review of and discussion of preliminary policy decisions for final report of Commission, Washington, D.C. (open with restrictions), 2–17–77.... 5765; 1–31–77

SECURITIES AND EXCHANGE COMMISSION

National Market Advisory Board, Los Angeles, Calif. (open), 2–14 and 2–15–77..... 5170; 1–27–77

SMALL BUSINESS ADMINISTRATION

Boise District Advisory Council, Boise, Idaho (open), 2–14–77..... 5170; 1–27–77
Madison District Advisory Council, Janesville, Wis. (open), 2–18–77. 6434; 2–2–77

STATE DEPARTMENT

Agency for International Development—
International Food and Agricultural Development Board, Washington, D.C. (open), 2–14 and 2–15–77. 3945; 1–21–77

Office of the Secretary—
Government Advisory Committee on International Book and Library Programs, Washington, D.C. (open), 2–17–77.. 4920; 1–26–77
International Educational and Cultural Affairs, U.S. Advisory Commission, Washington, D.C. (open), 2–17–77..... 4920; 1–26–77
Private International Law Study Group on Hotelkeepers' Liability, Washington, D.C. (open with restrictions), 2–17–77..... 3945; 1–21–77
Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Washington, D.C. (open), 2–17–77..... 3945; 1–21–77
Study Group 1 of the U.S. National Committee for the International Radio Consultative Committee (CCIR), Washington, D.C. (open), 2–15–77..... 3384; 1–18–77
United States Advisory Commission on International Educational and Cultural Affairs, Ottawa, Canada (open), 2–18 and 2–19–77. 5171; 1–27–77

TRANSPORTATION DEPARTMENT

Federal Railroad Administration—

Minority Business Resource Center Advisory Committee, Washington, D.C. (open with restrictions), 2–18–77..... 6027; 2–1–77

TREASURY DEPARTMENT

Internal Revenue Service—

Art Advisory Panel, Washington, D.C. (closed), 2–15 and 2–16–77. 2740; 1–13–77

VETERANS ADMINISTRATION

Des Moines Regional Office Station Committee on Educational Allowances, Des Moines, Iowa (2 documents), 2–18–77..... 5181; 1–27–77

WATER RESOURCES COUNCIL

Standing State Advisory Committee, Washington, D.C. (open), 2–16–77. 5777; 1–31–77

Next Week's Public Hearings

CONSUMER PRODUCT SAFETY COMMISSION

California children's clothing flammability regulations, Los Angeles, Calif. (open), 2–15–77..... 4513; 1–25–77

California children's clothing flammability regulations, San Francisco, Calif. (open), 2–14–77..... 4513; 1–25–77

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Disease Control Center—

Single-use gas and vapor chemical-cartridge respirators, Rockville, Md. (open), 2–14–77..... 2986; 1–14–77

Food and Drug Administration—

Good laboratory practices for nonclinical laboratory studies, Washington, D.C. (open), 2–15 and 2–16–77..... 6002; 2–1–77

INTERIOR DEPARTMENT

Fish and Wildlife Service—

Development of standards for transport of endangered wildlife and plant specimens, Washington, D.C. (open), 2–16–77.. 4907; 1–26–77

LABOR DEPARTMENT

Pension and Welfare Benefit Program—

Hearing on class exemption, 2–14–77. 1488; 1–7–77

[First published at 41 FR 31838, 31874, July 30, 1976]

TREASURY DEPARTMENT

Internal Revenue Service—

Hearing on class exemption, 2–14–77. 1488; 1–7–77

[First published at 41 FR 31838, 31874, July 30, 1976]

List of Public Laws

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

rules and regulations

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR–109, Amdt. 55]

PART 385—DELEGATION AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

Expansion of Delegation of Authority to the Director, Bureau of Operating Rights, to Approve or Deny Wet Leases

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. February 1, 1977.

Section 385.13(r) of the Board's Organization Regulations presently delegates authority to the Director, Bureau of Operating Rights, to approve short term wet leases where three specified conditions are met.

From time to time the Board receives applications to perform wet-lease operations which (1) do not conform to one or more of the three conditions for approval under delegated authority, or (2) should be disapproved. In the vast majority of cases, disposition of these applications involves no significant policy issues or other matters warranting the Board's consideration. Since there are well-established Board precedents in the area of wet-lease operations which would allow the staff to take action in the majority of cases, current procedures frequently impose an unnecessary burden on Board time. Accordingly, the Board is hereby delegating to the Director, Bureau of Operating Rights, the authority to approve or deny wet leases where such action is in accordance with established Board precedent.

Since this amendment is an administrative matter affecting a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary, and that the rule may become effective immediately.

Accordingly, the Board hereby amends paragraph (r)(3) of § 385.13 (14 CFR § 385.13(r)(3)), effective February 1, 1977, to read as follows:

§ 385.13 Delegation to the Director, Bureau of Operating Rights.

The Board hereby delegates to the Director, Bureau of Operating Rights, the authority to:

* * * * *

(r) With respect to consolidations, mergers, purchases, leases, operating contracts, and acquisitions of control:

* * * * *

(3) Approve or deny wet leases where approval or denial of the request is in accordance with established Board precedent.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324. Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; 49 U.S.C. 1324 (note.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–4131 Filed 2–8–77;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release SAB–14]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS

Subpart B—Staff Accounting Bulletins

PUBLICATION OF STAFF ACCOUNTING BULLETIN No. 14

The Division of Corporation Finance and the Office of the Chief Accountant today announced the publication of Staff Accounting Bulletin No. 14. The statements in the Bulletin are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division and the Chief Accountant in administering the disclosure requirements of the federal securities laws.

Staff Accounting Bulletin No. 14 deals with revisions to Staff Accounting Bulletin No. 6 regarding reporting requirements for accounting changes.

GEORGE A. FITZSIMMONS,
Secretary.

FEBRUARY 3, 1977.

REVISIONS TO STAFF ACCOUNTING BULLETIN No. 6

In SAB No. 6, Subsection II, item f, the following statement of "Facts" was given:

II. AMENDMENTS TO FORM 10–Q

f. Reporting requirements for accounting changes

FACTS

Instruction H(f)[1] to Form 10–Q requires that a registrant who changes its method of accounting shall indicate the date for such changes and the reasons for the changes. The registrant also must include as an exhibit in the "first Form 10–Q filed subsequent to the date of an accounting change, a letter from the registrant's independent accountants * * * indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances." A letter from the independent accountant is not required "when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such a change."

The Bulletin then included two questions and interpretive responses related to the above facts. Subsequent to the issuance of the SAB, numerous questions arose regarding the staff's interpretive response to former question No. 1. Discussions indicated that the previous response was misunderstood by some registrants and their independent accountants. The following questions, Nos. 1 through 6, serve as an amplification of the staff's previous views. (The prior question No. 1 and its response are deleted. Prior question No. 2 is redesignated as No. 7 and retained unchanged.)

QUESTION 1

For some alternative accounting principles, authoritative bodies have specified when one alternative is preferable to another. However, for other alternative accounting principles, no authoritative body has specified criteria for determining the preferability of one alternative over another. In such situations, how should preferability be determined?

INTERPRETIVE RESPONSE

In such cases, where objective criteria for determining the preferability among alternative accounting principles have not been established by authoritative bodies, the determination of preferability should be based on the particular circumstances described by and discussed with the registrant. In addition, the independent accountant should consider other significant information of which he is aware.

QUESTION 2

Management may offer, as justification for a change in accounting principle, circumstances such as: their expectation as to the effect of general economic trends on their business (e.g., the impact of inflation); their expectation regarding expanding consumer demand for the company's products; or plans for change in marketing methods. Are these circumstances which enter into the determination of preferability?

INTERPRETATIVE RESPONSE

Yes. Those circumstances are examples of business judgment and planning and should be evaluated in determining preferability. In the case of changes for which objective criteria for determining preferability have not been established

[1] Form 10–Q has recently been amended (ASR No. 206) effective for quarterly periods beginning after December 31, 1976. Instruction H(f) has been redesignated as Instruction 4(f).

by authoritative bodies, business judgment and business planning often are major considerations in determining that the change is to a preferable method because the change results in improved financial reporting.

QUESTION 3

What responsibility does the independent accountant have for evaluating the business judgment and business planning of the registrant?

INTERPRETIVE RESPONSE

Business judgment and business planning are within the province of the registrant. Thus, the independent accountant may accept the registrant's business judgment and business planning and express reliance thereon in his letter. However, if either the plans or judgment appear to be unreasonable to the independent accountant, he should not accept them as justification. For example, an independent accountant should not accept a registrant's plans for a major expansion if he believes the registrant does not have the means of obtaining the funds necessary for the expansion program.

QUESTION 4

If a registrant, who has changed to an accounting method which was preferable under the circumstances, later finds that it must abandon its business plans or change its business judgment because of economic or other factors, is the registrant's justification nullified?

INTERPRETIVE RESPONSE

No. A registrant must in good faith justify a change in its method of accounting under the circumstances which exist at the time of the change. The existence of different circumstances at a later time does not nullify the previous justification for the change.

QUESTION 5

If a registrant justified a change in accounting method as preferable under the circumstances, and the circumstances change, may the registrant revert to the method of accounting used before the change?

INTERPRETIVE RESPONSE

Any time a registrant makes a change in accounting method, the change must be justified as preferable under the circumstances. Thus, a registrant may not change back to a principle previously used unless it can justify that the previously used principle is preferable in the circumstances as they currently exist.

QUESTION 6

As stated in SAB No. 6, question 1 read: "If one client of an independent accounting firm changes its method of accounting and the accountant submits the required letter stating his view of the preferability of the principle in the circumstances, does this mean that all clients of that firm are constrained from making the converse change in accounting (e.g., if one client changes from FIFO to LIFO, can no other client change from LIFO to FIFO)?"

What follows is a revised interpretive response to that question.

INTERPRETIVE RESPONSE

No. Each registrant must justify a change in accounting method on the basis that the method is preferable under the circumstances of that registrant. In addition, a registrant must furnish a letter from its independent accountant stating that in the judgment of the independent accountant the change in method is preferable under the circumstances of that registrant. If registrants in apparently similar circumstances make changes in opposite directions, the staff has a responsibility to inquire as to the factors which were considered in arriving at the determination by each registrant and its independent accountant that the change was preferable under the circumstances because it resulted in improved financial reporting. The staff recognizes the importance, in many circumstances, of the judgments and plans of management and recognizes that such management judgments may, in good faith, differ. The emphasis contained in the original response in SAB No. 6 on the acceptance by an accounting firm of accounting changes in both directions by different clients was misplaced. As indicated above, the concern relates to registrants in apparently similar circumstances, no matter who their independent accountants may be.

[FR Doc.77-4129 Filed 2-8-77;8:45 am]

(Rel. No. IA-563)

PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Applicability of Investment Advisers Act to Certain Publications

Correction

In FR. Doc. 77-1308 appearing on page 2953 in the issue for Friday, January 14, 1977, in footnote 2 at the bottom of the middle column, wherever the words "publication available" appear, they should be changed to read "publically available".

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER F—ENROLLMENT

PART 41—PREPARATION OF ROLLS OF INDIANS

Roll of Cherokee Band of Shawnee Indians of Oklahoma; Correction

FEBRUARY 2, 1977.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

In FR Doc. 76-35061 appearing at page 52453 in the FEDERAL REGISTER of Tuesday, November 30, 1976, paragraph (1) of § 41.3 appearing on page 52453 is corrected in the tenth line of that paragraph by changing "the Act of March 2, 1899" to read "the Act of March 2, 1889."

THEODORE KRENZKE,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.77-4111 Filed 2-8-77;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 684-77]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart B—Office of the Attorney General, Office for Improvements in the Administration of Justice

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under 5 U.S.C. 301 and 28 U.S.C. 509 and 510 the Attorney General is authorized to delegate any of his functions as head of the Department of Justice to organizational components in the Department and to designate those officials responsible to carry out the functions so assigned.

The purposes of this rule are to: Revoke the existing delegations of authority to the Office of Policy and Planning; reorganize and redesignate that office as the Office for Improvements in the Administration of Justice, which is to be headed by an Assistant Attorney General; and establish new delegations of authority for this newly created office.

EFFECTIVE DATE: February 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Glen E. Pommerening, Assistant Attorney General for Administration, Office of Management and Finance, Department of Justice, Washington, D.C. 20530 (202-739-3101).

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509 and 510, § 0.6 of Subpart B of Part O of Chapter I of Title 28, Code of Federal Regulations, is revoked and revised to read as follows:

§ 0.6 Office for Improvements in the Administration of Justice.

Subject to the general supervision and direction of the Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Office for Improvements in the Administration of Justice:

(a) Initiation and design of proposals for improvements in the administration of justice relating to:

(1) Substantive civil and criminal laws;

(2) Procedures in civil and criminal cases;

(3) Organization and jurisdiction of courts and their personnel; and

(4) Effectiveness and fairness in crime control and criminal justice administration.

(b) Assistance in formulating and reviewing legislation related to improvements in the administration of justice.

(c) Assistance in the implementation of measures for improvements in the administration of justice.

(d) Initiation and promotion of cooperation among Federal, State, and local agencies and non-governmental organizations, groups, and individuals concerned with the administration of justice, to the end that their concerns and efforts may be coordinated in actions to improve the quality of civil and criminal justice.

(e) Administration of the Federal Justice Research Program, a Departmental program for the conduct, by contract or otherwise, of research relating to civil and criminal justice in the United States.

(f) Assistance in the planning of educational and training programs for the professional personnel in the Federal justice system.

(g) Undertaking such other assignments relating to the promotion of justice as may be designated from time to time by the Attorney General.

Dated: February 3, 1977.

GRIFFIN B. BELL,
Attorney General.

[FR Doc.77-3987 Filed 2-8-77;8:45 am]

Title 39—Postal Service

CHAPTER III—POSTAL RATE COMMISSION

[Order No. 150; Docket No. RM77-2]

PART 3001—RULES OF PRACTICE

Order Amending Rules of Practice and Procedure

FEBRUARY 3, 1977.

By FEDERAL REGISTER notice of October 29, 1976 (41 FR 47498) the Postal Rate Commission initiated rulemaking proceedings for the purpose of amending its rules of practice to incorporate miscellaneous rule changes, most of which are designed to update rate case filing requirements so as to reflect more accurately our decisions in Docket Nos. R74-1[1] and R76-1.[2] The Officer of the Commission (OOC), the United States Postal Service (Postal Service) and Direct Mail/Marketing Association, Inc. (DMMA) filed comments and/or counter-proposals. Reply comments were also filed by each of these participants.

Having considered the written comments of these participants, the Commission has determined that it should incorporate certain modifications to its proposed changes[3] to the rules of practice (39 CFR 3001.1 et seq.). As modified, these changes will be adopted and incorporated as amendments to the Commission's rules.

Commissioner Saponaro's separate statement, while characterized as a concurring statement, is in reality a dissent to an action the Commission has not taken. As we noted, the Commission has deferred action on changes in section 54(h)(2) cost attribution rule pending final disposition, by the court, of proceedings in the NAGCP case. The concurring statement, while recognizing that no action has been taken on rule 54(h)(2), nevertheless proceeds to expand on the separate statement previously issued with the Notice of Proposed Rulemaking in this docket. The majority of the Commission do not share the views set forth by Commissioner Saponaro on this matter.

As anticipated in the Notice of Proposed Rulemaking, the proposed amendments to the rate filing requirements engendered the most interest among parties filing comments. In fact, except for one comment pertaining to the proposed amendment permitting persons to file informal expressions of views in proceedings before the Commission, all comments were addressed to the amendments to the rate filing requirements found in Subpart B of our rules of practice (39 C.F.R. § 3001.51-56). Accordingly, these amendments are discussed first.

AMENDMENTS TO RULE 3001.54(h)(4)

In the Notice of Proposed Rulemaking, October 29, 1976, the Commission explicitly stated that the proposed amendment to section 3001.54(h)(4) was intended to require the Postal Service in its rate filings to separate attributable costs for certain rate categories, such as third class circulars and catalogs. In the past rate filings the Postal Service has aggregated such costs. This practice of aggregating costs for such major rate categories does not provide sufficient detail to properly attribute costs amongst the major rate categories for which we recommend rates.

The Postal Service concurs with our assessment that ideally such disaggregation should be pursued but suggests that since current data collection systems are not sufficiently refined to furnish this data such information should be provided only to the "extent practical." We are sympathetic to such concerns but it also must be recognized that to adequately fulfill our rate setting responsibilities, retrieval systems must be designed to provide data from which we can properly allocate costs amongst the varioust rate categories. These rate categories, however, not only include those areas of immediate concern such as third-class catalogs and circulars, but also fourth-class single piece and bulk bound printed matter, and other more discrete rate components such as the various zones in fourth-class parcel post.

In view of the magnitude of services which ideally should have cost disaggregation but for which the present state of data retrieval systems does not permit cost disaggregation, we have decided to adopt the Postal Service's proposal. This "to the extent practical" qualification, of course, only applies to rate categories, since the current rule now requires disaggregated cost data for the various subclasses of mail.[4] Consistent with the above, we have revised the language of this subsection to require that attributable costs be separately attributed to "mail classes, subclasses, special services, and, to the extent practical, rate categories of mail services."

DMMA proposed a further amendment to rule 54 which would require that the Postal Service include in each rate filing a breakdown of attributable costs for the test year at proposed rates by subclasses and by function or method of attribution. In its reply comments the Postal Service indicated that this information was provided in R76-1 to the extent practical and will continue to be provided in future rate filings. The Postal Service further states that the "level of detail" required under the proposal is "not replicable" in the form DMMA contemplates. The rules of practice are intended to provide guidelines to be followed and are not intended to catalogue exhaustively all the nuances of the components of a rate filing. However, we agree with DMMA that the need exists for a greater level of detail than has heretofore been supplied. But since the Postal Service has committed itself to include within its rate filings the data envisioned in the proposal, we will defer amending the rules regarding rate filing contents to specifically require this information to be provided.

AMENDMENTS TO RULE 3001.54(j)

In the Notice of Proposed Rulemaking the Commission indicated that the proposed revisions to § 3001.54(j) were not intended to be substantive but rather clarifications in the terminology to more accurately reflect the specific information required. The OOC expresses concern that these refinements will enable the Postal Service to omit from its rate filings the coefficient of elasticity and cross-elasticity for each class and subclass of mail. This was not our intent. Accordingly, we have expanded §§ 3001.54(j)(6)(i) and (ii) to require a detailed explanation of the methodology employed in determining changes in revenues or volumes resulting from changes in rates and fees, or from the diversion of mail from one class to another. Also, we have substituted the term "volumes" in place of "revenues" in §§ 3001.54(j)(6)(ii) and (iii) to more closely accord with the basic volumetric information solicited by this section.

With regard to our proposed changes to § 3001.54(j)(6)(iii), the Postal Service argues that the revenue (or more properly volume) effects of such factors as population, business activities, etc. can-

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[1] Opinion and Recommended Decision of the Postal Rate Commission, Postal Rate and Fee Increases, 1973, Docket No. R74-1, Vol. 1, 1-471-1349 (hereinafter cited as PRC Op. R74-1, 1-__).

[2] Opinion and Recommended Decision of the Postal Rate Commission, Postal Rate and Fee Increases, 1975, Docket No. R76-1.

[3] In light of *National Association of Greeting Card Publishers* v. *United States Postal Service*, —— F. 2d ——, Civil No. 75-1856 (D.C. Cir. filed Dec. 28, 1976), we are deferring consideration of our proposed amendments to rule 54(h)(2). (39 CFR 3001.54(h)(2)).

[4] The subclasses are listed in our last rate opinion, PRC Op. R76-1, pp. 157-261. Rate categories are subdivisions within a subclass.

not be shown separately because demand equations are multiplicative, i.e., the coefficients are interdependent. In this regard, we are in agreement with the Postal Service. Nevertheless we have found that our analysis of rate design can be impaired by the unavailability of data setting forth the effects of the various nonprice factors enumerated in this subsection. In order to obtain this information, but also to account for the interdependence of these nonprice variables, we have provided language to allow a presentation of the volume effects of a combination of interdependent factors with an explanation of the relative weight of said factors.

AMENDMENTS TO RULES 3001.54 (k), (l), (m), and (n)

Our proposed amendments to § 3001.54 (k), (l) and (m) did not provoke extensive comment by the OOC or the Postal Service. OOC suggests that we continue to require the Postal Service to supply the data which was originally provided by the Workload Reporting System (WLRS) which is now discontinued. As we intimated in the Notice of Proposed Rulemaking, in the next ratemaking case we will determine whether the data supplied by the substituted Management Operating Data System (MODS) is probative and should be provided. Thus except for deleting the obsolete reference to the defunct WLRS, we will hold in abeyance any further revisions to this rule.[5]

With respect to our amendments to Rules 3001.54 (l) and (m) we have revised the proposed rules to allow the Postal Service latitude to provide the contemplated data in workpaper form. This is premised upon the Postal Service's undertaking to provide workpapers which are complete, legible and self-explanatory.

In our proposed rule pertaining to Prior Rate Case Reconciliations [§ 3001.54(n)] we attempted to establish criteria indicating what is a material variance between test period costs, revenues and volumes and the actual costs, revenues and volumes. OOC in his comments asserted that our proposed "two-percent" variance test be lowered to one-percent. The Postal Service questioned the validity of any specific test and also criticized the proposed rule as being vague. This being our first attempt to isolate the nature of variance in this area, we believe that a general rule is appropriate and have decided to eliminate any test at this time. Rather, the Postal Service will be required to present all relevant data to the extent practical.[6] If the analysis provided by the Postal Service proves to be inadequate we will reconsider this rule upon the conclusion of the next rate case.

[5] We have also deleted the redundant words "'billing determinants'" in § 3001.54(k)(1)(iii).

[6] Of course, this rule, like any other Commission rule, may be waived for the next rate case, if good cause is shown. *See* 39 CFR 3001.22.

OTHER CHANGES IN THE RULES

No comments were received with respect to the other changes proposed in our Notice of Proposed Rulemaking except for the Postal Service's request that a provision be inserted in Rule 3001.19b (b) to require the Commission to periodically circulate notice to parties of the filing of comments by "commenters" pursuant to this amended rule. The Commission intends to circulate said notice as warranted but does not believe it necessary to revise the proposed rules in this regard.

Accordingly, in consideration of the foregoing findings and for the reasons given in the Notice of Proposed Rulemaking Part 3001 of Chapter 3 of title 39 of the Code of Federal Regulations is amended, effective February 13, 1977, as follows:

Subpart A—Rules of General Applicability

1. Amend § 3001.5 (a) and (h) to read as follows:

§ 3001.5 Definitions.

"Act" means the Postal Reorganization Act (84 Stat. 719, Title 39, United States Code), as amended.

* * * * *

(h) "Participant" means any party and the officer of the Commission who is designated to represent the interests of the general public and, for purposes of §§ 3001.11(e), 12, 21, 23, 24, 29, 30, 31, and 32 only, it also means persons granted limited participation.

3. Revised § 3001.19a to read as follows:

§ 3001.19a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17, in accordance with the following provisions:

(a) *Form of request.* Requests for leave to be heard as a limited participator shall be in writing, shall set forth the nature and extent of the requestor's interest in the proceeding, shall include the name and full mailing address of the person or persons who are to receive service of documents by the Secretary, and shall be served on the Postal Service (and on the complainant in a complaint proceeding) pursuant to § 3001.12. Except where good cause for late filing is shown, requests for leave to be heard as a limited participator shall be filed not later than the date fixed for the filing of petitions to intervene pursuant to § 3001.20(c).

(b) *Answers.* Answers to requests to be heard as a limited participator may be filed by any participant or limited participator in a proceeding or any person who has filed a petition to intervene or a request to be heard as a limited participator therein no later than 10 days after the request to be heard as a limited participator is filed.

(c) *Action on requests.* As soon as practicable the Commission shall act to grant or deny requests for limited participation. The grant of a request for limited participation shall not constitute a determination by the Commission that the grantee has such an interest in the proceeding that he would be aggrieved by an ultimate decision or order of the Commission.

(d) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participators may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Sections 3001.25 through 3001.28 shall not be applicable to limited participators. However, limited participators, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

4. Add new § 3001.19b, to read as follows:

§ 3001.19b Informal expression of views by persons not parties or limited participators (commenters).

Notwithstanding the provisions of §§ 3001.19a and 3001.20, any person may file with the Commission, in any case that is noticed for a hearing pursuant to § 3001.17, an informal statement of views in writing, in accordance with the following provisions:

(a) *Contents of statement.* A statement filed pursuant to this section shall set forth the name and full mailing address of the person by whom or on whose behalf it is filed, a concise statement of the issue or issues to which the comments contained therein apply, and a clear statement of any views, opinions, or suggestions which the person filing the statement wishes to lay before the Commission.

(b) *Disposition by the Commission or presiding officer.* Statements filed pursuant to this section shall be made a part of the Commission's files in the proceeding. The Secretary shall maintain a file of such statements which shall be segregated from the evidentiary record in the proceeding, and shall be open to public inspection during the Commission's office hours. A statement or exhibit thereto filed pursuant to this section shall not be accepted in the "record," as defined by § 3001.5(k) except to the extent that they are (1) otherwise formally introduced in evidence, or (2) a proper subject of official notice, pursuant to § 3001.31(j).

(c) *Ex parte communications—exception.* A statement filed pursuant to this section shall not be considered an ex parte communication within the meaning of § 3001.7.

5. Amend § 3001.32 (b) and (c) to read as follows:

§ 3001.32 Appeals from rulings of the presiding officer.

* * * * *

(b) *Appeals certified by the presiding officer.*

(1) Before the issuance of an initial decision pursuant to § 3001.39(a) or the certification of the record to the Commission pursuant to § 3001.38(a), rulings of the presiding officer may be appealed when the presiding officer certifies in writing that an interlocutory appeal is warranted. The presiding officer shall not certify an appeal unless the officer finds that (i) the ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion and (ii) an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.

(2) A request for the presiding officer to certify an appeal shall be made within 5 days after the presiding officer's ruling has been issued. The request shall set forth with specificity the reasons that a participant believes that an appeal meets the criteria of paragraphs (b)(1)(i) and (b)(1)(ii) of this section. Such requests shall also state in detail the legal, policy, and factual arguments supporting the participant's position that the ruling should be modified. If the appeal is from a ruling rejecting or excluding evidence, such request shall include a statement of the substance of the evidence which the participant contends would be adduced by the excluded evidence and the conclusions intended to be derived therefrom.

(3) The presiding officer may request responsive pleadings from other participants prior to ruling upon the request to certify an appeal.

(c) *Appeals not certified by the presiding officer.* If the presiding officer declines to certify an appeal, a participant who has requested certification may apply to the Commission for review within 10 days. Unless the Commission directs otherwise, its review of the application will be based on the record and pleadings filed before the presiding officer pursuant to paragraph (b) of this section.

* * * * *

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

1. Section 3001.54 is amended by revising paragraphs (h)(4), (j), and (k); redesignating paragraphs (l), (m), (n), (o) and (p) as paragraphs (o), (p), (q), (r), and (s) respectively, and by adding new paragraphs (l), (m), and (n) to read as follows:

§ 3001.54 Contents of formal requests.

* * * * *

(h) * * *

(4) The attributable and other costs reasonably assignable as provided in paragraph (h)(2)(i) through (iii) of this section shall separately be attributed to mail classes, subclasses, special services, and, to the extent practical, rate categories of mail service. The submission shall identify the methodology used to attribute or assign each type of such costs and, subject to paragraph (a)(2) of this section, shall also include an analysis of the effect on costs of:

(i) Volume;

(ii) Peaking patterns;

(iii) Priority of handling;

(iv) Mailer preparations;

(v) Quality of service;

(vi) The physical nature of the item mailed;

(vii) Expected gains in total productivity, indicating such factors as operational and technological advances and innovations; and

(viii) Any other factor affecting costs.

* * * * *

(j) *Revenues and volumes.* (1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the actual and estimated revenues of the Postal Service from the then effective postal rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraphs (f) and (g) of this section.

(2) Subject to paragraph (a)(2) of this section, every formal request shall set forth the estimated revenues based on the suggested rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraph (f)(2) of this section.

(3) Subject to paragraph (a)(2) of this section, the actual and estimated revenues referred to in paragraphs (j)(1) and (2) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources from which Postal Service collects revenues.

(4) Each revenue presentation required by paragraphs (j)(1), (2), and (3) of this section shall, subject to paragraph (a)(2) of this section, be supported by an identification of the methods and procedures employed.

(5) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request:

(i) The actual volume of mail at the prefiled rates for the most recent past fiscal year;

(ii) The estimated volume of mail at the prefiled rates for the fiscal year in which the filing is made;

(iii) The estimated volume of mail for the fiscal year in which the filing is made assuming the effectiveness of the suggested rates;

(iv) The estimated volume of mail for the future fiscal year, assuming the retention of the prefiled rates; and

(v) The estimated volume of mail for the future fiscal year, assuming the effectiveness of the suggested rates.

(6) Subject to paragraph (a)(2) of this section, a demand analysis shall be presented in every formal request, for each class and subclass of mail and postal service. The analysis shall include such items as the following:

(i) A detailed explanation of the methodology employed in determining changes in revenues for each class and subclass of mail and postal service resulting from changes in rates and fees;

(ii) A detailed explanation of the methodology employed in determining changes in volumes for each class and subclass of mail and postal service resulting from diversion from one class or subclass of mail and postal service to any other class or subclass of mail and postal service;

(iii) The identification of the change in volumes for each class and subclass of mail and postal service resulting from changes in population, personal income, business activity, alternative or competitive services, and other nonprice factors affecting postal service and volume. The volume effect shall be shown separately for each factor or combination of interdependent factors. When a change in volume is caused by a combination of interdependent factors an explanation of the relative weight of each factor shall be provided; and

(iv) The identification of peaking patterns.

(k) *Financial statements and related information.* (1) Subject to paragraph (k)(3) of this section, every formal request shall include, for the 2 fiscal years immediately preceding the fiscal year in which the date of formal filing occurs, the Balance Sheet, the Statement of Income and Expense, basic statistical information and the Statement of Income and Expense by budget categories of the Postal Service. This information shall include data with respect to:

(i) Balance Sheet and a supporting schedule for each item appearing thereon;

(ii) Statement of Income and Expense and a supporting schedule for each item appearing thereon;

(iii) As appropriate, statistical data with respect to revenue, pieces (by physical attributes, showing separately amounts of mail identified as stamped, metered, and imprinted, or other), weight, distance, postal employees (number, total payroll, productivity, etc.), postal space, post offices (number, classes, etc.), and any other pertinent factors which have been utilized in the development of the suggested rate schedule;

(iv) Statement of Income and Expense by cost segment.

(2) A reconciliation of the budgetary information with actual accrued costs shall be provided for the most recent fiscal year.

(3) If the fiscal information for the immediately preceding fiscal year is not fully available on the date of filing, a preliminary or pro forma submittal shall

be made and upon final completion an updated report shall be filed in substitution therefor.

(l) Billing determinants. A statement, which can be in workpaper form, indicating for each class and subclass of mail and postal service the relevant billing determinants (e.g, the volume of mail related to each rate element in determining revenues) separately for the current rates and the proposed rates. Proposed changes in rate design and the related adjustments of billing determinants should be explained in detail.

(m) *Continuing and phasing appropriations.* A statement, which can be in workpaper form, presenting detailed calculations of continuing appropriations according to 39 U.S.C. § 2401(c) and phasing appropriations under 39 U.S.C. 3626 and any proposed adjustment to such phased rates under 39 U.S.C. § 3627 indicated by circumstances known at the time of the filing. Calculation of all the phased rates for the entire applicable phasing period should be explained in detail.

(n) *Prior rate case reconciliations.* Every formal request shall contain, to the extent practical, an explanation considering both price and nonprice variables, of the reasons that the costs (by cost segment), revenues and volumes (by class and subclass of mail), projected for the fiscal year test period used in the most recently concluded rate case, differ from the actual accrued costs, revenues and volumes.

* * * * *

[39 U.S.C. §§ 3603, 3622, 3623; 5 U.S.C. 553.]

DAVID F. HARRIS,[1]
Secretary.

[FR Doc.77-4112 Filed 2-8-77;8:45 am]

Title 43—Public Lands: Interior

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

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3040—ENVIRONMENT AND SAFETY

COMPETITIVE COAL LEASING SURFACE MINING REGULATIONS: COAL

Final Regulations

Correction

In FR Doc. 77-2256 appearing at page 4442 in the issue of Tuesday, January 25, 1977, on page 4445, the intro text of § 3041.0-5(b) should be corrected to read as follows:

§ 3041.0-5 Applicability.

* * * * *

(b) The provisions of this subpart shall become effective upon the date of publication in the FEDERAL REGISTER as final rulemaking, except as hereinafter provided.

[1] By the Commission: Commissioner Saponaro concurring, filed a separate statement, attached hereto.

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 16; Amdt. 99-10]

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Conflict of Interest; Revision; Correction

In FR Doc. 77-1284 appearing at page 3118 in the FEDERAL REGISTER of Friday, January 14, 1977, the following changes should be made in Appendix C:

1. On page 3128, in column 1, subsection VI. Federal Railroad Administration, is corrected by deleting the list of employees under the subheading "Office of Federal Assistance" and inserting in its place the following list of employees:

Associate Administrator
Director, Office of National Freight Assistance Programs
Director, Office of Passenger and Special Programs
Director, Office of State Assistance Programs

2. On page 3128, in column 1, subsection VI. Federal Railroad Administration, is corrected by deleting the list of employees under the subheading "Office of Policy and Program Development" and inserting in its place the following list of employees:

Associate Administrator
Deputy Associate Administrator
Director, Office of Rail Economics and Operations
Director, Office of Rail Industry Structure
Director, Office of Rail Systems and Information

Dated: February 4, 1977.

BRUCE M. FLOHR,
Deputy Administrator.

[FR Doc.77-4162 Filed 2-8-77;8:45 am]

Federal Railroad Administration

[Rulemaking Docket LI-5]

PART 230—LOCOMOTIVE INSPECTION

Temporary Amendment of Inspection Interval

Notice is hereby given that the Federal Railroad Administration (FRA) is amending temporarily a single provision of the Locomotive Inspection Regulations, 49 CFR Part 230. This temporary amendment becomes effective on the date of issuance of this notice and expires at midnight, March 31, 1977.

The Locomotive Inspection regulation currently provides that all locomotive units must be inspected at least once every thirty days to determine whether the locomotive unit is in compliance with the provisions of this regulation (49 CFR 230.331(a)). The regulation also contains a provision that permits a locomotive unit to be inspected within five (5) days after the end of that thirty (30) day period if the railroad responsible for the inspection needs this additional time due to circumstances beyond its control (49 CFR 230.331(a)(1)).

The extreme adverse weather conditions that have prevailed for some time have caused many railroads to utilize this contingency provision for increased locomotive inspection intervals. The Association of American Railroads (AAR) has advised FRA in writing that despite utilization of this contingency provision many railroads are unable, because of the severe weather conditions, to conduct a sufficient number of locomotive inspections in order to maintain effective operations.

The magnitude of this problem has increased to the point that vital commodities are not being delivered by rail because the railroads lack sufficient locomotive units with in-date inspections to operate their trains. These commodities include shipments of liquified petroleum gases, oil and coal which furnish both heat and power to various industries throughout the country. These commodities, as well as food supplies, have been classified by the Interstate Commerce Commission as priority delivery items (42 FR 4849).

FRA has conducted an independent assessment of this problem and has concluded that the AAR estimate of the critical nature of this problem is essentially correct. FRA has also reviewed the degree of safety that is obtained by strict adherence to its current regulatory provisions. On the basis of that review and analysis, FRA has concluded that this emergency warrants immediate regulatory action in the public interest. Consequently, FRA is amending, on a temporary basis, the provision that allows a railroad five (5) additional days to conduct the required inspection so that a railroad will be permitted to conduct that inspection within fifteen (15) days after the end of the thirty (30) day period if the railroad responsible for the inspection needs the additional time due to circumstances beyond its control.

FRA's action in temporarily amending this provision is not intended to relieve any railroad of its responsibility to conduct these inspections on the normal thirty (30) day basis. This amendment is intended to provide an additional period of ten days within which to accomplish this inspection activity to the extent railroads are unable to complete the required inspection within the current time frames, as a direct consequence of the severe adverse weather conditions. FRA believes that these severe weather conditions are generally confined to railroad operations in the following states; Connecticut, Delaware, Illinois, Iowa, Indiana, Kentucky, Maryland, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, and West Virginia.

This temporary amendment to the regulation is not intended to relieve any railroad of its responsibility to determine that this additional time is in fact needed in each instance and to note these circumstances on the appropriate inspection form (FRA F 6180-49). Furthermore, this temporary amendment will not relieve a railroad of its responsibility to conduct a daily inspection as

required by the regulation (49 CFR 230.203).

In view of the scope of this problem FRA has determined that a temporary regulatory change is the appropriate response to this situation. This action is being taken only as a response to these emergency conditions and does not constitute a change to FRA's position on the efficacy of the locomotive inspection regulations generally, or on the proper inspection intervals for locomotive units. The decision to make this temporary amendment reflects FRA's determination that the public interest, under the current conditions, warrants a temporary regulatory change that is consistent with railroad safety for this limited period of time.

FRA has evaluated the adoption of this temporary amendment in accordance with the regulatory reform policies of the Department of Transportation, which were stated in the public notice published April 16, 1976 in the FEDERAL REGISTER (41 FR 16200). These policies require an evaluation of the economic impact of all regulations. FRA has determined that since this amendment is a temporary provision that will expire by its own terms on March 31, 1977, and that since this amendment serves to reduce temporarily economic burdens without imposing additional costs, the economic impact of this amendment is minimal.

FRA's action to amend the regulation on a temporary basis is being done without prior public notice under the specific authority contained in the Administrative Procedures Act (5 USC 553(b)(3)(B)). This amendment, which becomes effective immediately upon issuance, is being accomplished solely to respond immediately to the emergency nature of the current situation. FRA has, therefore, determined that notice and public procedure thereon are impractical, unnecessary and contrary to the public interest.

FRA, however, has scheduled a public hearing on the proceeding for February 15, 1977 to permit all interested parties to comment on this regulatory change. FRA will conduct the public hearing at 10:00 a.m., Tuesday, February 15, 1977, in Room 4436-38, 400 Seventh Street, S.W., Washington, D.C.

In consideration of the foregoing, Part 230 of Title 49 of the Code of Federal Regulations is amended as follows:

1. By revising paragraph (a) of § 230.331 to read as follows:

§ 23.331 Monthly locomotive unit inspection and report.

(a) Except as provided in paragraph (e) of this section, locomotive units shall be inspected at least once every 30 days to determine whether they meet the requirements of this subpart. However, an inspection may be made within 5 days after the end of the 30-day period or from February 4, 1977 through March 31, 1977 within 15 days after such 30-day period, if:

(1) The railroad responsible for the inspection needs additional time due to circumstances beyond its control; and

(2) The circumstances are noted on Form FRA F 6180-49.

This amendment is effective February 4, 1977 and immediate compliance with this provision is authorized.

(This amendment is issued under the authority of Section 5, 36 Stat. 914 (45 U.S.C. 28), section 6(e), 80 Stat. 939 (49 USC 1655(e)) and § 1.49 of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(c)(5).)

Issued in Washington, D.C. on February 4, 1977.

BRUCE M. FLOHR,
Deputy Administrator.

[FR Doc.77-4161 Filed 2-8-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 293 (Sub-No. 2)]

PART 1125—STANDARDS FOR DETERMINING RAIL SERVICE CONTINUATION SUBSIDIES

Report and Order

Since the publication of the most recent amendments to the standards for determining rail freight service continuation subsidies within the Northeast-Midwest region (41 FR 55686), the Office has been compiling a complete set of the standards, as amended to date. This task is now complete, and copies of the standards, as amended, may be obtained from:

Rail Services Planning Office, 1900 L Street, NW, Fifth Floor, Washington, DC 20036.

While incorporating the amendments into the standards, the Office discovered several minor corrections which needed to be made. As a result, the Office is reopening the proceeding to incorporate these corrections. Inasmuch as the changes are technical in nature and none represents a change in the meaning or the application of the standards, the amendments will be effective immediately.

In light of the foregoing consideration:

It is ordered, That the proceeding to formulate standards for determining rail freight service continuation subsidy standards in the Northeast-Midwest region, pursuant to section 205(d)(6) of the Regional Rail Reorganization Act, as amended, is hereby reopened for the purpose of amending the standards.

It is further ordered, That Part 1125 of Subchapter B of Chapter X of Title 49 of the Code of Federal Regulations be amended by making the changes set forth below to the standards adopted on January 8, 1975, and amended on March 28, 1975, January 22, 1976, March 26, 1976, and December 21, 1976.

And *it is further ordered*, That this order shall become effective February 4, 1977.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Issued February 4, 1977, by Alan M. Fitzwater, Director, Rail Services Planning Office.

ROBERT L. OSWALD,
Secretary.

1. Section 1125.2 is amended by revising the definition of "Form R-1" and by adding a definition of "Form R-2" to read as follows:

§ 1125.2 Definitions.

* * * * *

"Form R-1" means a Class I railroad's annual report filed with the Commission in accordance with the requirements of section 20 of the Interstate Commerce Act.

"Form R-2" means a Class II railroad's annual report filed with the Commission in accordance with the requirements of section 20 of the Interstate Commerce Act.

* * * * *

§ 1125.3 [Amended].

2. Subsection (b) of § 1125.3 is amended by inserting the word "freight" in front of the word "revenues" in both the fourth and fifth sentences.

§ 1125.5 [Amended].

3. The reference in the first sentence of paragraph (j)(5) of § 1125.5 to "paragraph (j)(4)" is corrected to read "paragraphs (j)(3) and (4)".

4. The reference in paragraph (k)(2)(ii) of § 1125.5 to "Rail Form A day ownership cost" is corrected to read "Rail Form A car ownership cost"

Appendix I [Amended].

5. The reference in the first sentence of Appendix I to "§ 1125.8(a)" is corrected to read "§ 1125.9".

Appendix II [Amended].

6. The reference in the first sentence of Appendix II to § 1125.8(f)" is corrected to read "§ 1125.9", and the reference in the second sentence of Appendix II to "§ 1125.4-7" is corrected to read "§ 1125.4-8".

[FR Doc.77-4177 Filed 2-8-77;8:45 am]

proposed rules

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 311]

RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 552b(g), and section 9 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1819, the Federal Deposit Insurance Corporation proposes to amend Title 12 of the Code of Federal Regulations by adding a new Part 311. The purpose of this proposed Part 311 is to implement the requirements of the Government in the Sunshine Act of 1976, 5 U.S.C. 552b (hereinafter "the Act").

The objective of the Act and of these regulations is to provide the public with the fullest practicable information regarding the decision making process, consistent with protecting the rights of individuals and the ability of the agency to carry out its responsibilities. Under the Act and these proposed regulations, Board members may not, after March 12, 1977, conduct "meetings" other than in accordance with this proposed regulation.

These proposed regulations generally follow the language of the Act, but in some cases it is necessary to clarify the applications of the general language of the Act to the specific circumstances of the Corporation. This is especially necessary in section 311.2b, the definition of meetings covered by the Act. Based on the legislative history, the Corporation believes that deliberations to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be withheld; informal background discussions among Board members and staff which clarify issues and expose varying views; infrequent decision-making by circulating written material to individual Board members; and sessions with individuals from outside the Corporation where Board members listen to a presentation, and may elicit additional information are not meetings covered by the Act. Public comment on this definition is specifically sought.

In general, the Act requires meetings and portions of meetings to be open to the public, except when an open discussion would result in the release of material exempt from public disclosure under subsection (c) of the Act (section 311.3 (b)). Among the exceptions to the open meeting requirements of the Act most applicable to the Corporation are meetings or portions of meetings which would disclose confidential or privileged financial information (311.3(b)(4)), information contained in or related to examination, condition, or operating reports (311.3(b)(8)), information that might endanger the stability of a financial institution (311.3(b)(9)(A)(ii)), and information concerning certain Corporation investigative, legal, or enforcement proceedings (311.3(b)(10)).

The Corporation has reviewed its past records of meetings and found that the overwhelming majority could properly have been closed pursuant to the four exceptions to the open meeting requirements just described. As a result of this finding, the Corporation qualifies under subsection (d)(4) of the Act for the use of expedited procedures in closing meetings under those four exemptions. The proposed regulations provide for these expedited closing procedures (section 311.6). The attention of the public is directed to the examples given in section 311.6(a) of meetings that may be closed in this manner. Although the proposed regulation allows meetings of the type on this list to be opened when the public interest so requires, it is expected that in most cases involving these matters an open meeting will not be possible. The proposed regulation also contains closing procedures for meetings that cannot be closed using the expedited procedures, and procedures for closing meetings at the request of an individual who believes his interests may be prejudiced by an open meeting (section 311.5). In addition, rules are set forth for the maintenance of transcripts, and minutes, and the procedures to be followed in inspecting and copying such materials (311.8). All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed rules should send them to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, to be received no later than March 11, 1977. Comments will be made available for inspection and copying upon request. The proposal may be changed in the light of the comments received.

By Order of the Board of Directors, February 5, 1977.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

PART 311—RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

Sec.
311.1 Purpose.
311.2 Definitions.
311.3 Meetings.
311.4 Procedure for announcing meetings.
311.5 Regular procedure for closing meetings.
311.6 Expedited procedure for announcing and closing certain meetings.
311.7 General Counsel certification.
311.8 Transcript, minutes of closed meetings.

AUTHORITY: The provisions of this Part 311 issued under 5 U.S.C. 552b and 12 U.S.C. 1819.

§ 311.1 Purpose.

This part implements the policy of the "Government in the Sunshine Act", Section 552b of Title 5, United States Code, which is to provide the public with as such information as possible regarding the decision making process of certain federal agencies, including the Federal Deposit Insurance Corporation, while preserving the rights of individuals and the ability of the agency to carry out its responsibilities.

§ 311.2 Definitions.

For purposes of this part—

(a) "Board" means Board of Directors of the Federal Deposit Insurance Corporation and includes any committee or subdivision of the Board authorized to act on behalf of the Corporation, but does not include any standing or special committee (such as the Board of Review, the Board of Review (Mergers), or the Committee on Liquidations, Loans and Purchases of Assets) which has been or may be created by the Board of Directors but whose membership consists primarily of Corporation employees, including not more than one Board member.

(b) "Meeting" means the deliberations (including those conducted by conference telephone call, or by any other method) of at least two members where such deliberations determine or result in the joint conduct or disposition of agency business but does not include:

(1) Deliberations to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be withheld;

(2) Informal background discussions among Board members and staff which clarify issues and expose varying views;

(3) Infrequent decision-making by circulating written material to individual Board members;

(4) Sessions with individuals from outside the Corporation where Board members listen to a presentation and may elicit additional information.

(c) "Member" means a member of the Board.

(d) "Open to public observation" and "open to the public" mean that individuals may witness the meeting, but not participate in, record, photograph, or otherwise electronically or mechanically reproduce the meeting without prior Corporation approval.

(e) "Public announcement" and "publicly announce" mean making reasonable effort under the particular circumstances of each case to fully inform the public. This may include posting notice on the Corporation's public notice bulletin board maintained in the lobby of its offices located at 550 17th Street, N.W., Washington, D.C. 20429, issuing a press release and employing other methods of notification that may be desirable in a particular situation.

§ 311.3 Meetings.

(a) *Open meetings.* Except as provided in Paragraph (b) of this Section, every portion of every meeting of the Corporation's Board will be open to public observation. Board members will not jointly conduct or dispose of Corporation business other than in accordance with this Part.

(b) *When meetings may be closed and announcements and disclosures withheld.* Except where the Board finds that the public interest requires otherwise, a meeting or portion thereof may be closed, and announcements and disclosure pertaining thereto may be withheld when the Board determines that such meeting or portion of the meeting or the disclosure of such information is likely to—

(1) 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 (B) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Corporation;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. § 552) provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

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

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Corporation or any other agency responsible for the supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to:

(i) (A) Lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Significantly frustrate implementation of a proposed Corporation action, except that paragraph (ii) shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

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

§ 311.4 Procedure for announcing meetings.

(a) *Scope.* Except to the extent that such announcements are exempt from disclosure under § 311.3(b), announcements relating to open meetings, and meetings closed under the regular closing procedures of § 311.5, will be made in the manner set forth in this section.

(b) *Time and content of announcement.* The Corporation will make public announcement at least seven days 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 Corporation to respond to request for information about the meeting. This announcement will be made unless a majority of the Board determines by a recorded vote that Corporation business requires that a meeting be called on lesser notice. In such cases, the Corporation will make public announcement of the time, place, and subject matter of the meeting, and whether it is open or closed to the public, at the earliest practicable time, which may be later than the commencement of the meeting.

(c) *Changing time or place of meeting.* The time or place of a meeting may be changed following the public announcement required by paragraph (b) only if the Corporation publicly announces the change at the earliest practicable time, which may be later than the commencement of the meeting.

(d) *Changing subject matter or nature of meeting.* The subject matter of a meeting, or the determination to open or close a meeting or a portion of a meeting, may be changed following the public announcement only if:

(1) A majority of the Board determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible; and,

(2) The Corporation publicly announces the change and the vote of each member upon such change at the earliest practicable time, which may be later than the commencement of the meeting.

(e) *Publication of announcements in Federal Register.* Immediately following each public announcement under this Section, such announcement will be submitted for publication in the FEDERAL REGISTER.

§ 311.5 Regular procedure for closing meetings.

(a) *Scope.* Unless § 311.6 is applicable, the procedures for closing meetings will be those set forth in this Section.

(b) *Procedure.* (1) A decision to close a meeting or portion of a meeting will be taken only when a majority of the entire Board votes to take such action. A separate vote of the Board will be taken with respect to each meeting which is proposed to be closed in whole or in part to the public. A single vote may be taken with respect to a series of meetings which are proposed to be closed in whole or in part to the public, or with respect to any information concerning such series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in the series. The vote of each Board member will be recorded and no proxies will be allowed.

(2) Any individual whose interests may be directly affected may request that the Corporation close any portion of a meeting for any of the reasons referred to in paragraphs (5), (6), or (7) of Section 311.3(b). Requests should be directed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. After receiving notice that an individual desires a portion of a meeting to be closed, the Board, upon request of any one of its members, will vote by recorded vote whether to close the relevant portion of the meeting. This procedure will apply even if the individual's request is made subsequent to the announcement of a decision to hold an open meeting.

(3) Within one day after any vote taken pursuant to paragraphs (b) (1) or (2) of this section, the Corporation will make publicly available a written copy of the vote, reflecting the vote of each Board member. Except to the extent that such information is exempt from disclosure, if a meeting or portion of a meeting is to be closed to the public, the Corporation will make publicly available within one day after the required vote a full written explanation of its action, together with a list of all persons expected to attend the meeting and their affiliation.

(4) The Corporation will publicly announce the time, place, and subject matter of the meeting, with determinations as to open and closed portions, in the manner and within the time limits prescribed in Section 311.4.

§ 311.6 Expedited procedure for announcing and closing certain meetings.

(a) *Scope.* Since a majority of its meetings may properly be closed pursuant to subparagraphs (4), (8), (9A), or (10) of Section 311.3(b) of this Part, subsection (d)(4) of the Government in the Sunshine Act (5 U.S.C. 552b) allows the Corporation to use expedited procedures in closing meetings under these four subparagraphs. Absent a compelling public interest to the contrary, meetings or portions of meetings that can be expected to be closed using these procedures include, but are not limited to: Administrative enforcement proceedings under Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) (exempt under subparagraphs (8), (9A), (10)); appointment of the Corporation as receiver, liquidator or liquidating agent of a closed bank or a bank in danger of closing (exempt under subparagraphs (8), (9A)), and certain liquidation activities pursuant to such appointment (exempt under subparagraphs (4), (10)); possible financial assistance by the Corporation under Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) (exempt under subparagraphs (4), (8), (9A)); changes pursuant to Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) in the rates of interest insured state nonmember banks may pay on deposits (exempt under subparagraph (9A)); certain bank applications including applications to establish or move branches, applications to merge, and applications for insurance (exempt under subparagraphs (8), (9A)); and investigatory activity under Section 10 (c) of the Federal Deposit Insurance Act (12 U.S.C. 1820(c)) (exempt under subparagraphs (4), (8), (9A), (10)). In announcing and closing meetings or portions of meetings under this section, the following procedures will be observed.

(b) *Announcement.* Except to the extent that such information is exempt from disclosure under the provisions of Section 311.3(b) the Corporation will make public announcement of the time, place and subject matter of the meeting and of each portion thereof at the earliest practicable time. This announcement will be published in the FEDERAL REGISTER if publication can be effected at least one day prior to the scheduled date of the meeting.

(c) *Procedure for closing.* (1) The Corporation's General Counsel will make the public certification required by Section 311.7.

(2) At the beginning of a meeting or portion of a meeting to be closed under this section, a recorded vote of the Board will be taken. The Board will determine by its vote whether to proceed with the closing. Even though a meeting or portion thereof could properly be closed under this section, a majority of the Board may find that the public interest requires an open session and vote to open the meeting. A copy of the vote, reflecting the vote of each Board member, will be made available to the public.

§ 311.7 General Counsel Certification.

For every meeting or portion thereof closed under Sections 311.5 or 311.6, the Corporation's General Counsel will publicly certify that, in the opinion of such General Counsel, the meeting may be closed to the public and will state each relevant exemptive provision. In the absence of the General Counsel, the Deputy General Counsel may perform the certification. If the General Counsel and Deputy General Counsel are both absent, the Special Counsel to the General Counsel or an Assistant General Counsel may provide the required certification. A copy of this 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, will be retained in the Board's permanent files.

§ 311.8 Transcript, minutes of closed meetings.

(a) *When required.* The Corporation will maintain a complete transcript, identifying each speaker, 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 portions of a meeting closed to the public pursuant to paragraphs (8), (9A), or (10) of Section 311.3(b), the Corporation may, in lieu of a transcript, maintain at set of minutes.

(b) *Content of minutes.* If minutes are maintained, they will fully and clearly describe all matters discussed and will provide a full and accurate summary of any actions taken, and the reasons for taking such action. Minutes will also include a description of each of the views expressed by each person in attendance on any item and the record of any roll call vote, reflecting the vote of each member. All documents considered in connection with any action will be identified in the minutes.

(c) *Available material.* The Corporation will maintain a complete verbatim copy of the transcript or minutes of each meeting or portion of a meeting closed to the public for a period of at least two years after the meeting, or until one year after the conclusion of any proceeding with respect to which the meeting or portion was held, whichever occurs later. The Corporation will make promptly available to the public the transcript, identifying each speaker, or minutes of items on the agenda or testimony of any witness received at the closed meeting except that in cases where the Privacy Act of 1974 (5 U.S.C. § 552a) does not apply, the Corporation may withhold information exempt from disclosure under § 311.3(b). For the convenience of members of the public who may be unable to attend open meetings of the Board, the Corporation will maintain for at least two years a set of minues of each meeting of the Board or portion thereof open to public observation.

(d) *Procedures for inspecting or copying available material.* (1) An individual may inspect materials made available under this Section at the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, during normal business hours. If the individual desires a copy of such material, the Corporation will furnish copies at a cost of 10 cents per page. Whenever the Corporation determines that in the public interest a reduction or waiver is warranted, it may reduce or waive any fees imposed under this Section.

(2) An individual may also submit a written request for transcripts or minutes, reasonably identifying the records sought, to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

[FR Doc.77-4332 Filed 2-8-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Notice of Proposed Rulemaking

The following proposed amendments to the SBA Size Regulations are being considered. These amendments are intended to clarify and modify size determination procedures to allow expedited and improved decisions in size status proceedings, to give greater weight to SBA Regional Office size determinations, and to generally provide for appellate form of review by the SBA Size Appeals Board.

Significant provisions of the proposed amendments would serve to effect the following changes:

(a) Provides that a firm protesting another firm's small business size status must provide specific detailed allegations regarding the basis for such protest and may provide evidence to SBA on such allegations;

(b) Specifies that SBA size determinations resulting from late protests will not apply to the procurement or property sale in question;

(c) Provides that, once properly instituted, size determinations will be completed even if they will not apply to the particular contract involved;

(d) Provides that the SBA size determination will be based primarily on allegations and facts supplied by the parties, but that SBA may request additional information;

(e) Provides that the concern whose size status is being determined will be given the opportunity to rebut adverse data in SBA files which may be utilized by SBA in its determination, and that it has the burden of supplying to SBA information on its size status;

(f) Provides specific procedures for recertification as small after a firm has been found by SBA to be other than small;

(g) Indicates that original SBA formal size determinations are generally made by SBA Regional Offices;

(h) Reconstitutes the SBA Size Appeals Board;

(i) Provides that the Size Appeals Board will generally not consider issues and evidence not previously presented to the SBA Regional Office;

(j) Provides that the specific factual findings of the SBA Regional Office will be presumed to be correct;

(k) Provides that the appealing party must specify the alleged grounds of material error in the original size or classification decision;

(l) Provides 10 days for size appeals to the Size Appeals Board on pending Government property sales;

(m) Provides that the Chairman of the Board may summarily dismiss untimely, frivolous or unspecific appeals;

(n) Provides that time limitations will be strictly applied;

(o) Provides that only concerns determined to be other than small business may petition for reconsideration by the Board, and that such reconsideration by the Board shall be granted only in extraordinary cases where the Chairman determines it necessary in the interest of fairness;

(p) Provides that the Board would not process product or service classification/size standard appeals which are untimely or where the contract has been awarded.

Comments may be submitted with respect to the proposed amendments to the Office of Interagency Affairs, SBA, 1441 L St., N.W., Washington, D.C. 20416. All material received on or before March 11, 1977, will be considered.

It is therefore proposed to amend Part 121 in the manner set forth below.

1. Section 121.3–2(u) is amended to read as follows:

§ 121.3–2 Definition of terms used in this part.

* * * * *

(u) "Protest" means a statement in writing from any bidder or offeror on a particular procurement or sale (or from any other party interested therein) alleging that another bidder or offeror on such procurement or sale is not a small business concern. Such statement shall contain specific detailed allegations in support of the protestant's claim. A protest received after the time limits set forth in § 121.3–5(a) shall be acted on, but such determination shall not apply to the procurement or sale in question.

2. Section 121.3–4 is amended to read as follows:

§ 121.3–4 Size determinations.

(a) Original size determinations shall be made by the regional director, or his delegatee, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, except that for lease guarantee reinsurance purposes such determinations shall be made by the Associate Administrator for Finance and Investment. The regional director or his delegatee, or the Associate Administrator for Finance and Investment promptly shall notify in writing, by certified mail, return receipt requested, the concern in question and other interested persons of his decision. Such determination shall become effective immediately and shall remain in full force and effect unless and until reversed by the Small Business Size Appeals Board pursuant to § 121.3–6.

(1) For the purpose of Government procurements or sales, a size determination shall be made only in the event of a protest pursuant to § 121.3–5, a request for recertification, a request for a Certification of Competency, a request by the U.S. General Accounting Office, or if the Associate Administrator for Procurement Assistance or his delegatee or a regional director or his delegatee has information which causes him to question the size status of a concern for the purpose of any Small Business contracting program or Procurement Source Program, or for any other purpose relating to Government procurement, and he concludes that a size determination is necessary: *Provided, however,* That a regional director or his delegatee may, whenever he deems such action necessary, determine the size status of a concern for the purpose of the Government Property Sales Program.

(2) For the purpose of SBA financial assistance, a formal size determination under this provision shall be made only where the regular review of the loan file or other substantial evidence indicates the need therefor and a request is made by the appropriate SBA financial assistance official, or an initial determination is made that the concern is other than small, in which case the concern shall have the right to request a formal size determination from the Regional Office. Initial nonformal financial assistance size determinations may not be appealed to the Size Appeals Board under § 121.3–6.

(b) Once properly instituted (i.e., by filing of a protest or by an official request for a determination) formal size determinations will be completed, even if the particular application, bid or offer is subsequently withdrawn, or the Government procurement or sale is cancelled or awarded.

(c) The size determination will be based primarily on facts and allegations supplied by the parties to the SBA.

SBA will ordinarily not raise additional issues concerning a firm's size status, but if deemed necessary or appropriate may utilize other information in its files and may make limited inquires including requests to the parties or other persons for additional specific information. The burden of establishing its small business size by submitting full information to SBA shall be upon the concern whose size status is under consideration. Such concern shall be given opportunity to rebut adverse data in SBA files which may be utilized by SBA in its determination. Specific signed factual evidence will be weighed more heavily by SBA than general unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure. The SBA formal size determination shall be based upon the record, including reasonable inferences therefrom, and shall state in writing the basis for its findings and conclusions.

"(d) If SBA has made a formal size determination that a particular concern is not small, the concern will not be deemed to be eligible within such applicable size standard for any assistance under the Small Business Act or Small Business Investment Act of 1958, unless it is thereafter recertified by SBA as a small business. After such an adverse size determination, the concern shall not self-certify itself as small within the same or a lower employee or annual receipts size standard (whichever is applicable) unless it is recertified. Applications for recertification shall be made to the SBA Regional Office which made the original size determination. Applications for recertification shall be accompanied by a current completed SBA Form 355 and by any other pertinent information necessary to show a significant change in its ownership, management, contractual relations, or in other factors bearing on its status as a small concern. If good cause is shown in extraordinary cases, the original determination on the application for recertification may be made by the Size Appeals Board."

§ 121.3–5 [Amended]

3. Section 121.3–5(a), relating to protests of a firm's small business status, is amended by substituting "regional office" for "district office" wherever it appears and by adding at the end thereof the following:

(a) * * * A protest must adequately set forth specific alleged grounds for the protest. A protest merely alleging that the protested concern is not small or is affiliated with unspecified other concerns will not be deemed to adequately specify grounds for the protest. Evidence supporting the protest may be submitted therewith. Protests which do not set forth specific alleged grounds for the protest will be dismissed.

4. Section 121.3–5(b), relating to notification of protest, is amended by substituting "regional director" for "district director" wherever it appears.

§ 121.3–6 [Amended]

5. Section 121.3–6(a) is amended by deleting paragraphs (1) and (2) thereof and substituting the following:

(a) * * * The Size Appeals Board shall consist of five members, to wit: The Deputy Administrator (Chairman); The Associate Administrator for Procurement Assistance (Vice Chairman); The Director, Office of Financing; The Deputy Associate Administrator for Operations; and the Director, Size Standards Division. In the event the Vice Chairman acts as Chairman in the stead of the Deputy Administrator, the Director of the Office of Procurement and Technical

Assistance shall become a member of the Board. Each member shall designate one alternate in writing to act in his stead, and in the event of an emergency, the Chairman may designate a temporary additional alternate for any member. Each member or his alternate shall have one vote except that the Chairman or the Vice Chairman acting in his stead shall vote only in the event of a tie.

6. Section 121.3–6(b)(3)(i) is amended to read as follows:

"(3) Time for appeal. (i) An appeal from a size determination or product classification by a regional director, or his delegatee, may be taken at any time, except that because of the urgency of pending procurements, appeals concerning the small business status of a bidder or offeror in a pending procurement must be within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a regional director or his delegatee. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on the 5th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned. Appeals from a size determination in a pending Government property sale must be within 10 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a regional director or his delegatee. Unless written notice of such appeal is received by the Board before the close of business on the 10th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending sale is concerned. An appeal received after the time limits set forth herein shall be acted on, but such determination shall not apply to the procurement or sale in question."

7. Section 121.3–6(b)(4) is amended to read as follows:

"(4) Notice of appeal. No particular form is prescribed for the notice of appeal. However, the appellant shall submit to the Board an original and one legible copy of such notice. A copy of the notice shall be sent to the contracting officer, and a copy shall be sent to the Regional Office which issued the size determination appealed. The notice should include the following information:

"(i) Name and address of concern on which the size determination was made;

"(ii) The character of the determination from which appeal is taken and its date;

"(iii) If applicable, the IFB or contract number and date, and the name, address and telephone number of the contracting officer;

"(iv) A full and specific statement of the reasons why the decision of a regional director, or his delegatee, the contracting officer or the Associate Administrator for Finance and Investment is alleged to be erroneous;

"(v) Arguments in support of such allegations; and

"(vi) Action sought by the appellant.

"Appeals must set forth specifically the alleged ground of material error in the original classification or size determination. The specific factual findings of such original SBA size determination will be presumptively deemed to be correct, and the Board generally will not review issues or evidence not previously presented to the SBA office making the original size determination unless such review is determined to be necessary to prevent manifest injury to a party not due to any fault or omission of such party."

8. Section 121.3–6(d) is amended to read as follows:

"(d) Statement of interested parties. After an appeal has been filed, any other interested parties may file with the Board a signed statement, together with one legible copy thereof, as to why the appeal should or should not be denied. Such statements shall be mailed or delivered to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416, within 5 calendar days of the receipt of appropriate notification of appeal or other action in the proceeding unless an extension is for cause granted by the Chairman of the Size Appeals Board. If the appellant is the concern whose size status is in question, the Board will provide copies of such statements submitted in connection with the appeal or a reconsideration thereof to such appellant.

9. Section 121.3–6(e)(1), relating to appeals to the Size Appeals Board, is amended by adding the following:

(e) * * * (1) * * * "Time limitations on all submissions will be strictly applied. Late submissions and submissions additional to those provided for in the regulation or requested by SBA may be disregarded by the Board to avoid delay in disposition of the case. If deemed necessary the Board may request additional specific information from the parties or other persons. In the case of refusal or failure to promptly furnish such information, the Board may assume that disclosure would be contrary to the interests of the party failing to make such disclosure."

* * * * *

10. Section 121.3–6(g), relating to reconsiderations, is amended to read as follows:

"(g) Reconsiderations. (1) Following a decision that a firm and its affiliates are not small business within an applicable size standard, any such firm or affiliate may petition the Chairman for reconsideration upon presentation of appropriate justification therefor. Such petition must be received by the Chairman within 10 business days following receipt by the firm of the written findings and conclusions of the Board. The petition for reconsideration may be in any form, with an original and one copy. The Chairman will notify interested parties that a petition for reconsideration has been received.

(2) The Chairman shall consider the petition for reconsideration upon the statement and other evidence presented by the petitioners and any other evidence the Chairman, in his discretion, deems necessary. Petitions for reconsideration will be granted only in extraordinary cases where necessary in the interest of fairness.

(3) Grounds for reconsideration. Grounds for reconsideration shall be:

(i) A material error of fact in the original decision; or

(ii) Relevant facts not previously considered by the Board and not previously available to the petitioner;

(iii) When a request for reconsideration is made, the petitioning firm must demonstrate that the grounds for reconsideration involve facts which were not previously presented to the Board through no fault or omission of such party.

(4) If the Chairman denies the request for reconsideration, he shall notify all parties. If the request for reconsideration is granted by the Chairman, he shall so notify all interested parties, setting forth a reasonable time within which the interested parties may, if appropriate, submit additional information. The Board may, in its discretion, provide interested parties with copies of appropriate information submitted by other parties where it determines that this is necessary in the interest of fairness or to better assist the Board in performing its factfinding functions.

(5) Following its reconsideration of the matter, the Board will promptly render a decision pursuant to paragraph (f) of this section. Such decision upon reconsideration shall not apply to the procurement or sale in question, but shall apply to the small business status of the petitioner and its affiliates with respect to other procurements or sales which have not been awarded at the time of such decision upon reconsideration. The decision of the Board shall constitute the final administrative remedy afforded by this Agency.

11. Section 121.3–6, relating to appeals to the Size Appeals Board, is amended by adding the following new paragraph (h):

"(h) The following may be summarily dismissed by the Chairman:

"(1) Untimely appeals and untimely petitions for reconsideration;

"(2) Appeals not setting forth specifically the alleged grounds of material error in the initial size or classification determination;

"(3) Appeals not within the Board's jurisdiction;

"(4) Appeals where the allegation of error has no apparent ground of support in either the record before the Board or under the Regulations of this Part 121;

"(5) Appeals on product or service classification/size standard determinations where the contract in question has already been awarded; and

"(6) Petitions for reconsideration which do not specify material errors of fact in the factual findings and conclusions of the Board's decision or do not specify relevant facts not previously presented to SBA through no fault or omission of the petitioning party.

"Such summary dismissal by the Chairman shall be final insofar as the pending procurement or sale is concerned. The

Chairman shall also refer size determination appeals dismissed solely by reason of untimeliness to the Board for a decision as regards eligibility for future procurements, sales, or other small business assistance. He shall not, however, refer to the Board untimely appeals from a product or service classification or size standard determination. The parties and other interested persons shall be promptly notified of the Chairman's action and the basis thereof. If a size determination appeal is dismissed solely for lack of specificity under paragraph (h) (2) of this section, the appellant may remedy such defect within 10 business days of notification of such dismissal, in which case the appeal shall be referred to the Board for a decision with respect to future eligibility under the applicable size standard."

12. Section 121.3–8, relating to definition of small business for Government procurement and to determination of the appropriate product or service classification and the applicable size standard on a procurement by the contracting officer, is amended by adding after the words "provided in § 121.3–6" the following:

§ Definition of small business for Government procurement.

"* * *; *Provided, however,* That an unclear or incomplete classification action by the contracting officer may be supplied by the SBA field office or the Size Appeals Board insofar as necessary in connection with a size determination or size appeal."

* * * * *

Dated: February 4, 1977.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.77–4160 Filed 2–8–77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 371, 378, 378a]

[SPDR–55, Docket No. 29818; Dated: February 3, 1977]

TRAVEL AGENTS AND TOUR OPERATORS

Free and Reduced-Rate Transportation on Charters and Tours

Notice is hereby given that the Civil Aeronautics Board is considering the amendment of Parts 371, 378 and 378a of its Special Regulations (14 CFR Parts 371, 378 and 378a), to allow indirect air carriers (tour operators) to offer free and reduced-rate transportation to travel agents on charters and tours conducted pursuant to Parts 371, 378 and 378a. This notice of proposed rulemaking is being issued to invite public participation in this proceeding by U.S.-flag and foreign direct and indirect air carriers, passengers, consumer organizations, governmental agencies, and interested members of the general public.

The background and purpose of this proceeding are explained in the attached Explanatory Statement and the proposed amendments are set forth in the proposed rules. This notice is issued under the authority of sections 101(3) and 204 (a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 737 and 743; 49 U.S.C. 1301 and 1324.

Interested persons may participate in this proceeding by submitting twenty (20) copies of written data, views or arguments, addressed to: Docket 29818, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material in initial comments received on or before March 28, 1977, and in reply comments received on or before April 12, 1977, will be considered by the Board before taking final action on this proposal. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 711, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C. upon receipt thereof.

Those persons planning to file comments or responsive comments who wish to be served with such comments filed by others, and are willing to undertake to serve their comments on others, shall file with the Docket Section at the above address, by February 22, 1977, a request to be placed on the Service List in Docket 29818. The Service List will be prepared by the Docket Section and sent to the persons named thereon. The persons on the Service List are to serve each other with comments or responsive comments at the time of filing.

A list of all persons filing comments will be prepared by the Docket Section and sent to the persons named thereon. Persons filing reply comments should serve any person whose initial comment is dealt with in their reply comment, even though the person filing the reply comment is not on the Service List.

Individual members of the general public who wish to express their interest as consumers by participating informally in this proceeding may do so by submitting comments or reply comments in letter form, without the necessity of filing additional copies.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

On September 22, 1976, a petition was filed in Docket 29818 on behalf of General Tours, Inc. seeking the institution of a rulemaking proceeding to consider amending Parts 371, 378 and 378a of the Board's Special Regulations (14 CFR Parts 371, 378 and 378a)[1] so as to permit tour operators acting as indirect carriers in organizing charters operated pursuant to those parts to offer free and reduced-rate transportation to travel agents engaged in retail sales. Petitioner notes that the Board has in the past granted authority by waiver to several tour operators for the free and reduced-rate transportation of travel agents, and asks that the Board's rules be amended to permit such transportation by tour operators without the necessity for petitioning for waivers in each instance in which free and reduced-rate transportation authority is desired.

Petitioner raises three main points in support of the relief requested: first, that no valid regulatory purpose is served by restricting the practices of tour operators in the area of free and reduced rate transportation, and it follows that no limitations on their rights to dispose of seats on charter flights should be imposed; second, that the provision of free and reduced-rate transportation by tour operators should be encouraged because such transportation will be used by tour operators to promote low-cost air transportation; and, third, that tour operators should be given free and reduced-rate transportation authority at least equal to that possessed by the scheduled carriers so that they can better compete with such carriers for group travel business from travel agents.

Answers in support of this petition were filed by the Airline Charter Tour Operators Association (ACTOA), David Travels, Inc., certain members of the National Air Carrier Association (NACA), Pan American World Airways, Inc., and the United States Tour Operators Association, Inc. (USTOA).[2] These answers generally reiterate arguments advanced by petitioner. In addition, Pan American states that it supports the proposal so long as appropriate conditions to protect the public interest are imposed, and USTOA suggests that free and reduced-rate transportation should be limited to retail sales agents "appointed by the tour operator under and pursuant to an organized system of retail sales agency approval administered by ATC, IATA, NACA or other association, organization or entity whose standards, requirements and procedures for granting such approval have been approved or authorized by the Board." The NACA members ask that any proceeding initiated in response to this petition be expanded to include consideration of whether charter carriers should not also have the right, subject to the charterer's consent, to offer free and reduced-rate transportation to travel agents.

On December 8, 1976, petitioner filed "Amendment No. 1" to its petition, calling our attention to two recent waiver applications which have been granted by the Board's Bureau of Operating Rights, acting under delegated authority. We have reviewed this document and have determined to consider it as part of the pleadings in this matter at this time. No answers to Amendment No. 1 have been filed.

Upon consideration of these pleadings and all relevant matters, we have determined to institute a rulemaking proceeding in response to this petition to consider generally whether we should amend our rules relating to free and

[1] The different types of charters authorized by these parts of our Special Regulations are, respectively: Advance Booking Charters (ABC's), Inclusive Tour Charters (ITC's), and One-Stop-Inclusive Tour Charters (OTC's).

[2] A letter supporting the petition, on behalf of International Leisure Corporation and United Buying Travel Service, Inc., was also received.

reduced-rate transportation authority for tour operators, and to consider specifically the proposed rules attached hereto.

We will not reiterate the history of the regulation of free and reduced-rate transportation authority by the Board, much of which is set forth in the petition and in the answer of ACTOA. It should suffice to note that the Board has generally attempted to act on free and reduced-rate transportation requests by tour operators on the basis that they should be given rights more or less equivalent to those given to the scheduled carriers, and one concept which we wish to consider in this proceeding is whether we should amend our rules so that they would more accurately reflect this principle of parity. The direction which we tenatively favor at this stage, however, is to more substantially relax our rules on free and reduced-rate transportation for travel agents offered by tour operators for a one-year experimental period, and to monitor the circumstances in which tour operators avail themselves of the right to offer free and reduced-rate transportation to travel agents, so that we may determine what course of action to follow on a permanent basis. The attached proposed rules would accomplish this purpose by allowing indirect air carriers organizing charter flights, pursuant to the authority conferred by Parts 371, 378 or 378a of our regulations,[2] to offer free or reduced-rate transportation to travel agents on such charter flights. We would require a list identifying these agents to be prepared and transmitted to the direct air carrier operating the charter flight, at least five business days prior to the departure of OTC's and ABC's, and by the 6th day after the departure of ITC's. The identifying information on the list would assist in detecting abuses, such as classifying persons who are not actually travel agents as such, in order to charge them a preferential rate or to evade the "cut-off" date established for the sale of the charter.

We recognize that the proposed rules attached hereto represent a marked departure from our previous policy of treating scheduled direct carriers and indirect carriers on an equal basis. We have tentatively concluded, however, that there are two significant differences between the scheduled carriers and the tour operators which justify this disparity. The first of these is that scheduled carriers are protected from competition, to some extent, by their certificates or permits. Thus they possess a degree of monopoly power which could be used to prefer some of their passengers (such as travel agents), leaving full fare-paying passengers to bear the costs of their largesse. Tour operators, on the other hand, appear to be engaged in a highly competitive industry, and the undue use of authority to grant free and reduced-rate transportation to displace participants who would have paid the full charge for the charter trip would logically result only in a tour operator's pricing itself out of the marketplace, rather than in injury to the traveling public.

Secondly, while the rates of commission payable to travel agents by scheduled carriers have historically been jointly agreed to by the carriers and embodied in agreements filed with the Board, no such industrywide uniformity exists in the case of commissions payable to travel agents by tour operators. Because tour operators are free to unilaterally determine the rates of commission which each of them pays to retail agents (a tour operator could, for example, pay an "override" to a particular travel agent equal to the price of a seat on one of its charters), there seems little point in attempting to unduly restrict the direct transfer of charter seats to those agents.

We have therefore tentatively decided to depart from the principle of parity established in our earlier decisions on the subject of free and reduced-rate transportation by tour operators, and instead to base our rules for tour operators on the different economic characteristics of the industry in which they operate.

There are a number of other matters relating to the details of the amendments to our rules which may be adopted in this proceeding which will be discussed below, and we will briefly state our tentative conclusions on each of them for the guidance of interested persons commenting on this proposal.

1. Much of the economic justification contained in the petition and answers supporting it is premised on the assumption that only unsold seats will be made available for use by travel agents without charge or at reduced rates. Although the proposed rules being issued herewith do not restrict tour operators to offering only unsold seats, such a restriction might arguably be desirable in ensuring that the costs of free and reduced rate transportation are not borne by consumers who pay full fares. On the other hand, it can be argued that tour operators should be allowed to give travel agents advance notice of when they will be traveling, just as they do in the case of other passengers, and that tour operators will, in their own self interest, restrict the use of confirmed seats at reduced rates to situations in which they believe that the seat probably will remain unsold. We are particularly interested in receiving comments from interested persons on this issue, to assist us in resolving what we perceive to be a very close question.

2. The petition states (at p. 5) that free and reduced-rate transportation should be accessible to all bona fide travel agents, whether or not they are affiliated with ATC, IATA, or NACA. This contrasts with the view of USTOA (Answer, at pp. 4–5), noted previously, that only those agents approved by ATC or similar entities be allowed to avail themselves of such transportation. Our tentative conclusion is that no particular affiliation should be required of an agent. The definition of a travel agent now contained in § 223.1 of our regulations is clear and unambiguous, and the identifying information which we propose to require concerning the transportation of travel agents should be sufficient to permit our staff to investigate instances of intentional or unintentional misuse of this authority.

3. The petition argues (at p. 5) that minimum group size, trip duration and itinerary restrictions are unnecessary in the case of free and reduced-rate transportation authority for use on charter trips. This seems to differ from the position of Pan American World Airways, Inc., which is in support of the petition only if the Board establishes "appropriate conditions to assure that the public interest is protected." (Answer, p. 1.) We tentatively agree with the petitioner that minimum group size, trip duration and itinerary restrictions are unnecessary.

As previously noted, we do not propose to require tour operators to offer only unsold seats to travel agents. Nonetheless, it seems likely that for the most part they will wish to restrict their offerings of free or reduced rate transportation to seats which probably would not otherwise be occupied by participants paying the full cost of the charter. Imposing a minimum group size could therefore result in situations in which no agents could be transported, even though one or a few seats remained unsold. As for trip duration and itinerary restrictions, they too seem unnecessary in the case of charters sold by tour operators: The familiarization which a travel agent can receive from participation in an ITC or OTC program can probably best be obtained by participating in the same program sold to the public, and in the case of ABC's, in which the public is receiving only air transportation, the "desination" familiarization which the travel agent will obtain can be arranged by the tour operator, we would assume, without the need for regulatory intervention.

It may well be that there are other conditions which we should impose which are not apparent from the pleadings before us. We hope that Pan American and others will make specific suggestions in their public comments filed in response to this notice.

4. The NACA members have asked (Answer, pp. 3–5) that we also consider in this proceeding amending our rules to allow charter carriers to utilize unused charter capacity to provide free and reduced rate transportation for travel agents, with the consent of the chartering entity. Upon consideration, we have determined not to expand this proceeding to consider that issue. Chartering

[2] We do not propose to authorize free and reduced-rate transportation on Travel Group Charters, since these charters are pro rata in nature. We will also exclude Overseas Military Personnel Charters and Study Group Charters, since they do not compete with ABC's, ITC's and OTC's, and are not typically sold by retail travel agents.

carriers are not, in providing capacity for charters and tours operated pursuant to Parts 371, 378 and 378a, dealing with retail travel agents, and whatever considerations might support NACA's request are clearly quite different from those applicable to tour operators. We thus believe that an expansion of this proceeding along the lines suggested by NACA would be inappropriate.

5. The Answer of ACTOA (at p. 6) argues that there is no need for advance filing restrictions with respect to free and reduced rate transportation of travel agents.[4] We tentatively disagree with this position, since we believe that permitting the sale of ABC and OTC seats to travel agents up to the date of departure of the trip might result in improper conduct on the part of a few tour operators, in that members of the public might be permitted to participate in the charter at the last minute under the guise that they are bona fide travel agents. Moreover, we see no strong countervailing need on the part of tour operators for permission to choose, up to the time of departure, the agents who will participate. The tour operator should easily be able to develop a list of potential travel agent participants before the closing date for the sale of those seats to the public, and then select the participating agents immediately after the closing date. Thus, for ABC's and OTC's, we will require that a passenger list of participating agents be submitted to the direct carrier at least five days before the date on which the flight will depart. Because it is possible that some participants on ABC and OTC charters may cancel after the date on which the travel agent list has been prepared, thus creating an empty seat which could be used for the transportation of an agent, we will permit operators to list some of the agents as standbys, to be transported if space becomes available.

In conclusion, we reiterate that we wish to receive comments on all aspects of the central issue raised by this petition, as well as on the particulars of the proposed rules attached below and on the considerations explicitly mentioned in this Explanatory Statement. There well may be important limitations which should be imposed on any free and reduced rate transportation authority granted to tour operators, or there may be indeed cogent reasons for declining to change our present rules at all. All public comments which are received will be considered carefully before further action is taken by the Board.

PROPOSED RULES

It is proposed to amend Parts 371, 378 and 378a of the Board's Special Regulations (14 CFR Part 371, 378 and 378a) as set forth below:

[4] This point was also raised by petitioner in "Amendment No. 1" to its petition, filed December 8, 1976.

PART 371—ADVANCE BOOKING CHARTERS

1. Amend the Table of Contents by adding, to Subpart B, new §§ 371.15 and 371.25a, identified as follows:

Subpart B—General Conditions and Limitations

* * * * *

371.15 Free and reduced-rate transportation for travel agents.

* * * * *

371.25a Passenger lists for travel agents.

* * * * *

2. Add a new definition, at the end of existing § 371.2, Definitions, to read as follows:

§ 371.2 Definitions.

* * * * *

"Travel agent" means a person (a) who is employed full time in a travel agency, (b) who has been in the continuous employment of such agent at least 12 months, and (c) who devotes his employment time in the agency primarily to the promotion and sale of transportation and related services.

3. Revise paragraph (f) of § 371.10, to read as follows:

§ 371.10 Advance booking charter general requirements.

* * * * *

(f) Passengers transported on the charter flight shall consist solely of charter participants, persons authorized to occupy unused space in accordance with § 371.13, or travel agents being carried in accordance with § 371.15.

4. Add a new § 371.15, to read as follows:

§ 371.15 Free and reduced-rate transportation for travel agents.

For a period of one year after the effetive date of this section, charter operators may provide free or reduced transportation on charters operated pursuant to this part, on a space-available basis or otherwise, to travel agents who are engaged in the retail sale of charters organized by the charter operator pursuant to the provisions of this part. No travel agent may be transported unless that agent has been included on the list required by § 371.25a, and has paid the full price (if any) specified on the list prior to his or her departure. If a travel agent replaces a canceling charter participant, the participant shall be given a refund in accordance with § 371.14(a).

5. Add a new § 371.25a, to read as follows:

§ 371.25a Passenger lists for travel agents.

Charter operator offering free or reduced rate transportation to travel agents shall prepare and transmit lists of agents to be transported in accordance with the following:

(a) No less than five days before the date on which the charter flight is to depart, the charter operator shall transmit to the direct air carrier(s) a list of all travel agents who are or may be participating in the charter. The list shall set forth the name of each travel agent, the name of the agency by whom the agent is employed, the mailing address of the agency, and the travel agent's business and residence telephone numbers. If the agent has no residence telephone, his or her residence mailing address shall be included. The list shall also indicate the total amount paid or to be paid by each agent for the charter trip (or a statement that no charge will be made), and shall state whether the agent has been assigned a seat or is a space-available standby. The list shall be deemed transmitted on the U.S. Postal Service postmark date imprinted on the envelope.

(b) A certification in the form specified in paragraph (b) of § 371.25 shall accompany all travel agent passenger lists, or corrections thereto, transmitted to the direct air carrier(s). Corrections to travel agent passenger lists may be made only in accordance with the provisions of paragraph (c) of § 371.25.

6. Revise paragraph (b) of § 371.41, to read as follows:

§ 371.41 Direct air carrier to identify enplanements.

* * * * *

(b) The direct air carrier shall, at the time of enplanement, enter on its copy of the passenger list, the documentary source of the identification required by paragraph (a) of this section, including the number appearing on the documents, together with the name of any enplaning passenger, and each travel agent being carried pursuant to §§ 371.15 and 371.25a, whose name does not already appear on the passenger list. The total number of names on the passenger list, thus revised, shall not be greater than the number of names originally appearing on that list, plus any travel agents traveling free or at reduced rate. The number of newly entered names (other than travel agents traveling free or at a reduced rate) shall not exceed the total amounts (or subtotal amounts, if there is a standby list), specified in §371.14. The direct air carrier shall identify each travel agent enplaned by an appropriate notation on the passenger list, and shall not enplane any travel agent who is not listed on the travel agent passenger list prepared and delivered in accordance with § 371.25a.

7. Amend § 371.50 by adding a new paragraph (c), to read as follows:

§ 371.50 Charter trip reporting.

* * * * *

(c) Within 30 days after the end of the sixth month after the month in which § 371.15 has become effective, each charter operator which has transported one or more travel agents pursuant to § 371.15 shall file with the Board (Bureau of Accounts and Statistics) a report identifying each charter (including the CAB identification) on which one or

more travel agents were so transported showing, for each such charter, the name of each agent transported, the price which each agent paid, and the percentage relationship between the price paid and the full price of the charter. The report may be in letter form, shall be clearly identified as a "Charter Operator Free and Reduced-Rate Transportation Report," and shall be signed by the charter operator or by an officer or member thereof. If a charter operator has also transported agents on tours conducted pursuant to Parts 378 or 378a of this chapter, one report covering all agents so transported may be filed.

PART 378—INCLUSIVE TOUR CHARTERS

8. Amend the Table of Contents by adding to Subpart D a new § 378.32, identified as follows:

Subpart D—Miscellaneous

Sec.
378.32 Free and reduced-rate transportation of travel agents.

* * * * *

9. Amend § 378.2, Definitions, by revising paragraphs (c) to read as follows:

§ 378.2 Definitions.

* * * * *

(c) An "inclusive tour group" means an aggregate of persons who are assembled by a tour operator or a foreign tour operator for the purpose of participation as a single unit in an inclusive tour: *Provided, however,* That nothing contained herein shall preclude a tour operator or a foreign tour operator from utilizing any unused space on an aircraft chartered by it for an inclusive tour, for the transportation, on a free or reduced basis, (1) Of such tour operator's or foreign tour operator's employees, directors and officers, and the parents and immediate families of such persons, subject to the provisions of Part 223 of this Chapter, and (2) of travel agents being carried pursuant to the provisions of § 378.32.

* * * * *

10. Add a new § 378.32, to read as follows:

§ 378.32 Free and reduced-rate transportation of travel agents.

(a) For a period of one year after the effective date of this section, tour operators and foreign tour operators may transport travel agents engaged in the retail sales of tours organized by the tour operator or foreign tour operator pursuant to this part on such tours, on a space-available basis or otherwise, free of charge or at a reduced rate. For the purposes of this section, "travel agents" means persons (1) Who are employed full time in a travel agency, (2) who have been in the continuous employment of such agency at least 12 months, and (3) who devote their employment time in the agency primarily to the promotion and sale of transportation and related services.

(b) Within 30 days after the end of the sixth month after the month in which § 378.32 has become effective, each tour operator and foreign tour operator which has transported one or more travel agents pursuant to § 378.32 shall file with the Board (Bureau of Accounts and Statistics) a report identifying each tour (including the CAB identification) on which one or more travel agents were so transported showing, for each such tour, the name of each agent transported, the price which each agent paid, and the percentage relationship between the price paid and the full price of the tour. The report may be in letter form, shall be clearly identified as a "Tour Operator Free and Reduced-Rate Transportation Report," and shall be signed by the tour operator or by an officer or member thereof. If a tour operator has also transported agents on charters and tours conducted pursuant to Parts 371 and 378a of this chapter, one report covering all agents so transported may be filed.

(c) If a travel agent replaces a canceling tour participant, the participant shall be given a refund of the tour price.

PART 378a—ONE-STOP-INCLUSIVE TOUR CHARTERS

11. Amend the Table of Contents by adding, to Subpart B, new §§ 378a.14 and 378a.25a, identified as follows:

Subpart B—General Conditions and Limitations

Sec.

* * * * *

378a.14 Free and reduced-rate transportation for travel agents.

* * * * *

378a.25a Passenger lists for travel agents.

* * * * *

12. Add a new definition, at the end of existing § 378a.2, Definitions, to read as follows:

§ 378a.2 Definitions.

* * * * *

"Travel agent" means a person (a) who is employed full time in a travel agency, (b) who has been in the continuous employment of such agent at least 12 months, and (c) who devotes his employment time in the agency primarily to the promotion and sale of transportation and related services.

13. Revise paragraph (f) of 378a.10, to read as follows:

§ 378a.10 One-stop-inclusive tour general requirements.

* * * * *

(f) Passengers transported on the charter flights shall consist solely of persons whose names are set forth in a passenger list duly filed with the Board in accordance with § 378a.25(b), persons authorized to occupy unused space in accordance with § 378a.13, or travel agents being carried in accordance with § 378a.14.

14. Add a new § 378a.14, to read as follows:

§ 378a.14 Free and reduced rate transportation for travel agents.

For a period of one year after the effective date of this section, tour operators may provide free or reduced-rate transportation on tours operated pursuant to this part, on a space-available basis or otherwise, to travel agents who are engaged in the retail sale of tours organized by the tour operator pursuant to the provisions of this part. No travel agent may be transported unless that agent has been included on the list required by § 378a.25a, and has paid the full price (if any) specified on the list prior to his or her departure. If a travel agent replaces a canceling tour participant, the participant shall be given a refund of the tour price.

15. Add a new § 378a.25a, to read as follows:

§ 378a.25a Passenger lists for travel agents.

Tour operators offering free or reduced rate transportation to travel agents shall prepare and transmit lists of agents to be transported in accordance with the following:

(a) At least five days prior to the date of departure of a tour operated pursuant to this part, the tour operator shall transmit to the direct air carrier(s) a list of all travel agents who are or may be participating in the tour. The list shall set forth the name of each travel agent, the name of the agency by whom the agent is employed, the mailing address of the agency, and the travel agent's business and residence telephone numbers. If the agent has no residence telephone, his or her residence mailing address shall be included. The list shall also indicate the total amount paid or to be paid by each agent for the tour (or a statement that no charge will be made), and shall state whether the agent has been assigned a seat or is a space-available standby. The list shall be deemed transmitted on the U.S. Postal Service postmark date imprinted on the envelope.

(b) A certification in the form specified in paragraph (d) of § 378a.25 shall accompany all travel agent passenger lists, or corrections thereto, transmitted to the direct air carrier(s). Corrections to travel agent passenger lists may be made only in accordance with the provisions of paragraph (c) of § 378a.25.

16. Revise paragraph (b) of § 378a.41, to read as follows:

§ 378a.41 Direct air carrier to identify enplanements.

* * * * *

(b) The direct air carrier shall, at the time of enplanement, enter on its copy of the passenger list, the documentary source of the identification required by paragraph (a) of this section, including the number appearing on the documents, and shall also enter the name and documentary identification source of each travel agent being carried pursuant to §§ 378a.14 and 378a.25. The direct air carrier shall identify each travel agent enplaned by an appropriate notation on the passenger list, and shall not enplane any travel agent who is not listed on the travel agent passenger list prepared and delivered in accordance with § 378a.25a.

17. Amend § 378a.50 by adding a new paragraph (d), to read as follows:

§ 378a.50 Charter trip reporting.

* * * * *

(d) Within 30 days after the end of the sixth month after the month in which § 378a.14 has become effective, each tour operator which has transported one or more travel agents pursuant to § 378a.14 shall file with the Board (Bureau of Accounts and Statistics) a report identifying each tour on which one or more agents were so transported showing, for each such tour, the name of each agent transported, the price which each agent paid, and the percentage relationship between the price paid and the full price of the tour. The report may be in letter form, shall be clearly identified as a "Tour Operator Free and Reduced-Rate Transportation Report," and shall be signed by the tour operator or by an officer or member thereof. If a tour operator has also transported travel agents on charters or tours conducted pursuant to Parts 371 or 378 of this chapter, one report covering all agents so transported may be filed.

[FR Doc.77-4134 Filed 2-8-77;8:45 am]

NATIONAL MEDIATION BOARD

[29 CFR Part 1209]

GOVERNMENT IN THE SUNSHINE ACT

Public Observation of National Mediation Board Meetings

Notice is hereby given that the National Mediation Board proposes to amend Chapter X, Title 29 Code of Federal Regulations, by adding a new Part 1209, entitled "Public Observation of National Mediation Board Meetings." Part 1209 is proposed to implement the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b. This part sets forth the regulations under which the National Mediation Board shall engage in public decisionmaking processes, make public announcement of meetings at which a quorum of Board Members consider and determine official agency actions, and inform the public of which meetings they are entitled to observe.

These proposed amendments are issued pursuant to the authority of 5 U.S.C. 552b(g) and 44 Stat. 577, as amended (45 U.S.C. 151 et seq.).

It is proposed to make these regulations effective on March 12, 1977, the effective date of the Government in the Sunshine Act.

Written comments concerning the proposed regulations may be submitted to Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board, Washington, D.C. 20572. Consideration will be given to all comments received on or before March 11, 1977.

Copies of all comments in response to this proposal will be available for public inspection during federal business hours at the Board's offices, 1425 K Street, NW, Washington, D.C.

By direction of the National Mediation Board.

ROWLAND K. QUINN, Jr.,
Executive Secretary.

It is proposed that Part 1209 be added to read as follows:

PART 1209—PUBLIC OBSERVATION OF NATIONAL MEDIATION BOARD MEETINGS

Sec.

AUTHORITY: 5 U.S.C. 552b(g), 44 Stat. 577, as amended (45 U.S.C. 151 et seq.)

§ 1209.01 Scope and purpose.

(a The provisions of this part are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) It is the policy of the National Mediation Board that the public is entitled to the fullest practicable information regarding its decisionmaking processes. It is the purpose of this part to provide the public with such information while protecting the rights of individuals and the ability of the agency to carry out its responsibilities.

§ 1209.02 Definitions.

For purposes of this part:

(a) The term "Board" means the National Mediation Board, a collegial body composed of three Members appointed by the President with the advice and consent of the Senate.

(b) The term "meeting" means the deliberations of at least two Members of the Board where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting shall be closed to public observation, or with respect to any information proposed to be withheld under 5 U.S.C. 552b(c).

§ 1209.03 Conduct of National Mediation Board Business.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part.

§ 1209.04 Open meetings.

Every portion of every Board meeting shall, except as otherwise provided by § 1209.11, be open to public observation.

§ 1209.05 Public announcement of meetings.

(a) Except as provided in §§ 1209.06 and 1209.07, the Board shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting, except as qualified by paragraph (b) of this section;

(2) Whether the meeting is to be open or closed to the public; and

(3) Name and telephone number of the agency official who will respond to requests for information concerning the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal the information that the meeting itself was closed to protect, the subject matter shall not be announced.

§ 1209.06 Meetings for Extraordinary Agency Business.

(a) Notwithstanding § 1209.05, where agency business so requires, the Board Members may determine by majority, recorded vote to schedule a meeting for a date earlier than one week subsequent to public announcement. Under such circumstances, the information to be conveyed to the public pursuant to § 1209.05 shall be publicly announced at the earliest practicable time.

§ 1209.07 Change in meeting plans subsequent to public announcement.

(a) Following public announcement of a meeting pursuant to § 1209.05 or § 1209.06, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time in a manner otherwise in conformance with § 1209.05.

(b) Following public announcement of a meeting, the subject matter of a meeting or the determination to open or close a meeting may be changed only if both of the following conditions are met:

(1) A majority, recorded vote of the Members of the Board determines that agency business requires the change and that no earlier announcement of such change was possible; and

(2) A public announcement of the change and of the individual Board Members' votes is made at the earliest practicable time.

§ 1209.08 Providing information to the public.

Information available to the public in accordance with this part shall be posted on a bulletin board maintained for such purpose at the Board's offices, 1425 K Street NW., Washington, D.C. Interested individuals or organizations may request the Executive Secretary, National Mediation Board, Washington, D.C. 20572 to place them on a mailing list for receipt of information available under this part.

§ 1209.09 Federal Register notices.

Immediately following each public announcement required by this part, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER.

(1) Notice of the time, place, and subject matter of a meeting;

(2) Whether the meeting is open or closed;

(3) Any change in one of the preceding; and

(4) The name and telephone number of the agency official who will respond to rquests for information about the meeting.

§ 1209.10 Capacity of public observers.

The public may attend open Board meetings for the sole purpose of observation. Observers may not participate in meetings unless expressly invited or otherwise interfere with the conduct and disposition of agency business. When a portion of a meeting is closed to the public, observers will leave the meeting room upon request to enable discussion of the exempt matter therein under consideration.

§ 1209.11 Provisions under which meetings may be closed.

A meeting as defined in § 1209.02 or portion thereof, may be closed to public observation where the Board determines that portions of the meeting are likely to incorporate deliberations subject to the exemptions enumerated in 5 U.S.C. 552b (c).

§ 1209.12 Procedures for closing meetings.

(a) The Board may determine to close to public observation a particular meeting or portions thereof, only if at least two Board Members vote on the record to take such action. No proxy votes shall be permitted. A single vote may be taken with respect to a series of meetings, or portions thereof, which are proposed to be closed to the public, 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 the series.

(b) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board close such portion to the public for any of the reasons referred to in 5 U.S.C. 552b(c) (5), (6) or (7), the Board, upon reqeust of any of the Members thereof, shall determine by recorded vote whether to close such portion.

(c) For every meeting or portion thereof which Members of the Board have voted to close, the General Counsel of the National Mediation Board shall publicly certify whether, in his or her opinion, the meeting may properly be closed to the public. In addition, the General Counsel shall state each relevant exemptive provision as set forth in 5 U.S.C. 552b(c). A copy of the General Counsel's certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and listing the persons present, shall be retained by the Board's Executive Secretary.

§ 1209.13 Public availability of recorded vote to close meetings and explanation therefor.

Within one day of any vote taken on a proposal to close a meeting, the Board shall make publicly available a record reflecting the vote of each Member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Board shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§ 1209.14 Maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public will be made and retained for two years or for one year after the conclusion of the agency proceeding involved in the meeting, whichever is longer. Such record shall consist of a verbatim transcript or electronic recording of the meeting except as provided by § 1209.14(b).

(b) In lieu of a transcript or recording, a comprehensive set of minutes may be produced if the closure decision was made pursuant to 5 U.S.C. 552b(c) (8), (9)(A), or (10). Such minutes shall fully and clearly describe all matters discussed, provide a full and accurate summary of any actions taken and the reasons expresed therefor, and include a description of each of the views expressed on any item. The minutes shall also reflect the vote of each Member on any action taken during the proceedings and identify all documents produced at the meeting.

§ 1209.15 Availability of records to the public.

(a) The Board shall make promptly available to the public the transcript, electronic recording, or minutes maintained as a record of closed meetings, except for such records exempt from disclosure pursuant to 5 U.S.C. 552b(f)(2). Copies of such nonexempt transcripts, minutes, or electronic recordings, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) Requests for transcripts, minutes, or electronic recordings of Board meetings shall be directed to the Executive Secretary, National Mediation Board, Washington, D.C. 20572. Such requests shall reasonably identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount. The Board may determine to require prepayment of costs associated with this Subsection.

§ 1209.16 Requests for records under Freedom of Information Act.

Requests to review or obtain copies of agency records other than notices or records prepared under this Part may be pursued in accordance with the Freedom of Information Act (5 U.S.C 552), part 1208 of the Board's rules addresses the requisite procedure under that Act.

[FR Doc.77-4170 Filed 2-8-77;8:45 am]

DEPARTMENT OF THE INTERIOR

[30 CFR Part 211]

COAL MINING OPERATIONS REGULATIONS

Adoption of the Cooperative Agreement With North Dakota for Enforcement and Administration of Surface Coal Mine Reclamation Standards

Correction

In FR Doc. 77-2260 appearing at page 4493 in the issue of Tuesday, January 25, 1977 in the second column, the second full paragraph is corrected to read as follows:

The Department of the Interior's surface mining regulations require a federal coal lessee to conduct mining operations in a manner which ensures the effective reclamation of mined lands. After review of State laws and regulations, practices and procedures, the Department has concluded that the State of North Dakota has the authority to, and does in fact, administer its reclamation laws and regulations in a manner that provides the same degree of environmental protection as required by Federal law. The Cooperative Agreement commits the State to this degree of environmental protection. The Agreement also recognizes that the procedures of the State are as effective as the procedures of the Department to enforce the requirements of the mining plan. If the State is unable to meet the terms of the Agreement, the Department has the duty to notify the State that it intends to cancel the Agreement. The Agreement calls for an exchange of information between the State and the Department and the Department may conduct inspections to determine whether the State is complying with the provisions of the Agreement.

DEPARTMENT OF DEFENSE

Department of the Navy

[32 CFR Part 724]

NAVY DISCHARGE REVIEW BOARD

Preparation of Record, Review, Notification Evidence

In accordance with the public-participation procedures prescribed for the Department of Defense in 32 CFR Part 296 (40 FR 4911), notice is hereby given that the Department of the Navy proposes to amend 32 CFR Part 724 pursuant to the authority conferred under 5 U.S.C. 301, 10 U.S.C. 1553, and 10 U.S.C. 5031. Part 724 is the codification of Secretary of the Navy Instruction 5420.174 of April 8, 1974, entitled "Navy Discharge Review Board, functions and procedures," and it establishes procedures or review of discharges and dismissals of former members of the Navy and Marine Corps pursuant to 10 U.S.C. 1553. On January 27, 1977, the Assistant Secretary of the Navy authorized the following proposed amendments to Part 724:

In § 724.42, the term "new, relevant evidence," which is a jurisdictional requirement for the Navy Discharge Review Board (the board), will be supplemented and expanded.

Section 724.80 will be amended to require the preparation of minority reports in all cases in which the decision of the board is not unanimous.

In § 724.91, the term "record of proceedings" will be supplemented and expanded.

Section 724.93 will be changed to reflect the requirement of notification of a de novo review by the Board for Correction of Naval Records in cases in which relief is not granted.

Finally, a new § 724.94 will be added concerning requests for a copy of the board's final decision.

Interested persons are invited to participate in the formulation of the proposed amendments by submitting written data, views, comments, and arguments to the Judge Advocate General (Code 133), Navy Department, Washington, D.C. 20370. All written material received on or before March 15, 1977, will be considered before taking action on the proposed amendments and the proposed amendments may be changed in light of comments received. All comments received in response to these proposed amendments will be available for public inspection during normal business hours at the Law Library of the Office of the Judge Advocate General, room 2527, Navy Arlington Annex, (Federal Office Building No. 2), Southgate Road and Columbia Pike, Arlington, Virginia.

These amendments are proposed under the authority of 5 U.S.C. 301; 10 U.S.C. 1553; and 10 U.S.C. 5031.

Accordingly, it is proposed to amend Part 724 of 32 CFR as follows:

§ 724.42 [Amended]

1. In § 724.42, the following four sentences are added after the word "Navy" in line 14:

* * * The phrase "new, relevant evidence not previously available at the time of original review" includes the opportunity for the board to assess the applicant's demeanor and credibility in a personal appearance before a board panel. Thus, an applicant may obtain an additional review by the board if the applicant will appear at a hearing. The board may deny a second review where it appears that the applicant deliberately withheld his or her personal appearance in order to obtain a second review. The "new, relevant evidence" requirement for a second review is jurisdictional, therefore, if the applicant does not in fact appear, and there are no other circumstances justifying a second review, no second review will be made.

2. Part 724 is amended by adding a new § 724.78, after § 724.77, which provides as follows:

§ 724.78 Availability of evidence.

All evidence obtained for consideration by the board, including the applicant's personnel files, Naval Investigative Service reports and Federal Bureau of Investigation reports on criminal record, is available to the applicant and his or her counsel. In personal appearance or nonpersonal appearance cases the board will, upon request, provide the applicant or counsel with a statement of the records obtained for consideration by the board.

§ 724.80 [Amended]

3. In § 724.80, 15th line, after the word "proceedings" and before the word "A", the following sentence is added:

* * * In all cases in which the decision of the board is not unanimous, dissenting board members shall prepare a minority report. * * *

§ 724.91 [Amended]

4. In § 724.91, after the word "case" in the 12th line, the following two sentences are added:

* * * Moreover, the board will transmit to the Secretary as part of the record of proceedings any statement or summary of the proceedings that the applicant, or his or her counsel, may submit, provided that the statement or summary does not exceed one typewritten page. Also, each brief or written argument filed with the board by an applicant is forwarded to the Secretary for review.

§ 724.93 [Amended]

5. In § 724.93, after the word "necessary" in the sixth line, the following sentence is added:

* * * Further, in a case in which relief is not granted, the board shall notify the applicant that he or she may apply to the Board for Correction of Naval Records for a de novo review of the discharge.

6. Part 724 is amended by adding a new § 724.94, after § 724.93, which provides as follows:

§ 724.94 Request for final decision.

Upon request, a copy of the board's statement of findings, conclusions, and decision, minority reports, if any, and the votes of board members on an application, will be furnished to the applicant and his or her counsel. The original in every case becomes a part of the individual's service record.

Dated: January 27, 1977.

JOSEPH T. MCCULLEN, JR.,
Assistant Secretary of the Navy (Manpower and Reserve Affairs).

[FR Doc.77-4108 Filed 2-8-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 4700]

RANGE MANAGEMENT

Wild Free-Roaming Horse and Burro Management; Correction

On January 25, 1977, there was published in the FEDERAL REGISTER (FR 4500) a notice of proposed rulemaking implementing section 9 of the Wild Free-Roaming Horse and Burro Act (16 U.S.C. 1331-1340) as provided by section 404 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) which authorizes the use of helicopters or, for the purpose of transporting captured animals, motor vehicles in administering the provisions of the Wild Free-Roaming Horse and Burro Act.

To correct and clarify the preamble of that proposed rulemaking, the following changes are hereby made:

1. Item #3 of the second paragraph is changed to read:

3. By revising § 4720.2, "Claimed Animals," to exclude the use of helicopters solely for the gathering operations of claimed animals.

2. The fourth and fifth sentences of the third paragraph are changed to read:

In addition to the scheduled hearings listed in this notice of proposed rulemaking, a public meeting will be held by the BLM District Office planning a roundup of excess wild free-roaming horses and burros. The purpose and plans for the roundup along with procedures to be used, including any proposed use of helicopters, will be discussed at that time.

CHRIS FARRAND,
Acting Assistant Secretary of the Interior.

FEBRUARY 3, 1977.

[FR Doc.77-4103 Filed 2-8-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 21]

[FCC 77-43; Docket Nos. 18261 and 21039]

AVAILABILITY OF LAND MOBILE CHANNELS

Memorandum Opinion and Order and Notice of Proposed Rulemaking

Adopted: January 12, 1977

Released: January 31, 1977

In the matter of amendment of Parts 21, 89, 91 and 93 of the rules to reflect the availability of land mobile channels in the 470-512 MHz band in the ten largest urbanized areas of the United States and amendment of Part 21, of the Rules to reflect the availability of land mobile channels in the 470-512 MHz band in thirteen urbanized areas of the United States.

This proceeding is a continuation of Docket 18261, see below the history of that docket. The purposes of this document are twofold: (1) To make new proposals for the use of the frequencies in the 470-512 MHz band in the Domestic Public Land Mobile Radio Service (DPLMRS), and (2) To resolve the controversies which have prevented DPLMRS usage of these frequencies to the present. However, we will treat these matters in reversed order for purposes of clarity.

BACKGROUND

1. This proceeding was initiated by a notice of proposed rulemaking on August 1, 1968, (14 FCC 2d 297; 33 FR 10943, Aug. 1, 1968), in which we considered means for providing additional spectrum

space to meet the needs of the land mobile radio services in major population centers. That notice was followed by our First Report and Order (23 FCC 2d 325 (1970)) in which we adopted rules to provide for use of a maximum of two of the lower seven UHF TV channels, on a shared basis with television broadcasting, by land mobile stations within 50 miles of the center of the ten largest urbanized areas. However, we left open assignment principles and specific frequencies to be designated for each of the land mobile services. Subsequently, in a notice of proposed rulemaking released January 28, 1971 (27 FCC 2d 371; 36 FR 2407, Feb. 4, 1971), we proposed decisions on those matters, and rules to implement the decisions. With respect to the Domestic Public Land Mobile Radio Service (DPLMRS), we proposed 12 frequency pairs (for each TV channel to be shared), for use by non-wireline common carriers (more commonly called Radio Common Carriers, or RCCs). We further stated that use of the frequencies was to be limited to those licensees authorized at that time to serve the areas involved.

2. After comments and reply comments were received, we issued our Second Report and Order (30 FCC 2d 221; 36 FR 12477, July 1, 1971) on June 22, 1971. In that document we assigned frequencies, adopted rules, and set out in § 21.501(k)(1), as well as related sections, provision for the DPLMRS. However, we also concluded that there was no support in the record for the conclusion that ruinous competition would result from allowing new carriers to enter these markets, and so decided in favor of "open entry", i.e., that the frequencies would not be limited to existing carriers.[1]

3. After release of that document we received Petitions for Partial Reconsideration from the National Association of Radiotelephone Systems (NARS) and from a group of RCCs, directed against our "open entry" decision in the DPLMRS. Both petitioners also requested a stay of that portion of the Order, to allow them to make a showing that would justify "closed entry", i.e., eligibility limited to existing licensees. On August 9, 1971, we issued a Memorandum Opinion and Order (31 FCC 2d 48 (1971); 36 FR 15121, Aug. 13, 1971) granting the Petition for Stay of Effective Date and the Petition for Partial Stay, and postponing the effective date of allocation of frequencies to the DPLMRS pending action on the petitions for partial reconsideration. We also stated that interested parties might file additional data and arguments in support of, or in opposition to, the position taken by the Commission with respect to eligibility for these frequencies. Pertinent data and arguments were to be filed within 60 days of the release of the order, and responsive arguments within 90 days. A list of parties who submitted filings is contained in Appendix A.

4. Comments submitted in support of the Petitions for Reconsideration by NARS and various RCC's almost without exception, favored "closed entry", although some modifications were suggested. The reasons offered, in summary, were that the non-wireline carriers (RCCs) now compete with the Bell System and other wireline carriers, as well as with each other. Competition in the major urbanized areas, it was alleged, had reached the point that further fragmentation would reduce the viability of the RCC industry. This would result because "open entry" would distribute the new channels so widely that efficient use could not be made of them, and because the RCCs would remain small and with limited financial resources. Statistics were adduced to show the number of RCCs licensed in the various areas, and the percentage of licensees showing losses for the year 1970. It was also pointed out that the greater the number of licensees in an area, the greater the percentage showing losses (although this is not true in every case). These statistics were alleged to show that there is a plethora of competing carriers, many of them small, and hence of limited effectiveness in competing with the wireline carriers. Thus, it was concluded by the Petitioners, it would be unwise to allocate the new frequencies in a manner that would leave the RCCs small, marginally profitable and unable to use the frequencies efficiently.

5. A further argument was made that a policy of "open entry" would almost certainly result in multiple competing applications and petitions to deny which would tie up the frequencies for many months, or years, delaying service to the public, and draining the resources of both the RCCs and the Commission. On the other hand, it was asserted that if the Commission were to adopt "closed entry" many of these problems would be avoided. It was asserted that with "closed entry" existing carriers could, and in some instances had already, formulated plans for joint or coordinated use of the available channels. Commission approval of these plans would allegedly result in prompt and orderly use of the new band, to the ultimate advantage of the public. A number of such plans were offered by various combinations of licensees, although there are also reply comments which show that at least some of the proposed plans do not include all present licensees in the metropolitan area.

6. Subsequently, some of these filings were withdrawn, by the National Association of Radiotelephone Systems (NARS) on November 25, 1974, and by a group of carriers on December 17, 1974. While withdrawing the earlier filings, NARS and the others requested instead that the Commission adopt the following policies:

(1) That the Commission should accept joint applications from existing licensees in the affected markets for cooperative multichannel operation. This is necessary it was alleged, in order: (a) To minimize competing applications, with further delay in bringing service to the public, (b) To make most effective technical use of the new frequencies, and (c) To enhance the ability of the RCCs to compete with the mobile radio services offered by the landline companies.

(2) That the Commission, when faced with the need to hold comparative hearings to choose between competing applicants, should favor applicants proposing trunked, interconnected service because that represents a more efficient use of the channel, a better service to the public, and a more competitive offering vis a vis the landline companies.

(3) That the Commission, in processing applications for the new channels, should give top priority to applications filed in New Jersey, Texas and the District of Columbia where there is no regulation of radiotelephone common carrier service. As a consequence, only FCC action is required or possible with respect to applications in such jurisdiction. Such priority handling would also be desirable to minimize the likelihood of multiple applications which would cause serious delays in initiating needed service on the new channels.

(4) That the Commission should reaffirm its adherence to the requirements of § 21.15(c)(4)[2] of the rules with respect to the prior obtainment of a state authorization where required by state law.

DISCUSSION; CLOSED VERSUS OPEN ENTRY

7. We have carefully reviewed the arguments for "closed entry", and also those opposed. "Closed entry", that is accepting applications for these frequencies only from existing DPLMRS licensees in the area, does not in our opinion insure that we will not receive competing applications. As the comments indicate, there is not complete agreement among existing carriers on the use of these frequencies. Thus we could face, even with closed entry, the possibility and likely probability of comparative hearings. While it is true that "open entry" could produce more competing applications and that they might be mutually exclusive and possibly result in more comparative hearings, we are adopting herein a policy which we believe will eliminate this problem. We thus remain unconvinced that "closed entry" has sufficient merit to risk jeopardizing the rights of the public and potential new carriers. Moreover, we have not been persuaded that "open entry" will

[1] For present purposes, the remaining history of the Docket may be summarized briefly. On March 15, 1974, we proposed to extend the land mobile-UHF-TV sharing to Houston, Dallas/Fort Worth and Miami (Fourth Further Notice of Proposed Rule Making, 45 FCC 2d 1093). By our Fifth Report and Order, issued July 17, 1974 (48 FCC 2d 360), this was done, including provisions for DPLMRS operations. Docket 18261 was terminated at that time, except with respect to disposing of petitions for reconsideration directed toward the DPLMRS portion of the Second Report and Order; which are treated herein.

[2] Effective December 1, 1975, this section is renumbered Section 21.13(f), Docket 20490, FCC 75-1073, released October 6, 1975.

endanger the financial viability of existing RCCs. Our own examination of RCC Form Ls indicates that, however the case may have been in 1971 most RCCs today seem to be profitable. There has been consistent growth in recent years, so that we believe the RCCs are financially viable and can bear any strain resulting from open entry. This is especially true, we think, in the major markets involved in this proceeding. Accordingly, we reaffirm our policy of permitting "open entry" to these new frequencies. Next we address the comments filed by NARS and others regarding policies the Commission should adopt in administering these frequencies.

JOINT APPLICATIONS

8. We do not anticipate any change in Commission policy regarding the treatment of applicants. Nothing in our rules precludes a "joint" application, nor do we see any reason, why we should not accept such applications provided the applicant (partnership, corporation, or several applicants joined by sharing agreement) meets our normal tests as being legally, technically and financially qualified, and otherwise files an application in accordance with our Rules and Regulations. When "joint" applications promote more effective use of the spectrum and thereby obtain most effective use of authorized facilities, the Commission will continue, as it has in the past, to encourage this approach. (We also believe that by technical coordination prior to filing applications, applicants could, in many instances ((as NARS suggests) minimize technical challenges, costly delays, make the most effective use of frequencies, and render earlier service to the public.)

9. NARS argues that, when faced with the need to hold comparative hearings to choose between competing applicants, the Commission should favor applicants proposing trunked, interconnected service, arguing that this represents a more efficient use of the channel and a better and more competitive service to the public. We recognize that in the past applicants in this service generally have been assigned a single radio channel at a time. Additional channels were granted to applicants only upon traffic load showings called for by Section 21.516 of our rules. In most major urban areas, the number of applicants exceeded the available number of channels, leading to comparative hearings, the results of which were often years in resolution. Meanwhile, the public was denied service until these matters were resolved.

10. We also recognize that the grade of service the public received was probably less than optimum due to the single channel assignment procedures. In most major urban areas, six or more radio common carriers were authorized one to three channels out of an available 21. Often 35 to 75 or more mobiles were assigned to a single channel. The grade of service varies, but a mobile subscriber attempting to obtain a channel during the busy hour will frequently find and will experience an excessive delay. With only a single channel available, the user public has no option available: he cannot shift to a free channel, but must make repeated attempts to obtain access to the channel.

11. Trunking does offer advantages over single channel systems. By making several channels, available as a trunk group to each member of the using public, not only does the grade of service greatly improve, but the utilization of the channels will also increase as a result. The resultant "trunking efficiency" has been well treated in the technical literature and has been endorsed by the Commission in Docket 18262.[3]

12. As will appear in greater detail below, we think that our approach will result in trunked service, and accordingly, we are accepting the NARS recommendation. However, since we do not anticipate any comparative hearings for these frequencies, it will not be necessary to grant a preference for trunked systems.

13. The last two of NARS recommendations may be disposed of briefly. We do not believe that there is any need to process applications in some cities before others, since no applications will be mutually exclusively as a result of electrical interference. Also, as indicated in our Notice of Proposed Rule Making, para. 7 above, we do not intend to require state certification prior to filing for these frequencies. With these matters out of the way, we can proceed to our proposals for the use of these frequencies.

A. Frequency Allocation. 14. It has come to our attention that, from a practical application of the television protection criteria adopted in this Docket, many of the frequencies cannot be used without severe limitations. Generally speaking, one of the shared UHF–TV channels in each city is capable of being used with few limitations while in most instances the other is not, due to the limitations imposed by the protection criteria that have been adopted.

15. For example, in the original 10 cities where two TV channels were made available, 14 of the 20 available TV channels have, to varying degrees, restrictions upon the location of base station within the 50-mile radius, plus restrictions upon height above average terrain (HAAT), ERP or both over much of the area. Additionally two cities, Chicago and Pittsburgh, have restrictions so severe as to preclude the use of base stations, and in Chicago limit mobile operations, on one of the two channels. The net result is that in many of these cities one of the two TV channels is largely unuseable for base stations, but generally useable for mobiles. Thus we have concluded, in the interests of efficient use of the spectrum allocated in this docket to eliminate the present designation of "base station frequencies" and "mobile, dispatch and auxiliary test frequencies" from the frequency tables contained in § 21.501(k) of our rules, and adding designations to Table A of § 21.501(1) of the Rules, in order to permit operation of systems with frequencies paired between the two TV channels rather than within a single TV channel[4] as previously anticipated. We are convinced that this will produce several benefits. One is that potentially all 24 channels in a city will be available instead of 12, thus doubling the available spectrum. Secondly, we are also of the opinion that the wider spacing of transmit and receive frequencies (6 to 36 MHz. depending upon the TV channels available, instead of 3 MHz) will improve the performance of both transmitters and receivers permitting lower power operation.[5] Third, we are of the belief that there may be a lesser potential for interference to television reception with all base stations confined within a single TV channel, instead of two. Accordingly, the tables are being redesignated on the basis. Change of these designation is, we think, a minor editorial correction, which will lead to improved service. Accordingly, we have revised the designations to permit this.

16. Revision of these designations on the frequency tables in no way relieves the applicant of compliance with the TV protection criteria contained in our rules, thus in instances such as Chicago there remain restrictions[6] on mobile operations on the channel designated "mobile". However, if by virtue of specific engineering analysis, or operational restraints, it can be shown that an applicant can, in fact, operate mobile units that will, by virtue of lower power than the 200 watts maximum, or at lower elevations than the 100 feet maximum, or restricted geographical operation meet or exceed the TV protection criteria, we will consider such applications on a case-by-case basis.[7] However, in all such instances, the Common Carrier Bureau will confer with the Broadcast Bureau and

[3] FCC Report of the Advisory Committee for the Land Mobile Services—Vol. 2, Part 1, Sec. 2.2.–2. Delay Table for Finite and Infinite Source Systems—A. Descloux, Bell Telephone Laboratories Published by McGraw Hill Book Co. FCC—"A Survey Aid and Analysis of Citizens Radio Service"—Contract RC–101–34–70. Second Report and Order, 46 FCC 2d 752, paras. 90 and 91; Memorandum Opinion and Order, 51 FCC 2d 945, para. 60.

[4] The exceptions will be Dallas-Ft. Worth, Houston and Miami where ony one TV channel was made available.

[5] RCC mobile telephone operations are conducted on a full-duplex basis, i.e., simultaneous transmit and receive. This requires a duplexer in the radio set in order to keep transmitter energy out of the receiver. The closer the spacing of transmit and receive frequencies, the more complex and costly the design of the duplexer and the greater the degradation of the performance of the transmitter and receiver.

[6] The 50dB co-channel and 0.0dB adjacent channel protection criteria were implemented by imposing restrictions assuming a "worst-case" basis, i.e. the base station located 50 miles from the metropolitan center, the mobile ranging 30 miles beyond this, high terrain elevating the mobile antenna 100 feet, 200 watt mobile transmitters, etc.

[7] Due to a slight dissimilarity in the field strength charts in Parts 21 and 73 of the Commission's Rules, the applicant is requested to consult Section 73.699 (Broadcast Rules) when requesting a waiver of the 200 watt maximum or 100 feet maximum criteria.

the Office of the Chief Engineer prior to taking any action, and bring the application to the full Commission for consideration if there is disagreement.

17. The trend of applications and authorizations has been in the direction of multiple channel systems—brought about in part by advances in technology, and in part by public demand for better services. Nevertheless, we will not preclude the possibility that single channel systems may have their place in the implementation of these new frequencies. We propose that each system operator will be permitted to equip his system up to an authorized maximum of 12 channels, with the number of channels that the public demand and his business judgment justifies. We also recognize that in the Urbanized centers we are dealing with in this proceeding, there exists a substantial demand for paging services. We are also inclined to believe that the mixture of one-way signaling (paging) on channels employed in a multi-channel trunked system could substantially diminish trunking efficiency and accordingly the grade of service to the mobile subscribers. Thus we propose that these frequencies be made available solely for mobile services except for that signalling necessary to establish and maintain communications with mobile units. We propose to satisfy the demand for additional paging channels in separate proceedings.

18. In all of the urbanized areas dealt with here, twenty-four (24) channel pairs will be made available, except for the Dallas-Fort Worth, Houston and Miami areas where only twelve (12) channels are available, but for largely technical reasons we will deal with them only in groups of 12. We recognize that in each of these cities there are many variables, such as number of prospective applicants, station locations, the number of prospective systems and channels per system. Thus we wish to place upon the applicants the maximum burden to propose facilities which will provide the most effective use of the available spectrum, the optimum grade of service to the public in terms of average delay, blocking probability, and number of subscribers to be served. Experience tells us that the number of potential applications for frequencies will far exceed the 12 or 24 pairs available. Following present procedures, this would lead to mutually exclusive applications, probably interdependent between all applicants; to petitions to deny; and eventually to protracted hearings and court cases of a highly complex nature. We envision it could be 5–10 years before the first system would go on the air. Meanwhile the public is denied needed service and the frequencies are unavailable to anyone. We have thus concluded that a new approach to frequency assignment and licensing is required on our part.

19. Our new approach is based in part upon our successful experience in administering the "guard band" frequencies and in part upon advances in technology which we believe will result in more effective and efficient use of the radio spectrum, better service to the public and solve potential problems of electrical mutual exclusivity.

20. Thus we are proposing below what we believe to be the minimum technical standards necessary to facilitate interference-free operation should there be two or more systems operating on the same frequencies in the same area. These standards apply only to the channel "search and seizure" and permit each system to employ any unique signaling technique once the channel has been "seized". Likewise, it will be the applicant's prerogative to equip a system for a single transmitter on a single frequency; a single transmitter on up to twelve frequencies; or up to twelve transmitters on twelve frequencies or any combination he chooses. Mobile units may be operated full-duplex or push-to-talk. As proposed, we see no conceivable type of system that cannot be employed, *Provided*, That it does not artificially load on a non-busy channel or employ techniques permitting excess overhead or set-up times.

21. Our technical standards allow two or more separate systems to operate on the same frequencies in an area. If carriers choose to operate common control terminals and related facilities in order to achieve more economical operation they may do so. Such a joint system must meet our minimal technical standards for off-the-air monitoring. That is, a joint system must be capable of a technically accommodating operation of another base station should we grant a license for such a station.

22. We have considered in detail the technical design of such over the air monitoring systems and are convinced it would work. One system design studied used subaudible tone coded squelch; another system used digital message preambles. Both system designs met our minimum technical standards and were "compatible" in sense that both system designs could be used in the same urban area at the same time and would work well.

23. Following careful considerations regarding various technical approaches considered, we decided that adopting minimum technical standards would have the advantage of permitting the use of available hardware and technology to the maximum extent possible and permit early implementation. We are convinced that there are viable technical solutions to joint use systems, and will not adopt detailed specifications for implementation unless forced to do so. But we will require applicants and suppliers proposing system (in accordance with our end objectives as enumerated in our minimum technical standards) to furnish evidence of detailed specifications and coordination with their application.

24. Accordingly, we are proposing to make these frequencies available only on a shared basis. We believe that applicants for these frequencies can, by cooperating and coordinating, determine how best to solve their operational and technical problems just as they did in implementing "guard band" operations. We conceive the possibility that all participants in an area could operate a common system but our technical standards provide means by which two or more systems could still operate on common frequencies on a non-interfering basis. We are in no way opposed to carriers operating a common system terminal, such as is employed by nine carriers on the Los Angeles guard-band frequencies, but our rules and technical standards do not require it. Obviously if all carriers operated through a common terminal, our concept can be easily implemented. But should they choose not to, then technical coordination is an absolute necessity in order to prevent interference between systems. Separate terminals could be tied together via wirelines to "busy out" a seized channel but we recognize this could be costly if the terminals were widely separated. Thus we have provided in our technical standards, an economical means whereby "off-the-air" monitoring of base station transmit frequencies could be employed to "seize" a channel between separate terminals. We have further specified that the connection between base and mobiles be accomplished as rapidly as possible to prevent channels from becoming loaded by overhead transactions instead of traffic. Aside from these few limitations, we have imposed no technical standards pertaining to signaling once a channel has been seized, nor in specifying how idle channels shall be assigned to subscribers. While we recognize there may be merits to a completely standardized system, we also recognize the great variety of systems currently offered in the marketplace. We chose therefore to allow the forces of the marketplace to determine what system each carrier may choose and what degree of standardization, if any, would result between systems other than that we've specified. We believe this approach will result in the fastest and most economical implementation of these frequencies.

25. There are still several other points that must be set out to complete our proposal. The first concerns "need" showings. This requirement in the DPLMRS has been treated in Long Island Paging 30 FCC 2d 405 (1971), and New York Telephone Company 47 FCC 2d 488 (1974), for new stations, and in Section 21.516 of the Rules for additional facilities. The major premise of this requirement has been that the applicant, if granted, received exclusive use (with some exceptions not pertinent here) of a valuable and scarce national resource. For that reason, it was incumbent on the applicant to show that efficient use would be made of the frequency. Our present proposal will create a different situation. With all frequencies shared by all licensees, if one does not find subscribers and generate traffic, there will be more air-time available for more efficient licensees. Accordingly, we will not require applicants for these frequencies to submit "need" showings.

26. A second point we wish to make concerns "cut-off" dates, see §§ 1.227 and 21. of our Rules. Cut-off dates have been established in the past so that mutually

exclusive applications could be processed and disposed of in an orderly manner, without new applications prolonging and confusing the matter. However, under our new proposal, there will not be any electrically mutually exclusive applications, and so there is no need for a cut-off date. Accordingly, we propose not to apply any cut-off on these frequencies, with the exception for mobile units, set out in paragraph 27 below. As a result even after some licensees are in operation, new applications will still be accepted and granted, if the applicant shows that he is qualified, the proposal is technically feasible, and that there is still room available on the frequencies.

27. While we are proposing to follow a policy of "open-entry" for these frequencies, we recognize that some upper limit traffic loading criteria must be imposed. Lack of such limits would result in the grade of service to the public rapidly diminishing once all channels had reached a fully-loaded condition. We are thus proposing to place an upper limit on the number of mobile subscribers permitted on these channels. Once this limit has been reached, no additional units may be added, except as replacements. Our experience on single channel operations indicate that generally a channel is considered filled to capacity with 30–40 mobiles. Trunking of twelve channels can easily permit accommodating 100 mobiles per channel assuming similar traffic characteristics. Once the then existing system operators have 1200 subscribers units on a group of twelve channels, we think that saturation has been reached. We solicit comments regarding the numbers we have selected in determining a loaded channel and in the amount set aside for expansion.

28. Accordingly, *It is ordered*, for the reasons given above, the petitions for reconsideration seeking "closed entry" are denied; and the policy request of NARS and others, paragraph 6 above, are granted to the extent indicated above, and in all other respects are denied.

29. *It is further ordered*, That pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, notice of rulemaking is hereby given concerning use of these frequencies in the Domestic Public Land Mobile Radio Service.

30. *It is further ordered*, That any interested persons may participate herein by filing comments and reply comments in accordance with the following schedule. Comments are to be filed on or before March 7, 1977, and reply comments on or before March 28, 1977. Comments and reply comments may be addressed to the issues, proposals set forth in this notice and to such other issues as the participants believe are relevant and necessary to the resolution of these matters. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding the Commission may also take into account other relevant information before it in addition to the specific comments initiated by this notice.

31. *It is further ordered*, That, in accordance with § 1.419 of the Commission's rules an original and five (5) copies of all comments, reply comments and other pleadings and submissions shall be furnished to the Commission. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Subpart C is amended as follows:

1. Existing 21.501(k) is revised to read as follows:

§ 21.501 Frequencies.

* * * * *

(k) The following frequencies are available for assignment to stations in the Domestic Public Land Mobile Radio Service operated by Miscellaneous Common Carriers operating in the listed urbanized areas and subject to the limitations contained herein:

BOSTON

Base station frequencies (MHz), channel 14	*Mobile, dispatch and auxiliary test frequencies (MHz), channel 16*
Group 1:	
470.0125	482.0125
470.0375	482.0375
470.0625	482.0625
470.0875	482.0875
470.1125	482.1125
470.1375	482.1375
470.1625	482.1625
470.1875	482.1875
470.2125	482.2125
470.2375	482.2375
470.2625	482.2625
470.2875	482.2875
Group 2:	
473.0125	485.0125
473.0375	485.0375
473.0625	485.0625
473.0875	485.0875
473.1125	485.1125
473.1375	485.1375
473.1625	485.1625
473.1875	485.1875
473.2125	485.2125
473.2375	485.2375
473.2625	485.2625
473.2875	485.2875

CHICAGO, CLEVELAND, NEW YORK-NORTHEASTERN, NEW JERSEY

Base station frequencies (MHz), channel 14	*Mobile, dispatch and auxiliary test frequencies (MHz), channel 15*
Group 1:	
470.0125	476.0125
470.0375	476.0375
470.0625	476.0625
470.0875	476.0875
470.1125	476.1125
470.1375	476.1375
470.1625	476.1625
470.1875	476.1875
470.2125	476.2125
470.2375	476.2375
470.2625	476.2625
470.2875	476.2875
Group 2:	
473.0125	479.0125
473.0375	479.0375
473.0625	479.0625
473.0875	479.0875
473.1125	479.1125
473.1375	479.1375
473.1625	479.1625
473.1875	479.1875
473.2125	479.2125
473.2375	479.2375
473.2625	479.2625
473.2875	479.2875

DALLAS-FORT WORTH

Base station frequencies (MHz), channel 16	*Mobile, dispatch and auxiliary test frequencies (MHz)*
482.0125	485.0125
482.0375	485.0375
482.0625	485.0625
482.0875	485.0875
482.1125	485.1125
482.1375	485.1375
482.1625	485.1625
482.1875	485.1875
482.2125	485.2125
482.2375	485.2375
482.2625	485.2625
482.2875	485.2875

DETROIT

Base station frequencies (MHz), channel 16	*Mobile, dispatch and auxiliary test frequencies (MHz), channel 15*
Group 1:	
482.0125	476.0125
482.0375	476.0375
482.0625	476.0625
482.0875	476.0875
482.1125	476.1125
482.1375	476.1375
482.1625	476.1625
482.1875	476.1875
482.2125	476.2125
482.2375	476.2375
482.2625	476.2625
482.2875	476.2875
Group 2:	
485.0125	479.0125
485.0375	479.0375
485.0625	479.0625
485.0875	479.0875
485.1125	479.1125
485.1375	479.1375
485.1625	479.1625
485.1875	479.1875
485.2125	479.2125
485.2375	479.2375
485.2625	479.2625
485.2875	479.2875

HOUSTON

Channel 17

Base station frequencies (MHz)	*Mobile, dispatch and auxiliary test frequencies (MHz)*
488.0125	491.0125
488.0375	491.0375
488.0625	491.0625
488.0875	491.0875
488.1125	491.1125
488.1375	491.1375
488.1625	491.1625
488.1875	491.1875
488.2125	491.2125
488.2375	491.2375
488.2625	491.2625
488.2875	491.2875

LOS ANGELES

Base station frequencies (MHz), channel 20	Mobile, dispatch and auxiliary test frequencies (MHz) channel 14
Group 1:	
506.0125	470.0125
506.0375	470.0375
506.0625	470.0625
506.0875	470.0875
506.1125	470.1125
506.1375	470.1375
506.1625	470.1625
506.1825	470.1825
506.2125	470.2125
506.2375	470.2375
506.2625	470.2625
506.2875	470.2875
Group 2:	
509.0125	473.0125
509.0375	473.0375
509.0625	473.0625
509.0875	473.0875
509.1125	473.1125
509.1375	473.1375
509.1625	473.1625
509.1875	473.1875
509.2125	473.2125
509.2375	473.2375
509.2625	473.2625
509.2875	473.2875

MIAMI

Base station frequencies (MHz), channel 14	Mobile, dispatch and auxiliary test frequencies (MHz)
470.0125	473.0125
470.0375	473.0375
470.0625	473.0625
470.0875	473.0875
470.1125	473.1125
470.1375	473.1375
470.1625	473.1625
470.1875	473.1875
470.2125	473.2125
470.2375	473.2375
470.2625	473.2625
470.2875	473.2875

PHILDELPHIA

Base station frequencies (MHz), channel 19	Mobile, dispatch and auxiliary test frequencies (MHz), channel 20
Group 1:	
500.0125	506.0125
500.0375	506.0375
500.0625	506.0625
500.0875	506.0875
500.1125	506.1125
500.1375	506.1375
500.1625	506.1625
500.1875	506.1875
500.2125	506.2125
500.2375	506.2375
500.2625	506.2625
500.2875	506.2875
Group 2:	
503.0125	509.0125
503.0375	509.0375
503.0625	509.0625
503.0875	509.0875
503.1125	509.1125
503.1375	509.1375
503.1625	509.1625
503.1875	509.1875
503.2125	509.2125
503.2375	509.2375
503.2625	509.2625
503.2875	509.2875

PITTSBURGH

Base station frequencies (MHz), channel 14	Mobile dispatch and auxiliary test frequencies (MHz), channel 18
Group 1:	
470.0125	494.0125
470.0375	494.0375
470.0625	494.0625
470.0875	494.0875
470.1125	494.1125
470.1375	494.1375
470.1625	494.1625
470.1875	494.1875
470.2125	494.2125
470.2375	494.2375
470.2625	494.2625
470.2875	494.2875
Group 2:	
473.0125	494.0125
473.0375	494.0375
473.0625	494.0625
473.0875	494.0875
473.1125	494.1125
473.1375	494.1375
473.1625	494.1625
473.1875	494.1875
473.2125	494.2125
473.2375	494.2375
473.2625	494.2625
473.2875	494.2875

SAN FRANCISCO

Base station frequencies (MHz), channel 17	Mobile, dispatch and auxiliary test frequencies (MHz) channel 16
Group 1:	
488.0125	482.0125
488.0375	482.0375
488.0625	482.0625
488.0875	482.0875
488.1125	482.1125
488.1375	482.1375
488.1625	482.1625
488.1875	482.1875
488.2125	482.2125
488.2375	482.2375
488.2625	482.2625
488.2875	482.2875
Group 2:	
491.0125	485.0125
491.0375	485.0375
491.0625	485.0625
491.0875	485.0875
491.1125	485.1125
491.1375	485.1375
491.1625	485.1625
491.1875	485.1875
491.2125	485.2125
491.2375	485.2375
491.2625	485.2625
491.2875	485.2875

WASHINGTON, D.C.

Base station frequencies (MHz), channel 18	Mobile, dispatch and auxiliary test frequencies (MHz), channel 17
Group 1:	
494.0125	488.0125
494.0375	488.0375
494.0625	488.0625
494.0875	488.0875
494.1125	488.1125
494.1375	488.1375
494.1625	488.1625
494.1875	488.1875
494.2125	488.2125
494.2375	488.2375
494.2625	488.2625
494.2875	488.2875

WASHINGTON, D.C.—Continued

Base station frequencies (MHz), channel 18	Mobile, dispatch and auxiliary test frequencies (MHz), channel 17
Group 2:	
497.0125	491.0125
497.0375	491.0375
497.0625	491.0625
497.0875	491.0875
497.1125	491.1125
497.1375	491.1375
497.1625	491.1625
497.1875	491.1875
497.2125	491.2125
497.2375	491.2375
497.2625	491.2625
497.2875	491.2875

2. Existing 21.501(l) is revised to read as follows:

* * * * *

(l) Frequencies in paragraph (k) of this section are for assignment in, or in the vicinity of, the urbanized areas listed in Table A below, subject to the following conditions:

(1) The trasmitter site(s) for base station(s) shall be located not more than 50 miles from the geographic center of an urbanized area as defined in Table A.

(2) Mobile stations shall be operated not more than 80 miles from the "Geographic Center" of an urbanized area as defined in Table A, below.

(3) Base stations operating on the frequencies available for land mobile use in any listed urbanized area shall afford protection to cochannel and adjacent channel television stations in accordance with the values set out in Tables B and C, below, except for Channel 15 in New York, N.Y., and Cleveland, Ohio, and Channel 16 in Detroit, Mich., where protection will be in accordance with the values set forth in Tables C and F, below.

(i) Base stations shall be located a minimum of one mile from local television stations operating on TV channels separated by 2, 3, 4, 5, 7, and 8 TV channels from the television channel in which the base station will operate.

(ii) Mobile units operating on the frequencies available for land mobile use in any given urbanized area shall afford protection to cochannel and adjacent channel television stations in accordance with the values set out in Tables D and G, below, except for Channel 15 in New York, N.Y., and Cleveland, Ohio, and Channel 16 in Detroit, Mich., where protection will be in accordance with the values set forth in Tables E and G below.

(iii) The television stations to be protected in any given urbanized area, in accordance with the provisions of (i) and (ii) of this paragraph, are identified in the Commission's publication, "TV stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470–512 MHz." The publication is available at the offices of the Federal Communications Commission at Washington, D.C. or upon the request of interested persons.

(4) For antenna heights between 500 feet and 3,000 feet above average terrain the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power

reduction graph in Figure A below, except for Channel 15 in New York, N.Y., and Cleveland, Ohio, and Channel 16 in Detroit, Mich., where the effective radiated power must be reduced in accordance with Figure B. For heights of more than 500 feet above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the Grade B contour of a cochannel TV station, an authorization will not be granted unless it can be shown that actual terrain considerations are such as to provide the desired protection at the Grade B contour, or that the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the Grade B contour will be achieved.

(5) Applicants for base stations in the Miami, Florida urbanized area may, in lieu of calculating the height of average terrain, use ten feet as average terrain height.

5(a) Tables and figures:

TABLE A.—*Frequency availability for land mobile use*

Urbanized area	Geographic center		Channel	Frequencies (megahertz)
	North latitude	West longitude		
Boston, Mass.	41°21'24"	71°03'24"	14	470-476
			16	482-488
Chicago, Ill.	41°52'28"	87°38'22"	14	470-476
			15	476-482
Cleveland, Ohio [2]	41°29'51"	81°41'50"	14	470-476
			15	476-482
Dallas, Tex.	32°47'09"	96°47'37"	16	482-488
Detroit, Mich. [3]	42°19'48"	83°02'57"	15	476-482
			16	482-488
Houston, Tex.	29°45'26"	95°21'37"	17	488-494
Los Angeles, Calif.	34°03'15"	118°14'28"	14	470-476
			20	506-512
Miami, Fla.	25°46'37"	80°11'32"	14	470-476
New York-northeastern New Jersey	40°45'06"	73°59'39"	14	470-476
			15	476-482
Philadelphia, Pa.	39°56'58"	75°09'21"	19	500-506
			20	506-512
Pittsburgh, Pa.	40°26'19"	80°00'00"	14	470-476
			18	494-500
San Francisco-Oakland, Calif.	37°46'39"	122°24'40"	16	482-488
			17	488-494
Washington, D.C., Maryland-Virginia	38°53'51"	77°00'33"	17	488-494
			18	494-500

[1] [Reserved]
[2] Channels 14 and 15 are not available in Cleveland, Ohio, until further order from the Commission.
[3] Channels 15 and 16 are not available in Detroit, Mich., until further order from the Commission.

TABLE B.—*Base station—Cochannel frequencies (50 dB protection), maximum effective radiated power (ERP)*

At this distance from transmitter site of protected UHF television station.	Distance in miles	Antenna height in feet (AAT) [1]										The effective radiated power (ERP) [2] and antenna height above average terrain (AAT) shall not exceed the values given in the table.
		50	100	150	200	250	300	350	400	450	500	
	162	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
——→	160	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	———	←——
	155	1,000	1,000	1,000	1,000	1,000	———	———	———	———	800	
	150	1,000	1,000	———	———	———	875	775	700	625	575	
	145	———	———	950	775	725	625	550	500	450	400	
	140	850	750	650	575	500	440	400	350	320	300	
	135	600	575	475	400	350	300	275	250	230	225	
	130	450	400	335	300	255	240	200	185	165	150	
	125	350	300	245	200	185	160	145	125	120	100	
	120	225	200	170	150	125	110	100	90	80	75	
	———	175	150	125	105	90	80	70	60	55	50	

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 mi from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 mi therefrom. The radials should be drawn for each 45° of azimuth starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 ft and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 ft contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map may be used. The average elevation of the 8-mi distance between 2 and 10 miles from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 pct of the distance) in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps, whichever is the latest. If such maps are not published for the area in question, the next best topographic information should be used.

[2] Power levels listed in table are given in watts.

NOTE.—To determine the maximum permissible effective radiated power:

(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in table B, the next lower mileage separation figure is to be used.

(2) Entering the table at the mileage figure found in (1) above, find opposite, a selection of powers that may be used for antenna heights ranging from 50 to 500 ft (AAT). If the exact antenna height proposed for the land mobile base station does not appear in table B, use the power figure beneath the next greater antenna height.

(3) If the power found to be permitted following this procedure is lower than that determined hereafter from table C, this lower figure is the maximum power that may be employed at the proposed land mobile base station.

TABLE C.—*Base station—Adjacent channel frequencies, maximum effective radiated power (ERP)*

At this distance from transmitter site of protected UHF television station.	Distance in miles	Antenna height in feet (AAT) [1]										The effective radiated power (ERP) [2] and antenna height above average terrain (AAT) shall not exceed the values given in the table.
		50	100	150	200	250	300	350	400	450	500	
	67	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
→	66	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	750	←
	65	1,000	1,000	1,000	1,000	1,000	1,000	1,000	825	650	600	
	64	1,000	1,000	1,000	1,000	1,000	1,000	775	625	500	400	
	63	1,000	1,000	1,000	1,000	1,000	650	450	325	325	225	
	62	1,000	1,000	1,000	1,000	525	375	250	200	150	125	
	61	1,000	1,000	700	450	250	200	125	100	75	50	
	60	1,000	1,000	425	225	125	100	75	50			

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 mi from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 mi therefrom. The radials should be drawn for each 45° of azimuth starting with true North. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 ft and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 ft contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map may be used. The average elevation of the 8-mile distance between 2 and 10 mi from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 pct of the distance) in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps, whichever is the latest. If such maps are not published for the area in question, the next best topographic information should be used.

[2] Power levels listed in table are given in watts.

NOTE.—To determine the maximum permissible effective radiated power:

(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in table C the next lower mileage separation figure is to be used.

(2) Entering the table at the mileage figure found in (1) above, find opposite, a selection of powers that may be used for antenna heights ranging from 50 to 500 ft (AAT). If the exact antenna height proposed for the land mobile base station does not appear in table C, use the power figure beneath the next greater antenna height.

(3) If the power found to be permitted following this procedure is lower than that determined heretofore from table F or B, this lower figure is the maximum power that may be employed at the proposed land mobile base station.

TABLE D.—*Mobile and control station—Distance between associated base station and protected cochannel television station (50 dB protection)*

Effective radiated power (watts) of mobile unit:	*Distance (miles)*
200	155
150	151
100	145
50	135
25	125
10	117
5	112

TABLE E.—*Mobile and control station—Distance in miles between associated land mobile base station and protected cochannel television station (40 dB protection)*

Effective radiated power (watts) of mobile unit:	*Distance (miles)*
200	130
150	125
100	120
50	115
25	110
10	105
5	100

TABLE F.—*Base station—Cochannel frequencies (40 dB protection), maximum effective radiated power (ERP)*

At this distance from transmitter site of protected UHF television station.	Distance in miles	Antenna height in feet (AAT) [1]										The effective radiated power (ERP) [2] and antenna height above average terrain (AAT) shall not exceed the values given in the table.
		50	100	150	200	250	300	350	400	450	500	
	130	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
→	125	1,000	1,000	1,000	1,000	1,000	1,000	1,000	850	750	725	←
	120	1,000	1,000	1,000	1,000	900	750	675	600	550	500	
	115	1,000	1,000	800	725	600	525	475	425	375	350	
	110	850	700	600	500	425	375	325	300	275	225	
	105	600	475	400	325	275	250	225	200	175	150	
	100	400	325	275	225	175	150	140	125	110	100	
	95	275	225	175	125	110	95	80	70	60	50	
	90	175	125	100	75	50						

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 mi from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 mi therefrom. The radials should be drawn for each 45° of azimuth starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 ft and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 ft contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map may be used. The average elevation of the 8-mi distance between 2 and 10 mi from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 pct of the distance) in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, for Tennessee Valley Authority Maps, whichever is the latest. If such maps are not published for the area in question, the next best topographic information should be used.

[2] Power levels listed in table are given in watts.

NOTE.—To determine the maximum permissible effective radiated power:

(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in table F, the next lower mileage separation figure is to be used.

(2) Entering the table at the mileage figure found in (1) above, find opposite, a selection of powers that may be used for antenna heights ranging from 50 to 500 ft (AAT). If the exact antenna height proposed for the land mobile base station does not appear in table F, use the power figure beneath the next greater antenna height.

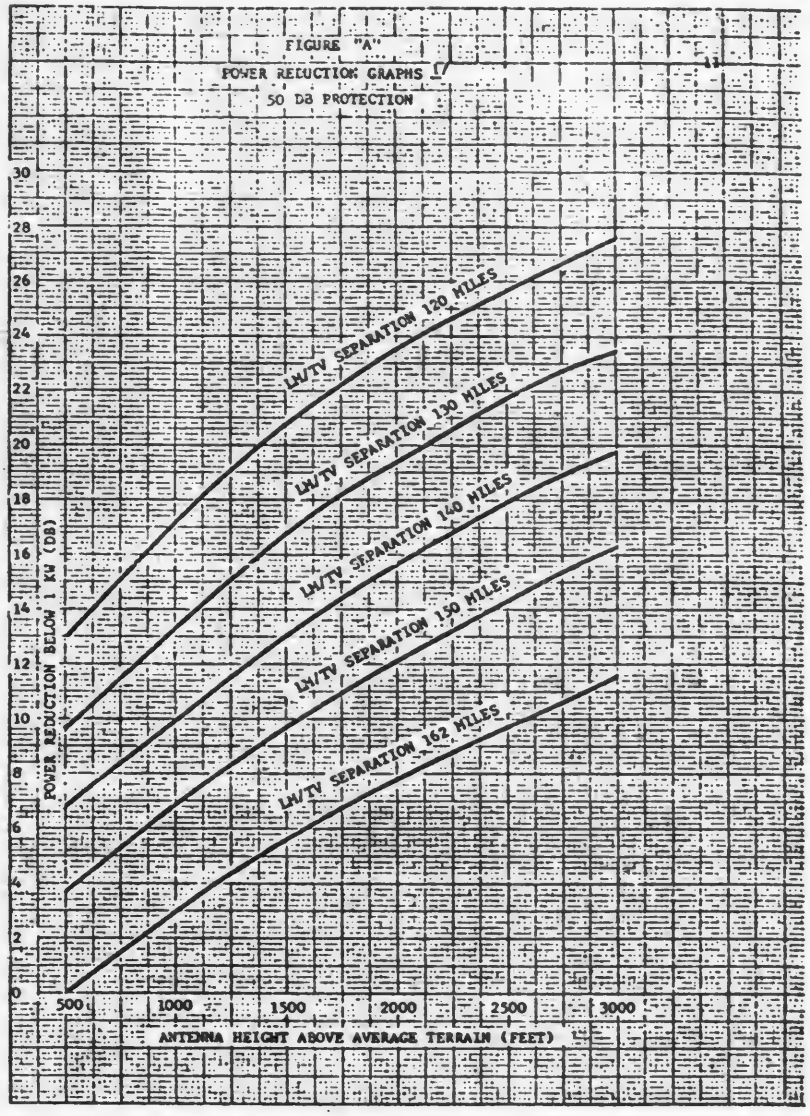
(3) If the power found to be permitted following this procedure is lower than that determined hereafter from table C, this lower fiugre is the maximum power that may be employed at the proposed land mobile base station.

TABLE G.—*Mobile and control station—Distance in miles between associated land mobile base station and protected adjacent channel television station*

Effective radiated power (watts) of mobile unit:	*Distance (miles)*
200	90
150	90
100	90
50	90
25	90
10	90
5	90

TABLE H—*Decibel reduction/power equivalents*

OB reduction below 1 kW:	*E.R.P. permitted (figures rounded)*
1	795
2	630
3	500
4	400
5	315
6	250
7	200
8	160
9	125
10	100
11	80
12	65
13	50
14	40
15	30
16	25
17	20
18	15
19	12
20	10
21	8
22	6
23	5
24	4
25	3
26	2.5
27	2
28	1.5
29	1.25
30	1



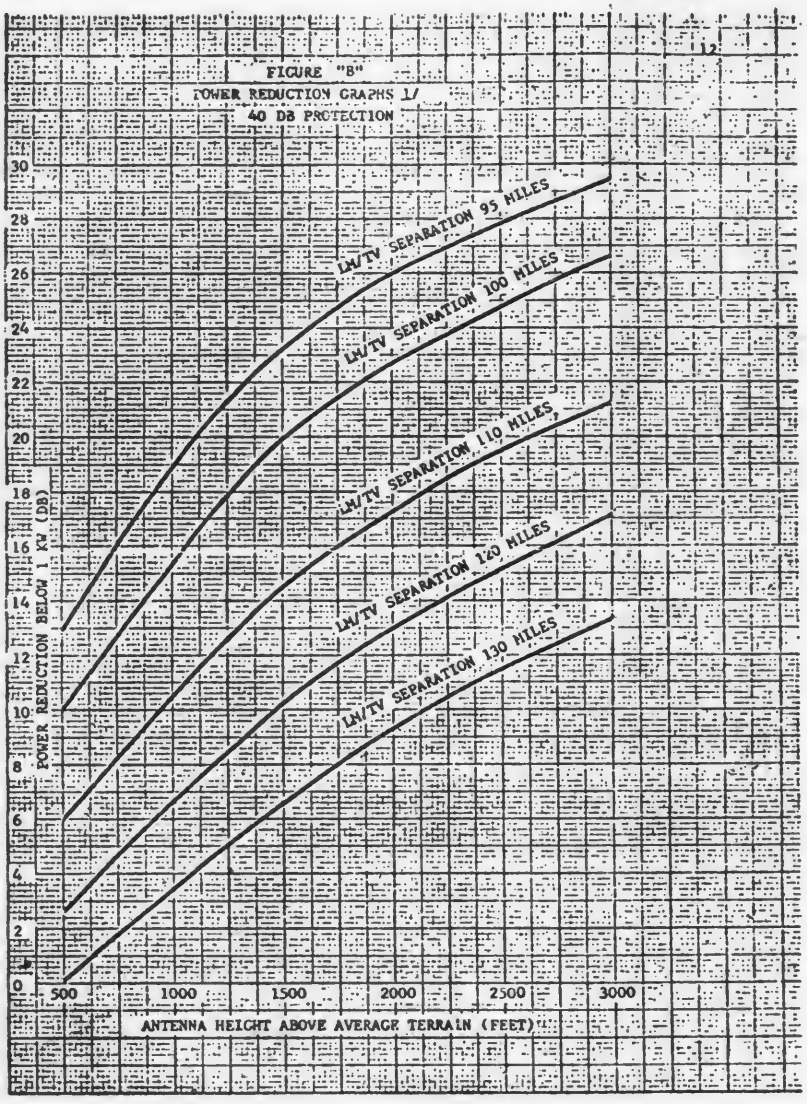
[1] *Directions for using this graph:*

1. Determine antenna height above average terrain.
2. Locate this value on the antenna height axis.
3. Determine the separation between the LM antenna site and the nearest protected co-channel TV station.
4. Draw a vertical line to intersect the LM/TV separation curve at the distance determined in step 3 above. For distances not shown on the graph, use linear interpolation.
5. From the intersection of the LM/TV separation curve draw a horizontal line to the power reduction scale.
6. The power reduction in dB determines the reduction below 1 kW that must be achieved.
7. See Table H for dB/power equivalents.

[2] For stations in the Los Angeles urbanized area with antenna elevations 1,500 or more feet, above sea level, the maximum authorized effective radiated power (ERP) shall be in accordance with the following table:

Antenna Height (ASL) (feet):	*Power (ERP)*
1,501–2,000	155 W.
2,001–2,500	100 W.
2,501–3,000	70 W.
3,001–3,500	50 W.
3,501–4,000	40 W.
4,001–4,500	30 W.
4,501 and above	25 W.

Existing stations may continue to use presently authorized powers until January 1, 1970.



1 *Directions for using this graph:*
1. Determine antenna height above average terrain.
2. Locate this value on the antenna height axis.
3. Determine the separation between the LM antenna site and the nearest protected co-channel TV station.
4. Draw a vertical line to intersect the LM/TV separation curve at the distance determined in step 3 above. For distances not shown on the graph, use linear interpolation.
5. From the intersection of the LM/TV separation curve draw a horizontal line to the power reduction scale.
6. The power reduction in dB determines the reduction below 1 kW that must be achieved.
7. See Table H for dB/power equivalents.

(6) These frequencies are to be employed solely for providing land mobile communication services. Signalling communications will be authorized only when employed for the purpose of establishing and maintaining mobile communications and to "mark" a busy channel in order to prevent interference between two or more licensees.

(7) Assignment of frequencies will be made from pairs listed within a single twelve channel group and, in the event of assignment to more than one applicant, will be available only on a cooperative shared basis. In this event, each licensee will be granted exclusive use of a channel only when the channel is idle and then only for the duration of a call or call attempt, after which the channel must be relinquished.

(8) To facilitate interference free operation between two or more systems assigned the same block of frequencies in the same urbanized area, each permittee shall, prior to commencing operation, submit to the Commission copies of agreements and system diagrams and plans illustrating how interference free operation will be accomplished. Submitted plans must contain as a minimum the following provisions:

(i) A means whereby a Base station transmitter will be prevented from being keyed when the frequency is in use by any other Base station in the area. This is to normally be accomplished by off-the-air monitoring of Base station transmit frequencies. Each Base station must be equipped with a receiver monitoring Base station frequencies which is co-located with the Base station transmitter and interconnected with the transmitter in such a way that it is impossible to key the associated transmitter upon detection of a signal by the receiver.

(ii) A means to insure rapid selective calling and station identification. Selective calling will be permitted on any channel in a group but may only take place on one channel at a time by any one licensee, and only on idle channels. No more than one (1) second of channel time may be employed for each call attempt, and no more than three (3) attempts are to be made during a one (1) minute period. High-speed signalling must be used for selective calling and station identification. Each identification code must provide at least 6 decimal digits of unique code capacity. Calling and identification shall take no more than 500 milliseconds at either Base or mobile from the time the transmitter has reached 90% power output, and the time needed to reach this output should not exceed 50 milliseconds. Likewise, receiver squelch circuits should be fully opened within 10 milliseconds from detection of carrier above threshold.

(iii) A means whereby it will be impossible for the operator of a mobile unit to key his transmitter in such a way as to cause harmful interference or to obstruct the communications of other stations or to transmit when beyond range of its base station. Each mobile unit shall be so configured as to provide automatic station identification when initiating a request for service; that such request can only be transmitted on an idle channel, and further that it shall be impossible to activate the mobile transmitter unless the mobile unit has received an enabling signal from a base station in response to its request for service.

(9) Notwithstanding other provisions of this part, applications for any of the frequencies listed in paragraph 21.501(k) hereof will be processed under the following procedure.

(a) Applications will not be subject to any "cut-off" date as prescribed in Section 1.227(b)(3) and Section 21 of the Rules, except as provided in (b) below.

(b) Within a metropolitan area on any twelve channel group of frequencies listed in paragraph 21.501(k) no more than 1200 subscriber mobile units, will be authorized to operate on these frequencies.

(10) No evidentiary hearings will be held by the Commission to determine which of the applications, filed pursuant this section that are mutually exclusive by reason of potential electrical interference, will be granted. Instead, if the applicants involved are otherwise found to be legally, technically, financially and otherwise qualified, and no petitions to deny are filed pursuant to section 309(d) of the Communications Act of 1934, as amended, and the rules in this part, the Commission will grant each such application, for operation on an interference-free basis with each of the other pending applicants subject, however, to the provisions that each permittee, before commencing service test operations, shall file with the Commission, and the Commission shall approve, a suitable arrangement for coordinated use of the assigned frequencies designed to insure interference-free DPLMRS service to the public.

(11) Any applicant filing for any frequency listed in Table A hereof thereby becomes subject to the conditions contained in this Section. If at the time renewal applications are filed any additional applicant timely files a mutually exclusive application, the Commission will act on all such pending applications as provided by the Communications Act and the Commission's rules.

APPENDIX A

Comments:

The National Association of Radiotelephone Systems (NARS).

Intrastate Radio Telephone Inc. of Los Angeles, Intrastate Radio Telephone of San Francisco, Phone Depots, d.b.a. Mobilfone Radio System, Radiofone Corporation of New Jersey, Rogers Radio Communication Services, Inc., S.M.W., Inc., Communications Industries, Inc., d/b as Mobilfone, General Communications Service, Inc., and Mobile Radio Communications, Inc.

Radio Common Carriers providing service in the Philadelphia urbanized area.

Radio Common Carriers providing service in the Philadelphia area.

American Radio-Telephone Service, Inc., RCC of Virginia, Inc., Radio Phone Communications, Inc., and Smith Communications Service.

Radio Communications, Inc.

Advanced Radio Communications Company.

Intrastate Radio Telephone, Inc., of San Francisco.

Aircall New York Corp., Page Boy, Inc., and Mobile Radio Message Service.

Phone Depots, Inc., and Radiofone Corporation of New Jersey.

Industrial Communications Systems, Inc.

Intrastate Radio Telephone, Inc., of Los Angeles, R.L. Mohr d/b as Radiocall Corp., and Pomona Radio Dispatch Corp.

Chicago Communications, Inc., North Shore Radio-Telephone, Inc. and Rogers Radio Communication Services, Inc.

Instaht Communications, Inc.

Akron Mobile Telephone, Inc., Anserphone, Inc., Cleveland Mobile Telephone Inc., Fitzgerald Radio Communications and Stark Radio Telephone.

S.M.W., Inc.

Reply comments were filed by:

NARS.

RAM Broadcasting Company.

Radio Common Carrier providing service in the Philadelphia area.

Radio Relay Corporation.

Radio Common Carriers providing service in the Cleveland Urbanized area.

Kwik Kall Communications Company.

Radio Common Carriers providing service in cities in the ten largest urbanized areas of the United States.

Suburban Two Way Radio Service.

Knox LaRue.

Late filed comments, with a request for waiver of the deadline were filed by:

Airsignal International, Inc., Telephone Message Bureau, Inc., tr/as Contact, and K&M Management Company.

[FR Doc.77-3620 Filed 2-8-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

MODOC NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Modoc National Forest Grazing Advisory Board will meet at 10:00 a.m., March 2, 1977, in the Forest Supervisor's Office, 441 N. Main, Alturas, California.

The purpose of this meeting is to discuss 1977 Triangle Ranch Permits, Finalize By-Laws, Wild Horse Management, Predator Control Program, and other items related to grazing on the Modoc National Forest.

The meeting will be open to the public. Persons who wish to attend should notify Kenneth C. Scoggin, Box 611, Alturas, California 96101. Telephone 916–233–3521. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Public members may speak up at meeting after the regular board meeting is completed.

Dated: January 31, 1977.

KENNETH C. SCOGGIN,
Forest Supervisor.

[FR Doc.77–4107 Filed 2–8–77;8:45 am]

UINTA NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Uinta National Forest Grazing Advisory Board will meet at 11 a.m. on Thursday, March 17, 1977, at the Rodeway Inn, 1292 South University Avenue, Provo, Utah.

The purpose of the meeting is to elect officers, plan summer field trip, and discuss current grazing matters.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 1428, Provo, Utah 84601, phone 801–377–5780. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rule for public particiaption: Persons may make statements at board meetings, but advance notice must be given to the Chairman.

Dated: February 1, 1977.

DON T. NEBEKER,
Forest Supervisor.

[FR Doc.77–4106 Filed 2–8–77;8:45 am]

Packers and Stockyards Administration

COUNCIL LIVESTOCK SALE COUNCIL, IDAHO, ET AL.

Depositing of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility, No., name, and location of stockyard	*Date of posting*
ID–107, Council Livestock Sale Council, Idaho.	Aug. 4, 1960.
NC–132, Dedmon's Livestock Yards, Shelby, N.C.	Apr. 2, 1959.
OK–179, Tulsa Stockyards, Tulsa, Okla.	Mar. 19, 1935.
WA–118, The Farmers Auction Sale Barn, Inc., Snohomish, Wash.	Oct. 3, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule relieving a restriction and may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become affective February 9, 1977.

(42 Stat. 159, as amended and supplemented (7 U.S.C. 181 et seq.))

Done at Washington, D.C., this 3rd day of February, 1977.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.77–4014 Filed 2–8–77;8:45 am]

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

PRIVACY ACT OF 1974

Systems of Records

On July 14, 1976 the U.S. Arms Control and Disarmament Agency gave formal notice in the FEDERAL REGISTER (41 FR 29012) of the existence and character of its systems of records as described in the FEDERAL REGISTER on August 28, 1975 (40 FR 39665–39669) and amended on May 26, 1976 (41 FR 21624–21626). On December 17, 1976 the Agency published in the FEDERAL REGISTER (41 FR 55314–55319) annual notice of the existence and character of its systems of records as required by 5 U.S.C. 552a(e)(4). Included in that notice was a compilation of the descriptions of the Agency's systems of records and their routine uses, as amended. This compilation will henceforth be used in referring to the Agency's systems of records.

On December 22, 1976 the Agency published a notice of proposed additional routine uses for some or all of its systems of records in the FEDERAL REGISTER (41 FR 55734–55735). Pursuant to 5 U.S.C. 552a(e)(11) interested persons were given thirty days to submit written data, views, or arguments to the Agency. No comments have been received. Accordingly, as authorized by 5 U.S.C. 552a(e)(4), the U.S. Arms Control and Disarmament Agency hereby gives notice of the existence and character of its systems of records as published in the FEDERAL REGISTER on December 17, 1976 (41 FR 55314–55319) and amended on December 22, 1976 (41 FR 55734–55735).

Effective date. This notice shall be effective on February 9, 1977.

LEON SLOSS,
Acting Director.

[FR Doc.77–4012 Filed 2–8–77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77–1–167]

BRANIFF AIRWAYS, INC. AND PAN AMERICAN WORLD AIRWAYS, INC.

Order Granting Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 31st day of January 1977.

From time to time, the Board has been requested to grant exemption authority pursuant to section 416(b) of the Federal Aviation Act of 1958, as amended, to permit Pan American World Airways, Inc. and/or Braniff Airways, Inc. to provide transportation to agents of the United States Secret Service in connection with the protection of foreign or United States dignitaries.[1] In such instances the carrier requires an exemption from section 401 because of certificate restrictions prohibiting the carrier from transporting domestic passengers (i.e., passengers who enplane and deplane within the United States) on domestic portions of inter-

[1] See e.g., Order 74–8–40, dated August 9, 1974.

national flights and an exemption from section 403 because of the absence of a tariff covering the transportation sought to be authorized.

In support of such applications, the carriers usually contend that the requests are limited in extent since they affect only single-flight operations and that the requests arise from the unusual circumstances resulting from the presence of national interests and safety considerations with respect to the transporting of foreign and United States dignitaries. Under these circumstances, the Board has determined that to require Pan American and Braniff to undergo certificate proceedings for the necessary authorizations would be an undue burden subjecting the carriers to costs wholly disproportionate to the authority sought and that grant of the exemption authority is in the public interest and will not adversely affect any other carrier. There has rarely, if ever, been any opposition to the granting of these exemptions.

Upon consideration of these circumstances, we have decided to grant an exemption to Pan American and Braniff from sections 401 and 403 of the Act to the extent necessary to permit them to transport United States Secret Service agents in connection with the protection of a foreign or United States dignitary. We find that such authorizations are limited in extent as to number of flights and passengers carried; that the carriage of such persons will not adversely affect any other carrier; that the expense of certification proceedings would be disproportionate to the size of the operations, overly burdensome on the carriers, and not in the public interest; and that to require the carriers to undergo certification proceedings would have the practical effect of precluding the proposed operations. Furthermore, we view the granting of this exemption as eliminating the need for Pan American and Braniff to file individual applications for the limited authority at issue here. In this regard, we note that frequently the carrier's need for the authority is immediate and often cannot be foreseen and that these unusual circumstances, combined with the absence of opposition to such applications, warrant grant of a blanket exemption. We also point out that elimination of ad hoc exemption procedures will enhance the ability of affected carriers to respond more immediately to requests to perform the subject transportation. Moreover, our action herein will assist in economizing the use of the Board's resources.

Under all these circumstances, the Board finds that the enforcement of sections 401 and 403 of the Act, and the terms, and conditions of the Pan American's and Braniff's certificates, insofar as they would otherwise prohibit the operations authorized herein, would be an undue burden on these carriers by reason of the limited extent of, and unusual circumstances affecting, the carriers' operations and would not be in the public interest.[2]

Accordingly, it is ordered, That:

1. Pan American World Airways, Inc., and Braniff Airways, Inc., be and they hereby are temporarily exempted from the provisions of sections 401 and 403 of the Act, and the terms, conditions, and limitations of their certificates of public convenience and necessity insofar as they would otherwise prevent them from transporting United States Secret Service agents between points between which they do not have local traffic rights in connection with the protection of a foreign or United States dignitary; *Provided*, That the air carrier shall collect from each agent transported the lowest applicable adult fare in effect by any carrier authorized to transport persons in regularly scheduled passenger service between the points involved, for the class of service furnished; and

2. This order may be amended or revoked at any time in the discretion of the Board without hearing.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-4130 Filed 2-8-77;8:45 am]

TIGER INTERNATIONAL, INC.

Application for Proposed Approval of a Corporate Restructuring Involving New Control Relationships and Various Intercompany Transactions, Dockets 21223 and 23798

Notice is hereby given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that the Civil Aeronautics Board intends to issue the attached order. Interested persons are hereby afforded until February 22, 1977, within which to file comments or request a hearing with respect to the action proposed in this order.

Dated at Washington, D.C., February 4, 1977.

PHYLLIS T. KAYLOR,
Secretary.

[Dockets 21223 and 23798]

ORDER OF APPROVAL

Application of Tiger International, Inc. for approval of a plan of corporate restructuring.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

By Order 76-3-96, March 15, 1976, the Board denied the request of Tiger International, Inc. (TI) that the Board approve one specific interaffiliate transaction and otherwise disclaim jurisdiction over a plan of corporate restructuring of various affiliates and their relationships within the TI system of subsidiaries and affiliated companies.[1] Specifically, the Board dismissed without prejudice applicant's limited request for approval of the direct acquisition by TLG, of all of the stock of NAL through a dividend payment from the latter's parent holding company, NER,[2] pursuant to ordering paragraph 2 of The Flying Tiger Corporation, et al., Order 72-7-26, July 10, 1972.[3] The Board's order is the subject of a pending petition for review in the U.S. Court of Appeals for the Ninth Circuit (Docket No. 76-2075).

By application filed on May 28, 1976,[4] TI requests that the Board approve the transfer of NAL from NER to TLG and also "the steps preceding such transfer,"[5] pursuant to section 408(a)(6) of the Federal Aviation

[1] With respect to the corporate restructuring, TI's original application of October 20, 1975, as summarized by the Board in Order 76-3-96, supra, states as follows: "The plan of reorganization contemplates the consummation of a number of integrated transactions which include the following: (1) the formation and establishment of (Tiger Leasing Group, Inc.) TLG, as an intermediate subsidiary holding company of TI; (2) the formation of a Shell subsidiary (Shell) by TLG; (3) the merger of Shell with North American Car Corporation (NAC)[2] as the surviving subsidiary corporation of TLG, implemented by the conversion of the NAC stock held by TI and (The Flying Tiger Line, Inc.) FTL, respectively, into TLG stock; [4] (4) TLG's acquisition from NAC of all of the common stock of (National Equipment Rental, Ltd.) NER; (5) TLG's acquisition of all of the stock of (National Aircraft Leasing, Ltd.) NAL, NER's subsidiary, as a dividend from NER." (Footnotes are omitted.)

[2] As hereinafter discussed, TLG is a holding company which is presently wholly owned by TI and which, under the proposed corporate restructuring plan, would be jointly owned by TI and its wholly owned subsidiary, FTL and the latter's wholly owned subsidiary, FTL Investments, Inc. (FTLI). NAL is an aircraft leasing subsidiary of NER, an equipment financing company, which in turn is a wholly owned subsidiary of NAC an equipment rental company. The latter company itself is jointly and wholly owned by TI, FTL, and FTLI. (References hereinafter to NAL are intended to include its aircraft leasing subsidiary, Liberty Air, Inc., and references to FTL generally include FTLI.)

[3] Paragraph 2 provides as follows: "The transfer of any aircraft leasing business or companies within the NER system of subsidiaries and affiliated companies to any other company within the FTC (TI) system of subsidiaries and affiliated companies shall be subject to prior Board approval and to the conditions set forth in paragraph 1 of Order 71-8-101, August 24, 1971, *and the conditions, to the extent applicable imposed in Order 70-6-119, May 5, 1970.*" (*Italics* ours.)

[4] The application was supplemented by letters of June 2, July 20, July 28, August 18, 1976, and January 31, 1977.

[5] See fn. 1, supra.

[2] The authorization with respect to section 403 will exempt Pan American and Braniff from the filing provisions of section 403, since the carriers would not have tariffs on file with the Board for transportation which they could not provide without exemption authority. We will, however, require Pan American and Braniff to charge the applicable fare for the class of service provided in the market, as contained in the tariffs of the carrier(s) authorized in the market.

Act of 1958, as amended (the Act),[6] and also pursuant to Order 70–6–119, dated May 5, 1970 (relating to the FTL reorganization proceeding)[7] and to Order 72–7–26, supra, relating to TI's (formerly FTC) acquisition of NER.[8]

Apart from the revised request for relief, the present application differs from and supplements the original application in several factual respects which relate to the corporate history of TLG.[9] For example, TI's original application of October 20, 1975, states that TLG was presently "owned by TI." It now appears that at that time TLG was wholly owned by NAC, and its ownership, together with various subsidiaries, was transferred to TI on November 26, 1975 for $1,000, the stated value of all of TLG common shares.[10] Also, TI failed to disclose to the Board TLG's subsequent acquisition of various additional subsidiaries prior to TI's subsequent filing of April 14, 1976.[11] Further, the latter filing, while indicating that TI owned four subsidiaries, failed to identify three of them, the nature of their operations, their financial results, past or projected, for any fiscal or calendar period.[12] Such information was first furnished by the present application and subsequent supplemental information letters as noted before.

According to the current information furnished by the applicant, TLG was originally incorporated in April 1974, as a wholly owned subsidiary of NAC, in order to reserve the name for affiliated leasing companies. Thereafter, but before its transfer to TI on November 26, 1975, TLG became the parent holding company of several subsidiaries viz., Whashin Tiger Leasing (Whashin), Tiger Leasing Ltd. (TLL), and TLG Equipment Limited (TLG Equip), as well as Shell.[13] Also, after the transfer of TLG and these subsidiaries from NAC to TI, TLG established one additional subsidiary, viz. Pro Renta, S.A. de C.V. (Pro Renta) on December 24, 1975, and acquired another subsidiary viz. Tiger Equipmentos & Servicios, Ltda. (TES) from NAC, on March 3, 1976.

[9] We note in passing that the number of material discrepancies among TI's successive filings and the initial omissions of material factual data have considerably delayed the processing of the subject application.

The financial data most recently submitted by the applicant relates both to those subsidiaries which were formed or acquired prior to November 26, 1975, and to those which were established or acquired since November 26, 1975. With respect to the former group of subsidiaries, the applicant discloses that Whashin is a Korean joint venture company [14] currently engaged in leasing construction equipment, industrial equipment, air conditioners and medical equipment on a finance leasing basis. For an eleven-month period ending December 31, 1975, Whashin had a net income, after provision for income taxes, of $15,000 and retained earnings of $15,000; and for the three-month period ended March 31, 1976, Whashin had a net income, after provision for taxes, of $13,000 for the period, and total retained earnings of $28,000.[15] The application also discloses that TLL is currently engaged as the sales agent for TLG Equip and administers its railcar lease portfolio; and that it has suffered a net loss of $16,000 as of March 31, 1976. Further the application discloses that TLG Equip was activated for the purpose of leasing computers in the United Kingdom, and that for the first six months ended June 30, 1976, it had income, before provision for income taxes, of $72,000 and retained earnings of $38,000.[16]

With respect to the newly established subsidiary, Pro-Renta, incorporated to engage in finance leasing in Mexico of general industrial equipment, applicant states that the company is still in the formation stage. Regarding the after-acquired subsidiary, TES, expected to engage in railcar leasing in Brazil, applicant states the company is still in the organizational process. In neither case does it appear that profits or losses resulted, or were expected to occur prior to the corporate restructuring herein.

In support of its request for Board approval, the applicant herein states that it is the objective of the reorganization to simplify the corporate structure and establish, to the extent possible, corporations which are to engage primarily either in finance leasing or in operating leasing.[17]

TI's leasing operations are presently conducted through NAC and NAC's several subsidiaries, including NER and NAL, collectively known under the trade name of Tiger Leasing Group.[18] The leasing group companies are all primarily engaged in the leasing of capital goods, including both finance leasing and operating leasing, as follows: (1) The largest entity of the leasing group companies, NAC itself, whose railcar-leasing division represents about 75 percent of the assets of the leasing group, is engaged in the operating leasing of specialized railroad cars, i.e., tank cars, hopper cars, and assorted freight cars; (2) NER is primarily engaged in finance leasing of general industrial equipment. NAL, a subsidiary of NER, is engaged in the operating and finance leasing of aircraft, while National Computer Rental, Ltd. ("NCR"), another subsidiary of NER, is engaged in the operating leasing of computer equipment; (3) the other miscellaneous leasing subsidiaries are involved in the operating leasing of construction and maintenance equipment for the petroleum industry, highway trailer leasing, and lease brokerage.

Further, the applicant states that the equipment leasing business in the recent past has undergone very rapid expansion. As a consequence lenders have become far more familiar with leasing companies and have developed definite preferences with respect to them. Finance lease companies are attractive to one set of lenders, while operating lease companies are attractive to an entirely different set of lenders. If both types of leasing are combined in a single enterprise, the effect may be to alienate both types of lenders at the same time. The result can be increased difficulty in borrowing and a higher cost of borrowing. Because of these realities of the financial marketplace and because leasing companies by their nature are heavy consumers of capital (primarily borrowed money), a simplified and segmented corporate structure is required to enable TI's various leasing companies more easily to raise capital at the lowest possible interest cost. A simplified and segmented corporate structure will separate as much as possible operating lease activities from finance lease activities so that lenders as a general matter will be dealing exclusively with those kinds of activities with which they are most familiar.[19]

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[6] Sec. 408(a) makes it unlawful unless approved by order of the Board as provided in this section: "(6) For any air carrier or person controlling an air carrier to acquire control, *in any manner whatsoever*, of any person engaged in a phase of aeronautics otherwise than as an air carrier;" (*Italics* ours.)

[7] By Order 70–6–119, effective on June 19, 1970, the Board originally approved, as part of a plan for the corporate reorganization of FTL, the acquisition of control of the air carrier by TI, formerly Flying Tiger Corporation (FTC), a holding company formed for this purpose, as well as for the conduct of various diversified activities through such other subsidiaries as might be established or acquired. Ordering paragraph 6 of that order required that there be submitted for prior Board approval any further acquisition of control, directly or indirectly, of a common carrier or any person engaged in a phase of aeronautics by TI, by FTL, or by any of their affiliates or subsidiaries; ordering paragraph 3, notwithstanding subsequent amendments thereto in various respects and specified exceptions not pertinent to the issues in this proceeding, prohibited without prior Board approval, any intercompany transactions with or affecting FTL which have an aggregate value of $100,000 or more, in any calendar year.

[8] See fn. 3 and 7, supra.

[10] No prior Board approval for this transfer was requested pursuant to ordering paragraph 3 of Order 70–6–119 (see fn. 7, supra). We do not condone this failure on the part of TI and/or FTL. However, since it does not appear that there was a willful withholding from the Board of the information relating to this transaction, and such information, as later discussed, having been made available to the Board, we conclude that no alteration of our decision herein would be warranted by reason of TI's and/or FTL's past failure.

[11] See Order 76–5–56, May 14, 1976.

[12] In these circumstances, the Board's determination in Order 76–3–96 to assert jurisdiction over the corporate restructuring, inter alia, pursuant to Order 70–6–119, was warranted, in order to resolve the issue of whether FTL's exchange of a given amount of NAC stock for a proportionate ownership of TLG was not unfair to the air carrier and did not adversely affect it.

[13] Shell is otherwise identified as TLG: North American, Inc. (TLG:N.A.).

[14] The other party to the joint venture is Whashin Industrial Co., Inc., a company unaffiliated with the TI system. The joint venture was entered into by TLG on December 20, 1974, when the latter company was still a wholly owned subsidiary of NAC. NAC advanced the funds to TLG to acquire 49 percent of the total Whashin stock.

[15] TLG's 49-percent ownership indicates a corresponding equity in Whashin's net income.

[16] However, applicant's letter of July 20, 1976 stated, among other things, that TLG is in the process of finalizing the transfer of the stock of one subsidiary, TLG Equip, to NAC at the par value of 99 pounds sterling.

[17] According to the applicant, a finance lease is a lease which returns to the lessor during its noncancelable original term the invoice cost of the equipment plus interest charges, related expenses and a profit on the investment. An operating lease returns to the lessor during its initial noncancellable term less than the full invoice cost of the equipment plus interest charges. The profitability of an operating lessor is dependent upon its ability to promptly place equipment on a new lease at the end of the initial lease. A finance lease, on the other hand, is merely a means of financing equipment and as such is an alternative source of capital for a lessee.

[18] Markedly, the trade name is to be differentiated from the legal entity, Tiger Leasing Group, Inc., herein referred to as TLG.

[19] According to the applicant, NAC is by far the largest borrower of the leasing group companies. It borrowed in excess of $160,000,000 in 1974 and $140,000,000 in 1975. NAC expects to borrow on a long-term basis an additional $150,000,000 in the next 18 months, at least $75,000,000 of in 1976.

No objections to the application or requests for a hearing have been received.

Upon consideration of the application, the Board finds that the corporate restructuring of NAC, whereby TI and FTL will jointly acquire direct control of TLG, and through TLG, of various new and merged subsidiaries, including, inter alia, NAC and NAL, does not, within the meaning of the third proviso of section 408(b), affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition. Further, no person disclosing a substantial interest is currently requesting a hearing and we find that the public interest does not require a hearing.

In connection with the establishment of the new control relationships pursuant to applicant's plan of reorganization, consideration has been given to the financial credibility and flexibility that will accrue to NAC and its various subsidiaries which are proposed herein to be restructured as horizontal affiliates under the common control of TLG. It appears likely, in our view, that the reorganization could give substantial borrowing leverage to each of the various subsidiaries by reason of their respective specialization emphasis either on finance leasing or on operating leasing. In addition, insofar as the proposed corporate restructuring includes, among other things, the transfer of the aircraft leasing company, NAL, from its parent, NAC, to the position of a direct subsidiary of TLG, such new control relationships, in our view, would not involve FTL's management in activities that are unrelated to its transportation expertise or resources, nor would it impair the financial strength or management of the air carrier.[20]

Also, in connection with the consummation of the subject proposed corporate restructuring, various intercompany transactions form an integral part of the corporate acquisitions which are contemplated by the plan. These intercompany transactions include (1) the exchange or conversion of TI's, FTL's, and FTLI's respective shares of NAC stock into shares of TLG, (2) NAC's receipt of a note from TLG in exchange for the common stock of NER,[21] and (3) a dividend payment by NER to TLG in the form of all of NAL's stock.[22]

With respect to the conversion or exchange of shares of NAC stock for shares of TLG stock, applicant states that TI and FTL will own in TLG "the identical ratio as their holdings in NAC prior to the merger and having the identical assets now held by NAC."

Obviously, such an exchange of stock was not negotiated at arm's length, and therefore, the question is posed whether such exchange is fair and reasonable at least to the air carrier. The fact that the stock exchange would result in TI and FTL each maintaining the identical ratio in TLG and its subsidiaries as was previously held in NAC is not conclusive of the fairness or reasonableness of the proposed exchange. It appears from the supplementary data furnished by the applicant that TLG's holding company interests at the time of the proposed acquisition of NAC through merger would not be confined to the investment in NAC and the latter's subsidiaries. As hereinabove noted, TLG presently owns other subsidiaries. We have noted that after the transfer on November 26, 1975, of TLG and its then existing subsidiaries (Whashin, TLL, TLG Equip and Shell), to TI, but prior to the filing of the present application on May 28, 1976, TLG formed one new subsidiary (Pro Renta, December 24, 1975), and acquired another (TES, March 22, 1976). Of the six TLG subsidiaries, two (Shell and TES) appear to be in an organizational status, and the remaining four appear to have been operational in varying degrees between November 26, 1974, and May 28, 1976. On the basis of the financial data submitted by applicant, it appears that the operations of the active subsidiaries resulted in an overall minimal net profitability.[23] FTL's exchange of its NAC stock for TLG stock on terms that would maintain the air carrier's same proportionate interest in the latter company as it previously held in the former, would not significantly alter the value of FTL's investment equity in NAC and its subsidiaries by reason of TLG's interposition and the corporate realignment. Hence the stock exchange transaction would not appear to be unfair or unreasonable.[24]

Regarding the intercompany transaction involving, respectively, NAC's receipt of a note from TLG in exchange for the common stock of NER, and NER's payment to TLG of a dividend in the form of all of the NAL stock, we do not find that any threat is posed to the air carrier's integrity or to its ability to perform its certificated obligations.

We find, therefore, that the proposed corporate restructuring of NAC which would result in the new control relationships described herein, is not inconsistent with the public interest. Further, we do not find that the conditions of section 408 of the Federal Aviation Act of 1958, as amended, will otherwise be unfulfilled. Nor do we find that the integrity of the air carrier and its ability to perform its certificate obligations would be impaired by reason of the intercompany transactions which would effectuate the corporate restructuring and realignment herein.

However, in the light of these standards, the Board intends to continue to exercise its surveillance over, among other things, the acquisition in any manner, whether by formation, establishment, or repositioning, of those affiliates, within an air carrier-related diversified system of companies, which are or may become engaged directly or indirectly in common carriage or in any aeronautical activities.[25] Hence, consistent with its previous action in these and other related proceedings[26] the Board has determined to impose various conditions appropriate to the exercise of its surveillance obligations.

First, we shall prohibit all transactions which involve the purchase, lease or modification of aircraft equipment or component parts between, on the one hand, FTL and, on the other hand, NAL or any other company within the TI system of affiliates and subsidiaries.

Secondly, we shall require that the transfer of any aircraft leasing business or company to any other company within the TI system of subsidiaries and affiliates shall be subject to prior Board approval.

Thirdly, the Board will retain jurisdiction of this proceeding.[27]

On the basis of the foregoing, the Board concludes that it should approve without hearing under the third proviso of section 408(b) of the Act and under Orders 70–6–119 and 72–7–26, dated respectively May 5, 1970, and July 10, 1972, subject to the conditions discussed above, various acquisitions of control and the various implementing transactions which are involved in the subject proceeding and corporate reorganization.[28]

Accordingly, it is ordered, That:

1. TI's, FTL's and FTLI's acquisition of direct control of TLG and through TLG, of various subsidiaries, including NAC, under a plan of corporate reorganization and realignment as described herein, be and it hereby is approved, subject to the following conditions:

(a) the transfer of any aircraft leasing business or companies within the TLG system of subsidiaries and affiliated companies to any other company within the TI system of subsidiaries and affiliates shall be subject to prior Board approval; and

(b) there shall be no transactions involving the purchase, lease or modification of aircraft equipment or component parts between, on the one hand, FTL, and, on the other hand, NAL or any other company within the TI system of affiliates and subsidiaries;

2. The intercompany transactions relating to (a) the transfer by NAC of its shares of TLG stock to TI; (b) the conversion or exchange of TI's, FTL's, and FTLI's shares of stock for shares of TLG stock; (c) the transfer by NAC of its shares of NER stock to TLG, and the latter's execution of a note to NAC in exchange therefor; and (d) the transfer by NER of its shares of NAL stock to TLG as a dividend payment, be and they

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[20] The Flying Tiger Corporation et al., Orders 71–9–112, September 29, 1971, and 72–7–26, supra, involving Board approval in accordance with the requirements of paragraph 6 of Order 70–6–119, supra, as well as under section 408 of the Act. See also, The Flying Tiger Corporation and Tiger Leasing Corporation, Orders 71–6–106, June 21, 1971, and 71–8–101, supra.

[21] According to the applicant, the carrying value of NER on NAC's books is approximately $40 million. In exchange for the common stock of NER, NAC will receive a note of TLG which will be collateralized by the NER stock being transferred. TLG's note will bear interest at 8 percent and provide for an amortization schedule of approximately 20 years. By reason of this transaction, NER will become a direct subsidiary of TLG.

[22] All of these intercompany transactions, as we have previously determined, are entered into with or affect the air carrier within the meaning of Order 70–6–119, supra, in the context of the corporate reorganization of NAC (together with its subsidiaries) in which FTL has an investment interest, and which is an affiliated company within the TI diversified system. See Order 76–3–96, supra.

[23] For the three-month period ended March 31, 1976, the total net income of TLG's subsidiaries (other than TLG Equip) was stated by applicant to be $9,000, and for six-month period ended June 30, 1976, TLG Equip's net income was stated to be $38,000.

[24] In light of this determination, we do not find that FTL was ultimately adversely affected by reason of the transfer by NAC of its 100 shares of TLG common stock to TI on November 26, 1975, for the stated value of $1,000, when TLG's assets included various subsidiaries, including Whashin. Any initial adverse effect on FTL by reason of its investment in NAC appears to have been adjusted by the terms of FTL's exchange of its NAC stock for TLG stock.

[25] Order 76–3–96, supra.

[26] Dockets 21223 and 23798 herein, and Docket 22768 involving The Flying Tiger Corporation and Tiger Leasing Company (Orders 71–6–106, June 21, 1971, and 71–8–101, August 24, 1971).

[27] These conditions are intended to be additional, and not superseding in respect of any of the conditions in The Flying Tiger reorganization proceeding Order 70–6–119, dated May 5, 1970, as amended, or in the Air Carrier Reorganization Investigation, Orders 75–10–65/66, served October 17, 1975, as amended.

[28] Notice of intent to dispose of the application without hearing has been published in the FEDERAL REGISTER, and a copy of such notice has been furnished by the Board to the Attorney General, not later than the day following such publication, both in accordance with the requirements of section 408(b) of the Act.

hereby are approved pursuant to Orders 72–7–26, July 10, 1972, and 70–6–119, dated May 5, 1970;

3. Except to the extent granted herein, all other requests in the application herein be and they hereby are denied; and

4. The Board shall retain jurisdiction over this proceeding.

By the Civil Aeronautics Board.

Secretary.

[FR Doc.77–4136 Filed 2–8–77;8:45 am]

NORTHWEST AIRLINES, INC.

Meeting

Notice is hereby given that a presentation will be made by Northwest Airlines, Inc., on Wednesday, February 23, 1977, at 2:30 p.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., regarding its cargo marketing concepts.

Dated at Washington, D.C., February 3, 1977.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–4132 Filed 2–8–77;8:45 am]

[C.A.B. 26390]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Agreement adopted by the Traffic Conferences of the International Air Transport Association relating to cargo rates and currency matters.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 2nd day of February, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted by mail vote, has been assigned the above C.A.B. agreement number.

The agreement would increase the currency surcharges for North Atlantic cargo transportation from Gibraltar, Mauritius, Seychelles, Sierra Leone, and the United Kingdom, from 21 percent to 31 percent, thus reflecting the recent further devaluation of the UK pound. This amendment would relate local currency rates more closely to recent fluctuations in the respective values of the various currencies involved, and will be approved herein.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the agreement to be adverse to the public interest or in violation of the Act.

Accordingly, *it is ordered that:*

Agreement C.A.B. 26390 be and hereby is approved.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–4133 Filed 2–8–77;8:45 am]

CIVIL RIGHTS COMMISSION

CALIFORNIA

Hearing

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on March 16, 1977, at the Federal Building, Room 8544, 300 North Los Angeles Street, Los Angeles, California. An executive session, if appropriate, may be convened at any time before or during the hearing.

The purpose of the hearing is to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning equal employment opportunity in the motion picture and television industries; to appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning equal employment opportunity in the motion picture and television industries; and to disseminate information with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning equal employment opportunity in the motion picture and television industries.

Dated at Washington, D.C., February 1, 1977.

ARTHUR S. FLEMMING,
Chairman.

[FR Doc.77–3997 Filed 2–8–77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

SUNY—BROOKLYN

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76–00512. Applicant: State University of New York, Downstate Medical Center, 450 Clarkson Ave., Brooklyn, New York 11203. Article: Superconductive Solenoid, Room Temperature Shim System and Programmed Energization/SC Shim Power Supply. Manufacturer: Canada Superconductor and Cryogenics Company Ltd., Canada. Intended use of article: The article is intended to be used for experiments aimed at detecting internal tumors in the monkey. The objective of this research is to develop a nmr technique that will ultimately detect and non-invasively localize internal tumors in man. Both high resolution nor experiments utilizing p^{31} as the probe nucleus and relaxation measurements using p^{31}, K^{39}, Na^{23} and H^1 are planned.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (October 1, 1974).

Reasons: This application is a resubmission of Dockets Number 75–00360–33–42900 and 76–00215–33–42900 which were denied without prejudice to resubmission on July 18, 1975 and May 20, 1976 respectively for informational deficiencies. The foreign article provides a probe large enough to accommodate the 4 inch shoulder span of a living squirrel, monkey and homogeneity of the order of 2×10^{-6} over a 0.5 centimeter diameter sphere. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 5, 1976 that the capabilities of the article described above are pertinent to the applicant's intended use. HEW also advises that no domestic company was able and willing to provide the pertinent features at the time the article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.77–4081 Filed 2–8–77;8:45 am]

UNIVERSITY OF WISCONSIN—EAU CLAIRE, ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6 (c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before March 1, 1977.

Amended regulations issued under cited Act (15 CFR 301) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket number: 77–00081. Applicant: University of Wisconsin-Eau Claire, Department of Biology, Eau Claire, WI 54701. Article: Electron Microscope, Model HS–9. Manufacturer: Hitachi Limited, Japan. Intended use of article: The article is intended to be used for teaching undergraduate, upper-division students and graduate students with some use for faculty research. These purposes include the development of proficiencies in EM techniques as well as original student faculty projects. Quality courses will be provided in introductory and advanced botany, zoology and survey courses for students majoring in biology, elementary and secondary education, medical technology nursing, predental, premedical, allied health services and other campus programs. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00082. Applicant: University of California, San Diego, Division of Anatomy, Department of Surgery, M–004, La Jolla, California 92093. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB-Produkter AB, Sweden. Intended use of article: The article is intended to be used for sectioning of embryonic tissues at varying stages of gestation during fine structural studies conducted on the brain spinal cord, and vertebral regions of normal and abnormal mutant mouse and chick embryos in which neural tube closure is defective.

The objectives of the experiments conducted will be to determine developmental interactions between the embroyonic neural tube and its surrounding notochordal and vertebral tissues as well as changes in intraneural cerebrovascularity in response to abnormal and neural development, and to correlate structural modifications in the surface of the neural ventricular cells observed by means of transmission electron microscopy with those seen by means of scanning electron microscopy. Application received by Commissioner: January 10, 1977.

Docket number: 77–00083. Applicant: University of Arizona, Department of Plant Pathology, Room 104, Bldg. 36, Tucson, Arizona 85721. Article: Ultramicrotome, Model LKB 8800A and accessory. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for sectioning plant, animal and fungal tissues embedded in hardened epoxy resins. Investigations will include ultrastructural studies on normal and pathologic plant and animal tissues, developmental studies on fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. In addition, the article will be used in the course Methods in Plant Pathology which involves a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells and various subcellular organelles and the employment of cytochemical staining methods to localize various enzymes. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–0084. Applicant: University of Utah, Department of Biology, Room 225 South Biology Building, Salt Lake City, Utah 84112. Article: Electron Microscope, Model EM 201 with High Goniometer Stage and Refrigerated Water Circulating System. Manufacturer: Philips Electronics Instruments, NVD The Netherlands. Intended use of article: The article is intended to be used for the following research projects:

(1) Examination of the characterization of the DNA made in in vitro of eukaryotic and prokaryotic systems,

(2) Study of the effect of methylation on DNA replication in vivo and in vitro in an attempt to relate the distribution of methyl groups to the in vitro synthesis of the small DNA pieces which are synthesized after methylation.

(3) A plant cell project in which the article will provide a rapid assay in the preparation for materials for autoradiographic experiments,

(4) Work on chemotaxis and *Escherichia coli* seeking rapid characterization of mutants which can be carried out by examination of flagella under the electron microscope, and

(5) Investigation of the control assembly and termination of proteins which is aimed at obtaining conditional (temperature-sensitive) lethal mutants of animal cell viruses in an attempt to elucidate the mechanism of viral neoplastic transformation.

Graduate students of the Biology Department will receive training in use of the article which will ultimately benefit them in their chosen careers of independent biological research. Application received by commissioner of customs: January 10, 1977.

Docket number: 77–00085. Applicant: Boston University School of Medicine, 80 E. Concord Street, Boston, MA 02118. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of neonatal lung, aorta, and purified elastin specimens. Investigations will include ultrastructural studies on normal and pathologic lung and other tissues, developmental studies on in vivo and in vitro lung systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interaction and subcellular changes in cells induced by changes in their biochemical and physical environments. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00086. Applicant: University of Idaho, Electron Microscopy Center, Department of Veterinary Science, Moscow, Idaho 83843. Article: Electron Microscope, Model EM 10A with Goniometer Stage and 70 mm Camera. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to study a wide variety of materials or phenomena including (1) cells from diseased and normal animals and plants; (2) microorganisms, mycoplasma, etc.; (3) crystal structures; (4) synthetic fibers and particles; (5) nucleic acid strands extracted from viral agents; (6) morphogenesis of subcellular elements in eukaryotic and prokaryotic cells; (7) ingestion and digestion of infectious agents and inert particles by phagocytic and nonphagocytic cells; and (8) replication or growth and binary division of infectious agents in parasitized host cells. The experiments that will be conducted include the following:

(1) Morphologic characterization of infectious agents,

(2) Ultrastructural Studies of Abnormal Leukocytes, and

(3) Origin of Ascospore—Delimiting Membranes.

In addition, the article will be used in a laboratory course in electron microscopy which is designed to develop proficiency in the use of the transmission electron microscope and selected preparation techniques used for electron microscopy. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00087. Applicant: University of Nebraska-Lincoln, Department of Chemistry, Lincoln, Nebraska 68588. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to cut crystals of all types in experiments involving determination of the modulate piezoreflection spectra from several different crystal faces not all of which occur naturally. The objective of this research is to locate the Van Hove singularities in the joint density of states of the crystals studied. This will permit greater understanding of the band structure of these solids. The article will also be used in the course Thesis Research, Chemistry 999 to train graduate students for research in solid state spectroscopy. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00088. Applicant: University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, Texas 75235. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the sectioning of normal and abnormal tissues from humans, dogs, rabbits, rats and mice, viruses, bacteria, leukocytes and cultured mammalian cells. Investigations will include light, fluorescence, phase-contrast and electron microscopic studies of morphologic, radioautographical, immuno-

cytochemical preparations of the above-cited specimens. Relatively low magnification ultrastructural studies of cell relationships, cell-substratum relationships and morphometric analyses as well as high resolution studies of enzyme localization and membrane interactions and subcellular changes induced by biochemical, physiological and pathological influences will be carried out. The article will also be used for the instruction of technicians, post-doctoral fellows, research associates, and research investigators who must learn techniques for thick and thin sectioning. One to several graduate students in the Department of Cell Biology will also receive the same instruction to enable them to perform research projects in electron microscopy in fulfilling requirements for the Ph.D. Degree in Cell Biology. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00089. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Article: Electron Microscope, Model EM 400 with High Tilt Goniometer and accessories. Manufacturer: Philips Electronics Instruments, NVD The Netherlands. Intended use of article: The article is intended to be used for experimental studies which will focus on the ultrastructural appearance of neurons and synapses in the developing visual system of chicks and developing rodents. In particular, the intracellular organelles of young neurons will be examined, and the developing synaptic junctions and intercellular attachments will be examined. A variety of approaches will be used, including thin-section electron microscopy, freeze fracture, goniometer specimen tilt for stereoscopy and close examination of the membrane modifications. In addition, the article will be used in the course, Histology (Structural Biology 204, 205) to familiarize students with cytology and histology of human tissues in preparation for pathology, physiology. Application Received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00090. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA. 94304. Article: Electron Microscope, Model EM 201; Plate Camera and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for studies of biological materials, including fixed and stained tissues, tissue culture material, and thin films. Experiments will involve study of synaptic populations in developing nervous tissue of the chicken and rodent. Tissues from fetal and neonatal animals will be studied in an attempt to gain information about the processes underlying the formation of connections in the adult brain. A second experiment involves the study of hypothalamic neurons which darken at specified times of the estrus cycle in rodents. The study will determine if protein synthesis or other metabolic factors correlate with this darkening. Tissue culture preparations of young neurons will involve electron microscopy as a means of assessing adhesion between developing cells. Finally, the article will be used for preparation of electron microscopic teaching materials, to be used in the cell biology and histology courses. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00091. Applicant: University of California, Riverside, P.O. Box 112, Riverside, California 92502. Article: Electron Microscope, Model H–500. Manufacturer: Hitachi, Japan. Intended use of article: The article is intended to be used for research in Cell Biology particularly in regards to membrane structure, organization and function, biogenesis of membrane, role of microtubules and microfilaments in membrane processes, and in cytochemical and ultrastructural studies designed to delineate cell structure and organization as related to development and function. The range of research projects include:

I. The delineation of the origin of microvacuoles involved in glandular secretions,

II. Determination of the particulate distribution within membranes as correlated with functional states,

III. Determination of the relationships and possible roles of microtubules and microfilament as related to membrane processes such as the division of cell organelles,

IV. Structure and function of plasma membranes in the host-parasite relationships of malaria,

V. Cytochemical studies of endomembrane differentiation in Maize,

VI. Five structural studies of muscular dysgenesis, and

VII. High resolution studies of membranes particular in regards to the delineation of attachment and recognition sites.

These studies necessitate examinations of the ultrastructure of the material listed above and involve detailed examinations at high resolution of thin-sections freeze-etch material, negatively stained preparation, examinations of thick sections, and field examinations at low power. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00092. Applicant: University of Alaska, Institute of Arctic Biology, Fairbanks, Alaska 99701. Article: 2 Cassette temperature recorders and cassette playback units. Manufacturer: Grant Instruments Inc., United Kingdom. Intended use of article: The article is intended to be used for the study of the effect of disturbance upon soil temperature regime; comparison of soil temperature regime between temperature alpine and subalpine sites and between arctic alpine and subalpine sites, and documentation of soil temperature regime within a cottongrass tussock. The article will also be used in the course Physiological Ecology which involves the examination of physiological adaptations of plants and animals to their environment. The objective of the laboratory portion of the course is to teach students to document important aspects of the environment (such as temperature) and to examine the responses of organisms to those factors. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00093. Applicant: State University of New York at Stony Brook, Dept. Psychiatry & Behavioral Science, School of Medicine/Health Sciences Ctr., Stony Brook, N.Y. 11794. Article: Electron Microscope, Model JEM 100C and accessories. Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is intended to be used in a research and training program on the organization and development of the brains of vertebrates. A wide variety of experiments will be conducted including structure of normal and abnormal synapse, sensory receptors, filled neurons, etc. The patterns of innervation and development will be examined using light, transmission electron microscopy, scanning transmission and secondary emission EM. Application received by Commissioner of Customs: January 10, 1977.

Docket number: 77–00095. Applicant: University of Rochester School of Medicine & Dentistry, Department of Anatomy, Box 603, 601 Elmwood Ave., Rochester, New York 14642. Article: Electron Microscope, Model EM 10A and High Goniometer Stage. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for the investigation of junctional complexes and cell to cell communication in normal and malignant tissues. DNA–RNA configurations in normal and malignant brain tissues will also be studied. Experiments will involve growing normal and tumor cell lines in vitro. At various time periods of growth, the spheroids will be prepared for electron microscopy to determine the type, development and duration of attachment of cell junctions in an attempt to elucidate the role of cell to cell communication in cancer cells which afford greater resistance to irradiation and/or chemotherapeutic agents. These cell lines will also be grown in laboratory animals to determine the in vivo effects of the drugs and/or irradiation on cell junctions and cell to cell communication. The article will also be used to train graduate students, medical students and post-doctoral fellows in the use of the microscope and ancillary techniques. Application received by Commissioner of customs: January 10, 1977.

Docket number: 77–00094. Applicant: University of Rochester School of Medicine and Dentistry, 601 Elmwood Avenue, Rochester, N.Y. 14642. Article: Oscilloscope Recording Camera, Model PC–2A and accessories. Manufacturer: Baytronics, Ltd., Canada. Intended use of article: The article is intended to be used as a unique teaching device in echocardiography in which trainees have an opportunity to study many variations in ultrasonic patterns of the heart and to develop an in-depth understanding of cardiac disease and function. The article will also be used to carry out active clinical research programs some of which has resulted in the publication of over 70 scientific papers and a textbook on echocardiography. Application received by

Commissioner of Customs: January 10, 1977.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-4082 Filed 2-8-77;8:45 am]

YALE UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00515. Applicant: Yale University, 260 Whitney Avenue, New Haven, Connecticut 06520. Article: Free Flow Electrophoresis Apparatus, Model FFA. Manufacturer: Garching Instruments, West Germany. Intended use of article: The article is intended to be used to separate white blood cells and toad bladder epithelial cells into various classes based on surface properties. The article will also be used to separate cell membrane classes. The objective of the experiments to be conducted is to study the chemical and functional properties of the separated materials.

COMMENTS: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is capable of separating or isolating white blood or epithelial cells and cell membrane classes on the basis of differing electrical surface charges. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the capability described above is pertinent to the applicant's intended research studies. HEW further advises that it knows of no domestic instrument of equivalent scientific value to the article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-4080 Filed 2-8-77;8:45 am]

Economic Development Administration

PARKTON CO.

Petition for Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by the Parkton Company, 1801 Whitehead Road, Baltimore, Maryland 21207, a producer of men's slacks, shirts and other apparel, was accepted for filing on January 28, 1977, pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated 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. Department of Commerce, Washington, D.C. 20230, no later than the close of business of February 22, 1977.

JACK W. OSBURN, JR.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-4011 Filed 2-8-77;8:45 am]

REGAL & WADE MANUFACTURING, INC.

Petition for Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Regal & Wade Manufacturing, Inc., 58-16 57th Road, Maspeth, New York 11378, a producer of photograph albums and playing cards, was accepted for filing on January 31, 1977, pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated 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. Department of Commerce, Washington, D.C. 20230, no later than the close of business of February 22, 1977.

JACK W. OSBURN, JR.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-4010 Filed 2-8-77;8:45 am]

Maritime Administration

[Docket No. S-542]

ATLANTIC RICHFIELD CO.

Notice of Application

Notice is hereby given that Atlantic Richfield Company (ARCO) has applied for written permission under section 805 (a) of the Merchant Marine Act, 1936, as amended (the Act), in connection with its application for operating-differential subsidy with respect to bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire on or before December 31, 1977, unless extended, or upon completion of a voyage(s) then in progress. Previous written permission under section 805(a) was granted to ARCO in connection with this application for subsidy by the Maritime Administration on December 16, 1976, namely, for ARCO and its wholly-owned subsidiaries, Philadelphia Tankers, Inc. and Tankers Leasing Corporation, to continue to own, operate, and charter eleven named tankers which engage in domestic intercoastal and coastwise services. ARCO has under charter an additional tanker, SS MEADOWBROOK, which it operates in domestic service and written permission under section 805(a) is required for this vessel.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on February 15, 1977, file same with the Secretary, Maritime Administration/Maritime Subsidy Board, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose

of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Maritime Subsidy Board.

Dated: February 3, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-4000 Filed 2-8-77;8:45 am]

[Docket No. S-544]

AMERICAN EXPORT LINES, INC.

Application

Notice is hereby given that American Export Lines, Inc. has filed an application dated February 3, 1977, to amend its present Operating-Differential Subsidy Agreement, Contract No. FMB-87, so as to modify its subsidized Trade Route No. 18 (Line E) U.S. Atlantic/India service to include a port or ports in the Persian Gulf and the Gulf of Oman. The applicant's Line E service presently includes the privilege of calling at U.S. Gulf ports and also encompasses the entire Trade Route No. 18 foreign area except for the Persian Gulf and the Gulf of Oman.

Interested parties may inspect this amendment in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20230.

Any person, firm, or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20230, by the close of business on February 16, 1977.

The Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistant Program No. 11.504 Operating-Differential Subsidies (ODS))

By order of the Maritime Subsidy Board.

Dated: February 4, 1977.

JAMES S. DAWSON, Jr,
Secretary.

[FR Doc.77-4163 Filed 2-8-77;8:45 am]

[Docket No. S-543]

PRUDENTIAL LINES, INC.

Application

Notice is hereby given that Prudential Lines, Inc. has filed an application dated January 24, 1977, to amend its present Operating-Differential Subsidy Agreement, Contract No. FMB-49 and successor contract to establish a new service on Trade Route No. 18 between United States Atlantic and Gulf ports (Maine-Texas, inclusive) and ports in Southwest Asia from Suez to Burma, inclusive, and Africa on the Red Sea, the Gulf of Aden and the Gulf of Aqaba, with the privilege of providing service between United States Gulf ports and ports on the North Coast of Africa.

The applicant proposes to make up to a maximum of 40 sailings annually and contemplates that initially the four LASH vessels on its Line D (Trade Route No. 10) service will continue service on Line D and will also provide service on Trade Route No. 18, but that subsequently up to four additional LASH vessels will be constructed or acquired for service on Trade Route No. 18.

Interested parties may inspect this amendment in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20230.

Any person, firm or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20230, by the close of business on February 16, 1977.

The Maritime Subsidy Board will consider these views and comments and take action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistant Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Maritime Subsidy Board.

Dated: February 4, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-4164 Filed 2-8-77;8:45 am]

National Oceanic and Atmospheric Administration

SCHEDULE OF FEES

Fishing by Foreign Vessels in Fisheries Subject to the Jurisdiction of the United States of America

On December 23, 1976, and December 30, 1976, the National Marine Fisheries Service (NMFS) published in the FEDERAL REGISTER (41 FR 55925 and 41 FR 56879) a notice of a proposed fee schedule for foreign vessels fishing for fishery resources subject to the jurisdiction of the United States of America. The purpose of the schedule is to establish fees to be paid by the owner or operator of any foreign fishing vessel wishing to fish within the United States Fishery Conservation Zone or for anadromous species or Continental Shell Fishery Resources over which the United States asserts jurisdiction under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.) (hereinafter the "Act"). The notice of December 23, proposed to charge an access fee based on the gross registered tons of the fishing vessels applying for a permit to fish in United States waters, and an allocation fee of 3.5 percent of the ex-vessel price of the surplus fish allocated to each nation. The notice of December 30, provided a list of proposed ex-vessel prices for certain species to be used in the computation of the allocation fee.

In consideration of comments received during the comment period, the Director, National Marine Fisheries Service (hereinafter the "Director") hereby issues notice of a fees schedule for fishing by foreign vessels in waters under the jurisdiction of the United States of America, pursuant to Section 204(b)(10) of the Act for the period starting March 1, 1977, until December 31, 1977, and to continue thereafter unless changed. This fees schedule has been duly established by the Associate Administrator of the National Oceanic and Atmospheric Administration.

PERTINENT SECTIONS OF THE ACT

Section 201(d) of the Act provided that foreign fishermen may be allowed to fish for "* * * that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States * * *."

Section 204(b)(10) of the Act further provides that reasonable fees shall be paid on behalf of any foreign fishing vessel for which a permit is issued. Fishing vessels are defined by Section 3(11) of the Act to include many types of vessels in addition to those actually engaged in harvesting fish. This includes any vessel "* * * aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing * * *."

Part of section 204(b)(10) of the Act provides:

> In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

CRITERIA FOR ESTABLISHING FEES SCHEDULE

The following criteria were considered in developing the proposed fees schedule for foreign fishing:

1. Fees will not be used as a management tool to restrict foreign fishing. Foreign fishing effort will be controlled by management plans.

2. The fees will not, in and of themselves, be so high as to prevent nations from utilizing the allocated surplus. The fee, in any event, must be reasonable.

3. Fees will recover an appropriate part of the management costs related to foreign fishing.

4. The same rate must apply to all foreign nations and the rate will not change within a given calendar year.

5. Fees will be simple to compute and collect. Fees shall be paid as provided in the Act.

6. Every vessel by law must pay a fee and obtain a permit, but the fee may vary with size and function of the vessel.

It is recognized that establishment of this schedule of fees requires flexibility and will require continuing review. A critical analysis and review of the operations of the fees schedule will be made during 1977, and further public comments will be sought. Revisions and changes deemed necessary as a result will be incorporated in the fees schedule for calendar year 1978.

FEES SCHEDULE

The fees charged each foreign nation for fishing for fishery resources subject to the jurisdiction of the United States will be as follows:

1. *Permit Fee*—A fixed annual fee of $1.00 pr gross registered ton (GRT) will be charged for any vessel engaged in or attempting to engage in the catching, taking, or harvesting of fish.

(a) A fixed annual fee of $0.50 per GRT will be charged for any vessel engaged in processing fish, but not catching, taking, or harvesting fish. There will be $2,500 upper limit on this charge.

(b) A fixed annual fee of $200 per vessel will be charged for any vessel engaged in aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing but not catching, taking, harvesting, or processing fish.

If a vessel participates in more than one of the above activities, the highest applicable fee will be charged.

2. *Poundage Fee*—For 1977, a poundage fee of 3.5 percent of the 1975 ex-vessel price of the fish will be charged on all fish allocated to each nation, including the bycatch when applicable. The 1975 dockside prices for computing fees were obtained from "Fisheries of the United States, 1975," except where noted.

Species:	*Average Ex-vessel Value (per metric ton)*
Armorheads, Pelagic	[1] 614
Butterfish	302
Cod, Pacific	251
Crab, Tanner	441
Flounders, Pacific (except Halibut)	318
Hake, Pacific	34
Hake, Red	156
Hake, Silver	194
Herring, Atlantic	73
Herring, Pacific	161
Mackeral, Atka	[3] 130
Mackerel, Atlantic	255
Mackerel, Jack	93
Other fin fish, Atlantic	328
Other ground fish, Pacific	[4] 45
Pollock, Alaska	[2] 98
Rockfish, Pacific	350
Sablefish	[3] 372
Snails (meats)	[4] 600
Squid, Atlantic	[5] 419
Squid, Pacific	[5] 82

[1] Source: *Foreign Fishery Information Release*, 77–1, NMFS Southwest Region.

[2] Source: *Monthly Statistics of Agriculture, Forestry and Fisheries*. November 1976. Japanese Ministry of Agriculture and Forestry.

[3] No specific landings in *Fisheries of the United States, 1975*. The average price for the following Pacific ground fish: cod, flounders, ocean perch, and rockfish—rose from $212/Ton in 1973 to $315/Ton in 1975. The average price for 1973 was calculated from *Fishery Statistics of the United States, 1973*, those for 1975 were calculated from *Fisheries of the United States, 1975*. Using the resulting price index of 148.6 and the 1973 price of $250/Ton for sablefish, a 1975 price of $372/Ton was estimated.

[4] Ex-vessel price provided by Japanese Embassy.

[5] The Division of Data Management and Statistics, NMFS, reviewed the raw data used to develop the value for squid in *Fisheries of the United States, 1975* and calculated separate prices for Atlantic and Pacific squid.

The poundage fee may be recomputed at the end of the year on the basis of actual catch data. If the catch is substantially lower than the allocation, a refund may be applied for, as described later.

OTHER CHARGES

Foreign nations will be required to reimburse the United States for the total costs of placing observers aboard foreign fishing vessels. All costs associated with the program, including salary, per diem, and transportation of observers, as well as overhead costs, will be included in the determination of this fee. Payment of observer costs will be made upon billing at the end of the calendar year. Procedures and charges for the observers will be announced in the future.

PAYMENT OF FEES AND REFUNDS

The amounts of all fees or other payments due will be in accordance with the prescribed guidelines as contained herein. Bills for collection (NOAA form 34–79) covering fee payments due will be sent to the Department of State, Office of the Deputy Assistant Secretary for Oceans and Fisheries Affairs, for forwarding to foreign nations after approval of applications to fish and before fishing begins. Payments should be made as follows:

1. Remittance for fees, and any other charges, should be sent to the Director, National Marine Fisheries Service, Attention: F3, Washington, D.C. 20235. Payments may be made in the United States also at NOAA Field Finance Offices located at 1700 Westlake Avenue, North, Seattle, Washington 98109; and, at 75 Virginia Beach Drive, Building 2, Miami, Florida 33149.

2. All payments for fees or other charges must be drawn in U.S. dollars, payable at a bank in the United States, and be made payable to the U.S. Department of Commerce—NOAA. Payments from private firms or individuals should be in the form of a certified check. To facilitate processing, each remittance should be accompanied by a copy of the applicable bill for collection for identification purposes.

Refunds will be made only upon written application to the Director, National Marine Fisheries Service, Attention: F3, Washington, D.C. 20235. Refunds should be requested as follows:

1. The amount involved should be more than $100.00.

2. Provide an explanation of the difference between the amount of actual catch and the amount authorized. Indicate the reason for the difference.

Detailed procedures on payments, partial payments and adjustments will be published at a later date.

NOTE.—The National Marine Fisheries Service has determined that this document does not contain a major proposal requiring preparation of an inflationary impact statement under E.O. 11821 and OMB Circular A–1.

Issued at Washington, D.C., and dated:

ROBERT W. SCHONING,
Director, National Marine Fisheries Service.

FEBRUARY 1, 1977.

[FR Doc.77–4341 Filed 2–8–77;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON ELECTRONIC WARFARE AND COUNTER-COMMUNICATIONS, COMMAND AND CONTROL (C^3)

Advisory Committee Meeting

The Defense Science Board Task Force on Electronic Warfare and Counter-Communications, Command and Control (C^3) will meet in closed session on March 1 and 2, 1977 in the Pentagon, Washington, D.C.

The mission of the Defense Science Board Task Force is to advise the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering and to provide long-range guidance in these areas to the Department of Defense.

The Task Force will provide an analysis of the communications, command and control (C^3) employed by potentially hostile forces and identify countermeasures that might be of significant help if the Department of Defense were required to counter those forces.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in section 552(b) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives Office of the Assistant Secretary of Defense (Comptroller).

FEBRUARY 4, 1977.

[FR Doc.77–4015 Filed 2–8–77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18128; FCC 77-44]

AMERICAN TELEPHONE AND TELEGRAPH CO., LONG LINES DEPT.

Order Re Tariff Revision

Adopted: January 12, 1977.
Released: February 1, 1977.

In the matter of American Telephone and Telegraph Company, Long Lines Department Revisions of Tariff FCC No. 260 Private Line Services, Series 5000 (TELPAK), Docket No. 18128.

1. We have under consideration paragraph 236 of our Memorandum Opinion and Order (Final Decision) released on October 1, 1976 (FCC 76-886; 41 FR 44489, Oct. 8, 1976) wherein we stated that we would issue a supplemental order indicating our disposition of each individual exception properly filed by the parties.

2. We are attaching below, our rulings on the exceptions filed by the parties to the Recommended Decision of the Chief, Common Carrier Bureau.

3. *Therefore, it is ordered,* That the attached rulings on exceptions be adopted.

FEDERAL COMMUNICATIONS COMMISSION,[1]
VINCENT J. MULLINS,
Secretary.

RULINGS ON EXCEPTIONS—DOCKET NO. 18128

Unless otherwise noted, all references are to our Memorandum Opinion and Order (Final Decision), released Oct. 1, 1976 (FCC 76-886).

A. AMERICAN TELEPHONE & TELEGRAPH CO.

Exception No.	*Ruling*
1	Denied. See Commission's Memorandum Opinion and Order FCC 76-609, released July 13, 1976.
2, 3, 4, 5, 6, 7	Denied. Based on the record herein we have found that FDC is a valid measure of costs for ratemaking purposes. See sec. XI of the Final Decision.
8, 9, 10	Denied. Based on the record herein we have found that LRIC is not a valid measure of costs for ratemaking purposes. See sec. X of the Final Decision.
11	Denied. Such testimony was considered, however our reading of the entire record does not support the testimony therein.
12	Denied. It is not apparent that the Recommended Decision failed to consider the cross-examination of CCB witnesses and rebuttal testimony directed to those witnesses. In any event, we have considered the entire record herein.
13	Denied. The discussion of economic theory in the Recommended Decision (RD) does have support in the record. Additionally, we do not believe that the matter of the use and characterization of economic literature is of decisional significance.
14	Denied. We find the RD's discussion of economic principles and authorities consistent with the record. Additionally, we do not believe that the acceptance and weight given economic theory and literature are of decisional significance.
15	Granted in part, to extent that the record is not conclusive as to the presence of cross-subsidy between MTS and Bell's private line services. See par. 186 of the Final Decision; otherwise denied.
16	Granted in part, to extent that the second criterion is not applicable in this case; otherwise denied. See pars. 196 to 198.
17, 18	Denied. See pars. 202 to 208.
19	Denied. See exceptions 1 and 11 to 14 above.
20	Denied. Based on the record herein we have found that FDC and not LRIC analysis, is a valid measure of cost for ratemaking purposes.
21	Denied. The intent of pars. 4 to 5 of the RD was to provide information on the history of the proceedings.
22	(*a*) Granted. See pars. 14 to 15. (*b*) Denied. See exceptions 2 to 7 above. (*c*) Granted. See par. 14.
23	Granted. See par. 15.
24	Granted. See par. 17.
25	Granted. The complete statement is not contained in attachment A.
26	Denied. See par. 22 and footnote 30 of the Final Decision.
27	Granted. The correct date is Dec. 6, 1971.
28, 29	Denied. See exception 1 above.
30	Granted. A complete listing of petitions filed by A.T. & T. was not included.

[1] Commissioner Lee absent; Commissioner Hooks dissenting.

Exception No.	Ruling
31	Granted. Several other parties to the proceeding did support A.T. & T.
32	Granted. See par. 27.
33	Granted. However, we find this to be of no decisional significance.
34, 35	Denied. We find that there are no competitive telecommunications alternatives to MTS and WATS within the applicable rate ranges.
36	Granted. See par. 27.
37	Denied. The Final Dicision agrees that the Commission need only be concerned in this proceeding with the rate levels of Bell's service classifications. See par. 29.
38	Denied. The questions do reflect the issues herein. See par. 28 and footnote 38 of the Final Decision.
39	Granted in part, to the extent that the RD is inconsistent with the Final Decision's statement of Bell's position at pars. 30 to 33; otherwise denied.
40, 41, 42	Granted in part, to the extent that the RD is inconsistent with the Final Decision's statement of Bell's position at par. 30; otherwise denied.
43	Granted in part, to the extent that the RD is inconsistent with the Final Decision's statement of Bell's position at par. 31; otherwise denied.
44	Denied. We do not read the RD to say that other market conditions reflecting relative demand elasticities for a service can not influence size of the market for a service, but only that alternative means of supply was the "most" significant market factor.
45	Granted in part, to the extent that the RD is inconsistent with the Final Decision's statement of Bell's position at pars. 32, 130, 135; otherwise denied.
46	Denied. Based on the record herein we have found that FDC is a valid measure of costs for ratemaking purposes and that earnings levels can be determined for individual service categories.
47	Denied. Based on the record herein we find that the private-line services are being subsidized by other services. See pars. 189 to 191.
48	Denied. See sec. III (Issues To Be Resolved) of the Final Decision.
49	Rejected. Argumentative.
50	Granted. (*a*) See exception 32 above; (*b*) See FCC 70M–941.
51	Granted. The last sentence does refer to "television" program transmission services and the word "changes" should have been used rather than "increases."
52	Granted in part, to the extent that the second criteria in the *Telpak Sharing* case is not applicable herein. See pars. 196 to 198; otherwise denied.
53	Granted. See exception 32 above.
54	Granted in part, to the extent that the RD is incomplete with respect to the Final Decision's presentation of these parties positions at pars. 192 to 208; otherwise denied.
55	Denied. See par. 34.
56	Denied. See par. 60.
57	Denied. The language in par. 87 of the RD is intended to paraphrase the wording in the *Private Line Rate* case.
58	Denied. We do not believe that this statement improperly suggests that FDC data were the criteria for cross-subsidization.
59	Denied. There is no statement in par. 88 of the RD that "the Commission made a finding of 'cross-subsidization' in the *Private Line Rate* cases." The Commission did conclude, as par. 88 of the RD correctly states, that cross-subsidization would be undesirable. See par. 69 of Final Decision.
60	Denied. As the RD correctly states costs do play a fundamental role in determining justness and reasonableness of rates with respect to rate discriminations. Competitive necessity is also important.
61	Denied. The cited decision is relevant to our prior policy with respect to lawfulness under sec. 202(a).
62	Denied. We do not believe that the tone of the quoted statement is changed when the excerpted language is included.
63, 64	Granted in part, to the extent that the RD is inconsistent with the Final Decision at pars. 192 to 209; otherwise denied.
65	Granted. See par. 68.
66	Denied. We do not believe that any clarification is necessary. Such implication is not made.
67	Granted in part, to the extent that the RD is inconsistent with the Final Decision at pars. 66 to 71 and 192 to 209; otherwise denied.

Exception No.	*Ruling*
68	Denied. See exceptions 2 to 20 above.
69	Denied. We believe this to be a fair characterization of the purpose of rate regulation.
70	Denied. No such implication is made.
71	Denied. See exceptions 8 to 10 and 18 to 19 above. Also see pars. 187 to 191 where we found cross-subsidization to exist in the pricing of Bell's services.
72	Granted in part, to the extend that noncost factors play a role, although not the central role in ratemaking. See par. 67; otherwise denied.
73, 74	Granted in part, to the extent that we reach no conclusion as to whether there is any intentional or systematic bias in Bell's decision process or as to whether Bell priced with "predatory intent"; otherwise denied.
75, 76, 77, 78, 79, 80, 81, 82, 83.	Granted in part, to the extent that the RD is inconsistent with the Final Decision at pars. 117 to 123; otherwise denied.
84	Denied. We believe that the heading is descriptive of the material contained therein and that the discussion is an accurate description of the material in the record. Also see sec. IX, X, and XI of the Final Decision.
85, 86	Denied. See exceptions 2 to 7 above.
87, 88	Denied. The RD did show that there were significant differences between conventional marginal cost-pricing theory and the LRIC methods proposed by Bell. Also see par. 114 which incorporates through par. 117 much of pars. 109 to 112 of the RD. Also see sec. X of the Final Decision.
89	Denied. See par. 114 which incorporates through par. 117 much of par. 110 of the RD. Also see par. 127 of the Final Decision.
90	Denied. We do not believe that the footnote misrepresents the record evidence.
91, 92	Denied. We conclude that the discussion is relevant in an explanation of the general theory of marginal cost pricing.
93, 94	Granted in part, to the extent that the RD is inconsistent with pars. 117 to 137 of the Final Decision; otherwise denied.
95	Denied. See exception 87 above. Also see par. 115.
96	Denied. See exemptions 87 to 91 above. Also see par. 116.
97	Denied. See exception 89 above. Also see par. 116.
98	Denied. See par. 116 which incorporates through par. 117 the essence of par. 118 of the RD.
99	Denied. See exceptions 87 and 89 above.
100	Granted in part, to the extent that the RD is inconsistent with the Final Decision at par. 116; otherwise denied.
101	(*a*) Granted in part, to the extent that the RD is inconsistent with the Final Decision at pars. 30 to 33; otherwise denied. (*b*) Denied. See par. 116 which incorporates through par. 117 this sentence in its entirety. (*c*) Denied. See exceptions 8 to 14 and 87 to 88 above. (*d*) Denied. See exception 87 above.
102, 103	Granted in part, to the extent that there is no evidence in this record that Bell has expanded production beyond that which is economically efficient; otherwise denied. See par. 116 which incorporates, through par. 117, the relevant portion of par. 122 of the RD.
104	Denied. See exceptions 87, 88 above.
105	Granted in part, to the extent that the RD is inconsistent with the Final Decision at pars. 30 to 33; otherwise denied.
106	Denied. See exceptions 87, 91 above.
107	Granted in part, to the extent that the last sentence of par. 126 of the RD is inconsistent with pars. 30 to 33 and 117 to 123; otherwise denied. See par. 116 which through par. 117 incorporates the remainder of par. 126 of the RD in its entirety.
108	Denied. See exception 88 above. Also see par. 116 which incorporates through par. 117 much of par. 127 of the RD.
109	Denied. See exception 8 above. Also see par. 116.
110	Denied. See exception 2 above. Also see par. 116.
111	Denied. See exceptions 8, 20, and 87 above. It is clear that Bell does not apply its LRIC analysis to all service offerings. See par. 127.
112, 113	Denied. It does not appear that Bell's use of off-peak rates in pricing MTS represents a vigorous application of marginal cost pricing. See also response to exceptions 109 and 111. Additionally, a complete reading of par. 128 of the RD shows that it is not contrary to par. 110 of the RD.
114	Denied. See exceptions 8 to 14 and 19 above.
115, 116	Denied. We conclude that the statement is a fair representation of Bell's LRIC proposal. See sec. X and, in particular, par. 137.
117	Granted in part, to the extent that the RD is inconsistent with the Final Decision at pars. 30 to 33; otherwise denied.

Exception No.	Ruling
118	Denied. See exceptions 2 to 4, 8 to 10, and 102 to 103 above. Also see par. 124.
119	Denied. See exception 118 above.
120	Denied. See par. 134 and response to exceptions B1 to B94, below. The conclusions regarding the soundness of Bell's market studies are unaffected by the extent to which exceptions B1 to B94, below, have been granted.
121	Denied. We conclude that this is a fair statement. Our analysis is founded upon the record, not upon the alleged "imputations," mischaracterizations, or "interpretations" of the RD. See par. 135. The deficiencies of Bell's incremental costing approach are discussed generally in sec. X.
122	Granted in part, to the extent consistent with par. 135 and footnote 75; othewise denied. It is not of decisional significance.
123, 124, 126, 127, 131, 132	Denied. We are in general agreement with the RD's assessment of the burden analysis. See par. 135 and footnote 75 which is based upon our independent analysis of the record. See also our discussion of Bell's "retrospective accountability analysis" at pars. 82 to 84, 131 to 132.
125	Granted in part, to the extent consistent with exception 130(b), below; otherwise denied, see response to exception 129(d) below.
128	Denied. (*a*) and (*b*) This is not of decisional significance. See response to exception 124, above. (*c*) This is not of decisional signficance. See response to exception 124 above. The analysis of Bell's "Basic Service" philosophy of ratemaking is founded upon the record. See pars. 87, 103, 127 to 129, 191. See also pars. 155 to 156. (*d*) and (*e*) Based upon the record herein we have found that FDC is a valid measure of costs for ratemaking purposes consistent with our statutory objectives and responsibilities, including the assurance of fair market rules. See sec. XI (particularly pars. 149, 159, 170 to 171), pars. 118, 184, 191, 219, 237 to 238, and response to exceptions 2 to 7, 11, 12, above. See also pars. 96, 120, 137, 225.
129	Denied. (*a*) and (*b*) The sentences are relevant and are accurate representations based upon the record. See response to exception 124, above. See also response to exception 137(a), below. (*c*) See responses to exception 128(c), above. (*d*) Based on the record herein we have found that FDC is the correct test of cross-subsidy. See response to exceptions 2 to 7, 9, 11 to 15, above, and pars. 184, 189 to 191. In regard to incremental analysis as performed in Bell's "burden test," see response to exception 124, above.
130	(*a*) and (*c*) Denied. See response to exception 129(d), above. (*b*) Granted in part. To the extent that we have found, on the basis of the record herein, that FDC method 1 (as presently formulated or as modified by our guidelines) is inappropriate as the exclusive measure of costs for ratemaking purposes; otherwise denied. We have determined that the revised FDC method 7 and method 1, as utilized in accordance with our decision, are the preferred valid costing methodologies; however, the present FDC method 7 and method 1 can provide a valuable guide as a "zone of reasonableness" in determining the lawfulness of past and present rates. See pars. 161, 170 to 179, 184, 191, 219 to 235, 237 to 238.
133, 149, 159	Denied. Based upon the record herein we have found that FDC is a valid measure of costs for ratemaking purposes consistent with our statutory objectives and responsibilities. See sec. XI (particularly pars. 149, 159, 170 to 171), pars. 118, 184, 191, 219, 237 to 238, and responses to exceptions 2 to 7, 11, 12, 20, above.
134, 135, 136, 150	Denied. Based upon the record herein we have found that LRIC is not a valid measure of costs for ratemaking purposes. See response to exceptions 8 to 12, above, sec. X, pars. 120, 156, 183, and footnote 138.
137	Denied. (*a*) Based upon the record herein we have found that Bell's incremental costing approach is not a valid measure of costs for ratemaking purposes. See response to exceptions 8 to 12, above, sec. X, pars. 120, 156, 183, and footnote 138. (*b*) See response to exception 112. Additionally the fourth sentence does not contain the alleged implication.
138	Denied. See response to exception 128 (d) and (e) above.
139	Denied. See response to exception 133, above. Based on our independent analysis of the record we conclude that par. 147 of the RD is an accurate representation of the deficiencies of FDC.

Exception No.	*Ruling*
140	Granted in part. See response to exceptions 130(b), 139 above. See also pars. 150 to 154; otherwise denied.
141	Granted in part. See response to exception 130(b), above; otherwise denied. See also discussion of the problems of forecasting at pars. 132 to 133, 233.
142, 143	Denied. This is not of decisional significance. See our discussion of the problems of forecasting at pars. 132 to 133, 233. Our determination of findings and conclusions is not dependent on the section of the RD to which the exception has been taken.
144	Granted in part; otherwise denied. See response to exceptions 134, 141, above.
145	Granted in part. To the extent consistent with footnote 77; otherwise denied. See response to exception 146, below.
146, 147, 148	Denied. This is not of decisional significance. Additionally, see response to exception 133, above. See also discussion on costing methodologies at pars. 105 to 123, 139 to 142.
151	Denied. See response to exceptions 133, 134, above, and pars. 87, 103, 127 to 129, 145, 155, 226.
152	Granted in part. See response to exceptions 130(b); otherwise denied.
153	Denied. This is not of decisional significance. See response to exception 133, above. Our determination of findings and conclusions is not dependent upon the section of the RD to which the exception has been taken.
154	Denied. See response to exceptions 133, 134 above. Our determination of findings and conclusions is not dependent upon the section of the RD to which the exception has been taken. See also pars. 143 to 145.
155	Denied. See response to exception 133, above, and pars. 87, 103, 120, 127 to 129, 145, 155, 156, 226.
156	Denied. See response to exception 133, above, and pars. 178, 221, 224, 233, 234.
157	Granted in part, to the extent that Bell's incremental costing approach is a departure from marginalist or neoclassical economic theory. See pars. 125 to 137; otherwise denied. It is not of decisional significance. See response to exceptions 133, 134, above. See also pars. 139 to 145. In addition see pars. 87, 103, 155.
158	Denied. This is not of decisional significance. See response to exceptions 133, 134, above. Our determination of findings and conclusions is not dependent upon the section of the RD to which the exception has been taken. See also pars. 139 to 145.
160	Granted in part. See response to exception 130(b) above; otherwise denied. Based upon the record herein we have found that FDC can indicate the presence of cross-subsidization over time. See response to exceptions 2 to 7, 9, 11 to 15, above and pars. 189, 190.
161	Granted in part. See response to exception 130(b); otherwise denied, for the reasons set forth in exceptions 68 to 159 and exceptions 2 to 10, above.
162	Granted in part, to the extent consistent with our response to exceptions 2 to 14, 19, 20, 38 to 50, 68 to 161, above; otherwise denied. See response to exception 137(a), above.
163	Granted in part, to the extent consistent with response to exceptions 2 to 14, 19, 20, 38 to 50, 57 to 162, above, 213 to 215, C 91 to C 93, D1, below; otherwise denied. See response to exception 133, above.
164	Denied. This is not of decisional significance.
165	(*a*) Granted in part, to the extent consistent with our response to exceptions regarding the RD's recitation of deficiencies in LRIC analysis for ratemaking purposes; otherwise denied. (*b*) and (*d*) Denied. Not of decisional significance in view of our determination regarding legal precedent and prior policy. See pars. 62 to 71. (*c*) Denied. See response to exception 134, above.
166, 167, 168, 169, 170, 171, 172.	Denied. See response to exception 165 (*b*) and (*d*) above.
173, 174, 175	Denied. Not of decisional significance. See response to exceptions 165 (b) and (d), above, and par. 62. Our determination of findings is not dependent upon the section of the RD to which the exception has been taken.
176	Granted in part, to the extent that more current FDC data was available and utilized in our determination. See pars. 180 to 191, 209. In addition, see response to exception 130(b), above; otherwise denied.
177	Granted in part. See response to exception 130(b), above; otherwise denied. See also pars. 180 to 183, 185 to 190, 209.
178	Granted in part. See response to exception 130(b), above; otherwise denied. See also pars. 204 to 207, 209.

Exception No.	*Ruling*
179	Granted in part, to the extent consistent with pars. 180 to 181, 209; otherwise denied.
180	Granted in part. See responses to exceptions 124, 179, above, par. 226 and footnote 116; otherwise denied.
181, 189, 214	Denied. See response to exception 38, above.
182	Denied. See response to exception 137(a), above.
183	Granted in part. See responses to exceptions 123, 130(b), 133, 137(a), above; otherwise denied.
184	Denied. See responses to exceptions 133, 137(a), above.
185	Granted in part. See responses to exceptions 38, 130(b), above, and pars. 185 to 188; otherwise denied.
186	Denied. See 38 FCC 2d 213, 245 (1972).
187, 188	Granted in part. See response to exception 185, above. See also footnote 116; otherwise denied.
190	Granted in part. See responses to exceptions 2 to 7, 179 to 181, above; otherwise denied.
191	Granted in part, to the extent consistent with par. 196 and to the extent that the RD is inconsistent with pars. 30 to 33; otherwise denied. Not of decisional significance. Our determination of findings is not dependent upon the section of the RD to which the exception has been taken.
192, 193	Granted in part, to the extent that the RD is inconsistent with pars. 192 to 209; otherwise denied.
194, 195, 197, 198, 199, 200, 207.	Granted in part. See response to exception 192, above; otherwise denied. Not of decisional significance. In view of our findings at pars. 199 to 201, and footnote 116 we need not address these exceptions.
196	Granted in part. See response to exception 194, above. See also pars. 180 to 191, 209; otherwise denied.
201	Granted. See response to exception 32, above.
202, 206	Granted in part. See responses to exceptions 32, 192, above; otherwise denied.
203	Granted in part. See responses to exceptions 130(b), 192 (particularly pars. 202 to 207), above; otherwise denied.
204	Granted in part. See response to exception 192 (particularly pars. 202, 203, 207), above; otherwise denied.
205	Granted in part. See responses to exceptions 120, 130(b), 192 (particularly pars. 196 to 198, 208), above; otherwise denied.
208	Granted in part. See responses to exceptions 130(b), 194, above; otherwise denied.
209	Granted in part. See response to exception 194, above and pars. 189 to 191; otherwise denied.
210	Granted in part. See responses to exceptions 130(b), 179, 192, 194, above; otherwise denied.
211	Granted in part. See responses to exceptions 130(b), 192 (particularly pars. 208 to 209, and footnote 116), above; otherwise denied.
212	Granted in part. See response to exception 192 (particularly pars. 208, 209), above; otherwise denied.
213	Granted in part. See response to exception 130(b), above, and pars. 180 to 191, 208, 209; otherwise denied.
215	Denied. See responses to exceptions 128 (d) and (e), 134, above.
216	(a) Granted in part. See response to exception 130(b), 134, above; otherwise denied. (b) Denied. Not of decisional significance. See response to exception 134, above. Our determination of findings and conclusions is not dependent upon the section of the RD to which the exception has been taken. (c) Denied. See response to exception 128 (d) and (e) above.
217	(a), (c), and (d) Granted in part. See response to exceptions 133, 213, above; otherwise denied. (b) Granted.
218	Granted in part. See responses to exceptions 130(b), 133, 137(b), above; otherwise denied.
219, 220, 225	Granted in part, to the extent that the RD is inconsistent with our guidelines at sec. XIII; otherwise denied. See also response to exception 130(b), above.
221	Granted in part. See responses to exceptions 120, 219, above; otherwise denied.
222	Granted in part. See response to exception 130(b), above; otherwise denied.
223	Granted in part. See responses to exceptions 185, 192, 213, above; otherwise denied.
224	Granted in part. See responses to exceptions 133, 219, above. See also pars. 210 to 218; otherwise denied.
226	Granted in part. See responses to exceptions 130(b), 179, above; otherwise denied.

Exception No.	*Ruling*
A1	Denied. Although attachment A includes only a portion of the Statement of Ratemaking Principles and Factors, the inclusion of the implementation paragraphs is not material to our decision herein.
B1, B6, B8, B9, B24, B37, B43, B49, B52, B54, B55, B63, B74, B77, B89.	Denied. Inclusion of such information is not material to treatment of the issue.
B10	Denied. Results are contained in superseding paragraphs.
B11	Granted in part. TR4 volume should have been 27 percent and TR5, 31 percent; otherwise denied.
B4, B7, B10, B12, B18, B26, B46, B84, B87, B91, B94.	Denied. Failure to include more detailed description, rationale, or effects does not justify a finding of error.
B5, B39, B64, B69, B93, B95	Denied. While not fully descriptive, inclusion of additional detailed statistical data would not serve to clarify or validate.
B2, B90	Denied. Audio service reference is for purposes of perspective only. See par. 87, attachment B of the RD.
B3, B29, B57, B62	Denied. Relevant data are included.
B13, B14, B15, B16, B17, B75, B82, B83.	Denied. The statements of results are adequate without inclusion of additional underlying data.
B20, B21, B22, B23, B85, B88	Denied. Expanded discussion at this point is inappropriate and immaterial.
B25	Granted in part. Additional factors accounting for the changes should have been included; otherwise denied. No material error.
B27	Denied. Characterization and encompassment are reasonable.
B28, B31, B35, B41, B47, B48, B70, B72, B78.	Denied. Such corrections are not material.
B30, B32, B34, B36, B40, B42, B44, B45, B59, B60, B66, B80, B86.	Denied. No error shown, based on Bell's allegations.
B38	Granted in part. Bell's data should have been included; otherwise denied.
B50	Granted. This position should have been included.
B51	Granted in part. National economic factors should have been included; otherwise denied.
B53	Granted in part. Explanation of the effects of 2 dates in the table should have been included; otherwise denied.
B56	Denied. The wording implies no material question.
B58	Denied. The attachment refers to past and current, not just current locations.
B61	Denied. MSI study properly appears in par. 55, attachment B of the RD.
B65, B67	Granted in part. The system descriptions of the study were not complete; otherwise denied.
B68	Granted. Par. 56, attachment B of the RD should have more accurately stated the density levels of record and a more detailed explanation of the low-high rates would better reflect the range of financing alternatives.
B71	Denied. See par. 63, attachment B of the RD.
B73	Granted in part. The lower cost range should have been $0.33; otherwise denied. No material error shown.
B76	Denied. There is no such implication nor any conclusion that if test rate 4 levels were used ARINC would implement a PMW system.
B79	Denied. See par. 207.
B81	Denied. There is no showing of invalidity.
B19, B33, B92	Denied. The statements are adequately supported by the record.
C1	Rejected. Argumentative and lack of specificity.
C2	Granted in part. Although objecting to the use of FDC methods in general, Bell advocates this approach as a "signal" or "point of reference" for the purpose of rate adjustments and, in practice, defers to the "discipline of full costs" in its overall and individual service pricing designs. See pars. 143, 157 to 158; otherwise denied.
C3	Denied. Based on the record herein. FDC is a valid measure of cost for a given category of service. See par. 191. See responses to general exceptions 2 to 5, supra.
C4	Denied. Bell's LRIC method is neither theoretically acceptable nor commensurate with the FCC's statutory mandate to insure just, reasonable, and nondiscriminatory rates. See par. 183.
C5	Denied. The RD notes the Bell usage of current and prospective costs in par. 5 of attachment C.
C6	Denied. Tr. 10776, line 20, refutes Bell's claim.
C7	Denied. The RD is merely relating the contention of the airlines and the networks; no conclusion is reached here about the validity of the claim.

Exception No.	*Ruling*
C8	Denied. No allegation has been made to the effect that a 10-year forecast is more accurate than a 5-year projection.
C9	Denied. The proposed addition is superfluous; the mention of the term "incremental cost" elsewhere in the paragraph indicates that the analysis is a differential one.
C10	Denied. The RD is merely pointing out the pros and cons of the study including non-Bell and Bell positions.
C11	Denied. The record is not clear as to what the correct plant fill factors should be. See par. 136.
C12, C13	Denied. The RD is merely describing the allegations of the network's witness on the subject.
C14	Granted in part, to the extent that identical time periods were apparently used for both the cost data and the market and revenue estimates; otherwise denied.
C15	Denied. See exception C11 above.
C16	Rejected in part. The first sentence is devoid of any record citation; otherwise denied. See exception C11, supra.
C17	Denied. The RD merely presents a synopsis of Western Union's position. It was not necessary to state contrary positions at this point.
C18	Denied. Par 21 of attachment C of the RD merely states briefly Dr. Melody's position on a certain use of capacity costs. Additional explanation is not needed.
C19	Granted in part, to the extent that the major reason that high-capacity interexchange line haul facilities have decreasing unit costs is attributed to higher circuit capacities; otherwise denied.
C20	Denied. There is no implication that the LRIC studies were "directed solely at interexchange high-frequency line facilities."
C21	Denied. See par. 135. See also exception C11 above.
C22	Denied. The RD's point is a narrow one which states only that the use of historic costs would not represent prospective cost. The exception is not on point.
C23	Denied. The paragraph merely describes in brief the record's discussion of unit costs and changes in output and fairly reflects the record evidence.
C24	Denied. The 3 sentences are meant to be only a succinct characterization of the Bell System stance, which the record supports. Additionally, Bell relies on "judgment" in determining costs under LRIC.
C25	Denied. Neither sentence of the exception is germane to par. 27 of attachment C of the RD.
C26	Denied. The RD does not purport to choose between the arguments here; rather, it merely presents the points of view of several of the parties to the case.
C27	Granted. This is a meaningful addition to the RD.
C28	Denied. In light of the guidelines prescribed herein, the exception is irrelevant.
C29	Granted. This characterization of the LRIC method fairly reflects the record.
C30, C31, C32, C33	Denied. The proposed additions are unnecessary.
C34	Denied. No such implication is made, nor is Bell's LRIC "consistent with economic theory." See sec. X of the Final Decision.
C35, C36, C37, C38	Denied. The proposed supplemental information is superfluous.
C39, C40, C41	Denied. Nothing in the exception refutes the accuracy of the RD's characterization of the testimony by the Common Carrier Bureau's witness; the intent of the paragraph is merely to describe, in brief, the witness' position.
C42	Denied. Bell's LRIC and "retrospective accountability" concepts are generally unacceptable for ratemaking purposes. See pars. 130 to 131, 135, 137, 183.
C43	Denied. The recommended changes add little to par. 44 of attachment C. Additionally, we have found the burden test and LRIC to be inadequate for ratemaking purposes.
C44	Granted. The term "fungible" is concerned with plant reusability and is applicable to plant with a long, short, or intermediate life.
C45, C46	Denied. See responses to exceptions C35 to C38, above.
C47, C48, C49, C50, C51	Denied. The referenced passage is designed to tersely describe the party's viewpoint; no attempt is made by the RD to either determine its validity or be all-inclusive in its representation. See also the responses to exceptions C35 to C38, and C42, above.
C52	Granted in part. To the extent of the specific exception to DOD's allegations. See footnote 77 of the Final Decision. Otherwise denied. We have determined that the burden test is inadequate for ratemaking purposes. See response to exception C56.

Exception No.	*Ruling*
C53, C54, C55	Denied. See responses to exceptions C42 and C47 to C51, above.
C56	Denied. The burden test is an unacceptable and inadequate regulatory tool. See pars. 130 to 131, 135, 137, 183. Further, the superiority of the FDC approach (as an indicator of cross-subsidization) over one based on incremental analysis is recognized. See pars. 135, 191, 237 to 238, and footnote 138.
C57	Denied. Method 1 (revised) will be used to provide data for purposes of comparison with allocations furnished by a modified method 7. See pars. 238, 241 of the Final Decision.
C58	Granted in part, to the extent that the "most recent FDC study" provided results of 4, not 7, study apportionments; otherwise denied.
C59	Granted in part, to the extent that the jurisdictional separations procedures as detailed in the "Separations Manual" pertain to the allocation of investment and expenses for interstate and intrastate jurisdictions and not ratemaking; otherwise denied. The principles contained in the manual are suitable for determining costs and revenues assigned to various service categories.
C60, C61, C62, C63	Denied. The additional information is superfluous.
C64	Denied. The paragraph in the RD is descriptive and does not purport to comment as to the specific merits and shortcomings of FDC methods 1 and 2, nor the referenced 1964 cost study.
C65	Granted. These descriptions of methods 1 through 7 were generally adopted by the Final Decision (see par. 160).
C66	Denied. The additional information is unnecessary.
C67, C68	Denied. See response to exception C18, above.
C69	Granted in part, to the extent that the exception was embraced by the Final Decision. See par. 160; otherwise denied.
C70	Denied. Bell's exception does not refute that the 1971 FDC study was an update of the 1969 study.
C71	Granted in part. See response to exception C59, above; otherwise denied.
C72	Granted in part, to the extent that the first 2 sentences are descriptive of methods 1 through 7; otherwise denied.
C73	Granted. Technically, this contention is correct, with varying degrees of applicability of the "relative use" concept depending on the method involved.
C74	Granted in part, to the extent that method 4 is not fairly representative of the Bell methods; otherwise denied. The record does not show that the paragraph is misleading and erroneous.
C75	Granted in part. See response to C59; otherwise denied.
C76	Granted in part, to the extent that the Bell concept underlying methods 3 to 7 involves the assignment of historical cost responsibility to the service that caused the construction of the facility, a method which, in practice, has yielded an apportionment of lower unit costs to the private-line services rather than MTS without regard to actual current use; also to the extent that all 7 FDC methods of allocation embrace the concept of "relative use" in the sense presented in the Bell exception; otherwise denied.
C77	Granted in part, to the extent that there is no record support for par. 68 of attachment C; otherwise denied. These issues are implicit in the Final Decision of the WATS proceeding, 59 FCC 2d 671 (1976).
C78, C79	Denied. We have determined that revised FDC methods 7 and 1 are the preferred costing methodologies. See pars. 219 to 235.
C80, C81, C82, C83, C84	Denied. These are merely fair and brief descriptions of parties' positions. Further elaboration is not needed.
C85	Denied. The record reveals that Dr. Melody and, to a lesser extent, Dr. Wein, are both advocates of the FDC approach.
C86, C87	Denied. See response to exceptions C80 to C84, above.
C88	Denied. The referenced paragraph in the RD does not indicate the network's repudiation of retrospective accountability, as implied by Bell.
C89	Denied. See response to exceptions C80 to C84, above.
C90	Granted in part, to the extent that the Bell exception is consistent with the Commission's decision to use a revised FDC method 7. See pars. 238, 241; otherwise denied.
C91	Denied. See response to exceptions C78 –C79, above.
C92, C93	Granted in part. See response to exception C90; otherwise denied.

Exception No.	*Ruling*
D1	Denied. Attachment D, comprised solely of a table entitled, "Return of Investment by Service as shown under Allocation Method Number 1 of the Fully Distributed Cost Studies" for the years 1965 through 1974, is intended to manifest only these facts. Thus, the reasons proffered by Bell in parts a to i, are argumentative and superfluous. Parts j to n, object to the RD's reliance on FDC method 1 data (in the attachment) as support for certain assertions concerning FDC in general. These exceptions are denied because the referenced table is designed to portray only method 1 statistics. The RD's election of this costing method is, of course, superseded by our determinations that revised FDC methods 1 and 7 are the proper costing approaches. See pars. 238, 241.

B. AERONAUTICAL RADIO, INC.

Exception No.	*Ruling*
1 to 5	Denied. See Commission's Memorandum Opinion and Order, FCC 76–609. Released July 13, 1976.
6, 7	Denied. The RD made sufficient findings and conclusions, and except as specifically noted herein, was an accurate interpretation of the record.
8	Denied. The record of docket No. 14251 was considered by the RD. Specific findings based solely on that record are not necessary.
9	Rejected. Exception is not specific as required by the Commission's rules (sec. 1.277(a) prior to the recent revision).
10	Denied. The delay was occasioned, in part, by the complexity of the issues herein. We have taken into account the "staleness" of the evidence. See par. 206.
11	Granted. See par. 61.
12	Rejected. Exception is argumentative and nonspecific. (See sec. 1.277(a) of the Commission's rules prior to the recent revision.)
13	Denied. Based on the record herein, we have found at pars. 207 and 208 that Telpak rates are not justified by competitive necessity.
14	Denied. See sec. III for a delineation of the issues in this decision.
15	Denied. See par. 29.
16	Denied. Justification is necessary in light of sec. 201(b) and 202(a) of the act where there is an increase in rates for some services, and not for others, in order to meet a higher overall revenue requirement.
17	Denied. We find that in general these questions do reflect the issues herein. See par. 28.
18	Granted in part, to the extent that such an issue has not heretofore been resolved; otherwise denied. We have decided the case upon our independent review of the record and did not presume beforehand the decisional relevance of fully distributed costs.
19, 20	Denied. See response to exception 17.
21	Denied. A sponsoring witness is not required.
22	Denied. The Commission has wide discretion in rulemaking proceedings to take official notice of materials outside the record.
23, 24, 25	Granted in part. We are not applying the second criteria of the *Telpak Sharing* case herein. See pars. 196 to 198; otherwise denied.
26	Denied. The RD's conclusion that LRIC is not commensurate with our statutory duty to insure just, reasonable, and nondiscriminatory rates is supported by the record.
27, 28	Denied. The RD and the Commission are not precluded from further inquiry on the issue of competitive necessity.
29	Denied. See pars. 204 to 207.
30	Denied. The *Telpak* case found that Telpak A and B were not justified by competitive necessity, and in any event these rates are not at issue herein.
31	Denied. The *Telpak* case did not find Telpak C and D rates to be compensatory.
32	Granted in part. The second *Telpak Sharing* criteria is not being applied herein. See response to exception 23; otherwise denied. See response to exception 27.
33	Denied. See pars. 204 to 206.
34	Denied. We agree with the RD that any additional competition from Western Union does not justify the nationwide blanket discrimination between Telpak and like private-line services.
35	Denied. The RD's criticism of Bell's past market studies and the RD's insistence on more reliable data are supported by the record.

Exception No.	*Ruling*
36 to 45, 53	Denied. At par. 206 we state our reasons for not relying on various cost studies and figures in the record which we have considered. Accordingly, these exceptions are not of decisional significance.
46	Denied. The cited testimony supports the RD's statement.
47	Denied. See pars. 205 to 206. See par. 207 with respect to competition from specialized common carriers.
48	Denied. We have explained our reasons for not relying on expressions of intent by current Telpak users. See pars. 205 to 206.
49, 51	Denied. The mere fact that private microwave has grown over time in itself is not relevant to a determination of competitive necessity for Telpak rates.
50	Denied. RD's conclusion is supported by the record.
52	Denied. See responses to exceptions 47 and 48.
54	Denied. This is a statement of one party's position and was not a finding of the RD. It was not necessary to find that MCI had not submitted any evidence.
55	Denied. Datran recently filed for bankruptcy.
56	Denied. This is of no decisional significance in light of our independent conclusion that nationwide Telpak service is not justified on the basis of competition from specialized carriers. See par. 207.
57	Denied. Rates designed to meet unspecified future competitive situations are not justified. See par. 207.
58	Denied. We are in substantial agreement with the RD. See pars. 204 to 207.
59	Denied. The record and our concern with cross-subsidization and carrier accountability support the rejection of LRIC. See sec. X.
60	Denied. The assertion is supported by the record. See sec. XII.
61	Denied. The RD's failure to define "cross-subsidization" in exact terms is not of decisional significance particularly since the word is used correctly therein. See RD, par. 183.
62	Denied. This is not of decisional significance.
63	Denied. See response to exception 62. "Compensatory" means, as correctly used by the RD, that the rates cover all relevant costs.
64	Denied. We have the statutory responsibility to assure the accountability of carriers within our regulatory jurisdiction. See pars. 77 to 84.
65	Denied. The statement merely expressed one possible result.
66, 73	Denied. In pars. 112 to 113, we state that the constructs of neoclassical marginal costing theory and its notion of optimality do not easily lend themselves to practical implementation.
67	Denied. The exception is not of decisional significance. We have independently concluded that the burden test is not acceptable for ratemaking purposes. See par. 135.
68 to 71, 77, 80	Denied. We have adopted a fully distributed cost approach and rejected LRIC on the grounds that it is unsatisfactory in view of our statutory responsibilities. Such is supported by the record. See ruling on exception 66. See secs. X and XI.
72	Denied. Par 111 of the RD merely specifies general practical difficulties in applying marginal cost-pricing and identification of the application of marginal cost-pricing to the mixture of monopoly and competitive services is not necessary.
74	Denied. This statement is supported by the record.
75	Denied. Since we do not rely on such testimony or references, the matter is not deemed to be of decisional significance.
76	Denied. While we have recognized some benefits of marginal cost-pricing, we have rejected the use of LRIC in part because it permits too much flexibility and managerial judgment and thus fails to meet our accountability objective.
78	Denied. At pars. 117 to 118 we recognize Bell's use of LRIC as a method of analysis and that under the basic service philosophy the price is set above LRIC, but we have rejected the use of LRIC as a measure of relevant cost for ratemaking purposes. See sec. X.
79	Denied. The RD's statement is relevant to a discussion of marginal cost-pricing.
81	Denied. The illustration is relevant to a discussion of marginal cost-pricing.
82	Denied. The statement is relevant in discussing the relative merits of LRIC.
83	Denied. We find rates shall be established on the basis of fully distributed and not incremental costs, or marginal costs.
84	Denied. See response to exception 68.
85	Denied. The distinction is relevant to a discussion of marginal cost-pricing.
86	Denied. We find that LRIC does not cover all relevant costs of providing service.

Exception No.	*Ruling*
87	Denied. LRIC is not the same as longrun marginal cost and prices will be set not at, but above, LRIC.
88	Denied. The presence of excess capacity is relevant to determining the cost of service.
89	Denied. The record supports our finding that Bell's selective applications of marginal cost-pricing to certain services under its basic service philosophy has resulted in rates which are unjust and unreasonable. There has not been an unreasonable or arbitrary burden placed on the proponents of LRIC to show otherwise.
90, 91	Denied. In so far as we have found in secs. IX and X numerous other reasons for rejecting LRIC, the objection is not deemed to be of decisional significance. We also note that our staff is considering revisions of the uniform system of accounts.
92	Denied. As we note in par. 127, under Bell's basic service philosophy, monopoly services will not be priced on the basis of LRIC.
93	Denied. We find that Bell's theory is one of contribution and conclude that LRIC does not measure compensativeness. See response to exception 68.
94	Denied. See response to exceptions 66 and 68.
95	Denied. We conclude that Bell's approach is violative of the objective of fair and equitable treatment of all users, because among other reasons, unattributable costs are not allocated as part of the incremental analysis. See pars. 128 to 130 and 137.
96	Denied. See response to exceptions 68 and 95.
97	Denied. We find that LRIC fails to satisfy the statutory responsibility of accountability. See par. 137.
98	Denied. Peak/off-peak pricing was cited merely as an example of one application of the theory of marginal cost-pricing.
99	Denied. See response to exception 68.
100	Denied. Par. 143 of the Final Decision states that Bell's "* * * basic service philosophy may be viewed simply as a special, implicit approach to the distribution of full recorded costs."
101	Denied. LRIC indirectly allocates unattributable costs as referenced in the response to exception 100 above.
102	Denied. The basic monopoly services bear the burden of the unallocated costs. See pars. 102 to 104. Additionally, LRIC does not comport with our accountability objective. See par. 137.
103	Denied. We conclude that LRIC analysis cannot prevent or detect cross-subsidies between monopoly and competitive services. Also, LRIC does not account for all costs. See pars. 127 to 132.
104	Denied. The Final Decision did consider (and rejected) the retrospective accountability tests. See pars. 130 and 131.
105	Denied. Doctor Wein's proposal was not accepted in the RD nor the Final Decision. Speculation as to the Commission's role under a hypothetical scheme is of no decisional significance.
106	Denied. The record demonstrates, and we have found that return levels of certain services have been and are currently deficient. See par. 7 and sec. XII.
107	Denied. See response to exception 104.
108, 109	Denied. We find that the revised FDC methods 1 and 7 best suit our statutory objective of accountability.
110	Granted in part, to the extent that the lawfulness of the DDS rates is not at issue herein. See our Final Decision and Order in docket No. 20288, adopted Jan. 5, 1977 (FCC 77-35); otherwise denied.
111	Denied. See response to exception 104.
112	Granted in part, to the extent such statement is not inconsistent with the statement noted in RD, par. 112; otherwise denied. It is not of decisional significance.
113	Denied. The RD's interpretation of economic theory is accurate when the quoted sentence is taken in the context of the entire paragraph.
114	Granted in part, to the extent that such testimony is part of the record; otherwise denied. We do not find that such testimony conclusively establishes the relative or absolute elasticities of demand of competitive and monopoly services.
115	Denied. The logical construction of a single paragraph of the lengthy RD is not of decisional significance. We reiterate that our selection of appropriate costing methods was based on an independent analysis of the record in light of our statutory objectives and responsibilities.

Exception No.	*Ruling*
116, 117, 118, 121, 122, 124, 132.	Denied. We are in general agreement with the RD's assessment of the burden analysis. See par. 135 and footnote 75 of our decision which are based upon our independent analysis of the record.
119	Denied. Such inference is totally illogical and not supported by the record.
120, 130, 131	Denied. FDC is a different test and the comparison made is not logical.
123	Denied. Private line services do not subsidize monopoly services.
125	Denied. See par. 135. It is concluded that the burden analysis is dependent on the formulation of demand cross-elasticities.
126	Denied. See pars. 155 to 159 of our decision.
127	Denied. We find that FDC is a valid measure of costs for ratemaking purposes that meets our statutory objectives and responsibilities.
128	Granted. Such a showing has been made. However, it is of no decisional significance.
129	Denied. See responses to exceptions 116 and 127.
133	Denied. This is of no decisional significance. We relied on an independent analysis of the record in this proceeding and not on the reasoning of the Federal Trade Commission in reaching our decision.
134	Granted in part, to the extent that the FCC does in fact regulate the allowable rate of return; otherwise denied. The RD's full statement is based on testimony in the record.
135, 136, 137, 138	Denied. This is of no decisional significance. Our findings and conclusions are not dependent upon the statements in the RD to which exception has been taken.
139	Granted. See response to exception 128.
140	Granted. We agree that future costs are best estimated by forward-looking studies. However, it is of no decisional significance.
141	Denied. Based on our independent analysis of the record, we find that the Bell market studies of the record are defective. See par. 134 of our decision.
142	Denied. The RD's description of a fully distributed cost study is supported by the record. Dr. Baumol's testimony was weighed in preparation of our decision. See pars. 128 to 131, 135, and 155 to 156.
143	Granted in part, to the extent that such methods are based on cost responsibility as discussed in secs. XI and XIII; otherwise denied.
144	Denied. Based on our review of the record, we find that fully distributed costs most fully satisfied our objectives and responsibilities. See pars. 155 and 156.
145	Denied. See response to exception 114.
146	Granted in part, to the extent that actual usage does not reflect cost responsibility; otherwise denied. There are many methods of cost allocation, actual use being one of them. See sec. XI, especially pars. 155 to 156.
147	Granted in part, to the extent consistent with secs. IX and XI of our decision; otherwise denied.
148	Denied. We have found that the use of a revised FDC method 7 along with revised method 1 effecuates our statutory objectives and responsibilities. The question of subsidies between intrastate and interstate jurisdictions is not an issue in this case, nor is there existence of decisional significance.
149	Granted in part, to the extent that we find that the use of revised method 7 with revised method 1 best satisfies our statutory objectives and responsibilities; otherwise denied.
150	Denied. We find that the record supports the use of FDC methods to determine the lawfulness of rate levels of interstate services. We will allow certain departures as outlined in sec. XIII.
151	Denied. Economic efficiency may be only one of many areas of concern to the Commission. See sec. VIII.
152	Granted in part. See footnote 73; otherwise denied. Such information is appropriate to fulfill our statutory objectives and responsibilities as noted in secs. VIII, IX, and XI.
153, 154	Denied. On the subject of forecasts, see pars. 130 to 134. We find forecasts to be an integral part of cost causation methodology in our discussion of method 7 in sec. XI and in our guidelines in sec. XIII.
155	Granted in part. See response to exception 152; otherwise denied.
156	Denied. We find that special treatment for particular services is unwarranted as specified in sec. XI, particularly pars. 146 to 149.

Exception No.	*Ruling*
157	Denied. See responses to exception 156.
158	Denied. The RD properly characterizes the case in question.
159	Granted in part. We agree that the *Private Line Rate* cases predated the original seven-way cost study—the progenitor of FDC methods of record in this proceeding; otherwise denied. The failure of the RD to explain this is of no decisional significance.
160	Denied. The RD's reference to t he *WADS* case was relevant in the context used in par. 88 of the RD.
161	Granted in part, to the extent that the RD is inconsistent with sec. XII of our decision; otherwise denied.
162	Denied. The RD's reliance on the *Press Rate* case was appropirate in the context used.
163	Denied. An exact definition of "cross-subsidization" is not necessary.
164	Denied. We did not rely upon this characterization in summary of our past decisions in the RD. We reached the conclusions in our decision based on our own judgment of past policy in relation to the record. See sec. VII of our decision.
165	Denied. We do not find the RD's summary characterization noted in the exception inconsistent with our decision in *Free or Reduced Rates*.
166	Granted in part. See par. 62 of our decision; otherwise denied.
167	Denied. See response to exception 148.
168	Grandted in part. We are not relying on these cases as a basis for our decision. See sec. VI; otherwise denied.
169	Denied. See response to exception 133.
170	Denied. Our determinations of findings and conclusions is not dependent upon the section of the RD to which exception has been taken.
171	Granted. No party argued for the use of out-of-pocket costs as a basis for ratemaking.
172	Granted in part, to the extent that we have found that methods 1 and 7 define a "zone of reasonableness" for determining the lawfulness of current and past rate levels; otherwise denied.
173	Denied. See pars. 203 to 209.
174	Denied. We agree with the RD that earnings at such levels might indicate that not all relevant costs of furnishing service have been covered. See par. 189.
175	Denied. Cross-subsidization need not be evidenced by an actual flow of revenues between services but may occur when deficiencies in 1 service are made up by earnings in another service so that Bell might achieve its overall rate of return. See par. 189.
176	Denied. We have independently reached the conclusion that the burden analysis is inappropriate for ratemaking purposes. See par. 135.
177	Granted in part, to the extent we are relying on a "zone of reasonableness" bounded by FDC methods 1 and 7 to determine the presence of cross-subsidy and the lawfulness of rates; otherwise denied. See par. 209.
178	Denied. The exception is not deemed to be of decisional significance. We have determined that the rate level differential between Telpak and other private-line services is not justified by competitive necessity and constitutes an unlawful discrimination between like services under sec. 202(a). See pars. 207 to 208.
179	Denied. The record supports our decision to use revised FDC methods 1 and 7 data to identify cross-subsidies, and to reject Bell's methodology for such purposes.
180	Denied. A comparison of LRIC cost estimates with incomplete FDC method 7 historical cost data are not a reliable means of assuring forecast reliability and accountability. See pars. 130, 131.
181	Granted in part, to the extent that the methodology we have adopted incorporates both revised FDC methods 1 and 7; otherwise denied.
182	Denied. This is not of decisional significance. Neither LRIC, the burden test nor retrospective accountability are appropriate for ratemaking purposes.
183	Granted in part, to the extent we have not concluded that rates for MTS and WATS are unlawful under sec. 202(a); otherwise denied.
184	Granted in part, to the extent that FDC methods 1 and 7 are used to provide a "zone of reasonableness" in determining the lawfulness of present and past MTS and WATS rates; otherwise denied.
185	Granted in part, to the extent that we have found it unnecessary to decide whether such is unlawful under sec. 202(a). See footnote 116; otherwise denied.

Exception No.	*Ruling*
186	Denied. The *Telpak* cases did authorize departure from costs and we have provided guidelines for such departure in pars. 223 and 232.
187	Denied. We find that Telpak and private-line services were like services and that Telpak is not justified by cost differences. See par. 201. At par. 209 we discuss the possible significance of Telpak's low rates and relatively high-earning levels.
188 to 192	Denied. Only the lawfulness of the overall service category return levels are at issue herein. See par. 26 and footnote 37.
193	Denied. Bell is ordered to file within specified time limits rates in conformity with our decision. Parties at that time may petition for any appropriate relief in accordance with the Communications Act and the Commission's Rules.
194	Granted in part. We expressly recognize our mandate which is implicit in the RD. See par. 61. We also recognize the benefits accruing from a bulk communications service. See par. 208; otherwise denied.
195	Granted in part, to the extent that "fills" for 1961 reflect that consumers were just adapting to the new Telpak tariff; otherwise denied. "Fill" is material in determining the effective rate.
196	Granted in part. We recognize the public benefits of bulk communications services. See par. 208; otherwise denied.
197	Denied. We conclude that the rates for either private-line services or Telpak have not been unlawfully high and we are terminating all extant accounting orders.
198, 199	Denied. Exceptions are repetitive. The merits of these exceptions have been addressed above and the recommended conclusions are not warranted.

C. MCI

Exception No.	*Ruling*
1, 2, 3, 4	Granted in part, to the extent that the Commission's decision in docket 20736 prescribed 9.5 percent as fair rate of return and to the extent consistent with our findings in sec. XII; otherwise denied.
5	Granted in part, to the extent that the PLS rate are unlawfully low and appropriate revision is necessary consistent with our guidelines in sec. XIII; otherwise denied. It appears that the MTS earnings level is lawful (see par. 185) and for the reasons stated at par. 188, we are not presently requiring adjustment of the WATS rate level.

D. THE AIRLINE INDUSTRY PARTIES

Exception No.	*Ruling*
1	Denied. The procedure established is correct as a matter of law.
2	Denied. We ruled upon these same arguments in this proceeding in our Memorandum Opinion and Order released on July 13, 1976 (FCC 76-609).
3	Denied. The submission of testimony stating the views of the Chief, Common Carrier Bureau, or his trial staff is not required by law.
4	Denied. The RD did not arrive at conclusions concerning the validity of the 7 way cost study, but only restated data it provided.
5	Denied. Our decision subjecting the Telpak increase to accounting orders is cited by the RD.
6	Denied. The Telpak increases are a matter of public record.
7	Denied. Failure of the RD to summarize such evidence does not mean it was not considered.
8	Denied. The RD did not state that the Telpak Service category was restricted to discrete broadband channels suitable for high-speed data.
9	Denied. The statement of the RD correctly reflects the framework in which the issues were drawn.
10	Denied. Such a statement was not necessary insofar as changed circumstances did not prevent the RD from reconsidering the competitive necessity for Telpak.
11	Granted in part, to the extent that the currently allowable interstate rate of return is 9.5 to 10 percent; otherwise denied. The question reflects issues under consideration.
12, 13, 14	Denied. The question reflects the issues under consideration. See par. 28.
15	Denied. We have terminated all extant accounting orders.
16	Granted in part, to the extent we have generally considered the question posed in our decision herein; otherwise denied.
17	Granted. We acknowledge our obligation under sec. 1 of the Communications Act.

Exception No.	Ruling
18	Denied. Such a finding is unnecessary to summarize prior Commission policy concerning subsidization of competitive services.
19	Denied. The RD's analysis of our *WATS* decision is accurate.
20	Granted in part, to the extent that a finding should have been made that consideration was given in the Private Line cases to noncost criteria. See par. 67; otherwise denied.
21	Granted. Such a finding should have been made.
22	Denied. Such a finding is unnecessary to accurately reflect past Commission policy.
23	Granted in part, to the extent we may consider noncost criteria where departure from rates based directly on costs is justified; otherwise denied.
24	Granted in part, to the extent that we are not applying criteria 2 herein; otherwise denied.
25	Granted in part, to the extent that the RD incorrectly framed the issues with respect to Telpak C and D in terms of compliance with the second criteria requiring a showing that discriminatory rates were just sufficient to retain business that would otherwise be lost; otherwise denied.
26	Denied. The RD accurately reflects our decision in the Free or Reduced Rates cases.
27	Denied. The RD accurately summarizes past Commission decisions, but is not intended to indicate Commission prejudgment of the issues in this proceeding.
28, 29	Denied. The findings of the RD are supported by the record.
30	Denied. Failure to summarize the "Accommodation Theory" does not mean that it was not considered.
31	Denied. Such a finding is unnecessary as we recognize the intent and meaning of our previous decisions.
32, 33	Denied. The findings of the RD are supported by the record.
34	Denied. The RD has considered the degree of arbitrariness involved in each costing approach.
35	Denied. The findings of the RD are relevant and supported by
36	Denied. See pars. 112 to 116.
37	Denied. The findings of the RD are supported by the record.
38	Denied. Reference to the authorities excepted to is of no decisional significance and was not prejudicial to the parties.
39	Denied. No prejudice to the parties has occurred.
40	Denied. Official notice may be taken of documents filed before the Commission in other proceedings.
41	Denied. The finding of the RD is qualified and therefore is not of decisional significance.
42	Denied. The discussion in the RD is relevant for the purpose of providing an example of the application of short-run marginal pricing.
43	Denied. The discussion is relevant for the purpose of drawing a comparison of short-run marginal pricing.
44	Denied. Failure to discuss the "Accommodation Theory" does not mean that it was not considered.
45, 46	Denied. The findings of the RD are relevant and supported by the record.
47	Denied. The findings of the RD are conceptually accurate.
48, 49, 50	Denied. The findings of the RD are supported by the record.
51	Denied. The findings of the RD are accurate and supported by the record.
52	Denied. The exception misstates the findings of the RD. Consideration was given to the "Accommodation Theory."
53	Denied. The findings of the RD are supported by the record in docket No. 16258, which was made part of this proceeding.
54	Denied. The findings of the RD accurately reflect the record.
55	Granted in part, to the extent that present accounting rules do not conform entirely with appropriate costing principles, but not LRIC; otherwise denied.
56	Denied. The errors found in Bell's market studies by the RD are significant and merit skepticism.
57	Denied. See par. 135.
58	Denied. The finding of the RD is correct.
59	Denied. Method 1 does provide an indication from a historical perspective, as to whether private-line services were being furnished at rate levels below cost.
60	Granted in part, to the extent that a "zone of reasinableness" bounded by FDC methods 1 and 7 should have been used to determine the presence of cross-subsidization; otherwise denied.
61, 62	Denied. The RD's statement is correct and relevant in the context in which it appears.
63	Denied. Consideration was given to the recommendations of all parties in this proceeding.

Exception No.	*Ruling*
64	Denied. The finding of the RD that there was no probative evidence on the record is not a finding of complete absence of evidence, but a conclusion drawn from and supported by the record.
65	Denied. The statement of the RD is supported by the record.
66	Denied. The conclusions of the RD in rejecting the LRIC approach are correct and supported by the record. See pars. 124 to 137.
67	Denied. The statement is supported by the record. The use of LRIC is inimical to our statutory objective of carrier accountability.
68	Denied. We do not want to completely reject the concept of marginal costing which may be appropriate for purposes other than those presented in this proceeding.
69	Denied. The conclusion of the RD is supported by the record and consistent with the statutory objectives of the act. See sec. XI.
70	Denied. The comments of the RD applied to the use of forecast data generally and not LRIC specifically.
71	Granted in part, to the extent we recognize and consider the evidence offered; otherwise denied. Such evidence does not warrant a finding that future costs can be forecast with sufficient accuracy to insure meeting our statutory objectives.
72	Denied. We find that FDC studies can be conducted on the basis of both forecast and historical costs.
73	Denied. The discussion of LRIC in the RD is correct and supported by the record.
74	Denied. The discussion in the RD is relevant to pointing out the application of FDC.
75	Denied. The discussion in the RD is supported by the record.
76	Denied. The finding of the RD is supported by the record.
77	Denied. The statement in the RD is supported by the record.
78	Granted in part, to the extent that the observation of the RD is unnecessary to arrive at a conclusion concerning whether LRIC or FDC are consistent with statutory objectives; otherwise denied.
79	Denied. Consideration on the uniform system of accounts in the RD is relevant in determining the practical application of LRIC.
80	Denied. The observation of the RD is relevant to consideration of the effectiveness of FDC.
81	Denied. The finding of the RD is correct and supported by the record.
82, 85	Rejected. These exceptions are in flagrant violation of the Commission's rule that exceptions are to be nonargumentative and absent lengthy discussion of law (sec. 1.277(a) prior to the recent revision.
83	Denied. The finding of the RD is correct and supported by the record.
84	Denied. The finding of the RD is supported by the record.
85	Denied. The finding of the RD is supported by the record. We conclude that the "accommodation theory" is not a satisfactory method of insuring carrier accountability.
86	Denied. The conclusion of the RD is supported by the record and is reflected by the conclusions we are drawing herein.
87	Granted in part, to the extent we are adopting herein a combination of FDC methods Nos. 1 and 7; otherwise denied.
89	Denied. See par. 62.
90	Denied. The discussion in the RD concerning jurisdiction separations is appropriate.
91	Denied. This is not of decisional significance. See par. 62.
92, 93, 94	Denied. This is not of decisional significance.
95	Denied. The analysis of the RD of the cases cited in support of LRIC is accurate.
96	Denied. The findings of the RD are supported by the record.
97	Denied. The finding of the RD is supported by the record.
98	Denied. The low-levels of return on Bell's Private-Line Telegraph, Private-Line Telephone, Audio/Radio, Television, and "other" service classifications are maintained through cross-subsidization. See pars. 189 to 191.
99	Granted in part. Primary reliance is on revised method 7 procedures supplemented by revised method 1. See pars. 219, 221; otherwise denied. See pars. 124, to 137.
100	Granted in part. Primary reliance for proper costing methodology is on revised FDC method 7 procedures; otherwise denied.
101, 102, 107, 121	Denied. We find that the existence of levels of return that are unjustly and unreasonably high or too low, indicate a return level relationship which embodies cross-subsidization. See par. 191.

Exception No.	Ruling
103, 112, 118	Granted in part. We hold that the application of the second criteria, requiring a showing that the discriminatory rates are just sufficient to retain business which would otherwise be lost, imposes an all but impossible burden on the carrier. We will not apply this criterion in the present cast and will reserve judgment on the applicability of the second criteria to other situations. See pars. 195 to 198; otherwise denied. See pars. 202 to 208.
104, 105, 116	Denied. We agree with the RD that the specialized carriers do not present a sufficient competitive threat along their few routes to justify nationwide discriminatory pricing on the basis of competitive necessity. See pars. 202 to 208.
106	Granted in part. Even though interconnection of private systems with carrier systems has been liberalized, certain restrictions remain on such interconnection, and to that extent there is a dependence upon local loops which affects the competitiveness of specialized carriers; otherwise denied.
108	Denied. The statement is supported by the record.
109	Granted in part, to the extent that we are not applying the competitive necessity test to the audio service category; otherwise denied.
110	Denied. While growth in specialized carriers and satellites might justify such a competitive response in the future, this uncertain probability is not sufficient to justify the present Telpak offering. See par. 207.
111	Granted in part. We need not decide whether Telpak rates are lawful within the meaning of sec. 201(b) of the Act. See par. 209; otherwise denied.
113	Denied. The statement is supported by the record.
	Do.
114	Denied. Findings of RD are accurate.
115	Denied. Official notice may be taken of documents properly filed before this Commission.
117	Denied. Statement is supported by the record.
119	Granted in part, to the extent indicated in exceptions 99 and 103, referring to FDC method 7 and the rejection of the second criteria; otherwise denied.
120	Granted in part. See par. 209 in which we state that the non-compensatory issue is not reached herein; otherwise denied.
122	Denied. The statement is supported by the record.
123	Denied. The findings of the RD are accurate.
124	Denied. The RD's assertion did not broaden the issues in this docket.
125	Denied. We have determined that LRIC is an inappropriate methodology for determining the lawfulness of rate levels of individual service categories. See sec. X.
126, 127	Granted in part, to the extent that we are ordering new rate levels consistent with the established guidelines; otherwise denied. See also response to exception 101.
128	Denied. Findings are relevant and supported by the record.
129	Denied. We have not determined whether the Telpak rates were compensatory. See par. 209. However, it apears that prior Telpak increases were justified.
130	Denied. The RD correctly listed questions to be addressed in resolving the issues previously designated; it did not designate additional issues. We have considered the accommodation theory and have found it to be unacceptable.
131	Granted in part, to the extent that we are relying on both FDC methods 1 and 7. See par. 213; otherwise denied.
132	Granted in part, to the extent consistent with secs. XII(A) and XIII; otherwise denied. See pars. 210 to 218.
133	Granted in part. Revised FDC methods 1 and 7 are to be used; otherwise denied.
134, 135, 137	Rejected. A flagrant violation of the Commission rule (sec. 1.277(a) prior to the recent revision) that exceptions shall not be argumentative.
136	Denied. Recommendations of the RD were sufficient and were supported by the record.
138	Denied. The statement is supported by the record.
1B	Denied. The absence of such statement is of no decisional significance.
2B	Denied. The conclusion is supported by the record.
3B	Denied. The statement is supported by the record. See par. 134.
4B	Denied. The absence of such finding is of no decisional significance.
5B	Denied. The statement is supported by the record.
6B	Denied. This is of no decisional significance, particularly in light of our discussion at par. 206.
7B	Denied. Failure to discuss does not mean the comparisons were not considered.
8B	Denied. The failure to present these charges was of no decisional significance.
9B	

Exception No.	*Ruling*
10B	Denied. Such exceptions were considered.
11B	Denied. The failure to make such a presentation was of no decisional significance.
12B	Denied. The failure to include the terminal component in the annual cost comparison is of no decisional significance.
13B	Denied. The conclusion is of no decisional significance.
14B	Granted. The actual first cost was $257.3 million.
15B, 16B	Denied. See par. 206.
17B	Denied. The record adequately supports the findings. See par. 207.
18B, 19B, 20B	Denied. The statement is of no decisional significance.
21B	Denied. The conclusions are supported by the record.
22B	Granted in part, to the extent that construction of PMW systems did take place at the higher rates. However, such is not necessarily indicative of the competitive necessity for Telpak. See par. 205; otherwised denied.
23B	Denied. The conclusion is supported by the record. See pars. 204 to 207.
1C	Denied. This factor was considered.
2C	Denied. The statement is supported by the record.
3C	Denied. The assertion is of no decisional significance.
4C	Denied. The statement is supported by the record.
5C	Denied. This conclusion is unnecessary.
6C, 8C	Denied. See the Commission's guidelines on an appropriate costing methodology at sec. 13.
7C	Denied. This conclusion is unnecessary.
9C, 11C	Granted in part, to the extent that we adopt a modified form of both methods 1 and 7 costing methodologies; otherwise denied.
10C	Denied. The statement is supported by the record.
12C	Denied. The adoption of method 1 and 7 procedures renders this assertion moot.
13C	Denied. The statement is suported by the record.

E. NATIONAL ASSOCIATION OF MOTOR BUS OWNERS

Exception No.	*Ruling*
1	Denied. We have ruled on this matter in our Memorandum Opinion and Order, FCC 76-906, released July 13, 1976.
2	Granted in part, to the extent that the RD is inconsistent with sec. XIII of the Final Decision which sets forth guidelines for the proper ratemaking principles to be used in determining the lawfulness of rate levels; otherwise denied.
3, 4	Denied. We have rejected the use of LRIC as being inconsistent with our statutory responsibilities. See sec. X.
5	Denied. We find Telpak to be unlawfully discriminatory. See sec. XII(b). Although we do not decide whether Telpak rates are compensatory, nothing suggests that prior Telpak rate increases were not justified. Accordingly, refunds are not warranted.
6	Denied. Any increases in private-line rates filed during the pendency of this and earlier related proceedings are justified and reasonable insofar as we have found herein that the rate levels associated with these private-line services continue to be unlawfully low. See par. 190. Accordingly, refunds are not warranted.
7	See responses to the Airline Parties' exceptions.

F. NETWORK PARTIES

Exception No.	*Ruling*
1	(*a*) Denied. We have found that competitive necessity criteria shall apply to Telpak only. See pars. 199 to 201 and footnote 116. (*b*) Denied. We have found that the "Bell Burden Test" is not an appropriate procedure for the determination of interservice subsidy. See par. 135. (*c*) Denied. Bell's LRIC is unacceptable for ratemaking purposes. See pars. 124 to 137, 183. (*d*) Denied. FDC is the appropriate methodology for ratemaking purposes. See sec. XI. (*e*) Granted in part. FDC method 7, as revised, is to be used along with method 1; otherwise denied. (*f*) Denied. The rate levels associated with the audio/radio and television service classifications are unlawful within the meaning of sec. 201(b) of the act. See par. 189.
2	Denied. See response to exception 1(*a*) above.
3	Denied. See response to exception 1(*a*) above. See pars. 204 to 208.
4	Denied. See response to exception 1(*a*) above. Additionally, we are not applying this criteria herein. See par. 198.

Exception No.	*Ruling*
5	Denied. See response to exception 1(*a*) above.
6	Denied. Bell's burden test is unacceptable as a means of detecting cross-subsidization. FDC is the appropriate method for identifying cross-subsidization. See pars. 135 and 184.
7	(*a*) Denied. The meaning of the first sentence is that a proper test of cross-subsidization should meet the Commission's need of determining whether or not cross-subsidization has actually occurred. The conclusion is that Bell's burden test fails to fulfill this need—not that the burden test was intended to verify the actual result of LRIC pricing. (*b*) Denied. The burden test was not applied to all services. (*c–f, h*) Denied. These exceptions are of no decisional significance. Based upon our independent analysis of the record we agree with the RD that the burden test is inappropriate for ratemaking purposes. See par. 135. (*g*) Denied. We do not consider the presence or lack thereof of economies of scale as an important factor in deciding to accept FDC results.
8	(*a*) Denied. We reject the use of strict marginal costing approach as well as Bell's LRIC approach for determining the return levels for individual service categories. See secs. IX and X. (*b*) Denied. We reject the use of LRIC methods for determining whether rate levels are compensatory and free from cross-subsidization. See pars. 135 and 184. (*c*) Denied. See sec. X. Bell itself disavows any contention that their LRIC methodologies were intended to lead to an optimal allocation of resources. See Bell exceptions, pp. 46 to 49. (*d*) Denied. The exception is based on a premise rejected in response to exception (*b*) above. (*e*) Denied. LRIC is not the appropriate ratemaking standard. However, departures from rates based on historical full costs may be appropriate under some circumstances. See par. 232. (*f*) Granted in part, to the extent that incremental costs might be appropriate in certain other situations, such as peak-off-peak pricing; otherwise denied.
9	(*a*) Denied. No record support is provided to support this exception. Several parties as well as the Commission staff, provided expositions concerning; the historical development of marginal cost-pricing as well as the development of marginal analysis itself. We conclude that the delineation of the history of economic analysis is of no decisional significance. However, the record supports the importance of marginal cost-pricing in developing optimal rate structures for State-owned natural monopolies. (*b*) Denied. No record support is provided to explain this exception. In addition, the exception makes the implication that the simplistic pricing rule—set prices equal to marginal cost—which does hold in static theory for all markets, applies to the real world situation of telecommunications. (*c*) Denied. The transcript references made by the network companies do not support the exception. Dr. Bonbright specifically disassociates his observations with regulatory experience in telecommunications: "* * * I am referring here not to telecommunications regulation about which I suppose every man in this room knows much more than I * * *." (Tr. 12267). Dr. Bonbright was also not aware of any regulatory body which has accepted the principle of marginal cost plus surcharges based on value of service (Tr. 14680). (*d*) Denied. The "desired results" which the RD makes reference to are the social optimums described in previous paragraphs. Even Bell itself disavows any ties between its approach and a particular social optimum. See Bell exceptions, pp. 46 to 49. (*e*) Denied. The networks provide no support in refuting the RD's general observation that in theory a regulated firm, under rate of return regulation, "operates under an incentive to practice cross-subsidization" between competitive and monopoly services and that if the utility is successful in this practice "it will realize an increase in total profits." (*f*) Denied. We find that FDC, and not LRIC, is required for use in detecting possible cross-subsidies between services. See pars. 183, 184. (*g*) Granted in part, to the extent that the RD's contention is based on evidence not in the record; otherwise denied. (*h*) Denied. We do not find Bell's peak/off-peak pricing of MTS to be a rigorous application of marginal cost theory. (*i*) Denied. We disagree with the contention that Bell's LRIC techniques achieve a social optimum of maximum economic efficiency—first or second best. See pars. 117, 120.

Exception No.	Ruling
10	(a) Denied. Regardless of how easy or difficult retrieval of incremental cost data would be, incremental costs applied only partially do not meet the statutory requirements of the Communications Act. See par. 120.
	(b) Granted in part. Adoption of FDC will not absolve all problems relating to achieving accuracy in data collection, see footnote 73; otherwise denied. We find that a proportional distribution of all recorded costs best furthers the underlying objectives of the act. See par. 149.
	(c) Denied. Partial application of Bell's LRIC techniques results in the absence of accountability to the Commission. See par. 120.
	(d) Denied. We find use of Bell's retrospective accountability analyses to be unacceptable. See pars. 130, 131.
	(e) Denied. Bell's LRIC techniques were not discarded solely as a result of the possibility of bias in forecasting.
11	(a–d) Denied. We find appropriate for ratemaking purposes. See sec. XI. In addition, we approached the subject of costing methodology on an eclectic basis—drawing from principles of law and economics. See par. 105 and footnote 61. see also par. 64.
	(e) Denied. See pars. 184 and 191.
12	(a) Denied. See pars. 132 to 134.
	(b) Denied. See par. 233.
	(c) Denied. Final Decision pars. 119, 151 indicate that Bell retains the full-cost approach for its interstate services in the aggregate, the result of which is the allocation of "residual" costs to the "nonmarginal" user.
	(d) Granted in part. It is true that the RD did not indicate specifically how "demand characteristics" may be incorporated into FDC analysis. The Final Decision however does make allowance for this concept. For example, method 7 allocates plant under construction on the basis of growth factors; otherwise denied.
	(e) Granted in part. The record and decisions in this case provide no definitive statement with regard to this exception; otherwise denied. The RD does provide record support for its contention. See staff exhibit 50, p. 87. We recognize the importance or both full and marginal costs in modern business practice. See par. 141.
13	(f) Denied. See response to exception 11(a to d), above. See pars. 143 and 178.
	(a) Denied. FDC studies made over a period of several years would give consideration to changes in utilization over time. In addition, the inventory as of a certain date involves an average mix of facilities rather than a specific count of plant items. Specific inventories were made in 1964 and 1967 only (Tr. 9402 to 9404, docket 18128).
	(b) Granted in part to the extent that the Commission has established a task force to consider changes in procedures for depreciation accounting; otherwise denied.
	(c) Denied. The exception is unclear with respect to which FDC studies are being referenced. The general problem of too high a proportion of plant being assigned to services which are not growing will be considered in revisions to FDC methods 1 and 7 as indicated in the Final Decision at sec. XIII.
	(d) Denied. The exception is not specific as to what the network companies mean by "actual" usage. An unusually high usage during the period of 1 FDC study will not establish a definitive trend upon which to evaluate the reasonableness of a service rate of return.
	(e) Denied. The exception is neither specific as to which FDC studies are being referenced, nor clear as to what is meant by "unjustifiably."
	(f to i) Granted in part, to the extent that FDC method 7 is to be used to account for cost causation; otherwise denied.
14	(a) Granted in part. Although it is true that the *Separations Manual* and its procedures themselves have never been intended for ratemaking purposes, it is incorrect to imply that procedures which involve allocation of costs between interstate and intrastate cannot be employed as part of the process of determining reasonable rate levels and rate relationships. It is important to note that the *Separations Manual* procedures must be modified in order to be of use in an FDC method 1 analysis. The basic premise upon which jurisdictional separation are accomplished—actual or relative use—can be employed as well in an FDC analysis to distribute costs among interstate services. The Final Decision indicates that "analyses based on relative use do indicate demand patterns and facility assignments which provide valuable evaluating information." See par. 161.

Exception No.	Ruling
	(b) Denied. The implication that opportunity was not available for discussion concerning the relative merits or disadvantages of a FDC philosophy is incorrect. The Final Decision at par. 215 indicates that * * * "the parties to this proceeding had ample notice that the Commission's prescription of a particular costing methodology was at issue * * *" Par. 216 reviews the fact that the parties have had full opportunity to be heard including oral argument, and that the action taken is just and reasonable as supported by the record. (c) Denied. The Final Decision did not rely on the testimony of witness Edwin Winslow in coming to conclusions concerning the validity of FDC. (d) Granted in part. We find revised method 7, along with method 1, to be appropriate for ratemaking purposes; otherwise denied. (e) Granted. Revised method 7 will be the principle costing methodology. Use of method 1 will still be required in order to indicate the pattern of current demand and usage. See pars. 161, 221. Procedures for conducting an FDC 1 study will be reviewed for changes as indicated in par. 178.
15	(a) Denied. The Final Decision, at par. 27, specifically states that at issue is whether the rate level for audio and video program transmission services is or will be just and reasonable within the meaning of sec. 201(b) of the Communications Act of 1934. (b) Denied. We conclude at pars. 237 and 238 that in order to determine whether rate levels and rate levels relationships are just, reasonable, or not unduly discriminatory, the actual full costs of providing service must be known. Past levels of return for the audio program transmission services, according to full-cost standards FDC 1 and 7, have generally been unlawfully low. See pars. 189 to 190. (c) Denied. See response to exception 14(b), above.
16	Denied. See pars. 189 to 191.
17	Granted in part. FDC methods 1 and 7 are designated by the Final Decision as the appropriate methods for establishing a "zone of reasonableness" for the lawfulness of individual service, present and past rate levels; otherwise denied.

G. UNITED PRESS INTERNATIONAL

Exception No.	Ruling
1, 2, 3, 4	Denied. Only the lawfulness of the overall service category return levels are at issue herein. See par. 26 and footnote 37. Bell is ordered to file within specified time limits rates in conformity with our decision. Parties at that time may petition for any appropriate relief in accordance with the Communications Act and the Commission's rules.

H. ASSOCIATED PRESS

Exception No.	Ruling
1, 2, 3	Denied. The procedures are not violative of administrative due process. See our Memorandum Opinion and Order, released July 13, 1976 (FCC 76-609).
4	Granted in part, to the extent that we are adopting a revised FDC method supplemented by a revised method 1 as the appropriate ratemaking standard; otherwise denied.
5	Granted in part, to the extent that specialized carriers are not competitive with Bell on a nationwide basis. See par. 207; otherwise denied.
6	Granted in part, to the extent that we find revised method 7 as the primary justification for future rate filings; otherwise denied.
7	Denied. See sec. III.
8	Denied. We conclude that rate levels for private-line services have generally been unlawfully low. Any past rate increases, therefore, have been warranted. See par. 190.
9	Denied. See response to exception 7 above. The lawfulness of individual service category internal rate structures are not at issue herein.
10	Denied. See responses to exceptions 7 and 9 above.
11	Denied. See response to exception 8 above.
12	Denied. See response to exception 8 above. Accordingly, no refunds are warranted.
13	Granted in part. In the absence of a clear indication as to the required direction of rate changes which would yield the allowed return, price elasticity studies would be required in conjunction with FDC studies; otherwise denied. See response to exception 8 above.

Exception No.	Ruling
14	Denied. We have not yet determined whether the news wire services are entitled to preferential rates. This is at issue in docket No. 20667.
15	Granted in part, to the extent that we are considering the lawfulness of only Telpak service under sec. 202(a) of the act. See pars. 199 to 201; otherwise denied.
16	Denied. See response to exception 8 above.
17	Do.
18	Granted in part, to the extent that it is only conclusive that WATS is cross-subsidizing private-line services and it is not conclusive that MTS is cross-subsidizing. See pars. 186, 187; otherwise denied. We reject Bell's "contributional" approach to ratemaking embodied in the LRIC analysis.
19	Denied. See response to exception 14 above.

I. WESTERN UNION TELEGRAPH CO.

Exception No.	Ruling
1	Granted in part, to the extent that Western Union's increases in its Telpak and private-line rates were justified. Accordingly, no refunds are due; otherwise denied. See par. 29.
2	Granted in part, to the extent that Bell may file a new bulk offering consistent with our guidelines in sec. XIII, and with our findings and conclusions at pars. 202 to 208; otherwise denied.
3	Granted. We have ordered Bell to terminate its existing Telpak offering. See par. 242.

J. DEPARTMENT OF DEFENSE AND U.S. EXECUTIVE AGENCIES

Exception No.	Ruling
1	Granted. These do represent the opposition of DOD. See par. 41.
2	Granted. See par. 61 of our decision.
3	Denied. See pars. 66 to 71 of our decision.
4	Denied. The alleged advantages of an incremental cost approach were discussed.
5	Denied. Bell's proposed incremental cost pricing is rejected as a basis for ratemaking in light of our statutory objectives and responsibilities.
6	Denied. See pars. 119 and 120 of our decision.
7	Denied. See par. 120 and sec. X.
8	Denied. See pars. 112, 113, and 114
9	Granted in part, to the extent consistent with par. 62; otherwise denied.
10	Denied. This is of no decisional significance. Our final decision was based upon our independent analysis of the record. We did not rely on the FTC actions to reach our decision.
11	Denied. No contradiction is apparent in light of our statutory objectives and responsibilities.
12	Denied. We find incremental costs to be inappropriate as a ratemaking standard. New services are to be priced consistent with our guidelines in sec. XIII.
13	Denied. Based on the record herein, we find FDC to be the appropriate standard for ratemaking purposes.
14	Denied. The RD included such considerations in its discussion of fully distributed costs.
15	Denied. See par. 184.
16	Granted in part. A revised FDC method 7, in conjunction with a revised method 1, has been adopted as the most appropriate costing method for Bell's interstate services; otherwise denied. See sec. X.
17	Granted. Method 4 is not completely representative of all of FDC methods 3 to 7.
18	Granted in part; otherwise denied. We rely primarily on a revised method 7 and in part on a revised method 1 which is based upon jurisdictional separations.
19	Denied. Such a notation is unnecessary.
20	Denied. Substantial competitive alternatives to Telpak were not conclusively demonstrated. See par. 207.
21	Denied. See pars. 205 to 207.
22	Denied. Such a finding was not justified by the record. See par. 206.
23	Granted. We are not applying this criterion herein. See par. 198.
24	Denied. See pars. 204, 205.
25	Denied. The "Hi-Lo" tariff was found unlawful because its rates were not supported by the record therein.
26	Granted in part, to the extent that we are not applying the second criterion; otherwise denied.
27	Granted in part, to the extent that we make no finding as to the lawfulness of Telpak rates under sec. 201(b). See also response to exception 23 above; otherwise denied.

Exception No.	Ruling
28	Denied. There is no probative record evidence that the RD's requirement that Bell earn an equal rate of return for all individual services would destroy competition.
29	Denied. We do not reach a finding as to whether Telpak rates are compensatory at the current earnings level. However. we do question the validity of the Telpak rate of return studies. See par. 209.
30	Denied. No such confusion is apparent.

K. AD HOC TELECOMMUNICATIONS COMMITTEE

Exception No.	Ruling
1	Denied. See par. 28.
2	Denied. See pars. 192 to 208.
3	Denied. See par. 209.
4	Denied. See pars. 204 to 205.
5	Denied. See par. 207.
6	Granted in part, to the extent consistent with our findings and conclusions in par. 198; otherwise denied.
7	Granted in part, as to the application of the second criterion. See par. 201; otherwise denied.
8	Denind. See par. 208.
9	Granted in part, to the extent that revised FDC method 7 along with revised method 1 is the appropriate standard for ratemaking purposes.

L. AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA

Exception No.	Ruling
1	Denied. Individual service category internal rate structures and internal rate relationships are not at issue herein. See pars. 26 to 27. See par. 29 regarding Western Union's rate levels.
2	Denied. The cases mentioned are consistent with the principle that individual service rate levels should be related to the cost of providing the service.
3	Granted in part, to the extent indicated in pars. 197 and 198; otherwise denied.
4	Denied. Bell's use of LRIC is not in the public interest nor consistent with our statutory objectives and responsibilities.
5	Denied. Bell's methodologies do not employ standards which adequately consider the public interest in evaluating such questions as price discrimination and cross-subsidization. See par. 135.
6	Denied. While RD par. 105 does not conclude that Bell's LRIC methods do result in lower income customers having to pay the highest rates, we agree that such a result is possible under the theory of consumer surplus maximization.
7	Denied. FDC methods can provide estimates of unit costs and can be used in conjunction with appropriate demand factors.
8	Denied. This exception is frivolous. A complete reading of the RD shows the distinction between marginal and incremental costs. The RD's interchange of the terms is of no significance to our decision.
9	Denied. Our interpretation of RD par. 110 is that there is by no means total agreement concerning the practical application of incremental costing principles to the situation noted. We agree with this characterization.
10	Denied. We find that FDC and not LRIC, is consistent with the objective of carrier accountability. See also par. 132 to 133 concerning the subjective elements of forecasting.
11	Granted. Cites were not supplied. of the Bell System arguments. See pars. 30 to 31 and its references to Bell System filings in this docket. Bell has argued for applications of LRIC methods to special and private-line services only, with monopoly services being required to contribute to all remaining revenue requirements. See par. 124.
12	Granted. Cities were not supplied.
13	Denied. The purpose of the decision and this paragraph is not to present a mathematical treatise. It is quite obvious, however, that reference is being made to the "Averch-Johnson effect" as described in their article in *The American Economic Review*, vol. 52, No. 5 (December 1962) pp. 1052–1069, and numerous subsequent articles on the same topic.
14	Denied. We are in general agreement with the RD's conclusions based on economic theory. However, our findings and conclusions do not rely on the portion of the RD to which exception is taken.
15	Denied. See sec. X concerning the asserted relationship between Bell's LRIC and neoclassical theory. Speculation as to the origin of the decision to implement an LRIC approach is irrelevant.

Exception No.	*Ruling*
16	Denied. We agree with the RD that A.T. & T. has applied their LRIC method on a selective basis, the result of which is not in the public interest.
17	Denied. No such conclusion regarding short-run marginal costs was made. Further, we find Bell's LRIC approach to be unacceptable for ratemaking purposes.
18	Denied. Bell's LRIC methods are unacceptable for establishing proper rate levels. See secs. IX and X.
19	Denied. See pars. 130, 131.
20	Denied. See pars. 130 to 135 which discusses the deficiencies in Bell's forecasting techniques and retrospective accountability test and the inability of Bell's LRIC analysis to provide an acceptable basis for carrier accountability.
21	Denied. See secs. IX and X.
22	Denied. See par. 134.
23	Denied. We have found that cross-subsidization cannot be detected by an incremental revenues analysis. See footnote 75 and par. 135.
24, 25, 26, 27	Denied. We agree with the RD's conclusions respecting the burden test. See par. 135.
28	Denied. We agree that LRIC analysis cannot prevent cross-subsidization and rate discrimination. Furthermore, it is inimical to the Commission's statutory accountability objective. See sec. X.
29	Denied. Marginal cost pricing is not suitable for determining interservice rate relationships. Its possible application in other contexts has not been developed in the record herein. See pars. 121, 122.
30	Denied. Based on the record herein, we have found FDC to be a valid analysis for determining rate level relationships among service categories.
31	Denied. The exception suggests that joint costs should be allocated only to noncompetitive services. This is contrary to the statutory objectives and responsibilities delineated in sec. VIII. The fact that there exists more than 1 FDC method to allocate costs does not mean that the method chosen is arbitrary. See par. 64.
32	Denied. Although further clarification might have been helpful, this is of no decisional significance.
33	Granted in part, to the extent that the Final Decision favors the use of cost causation in the allocation of such common costs as spare capacity; otherwise denied. See par. 222.
34	Granted. The record does show that some economies of scale are present in A.T. & T. operations. However, such is of no decisional significance.
35	Granted. The RD did not provide such explanation. See pars. 171, 227, 233, and 234 of the Final Decision as to the role of future demand factors in FDC analysis.
36	Denied. See response to exception 32 above.
37	Denied. See par. 149 of the Final Decision.
38	Granted in part, to the extent that the Final Decision does place primary acceptance on a revised FDC method 7; otherwise denied.
39	Denied. Sec. VI indicates there is no definitive legal precedent concerning the preference of either an incremental or fully allocated approach. Sec. X concludes that Bell's retrospective accountability analysis is inadequate for regulatory purposes, and it is explicit throughout the entire decision that the selective application of incremental methods is unacceptable and inconsistent with our statutory objectives and responsibilities.
40	Denied. The results were provided by Bell. We find no need to question the reliability of the figures nor do we feel that additional data are necessary.
41	Denied. FDC results provide an acceptable means to evaluate the lawfulness of individual service rate levels and interservice rate level relationships. See pars. 159 and 170.
42	Denied. We accept FDC results within a "zone of reasonableness" as the means to identify cross-subsidization. See sec. XII(A).
43	Granted. The actual ability to discontinue a service at will need not be a prerequisite to implementing Bell's burden test.
44	Granted in part. A.T. & T. does not rely exclusively on marginal cost studies; otherwise denied. It is not necessary to indicate the obvious fact that A.T. & T.'s reliance on incremental costs does not extend to its overall rate of return.
45	Granted in part. We recognize that competitive necessity was not the sole reason which A.T. & T. presented for promoting incremental costing techniques; otherwise denied.

Exception No.	Ruling
46	Granted in part, to the extent consistent with the findings at pars. 199 to 201 of the Final Decision. The relevant competitive necessity criteria should apply only to a service which is found to be "like" another service and which is offered at a price differential purportedly to meet the competition; otherwise denied.
47	Granted in part. See response to exception 46 above. Also see sec. XII(B) of the Final Decision; otherwise denied.
47	Granted in part. See response to exception 47 above; otherwise denied.
49	Denied. We find that the Telpak offering, as presently structured, is not justified by competitive necessity. See pars. 202 to 208.
50	Granted in part, to the extent that we find that the application of this second criteria is not necessary in the present case. See par. 198; otherwise denied. We reach no conclusion as to whether Telpak rates are "just sufficient" to retain business or the proper method for measuring the same.
51	Granted in part, to the extent that we do not find it necessary to determine whether Telpak rates do satisfy the third criterion. See par. 209; otherwise denied. We reject Bell's burden test.
52	Granted in part. The Final Decision, unlike the RD, does not explicitly separate Telpak bulk rates for Private-Line Telephone and Telegraph Service on the one hand and Private-Line Telpak (broadband) Service on the other, as separate categories of service. See par. 27; otherwise denied. In finding that the current Telpak tariff is not justified, all categories are included, and it is incumbent upon A.T. & T. to justify all components of the service in order to justify an offering on the basis of competitive necessity.
53	Granted in part. See response to exception 46 above; otherwise denied.
54	Denied. See sec. XII(B), especially pafs. 192 to 208.
55	Denied. We conclude that rates for private line services have generally been unlawfully low. Any past rate increases, therefore, have been warranted. See par. 190.
56	Denied. We find that FDC, and not LRIC, is consistent with our statutory objectives and responsibilities emanating from the Communications Act.
57	Denied. See response to exception 56 above.
58	Granted. The Final Decision provides a new schedule for implementation as described in sec. XVI, based on revised FDC procedures and allocations.
59	Denied. Sec. XVI describes the schedule for filing new tariffs while making no requirement for a further proceeding. Meetings with Commission staff are being held to implement the revised FDC methods.
60	Denied. We have terminated all extant accounting orders. See par. 243.

[FR Doc.77-3936 Filed 2-8-77;8:45 am]

[Docket Nos. 21080-21082; File Nos. 8631-CM-P-72, etc.]

AAA TELEPHONE ANSWERING SERVICE AND MEDICAL EXCHANGE, INC.

Designating Applications for Consolidated Hearing on Stated Issues Memorandum Opinion and Order

Adopted: January 12, 1977.

Released: February 4, 1977.

In regards applications of AAA Telephone Answering Service and Medical Exchange, Inc., Docket No. 21080, File No. 8631-CM-P-72; and Midwest Corporation, Docket No. 21081, File No. 9451-CM-P-72; and CFR Corporation, Docket No. 21082, File No. 858-CM-P-73; for construction permits in the Multipoint Distribution Service for a new station at Baton Rouge, Louisiana.

1. The Commission has before it the above-referenced applications of AAA Telephone Answering Service and Medical Exchange, Inc. (AAA) (File No. 8631-CM-P-72), filed on May 31, 1972; Midwest Corporation (Midwest) (File No. 9451-CM-P-72), filed on June 27, 1972; and CFR Corporation (CFR) (File No. 858-CM-P-73), filed on August 11, 1972. All three applications propose Channel 1 operation in the Baton Rouge, Louisiana area, and thus are mutually exclusive and require comparative consideration. All three applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. AAA, licensee of a two-way radio common carrier at Baton Rouge, has only the above-referenced application pending before the Commission. Midwest, owned by APS, Inc., has MDS applications in twenty cities, including Winston-salem and Greensboro, North Carolina, and is permittee in Greenville, South Carolina. CFR, licensee in the DPLMRS, has only this MDS application pending.

3. Upon review of the captioned applications, we find that the three applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Baton Rouge, Louisiana area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That AAA Telephone Answering Service and Medical Exchange, Inc., Midwest Corporation, CFR Corporation, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77-4153 Filed 2-8-77;8:45 am]

[Docket Nos. 21050, 21051; File Nos. 360-CM-P-73, 1975-CM-P-73]

A. MICHAEL LIPPER AND INTERNATIONAL TELEVISION CORP.

Designating Applications for Consolidated Hearing on Stated Issues Memorandum Opinion and Order

Adopted: January 12, 1977.

Released: February 3, 1977.

In re applications of A. Michael Lipper, Docket No. 21050, File No. 360-CM-P-73; and International Television Corporation, Docket No. 21051, File No. 1975-

CM–P–73; for construction permits in the Multipoint Distribution Service for a new station at Colorado Springs, Colorado.

1. The Commission has before it the above-referenced applications of A. Michael Lipper (Lipper) (File No. 360–CM–P–73), filed on July 20, 1972 and International Television Corporation (ITC) (File No. 1975–CM–P–73), filed on September 12, 1972. Both applications propose Channel 1 operation in the Colorado Springs, Colorado area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Lipper has MDS construction permit applications pending before the Commission for four other cities, including Monterey and Stockton, California and has been granted permits in Long Island, New York and So. Lake Tahoe, California. ITC has applications pending in six cities, including Santa Barbara and Bakersfield, California, and has been granted permits in Axnard, California and Lincoln, Nebraska.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Colorado Springs, Colorado area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That A. Michael Lipper, International Television Corporation, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77-4149 Filed 2-8-77;8:45 am]

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

[Docket Nos. 21060–21063; File Nos. 1972–CM–P–73, etc.]

BUCKEYE CABLEVISION, INC., ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: January 12, 1977.

Released: February 3, 1977.

In the matter of applications of Buckeye Cablevision, Inc., Docket No. 21060, File No. 1972–CM–P–73; and International Television Corporation, Docket No. 21061, File No. 1973–CM–P–73; and A. Michael Lipper, Docket No. 21062, File No. 3991–CM–P–73; and Salinas Valley Radio Telephone Company, Docket No. 21063, File No. 4462–CM–P–73; for construction permits in the Multipoint Distribution Service for a new station at Monterey, California.

1. The Commission has before it the above-referenced applications of Buckeye Cablevision, Inc. (Buckeye), filed on September 22, 1972; International Television Corporation (ITC), filed on September 22, 1972; A. Michael Lipper (Lipper), filed on November 30, 1972; and Salinas Valley Radio Telephone Company (Salinas), filed on December 5, 1972. All four applications propose Channel 1 operation in the Monterey, California area, and thus are mutually exclusive and require comparative consideration. All four applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Buckeye is 80 percent owned by The Toledo Blade Company, which publishes the Toledo Blade, the Toledo Times and various other newspapers and holds essentially all the stock of P. G. Publishing Company, which publishes the Pittsburgh Post Gazette; and holds a 75% interest in a broadcast licensee in Lima, Ohio. Cox Cable Communications, Inc., which owns 20 percent of Buckeye, is a subsidiary of Cox Broadcasting Corporation, which has a broad range of broadcast and common carrier interests. Buckeye has two MDS construction permit applications pending and has been granted a permit for Lima, Ohio. ITC has six MDS construction permit applications pending before the Commission and is an MDS permittee for Lincoln, Nebraska and Oxnard, California. Lipper, who has interests in other MDS locations with Mr. Howard S. Klotz, has applications pending for four other cities and is permittee for So. Lake Tahoe, California and Long Island (Farmingville), New York. Salinas, licensee in the DPLMRS, has only the above-referenced MDS application on file.

3. Upon review of the captioned applications, we find that the four applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Monterey, California area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Buckeye Cablevision, Inc., International Television Corporation, A. Michael Lipper, Salinas Valley Radio Telephone Company, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate here shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77-4150 Filed 2-8-77;8:45 am]

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

[Docket Nos. 21065, 21066; File Nos. 361–CM–P–73, 2272–CM–P–73]

HUNTSVILLE SIGNAL COMPANY, INC. AND SOUTH CENTRAL BROADCASTING CORP.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: January 12, 1977.

Released: February 3, 1977.

In reference applications of Huntsville Signal Company, Inc., Docket No. 21065, File No. 361–CM–P–73; and South Central Broadcasting Corporation, Docket No. 21066, File No. 2272–CM–P–73; for construction permits in the Multipoint Distribution Service for a new station at Huntsville, Alabama.

1. The Commission has before it the above-referenced applications of Huntsville Signal Company, Inc. (Signal) (File No. 361–CM–P–73), filed on July 21, 1972 and South Central Broadcasting Corporation (South) (File No. 2272–CM–P–73), filed on September 28, 1972. Both applications propose Channel 1 operation in the Huntsville, Alabama area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal request of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Signal is 80 percent owned by North Alabama Broadcasters, Inc., which has broadcast interests in Huntsville, 10 percent by National Telecommunications Associates, Inc., which is a systems design and operations organization, and 10 percent by Signal Engineering and Sales, Inc., which is a telecommunications construction contractor. It has two MDS construction permit applications pending before the Commission, though its principals have interests in other MDS applications in various cities, including Birmingham, Alabama. South is the licensee of broadcast stations in Indiana and Tennessee and has construction permit applications pending for three other cities, including Florence, Alabama.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Huntsville, Alabama area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Huntsville Signal Company, Inc., South Central Broadcasting Corporation, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77–4145 Filed 2–8–77;8:45 am]

[Docket Nos. 21067, 21068; File Nos. 1974–CM–P–73, 3988–CM–P–73]

INTERNATIONAL TELEVISION CORP. AND KERN COUNTY BROADCASTING CORP.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: January 12, 1977.

Released: February 3, 1977.

In re Applications of International Television Corporation, Docket No. 21067, File No. 1974–CM–P–73; and Kern County Broadcasting Corporation, Docket No. 21068, File No. 3988–CM–P–73; for construction permits in the Multipoint Distribution Service for a new station at Bakersfield, California.

1. The Commission has before it the above-referenced applications of International Television Corporation (ITC), filed on September 22, 1972 and Kern County Broadcasting Corporation (Kern), filed on December 1, 1972. Both applications propose Channel 1 operation in the Bakersfield, California area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. ITC has six MDS construction permit applications pending before the Commission and is an MDS permittee for Lincoln, Nebraska and Oxnard, California. Kern, wholly owned by ASI Communications, Inc. (ASI), has only the above-referenced MDS application on file. ASI has interests in broadcasting licensees in California, Massachusetts and Ohio.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Bakersfield, California area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further order,* That International Television Corporation, Kern County Broadcasting Corporation, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77–4151 Filed 2–8–77;8:45 am]

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[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

[Docket Nos. 21052, 21053; File Nos. 9193–CM–P–72, 9456–CM–P–72]

MULTI-COMMUNICATION SERVICES, INC. AND KLOTZ, HOWARD S./CORBUS, WILLIAM

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: January 12, 1977.

Released: February 3, 1977.

In the matter of applications of Multi-Communications Services, Inc., Docket No. 21052, File No. 9193–CM–P–72; and Koltz, Howard S./Corbus, William, Docket No. 21053, File No. 9456–CM–P–72; for construction permits in the Multipoint Distribution Service for a new station at Bridgeport, Connecticut.

1. The Commission has before it the above-referenced applications of Multi-Communication Services, Inc. (Multicom) (File No. 9193–CM–P–72), filed on June 22, 1972 and Klotz, Howard S./Corbus, William (Klotz) (File No. 9456–CM–P–72), filed on June 29, 1972. Both applications propose Channel 1 operation in the Bridgeport, Connecticut area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Multicom has twenty-three MDS construction permit applications pending. Several of its officers have interests in broadcasting and CATV operations in Florida and Georgia. Klotz has twenty-one MDS construction permit applications pending and is permittee in San Bernardino, California, New Haven, Connecticut, and Atlantic City, New Jersey.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Bridgeport, Connecticut area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Multi-Communication Services, Inc., Klotz, Howard S./Corbus, William, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77–4148 Filed 2–8–77;8:45 am]

[Docket Nos. 21056, 21057; File Nos. 1968–CM–P–73, 1969–CM–P–73]

MULTIPOINT INFORMATION SYSTEMS, INC. AND MULTI-COMMUNICATION SERVICES, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: January 12, 1977.

Released: February 3, 1977.

In the matter of applications of Multipoint Information Systems, Inc., Docket No. 21056, File No. 1968–CM–P–73; and Multi-Communication Services, Inc., Docket No. 21057, File No. 1969–CM–P–73; for construction permits in the Multipoint Distribution Service for a new station at Gary, Indiana.

1. The Commission has before it the above-referenced applications of Multipoint Information Systems, Inc. (MIS), filed on September 21, 1972 and Multi-Communication Services, Inc. (Multicom), filed on September 22, 1972. Both applications propose Channel 1 operation in the Gary, Indiana area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. MIS a principal of which holds interests in broadcast licenses in Cleveland, Ohio and McKeesport, Pennsylvania, has thirteen applications for MDS construction permits pending before the Commission and has been granted a permit for Canton, Ohio. Multicom has twenty-three MDS construction permit applications pending. Several of its officers have broadcasting and CATV interests in Florida and Georgia.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Gary, Indiana area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Multipoint Information Systems, Inc., Multi-Communication Services, Inc., and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77–4146 Filed 2–8–77;8:45 am]

[Docket Nos. 21069, 21070; File Nos. 1466–CM–P–73, 3459–CM–P–73]

OHIO MDS CORP. AND MICHIGAN TELECOMMUNICATIONS SERVICES, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: January 12, 1977.

Released: February 3, 1977.

In regard applications of Ohio MDS Corporation, Docket No. 21069, File No.

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

1466–CM–P–73; and Michigan Tele-Communications Services, Inc., Docket No. 21070, File No. 3459–CM–P–73; for construction permits in the Multipoint Distribution Service for a new station at South Bend, Indiana.

1. The Commission has before it the above-refereneced applications on Ohio MDS Corporation (Ohio), filed on August 31, 1972 and Michigan Tele-Communications Services, Inc. (MTS), filed on November 8, 1972. Both applications propose Channel 1 operation in the South Bend, Indiana area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Ohio (formerly Dayton Communications Corporation) has construction permit applications pending for six other cities, including Fort Wayne, Indiana, has been granted four construction permits and is licensed and providing service in Cincinnati and Dayton, Ohio. MTS has five MDS construction permit applications pending for four other cities, all in Michigan, and has been granted permits for five cities, including Kalamazoo and Ann Arbor, Michigan.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the South Bend, Indiana area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Ohio MDS Corporation, Michigan Tele-Communications Services, Inc., and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77–4152 Filed 2–8–77;8:45 am]

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et. al., 55 F.C.C. 2d 626 (1975).

[Docket Nos. 21054, 21055, File Nos. 1070–CM–P–73; 2934–CM–P–73]

OHIO MDS CORP. AND OMEGA COMMUNICATIONS, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: January 12, 1977.

Released: February 3, 1977.

In re applications of Ohio MDS Corporation, Docket No. 21054, File No. 1070–CM–P–73; and Omega Communications, Inc., Docket No. 21055, File No. 2934–CM–P–73; for construction permits in the Multipoint Distribution Service for a new station at Fort Wayne, Indiana.

1. The Commission has before it the above-referenced applications of Ohio MDS Corporation (Ohio), filed on August 21, 1972 and Omega Communications, Inc. (Omega), filed on October 27, 1972. Both applications propose Channel 1 operation in the Fort Wayne, Indiana area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Ohio (formerly Dayton Communications Corporation) has construction permit applications pending for six other cities, including South Bend, Indiana and has been granted four construction permits, and is licensed and providing service in Cincinnati and Dayton, Ohio. Omega has a construction permit application also pending for Indianapolis, Indiana.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Fort Wayne, Indiana area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Ohio MDS Corporation, Omega Communications, Inc., and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.77–4147 Filed 2–8–77;8:45 am]

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et. al., 55 F.C.C. 2d 626 (1975).

[Docket No. 20027; RM–2050; FCC 77–65]

OIL SPILL CLEANUP OPERATIONS

Denial of Frequency Allocation; Third Report and Order

Adopted: January 26, 1977.

Released: February 1, 1977.

In the matter of amendment of Parts 2 and 91 of the Commission's rules and regulations to provide a frequency allocation for oil spill cleanup operations.

1. On June 5, 1975, in response to a petition from the American Petroleum Institute (API), the Commission released a First Report and Order (FCC 75–611; 40 FR 24735, June 10, 1975) amending Parts 2 and 91 of the Commission's Rules and Regulations to provide a frequency allocation for oil spill cleanup operations.[1] The allocation consisted of 2 Government and 5 non-Government channels including 3 frequency pairs, one of which was in the UHF portion of the spectrum. Paragraph (9) of the Report and Order discussed the possible reallocation of a second pair of UHF frequencies, which were requested in the API petition, from the 450 MHz broadcast

remote pickup bands. At the time the Report and Order was adopted the Commission was also considering Docket 20189, which proposed channel splitting in these remote pickup bands. On June 29, 1976, a Report and Order (SCC 76–624; 41 FR 29681, July 19, 1976) was adopted by the Commission in Docket 20189 which did split the channels in the remote pickup bands but did not reallocate any of the new channels.

2. Since the adoption of the First Report and Order in the instant proceeding, few assignments have been made on the channels allocated for oil spill use. Even though these channels have been available for use for 18 months, only 17 licenses have been granted on the non-Government channels, and only 5 of these specified the UHF frequencies.

3. It appears, therefore, that the UHF channel pair presently available for oil spill cleanup operations will be sufficient for the foreseeable future. It should also be noted that the petroleum industry has a large number of VHF & UHF mobile channels available to it which can be used for oil spill cleanup operations if required. For these reasons the Commission does not believe the allocation of a second pair of UHF frequencies for use in oil spill cleanup operations is justified at this time.

4. Accordingly, pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, *it is ordered*, That the second frequency pair at 450 MHz requested by the API petition for oil spill cleanup operations is denied.

5. *It is further ordered*, That this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,[2]
VINCENT J. MULLINS,
Secretary.

[FR Doc.77–3935 Filed 2–8–77;8:45 am]

[Report No. I–314]

OVERSEAS COMMON CARRIER APPLICATIONS

Accepted for Filing[1]

[1] Unless otherwise specified herein, interested parties may file comments with respect to the above described applications within 30 days of the date of this Public Notice. It is requested that such comments refer to the application' file number shown above. Copies of the applications are available for inspection in the Common Carrier Public Reference Room. All applications listed are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations and other requirements.

JANUARY 31, 1976.

TELEPHONE WIRE FACILITIES

I–P–C–6916–15 Communications Satellite Corporation, Formal (§ 6301). To establish channels of communication between the Andover, Maine earth station and Umm-Al-Aish, Kuwait.

I–P–C–7388–18 Communications Satellite Corporation, Formal (§ 63.01). To establish channels of communication derived by means of Single Channel Per Carrier Pulse Code Modulated Multiple Access Demand Assignment Equipment (SPADE) between the Etam, West Virginia earth station and Umm-Al-Aish, Kuwait. To establish channels of communications between the Etam, West Virginia earth station and Umm-Al-Aish, Kuwait.

TELEPHONE WIRE FACILITIES

I–T–C–2441–1–M ITT World Communications, Inc., Formal (§ 63.01). To activate up to twenty in lieu of the eleven previously authorized whole voice-grade circuits in the Hawaii-3 Cable System for use in providing its regularly authorized services between U.S. Mainland and Hawaii.

I–T–C–2607–5 Western Union International, Inc., Formal (§ 63.01). To lease and operate one voice-grade circuit between its New York, New York and San Francisco, California operating center, for the provision of its regularly authorized international communications service.

The following Section 214 applications have been filed pursuant to § 63.03 of the Commission's Rules. Pursuant to § 63.03 these applications will be automatically granted 21 days after the date of their filing unless the Commission notifies the applicant to the contrary on or before said 21st day.

I–T–C–1890–55 RCA Global Communications Inc. To use facilities for the provision of its regularly authorized service including Hotline service between points in the continental United States and points in the Puerto Rico/Virgin Island area, and beyond.

I–T–C–2462–21 TRT Telecommunications Corporation to lease and operate one voice-grade circuit between its New York, New York operating center and that of French Telegraph Cable Company.

I–T–C–2440–16 ITT World Communications Inc. To derive up to 88 telegraph channels from a previously authorized voice-grade circuit between the United States and France for the provision of authorized non-voice services between such points and beyond.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77–4144 Filed 2–8–77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP77–130]

NORTHERN NATURAL GAS CO.

Notice of Application

JANUARY 28, 1977.

Take notice that on January 19, 1977, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP77–130 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 93 small volume sales measuring stations and the sale and delivery of additional volumes of natural gas in the states of Montana, South Dakota, Minnesota, Iowa, Nebraska, Kansas, Oklahoma and Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes in Docket No. CP77–130 to provide service to right-of-way grantors whose easements provide for the contractual right to gas service as partial consideration for the easement to construct and operate pipeline facilities across their property. It is stated that such service would be made to small volume[1] industrial, commercial and residential customers.

Applicant proposes to install and operate 71 delivery stations in South Dakota, Minnesota, Iowa, Nebraska, Kansas and Texas for which resale would be made by Peoples Natural Gas Division of Northern Natural Gas (Peoples) from Peoples presently authorized contract demand.

Applicant proposes to install and operate 15 delivery stations in Oklahoma and Texas. It is stated that Applicant would sell and deliver natural gas to Southern Union Gas Company (So. Union) for resale to these small volume customers, which would result in an increase in annual sales to So. Union under Applicant's Rate Schedule X–46 of 36,962 Mcf, requiring an increase in the authorized annual sales from 655,332 Mcf to 692,294 Mcf. It is further stated that there would be an increase in maximum day "off peak" (between April 1 and October 1) volume, under Applicant's Rate Schedule X–25 from 79 Mcf to 151 Mcf.

Applicant proposes to install and operate two delivery stations in Texas, and would sell and deliver natural gas to West Texas Gas, Incorporated (WTG) for resale to these small volume customers under its Rate Schedule X–40. It is stated that this would result in an increase in annual sales of 2,327 Mcf, resulting in total annual authorized sales of 2,291,111 Mcf to WTG.

Applicant proposes to install and operate 5 delivery stations and make direct sale and delivery of natural gas to these 5 Montana customers pursuant to terms of farm tap service contracts between Applicant and the new customers.

Applicant more fully describes the 93 proposed small volume sales measuring stations, including location, estimated peak day, peak month and annual sales, and use as follows:

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[1] See also 41 FR 4827, Feb. 2, 1976.

[2] Commissioner Lee absent.

[1] As defined in Northern's Gas Tariff, customers with maximum day gas requirements under 200 Mcf are considered small volume customers.

Utility project No.	Right-of-way grantor	Description—County and State	Market Data: Estimated sales (1,000 ft³) Peak day [1] Winter	Peak day [1] Summer	Peak month [1] Winter	Peak month [1] Summer	Annual	Primary end-use
		PEOPLES NATURAL GAS DIVISION						
P-1	A.F.C., Inc	Fillmore, Minn	42.5		1,108		5,612	Commercial heat.
P-2	Anderson, Robert N	Hancock, Iowa	15.0		100		180	Crop dryer.
P-3	Angell, Warren	Seward, Kans		36.0		1,080	5,200	Irrigation.
P-4	Ashworth, Ronald D	Kiowa, Kans		21.6		576	1,439	Do.
P-5	Bauer, Walter M	Dakota, Minn		50.0		1,500	2,537	Crop Dryer.
P-6	Beenken, Herman L	Grundy, Iowa	2.0		30		139	Residential heat.
P-7	Bell, Gene	Polk, Iowa	1.7		25		165	Do.
P-8	Berlier, Earl E. No. 1	Kearney, Kans		144.0		4,320	20,260	Irrigation.
P-9	Berlier, Earl E. No. 2	do		144.0		4,320	20,260	Do.
P-10	Berlier, Earl E. No. 3	do		144.0		4,320	20,260	Do.
P-11	Bies, Lawrence	McCook, S.D	2.0		45		190	Residential heat.
P-12	Borth, James H	Meade, Kans		36.0		1,080	5,300	Irrigation.
P-13	Borth, Wm. Dean	do		48.0		1,440	7,600	Do.
P-14	Bosse, Bernard	Union, S.D	2.0		45		190	Residential heat.
P-15	Burger, Henry F.	Gage, Nebr	2.5		24		124	Do.
P-16	Chambers, Gordon	Pottawattamie, Iowa		34.0		133	445	Crop dryer.
P-17	Clutter, Charles Jr	Hodgeman, Kans		21.6		576	1,439	Irrigation.
P-18	Cobler, Leo M	Jasper, Iowa	2.0		40		200	Residential heat.
P-19	Cole, Richard	Cass, Nebr		24.0		240	240	Crop dryer.
P-20	Collinsworth, James P	Ochiltree, Tex		31.2		600	3,000	Irrigation.
P-21	Cornelsen, Peter K	Meade, Kans		24.0		720	3,700	Do.
P-22	Crump, Johnnie	Grant, Kans		60.0		1,500	6,300	Do.
P-23	Dahlby, Roger	Worth, Iowa		120.0		3,000	8,000	Crop dryer.
P-24	Dillon, James F	Marshall, Iowa	2.0		44		202	Residential heat.
P-25	Dressen, Leonard	Minnehaha, S. Dak	2.0		45		190	Do.
P-26	Durkee, D. T	Kiowa, Kans		21.6		576	1,439	Irrigation.
P-27	Elliott, Gerald	Stevens, Kans		33.6		600	3,800	Do.
P-28	Eskelund, Dick No. 1	Finney, Kans		38.4		1,200	4,900	Do.
P-29	Eskelund, Dick No. 2	do		38.4		1,200	4,900	Do.
P-30	Evans, Benj	do		60.0		1,500	6,300	Do.
P-31	Freese, Herman	Jefferson, Nebr		38.4		69	270	Do.
P-32	Gaalswyek, Henry	Martin, Minn		120.0		2,000	4,000	Crop dryer.
P-33	Garnett, Mike	Hansford, Tex	2.4		60		450	Residential heat.
P-34	Gaskill, L. A	Stevens, Kans	120.0		3,000		16,000	Crop dryer.
P-35	Giles, Charles L	Haskell, Kans		48.0		750	3,500	Irrigation.
P-36	Goss, Dennis	Finney, Kans		28.8		700	2,700	Do.
P-37	Graham, Larry	Washington, Kans	1.5		40		198	Residential heat.
P-38	Green, James F	Hansford, Tex		28.2		600	3,000	Irrigation.
P-39	Grossman, Kenneth	Mills, Iowa	2.5		53		297	Residential heat.
P-40	Harshberger, Roy	Ford, Kans		21.6		576	1,439	Irrigation.
P-41	Hart, Frank L	Edwards, Kans		7.2		172	420	Do.
P-42	Henningsen, Kenneth	Palo Alto, Iowa	3.2		60		295	Residential heat.
P-43	Herbel, Maxine S	Stevens, Kans		33.6		587	3,507	Irrigation.
P-44	John T. Farms, Inc	Haskell, Kans		33.6		600	3,800	Do.
P-45	Keller, Charlie	Stafford, Kans	4.0		60		295	Residential heat.
P-46	Kranse, J. Rodney	Story, Iowa	1.7		25		165	Do.
P-47	Larsen, Leslie	Lincoln, S. Dak	2.0		45		190	Do.
P-48	McCarthy, Donald R	Guthrie, Iowa	1.7		25		165	Do.
P-49	Meacham, Fred L	Dallas, Iowa	1.7		25		165	Do.
P-50	Nelson, Reuben E. L	Webster, Iowa	1.7		25		165	Do.
P-51	Nicholson, Myron L	Ford, Kans		21.6		576	1,439	Irrigation.
P-52	Nilson, Wendell A. No. 1	Union, S. Dak	2.0		45		190	Residential heat.
P-53	Nilson, Wendell A. No. 2	do	2.0		45		190	Do.
P-54	Painter, William J	Clark, Kans		12.0		360	1,440	Irrigation.
P-55	Palmer, George	Seward, Kans	7.2		12		59	Farrowing.
P-56	Pennington, Robert L	Meade, Kans		36.0		1,000	4,700	Irrigation.
P-57	Pyle, E. M., IV	Kiowa, Kans		43.2		1,152	2,878	Do.
P-58	Reimer, Harold W	Gage, Nebr	3.2		60		295	Residential heat.
P-59	Reiter, Steve	Blackhawk, Iowa	2.0		30		139	Do.
P-60	Richter, Donald	O'Brien, Iowa	2.0		45		190	Do.
P-61	Riphahn, Martin	Haskell, Kans		60.0		600	6,000	Irrigation.
P-62	Schlessiger, Fred	Barton, Kans		21.6		576	1,439	Do.
P-63	Siebert, Jake L	Grant, Kans		60.0		1,500	6,300	Do.
P-64	Slaughter, Dean	Hansford, Tex		31.2		600	3,000	Do.
P-65	Stucky, Phillip H	Finney, Kans		72.0		600	4,150	Do.
P-66	Sturgeon, Fred	Kiowa, Kans		64.8		1,728	4,344	Do.
P-67	Thomason, Don	Ochiltree, Tex		31.2		600	3,000	Do.
P-68	Weaver, John	Meade, Kans		24.0		720	2,900	Do.
P-69	Wilson, Ronnie	Benton, Iowa	2.0		30		139	Residential heat.
P-70	Wooster, Jack	Ochiltree, Tex		28.2		600	3,000	Irrigation.
P-71	Zimmerman, Elmer J	Minnehaha, S. Dak	2.0		45		190	Residential heat.
	Seasonal total		238.5	1,995.6	5,236	47,147		
	Total peoples division		2,234.1		52,383		221,514	
		SOUTHERN UNION GAS COMPANY						
S-1	Andrews, Dennis	Beaver, Okla	2.0		30		185	Residential heat.
S-2	Andrews, Joe V	Harper, Okla	1.0		20		150	Do.
S-3	Borwn, David E	Beaver, Okla	2.0		30		185	Do.
S-4	Brown, Donald J	do		20.0		700	5,800	Irrigation.
S-5	Bull, Weldon	do		25.0		700	5,800	Do.
S-6	Foster, A. B. Jr	Pecos, Tex		72.0		2,160	20,520	Do.
S-7	Griggs, Ira	Texas, Okla	1.0		20		132	Residential heat.
S-8	Harvey, Ted	Ellis, Okla		15.0		700	5,800	Irrigation.
S-9	Howard, Jerry L	Beaver, Okla		20.0		600	3,800	Do.
S-10	Jones, Marvin	do		40.0		1,200	8,650	Do.
S-11	Jones, Vernon	do	1.0		20		150	Residential heat.
S-12	Nine, Art	Ellis, Okla	1.0		20		150	Do.
S-13	Shepard, Don	do		20.0		700	5,800	Irrigation.
S-14	Sims, J. D	Beaver, Okla	1.4		20		180	Residential heat.
S-15	Spurgeon, D.W	do	1.4		20		180	Do.
	Seasonal Total		10.8	222.0	180	6,760		
	Total Southern Union		232.8		6,940		57,482	

Utility project No.	Right-of-way grantor	Description—County and State	Market Data: Estimated sales (1,000 ft³) Peak day [1] Winter	Peak day [1] Summer	Peak month [1] Winter	Peak month [1] Summer	Annual	Primary end-use
		WEST TEXAS GAS, INC.						
W-1	Elkins, Emory	Swisher, Tex	1.5		32		202	Residential heat.
W-2	Royce, J. L., and K. L.	Gray, Tex		26.0		450	2,125	Irrigation.
	Seasonal Total		1.5	26.0	32	450		
	Total West Texas		27.5		482		2,327	
		NORTHERN NATURAL GAS (DISTRICT)						
N-1	Jess, Gottlieb	Hill, Mont	3.2		60		295	Residential heat.
N-2	Lux, John J	Blaine, Mont	3.2		60		295	Do.
N-3	Paulsen, Harold J	do		12.0		300	980	Irrigation.
N-4	Romain, John D	Hill, Mont	3.2		60		295	Residential heat.
N-5	States, Duane L	Blaine, Mont	3.2		60		295	Do.
	Seasonal total		12.8	12.0	240	300		
	Total northern direct		24.8		540		2,160	
	Total all projects		2,519.2		60,345		283,483	
	Commission Costs							
	Total project costs							

[1] Noncoincidental.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 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 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 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-3750 Filed 2-8-77;8:45 am]

[Docket o. G-3813, etc.]

SUN OIL COMPANY, ET AL.

Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates [1]

JANUARY 31, 1977.

Take notice that each of the Applicants listed below has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure Base
G–3813 B 1–18–77	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Northern Natural Gas Co., State Land 15, Blinebry Field, Lea County, N. Mex.	(1)	----------
G–8286 B 1–13–77	Sun Oil Co	Transcontinental Gas Pipe Line Corp., South Duson Field, Lafayette Parish, La.	(2)	----------
G–9980 C 5–17–76	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Natural Gas Pipeline Co. of America, Camrick Field, SE/4, Sec. 17, T2N, R21ECM, Beaver County, Okla.	3 4 55.66¢	14.65
G–10143 D 1–13–77	Atlantic Richfield Co	Tennessee Gas Pipeline Co., State lease No. 2550, West Delta block 56, offshore Louisiana.	(5)	----------
CI61–348 D 12–27–76	The California Co., a division of Chevron Oil Co., 1111 Tulane Ave., New Orleans, La. 70112.	Southern Natural Gas Co., Franklin Field, St. Mary Parish, La.	(6)	----------
CI69–690 B 1–13–77	Shell Oil Co., Two Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., State lease No. 4682, Eugene Island block 19, St. Mary, et al., Parishes, La.	(7)	----------
CI71–492 D 1–18–77	Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102.	Consolidated Gas Supply Corp., Sandy River district, McDowell County, W. Va.	(8)	----------
CI73–756 B 1–10–77	Shell Oil Co	El Paso Natural Gas Co., Canyon No. 4 and Gallegos No. 5 Wells, Bisti Field, San Juan County, N. Mex.	(9)	----------
CI75–38 C 1–12–77	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	El Paso Natural Gas Co., T. R. Andrews No. 1 Well, Unit B, sec. 32, T22S, R38E, Lea County, N. Mex.	9 10 60.5171¢	14.73
CI76–139 D 9–30–76	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Northern Natural Gas Co., Buffalo Wallow West Field, (granite wash formation), Hemphill County, Tex.	(11)	----------
CI76–140 D 9–30–76	Anadarko Production Co	Panhandle Eastern Pipe Line Co., Buffalo Wallow West Field, (granite wash formation), Hemphill County, Tex.	(11)	----------
CI76–739 C 10–12–76	Ashland Oil, Inc., P.O. Box 1503, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., Woodward Area, Major County, Okla.	3 12 $1.62	14.65
CI77–174 E 1–10–77	Cities Service Oil Co	Natural Gas Pipeline Co. of America, Indian Basin Area, Eddy County, N. Mex.	13 14 33.383¢	14.65
CI77–198 A 12–30–76	Enserch Exploration, Inc., 1025 Connecticut Avenue NW., Suite 1206, Washington, D.C. 20036.	Natural Gas Piepline Co. of America, Gertrude Bilberry No. 1 Well, Patrick Osborne Survey, A–453, Jack County, Tex.	99.9945¢ 101.0897¢ 15 16 17	14.65
CI77–208 A 12–27–76	General American Oil Co. of Texas, Meadows Bldg., Dallas, Tex 75206.	El Paso Natural Gas Co., Southeast Parsell Field, Roberts County, Tex.	10 17 18 168.5¢	14.73
CI77–209 (CI66–1106) B 1–3–77	Curtis Hankamer, 3453 Knollwood Dr. NW., Atlanta, Ga. 30305.	CRA, Inc., Mertzon (Sixty-Seven Canyon) Field, Irion County, Tex.	(19)	----------
C77–210 A 1–6–77	Atlantic Richfield Co	Transco Gas Supply Co., High Island block III Field, offshore Texas.	10 20 $1.75	14.65
CI77–211 A 1–6–77	Pioneer Production Corp., P.O. Box 2542, Amarillo, Tex. 79105.	United Gas Piep Line Co., Isaac Parker Survey, A–61, Polk County, Tex.	17 21 $1.4123	14.65
CI77–212 A 1–7–77	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, Red Tank Field, Lea County, N. Mex.	17 $1.4123	14.65
CI77–214 (G–4241) B 1–13–77	R. Lacy, Inc., et al., P.O. Box 2146, Longview, Tex. 75601.	Lone Star Gas Co., Carthage Field, Panola County, Tex.	(8)	----------
CI77–215 (CI65–181) B 1–13–77	Texaco, Inc., to plant operator Phillips, P.O. Box 3109, Midland, Tex. 79701.	Phillips Petroleum Co., Eumont Queen, Lea County, N. Mex.	(22)	----------
CI77–216 (G–7573) B 1–13–77	Coastal States Gas Producing Co., Five Greenway Plaza East, Houston, Tex. 77046.	Certain producers, South Cottonwood Creek Field, De Witt County, Tex.	(18)	----------
CI77–218 A 1–13–77	Monsanto Co., 1300 Post Oak Tower, 5051 Westheimer, Houston, Tex. 77056.	Transwestern Pipeline Co., Nash Federal No. 3 Well, Eddy County, N. Mex.	17 $1.43	14.65
CI77–219 A 1–13–77	Union Oil Co. of California, P.O. Box 7600, Los Angeles, Calif. 90051.	El Paso Natural Gas Co., L. R. French-Uncle Sam No. 1 Well, South Corbin Morrow Field, Lea County, N. Mex.	10 17 53.0000¢	14.73
CI77–221 (G–18882) B 1–18–77	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, S. E. Camrick Field, Beaver County, Okla.	(23)	----------
CI77–222 (G–16973) B 1–18–77	Exxon Corp	do	(24)	----------

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

[1] Reclassification of well.
[2] Lease expired.
[3] Subject to upward and downward Btu adjustment.
[4] Includes 100 pct tax reimbursement.
[5] Nonproductive.
[6] Certain leases surrendered.
[7] Lease surrendered.
[8] The small volume of Shell gas available coupled with the distance of the wells from El Paso's lines will not justify gathering lines required for sale.
[9] Includes 53.0000¢ base price, 4.5777¢ production taxes, 1.4394¢ Btu adjustment, plus 1.5000¢ gathering allowance.
[10] Applicant is willing to accept a permanent certificate in accordance with opinion No. 770, as amended.
[11] Original filing inadvertently omitted depth limitation.
[12] Being renoticed to reflect change of purchaser.
[13] Subject to downward Btu adjustment.
[14] Includes 2.5513¢ estimated tax reimbursement.
[15] Applicant requests the maximum applicable rate set forth in opinion No. 770, as amended, or if initial delivery is prior to Jan. 1, 1977, 99.9945¢.
[16] From Jan. 1, 1977 through Dec. 31, 1977, 101.0607¢.
[17] Subject to adjustments pursuant to opinion No. 770, as amended.
[18] Includes 143.0¢ base rate, 11.59¢ tax reimbursement, 13.91¢ Btu adjustments.
[19] Uneconomical.
[20] Subject to upward and downward Btu adjustment and tax reimbursement.
[21] Base price $1.4123 for period ending Oct. 1, 1976, plus Btu adjustment and tax reimbursement and 0.9946¢ escalation each quarter.
[22] Reserves depleted.
[23] Well plugged and abandoned.
[24] Contract has expired.

[FR Doc. 77-3946 Filed 2-8-77;8:45 am]

[Docket No. CP77-182]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

FEBRUARY 4, 1977.

Take notice that on February 3, 1977, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP77-182 an application pursuant to Section 3 of the Natural Gas Act to import up to two 35,000 cubic meter shiploads of liquefied natural gas (LNG) from Algeria to the United States through the LNG terminal facilities of Distrigas of Massachusetts Corporation (DOMAC), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia seeks authorization to import up to approximately 70,000 cubic meters of LNG (equivalent to approximately 1,500,000 Mcf of vaporous natural gas), to be purchased from Societe Nationale Pour La Recherche, La Production, Le Transport, La Transformation Et La Commercialisation Des Hydrocarbures (Sonatrach), a national corporation of Algeria. Columbia states that it has been agreed in principle that Columbia would provide the necessary shipping and that loading of such LNG at Skikda must commence no later than February 4, 1977.

It is indicated that the first shipload of LNG would be loaded abroad a cryogenic tanker provided by Columbia under contract with Multinationale Gas and Petrochemical Company (Multinationale), a Liberian corporation, and transported to the LNG facilities of DOMAC at Everett, Massachusetts, and that Multinationale has agreed to make available to Columbia the SS Kenai Multina, a 35,000 cubic meter cryogenic LNG tanker of Liberian registry. Columbia and Multinationale would enter into a contract of affreightment, whereby the LNG would be loaded, transported and discharged under standard maritime terms and conditions, it is said. The application alleges that the SS Kenai Multina would obtain necessary U.S. Coast Guard certification prior to commencement of deliveries of LNG herein authorized. The SS Kenai Multina is said to have previously delivered LPG to Providence, Rhode Island, at which time the U.S. Coast Guard issued a letter of compliance for the ship to operate in U.S. waters. It is said that the second shipload would be transported under arrangements yet to be made by Columbia.[1]

It is alleged that due to press of time in mobilizing this project, Columbia has not entered into written contracts with Sonatrach, however, oral agreements have been reached as to functions and costs. Columbia states that formal agreements would be executed as promptly as possible to reflect such oral arrangements. Estimated costs are as follows: [2]

[1] The SS Kenai Multina is said to have previously delivered LNG to Everett on August 16, 1976, with appropriate Coast Guard approval.

[2] Use of SS Kenai Multina to transport Algerian LNG would reduce total costs of shiping Alaskan LNG by approximately $340,000, it is said.

Purchase per shipload

	Volume (1,000 ft³)	Cost per 1,000 ft³	Total
Purchase cost	750,000	$1.40	$1,050,000
Ocean transportation less boiloff—3.25 pct	725,625	0.498	361,361
Terminaling and unloading at Everett, Mass	725,625	0.975	707,484
6 pct fuel and unaccounted for	43,538		
Pipeline transportation: Boston Gas Co. displacement	682,087	0.235	160,290
Total delivered	682,087	[1] 3,342	2,279,135

[1] Includes $0.234/1,000 ft³ for fuel and boiloff.

Columbia states that it is currently in a grave emergency situation which has been created by a number of factors. The primary factor is the extremely cold weather experienced throughout Columbia's service area during the end of its underground storage injection season last October and extending from the commencement of its winter heating season, November 1, 1976, to date, it is said. The months of October and November 1976 and January 1977 are the coldest October, November and January ever experienced in Columbia's service area, and from October 1, 1976, through January 31, 1977, Columbia's overall service area experienced a degree day deficiency (DDD) of 4108, it is asserted. This is 1066 DDD's or 35 percent colder than normal and 604 DDD's or 17 percent colder than the coldest period experienced on Columbia's system during the past 30 years, Columbia states.

The application indicates that this abnormally cold weather has had a drastic impact on Columbia's underground storage inventories, and that due to an extremely severe cold spell during the last 16 days of October, Columbia entered the winter season with a storage deficiency of approximately 25 million Mcf out of a total scheduled capacity of 590 million Mcf, 211 million Mcf of which represent turnover storage volumes available for withdrawal during the winter season. Columbia asserts that it has not been able to make up this deficiency, but rather, such deficiency has nearly quadrupled due to the continued unprecedented cold weather and the increased heating requirements that have existed throughout the current winter season.

Columbia states that in addition to the inadequate gas supply available to meet the requirements of Columbia's customers over the remainder of the current winter season, Columbia faces a severe problem in meeting its customers' peak-day requirements due to the present deficiency in storage inventories, and that as a result of the severe drain on Columbia's storage facilities, Columbia has already withdrawn 192 million Mcf from storage and is approximately 91 million Mcf ahead of scheduled storage withdrawals. Thus, it is asserted only 19 million Mcf of storage turnover remains for the rest of the winter season, and that with Columbia's storage in such depleted condition, it is essential that supplemental flowing gas be obtained immediately. In addition, Columbia states it is essential during the summer injection season that Columbia have sufficient supplies such as this LNG to assure that LNG storage will be adequate to meet storage requirements for the 1977–78 heating season.

Columbia further states that the impact of the gas shortage on Columbia's system was compounded by the recent explosion at the Green Springs Synthetic Gas Plant owned and operated by Columbia's affiliate, Columbia LNG Corporation (Columbia LNG), and that while this plant's design output of 250,000 Mcf per day is not considered a part of Columbia's own gas supply, all of this synthetic gas is sold directly to Columbia's wholesale customers, is transported to said customers by Columbia and is relied upon by them as part of their total gas supplies. One of the two trains in this plant was restored to operation on January 16, 1977, at a reduced level of production, it is said.

Thus, it is asserted, the severe weather experienced on Columbia's system during the present winter, together with Columbia's already limited gas supplies and the explosion at Columbia LNG's Green Springs Plant, have all contributed to Columbia's emergency and have placed its wholesale customers in a position where curtailments of their essential high-priority market requirements would occur, even assuming normal weather conditions for the remainder of the winter.

Further, it is asserted that Columbia and its customers have made every conceivable effort to offset the emergency gas shortage that they are facing and that Columbia and its customers have taken all feasible steps to encourage their ultimate consumers to conserve as much gas as possible during the current supply crisis, including the closing of schools, the shutdown of all but the most essential businesses dependent upon gas, and a continuing appeal to residential and small commercial consumers to set their thermostats at 65 degrees or below. Columbia indicates that despite these measures, it and its wholesale customers face severe seasonal and peak-day deficiencies in their ability to supply essential high-priority requirements during the remaining winter season.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 11, 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 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4255 Filed 2-7-77;2:51 pm]

[Docket No. ER76-508]

IDAHO POWER CO.

Notice of Filing of Amended Rate Schedule

JANUARY 31, 1977.

Take notice that on January 18, 1977, Idaho Power Company (Idaho) tendered for filing an amended rate schedule reducing the proposed rate which is the subject of the above-captioned docket. The instant amended filing reflects the correction of an error in the computation of income taxes applicable to this service which was made in Idaho's initial filing.

Idaho states that all parties of record in this proceeding have been previously furnished with a copy of this revision.

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 February 11, 1977. 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.77-4253 Filed 2-8-77;8:45 am]

[Docket No. RP76-52 et al]

NORTHERN NATURAL GAS CO.

Notice of Certification

FEBRUARY 3, 1977.

Take notice that on January 28, 1977, Presiding Administrative Law Judge Issac D. Benkin certified to the Commission for disposition several motions made by counsel for Minnesota Gas Company orally upon the record of the hearing session of January 26, 1977. The Minnesota Gas motions ask that the Commission's order of January 19, 1977 directing the Presiding Administrative Law Judge to hold a separate hearing and reach an accelerated decision upon the question whether a fixed base period should be established for administration of the curtailment plan of Northern Natural Gas Company be set aside and that disposition of the fixed base period issue

should abide the completion of the hearing on Northern Natural's total curtailment plan. The Presiding Judge states in his certification that since the motions are, in effect a request for reconsideration he has no authority to rule on the motions.

Minnesota Gas, in the transcript certified to the Commission for disposition, makes several claims of denial of due process resulting from the January 19 order. The Presiding Judge states in his certification that numerous parties, both supporting and opposing the Minnesota Gas motions, have requested the opportunity to file written statements. Furthermore, the Presiding Judge states that in light of the fact that the accelerated hearing mandated by the January 19, 1977 order is presently in progress, the time for filing written comments should be limited.

All comments on the motions certified by the Presiding Administrative Law Judge should be filed on or before February 11, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4252 Filed 2-8-77;8:45 am]

[Docket No. CP75-340]

NORTHWEST PIPELINE CORP.

Notice of Petition to Amend

FEBRUARY 2, 1977.

Take notice that on January 13, 1977, Northwest Pipeline Corporation (Petitioner), P.O. Box 1526, Salt Lake City, Utah 84110, filed pursuant to Section 3 of the Natural Gas Act in Docket No. CP75-340 a petition to amend the Commission's order issued December 31, 1975, in Docket No. CP75-340 so as to authorize the continued importation of natural gas from British Columbia, Canada, through October 31, 1977, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by Commission order issued December 31, 1975, it was authorized to continue the importation of an additional 125,000 Mcf of gas on peak days and up to 30,000 Mcf of gas on an average day basis at the Kingsgate, British Columbia, import point through October 31, 1976. It is stated that the additional volumes of gas are made available to Westcoast Transmission Company Limited (Westcoast), for resale to Petitioner, by Alberta and Southern Gas Company Limited (A&S) on a best-efforts limited term basis. It is further stated that Pacific Gas Transmission Company (PGT) receives the volumes at Kingsgate and transports such volumes for delivery to Petitioner at two existing points of interconnection between the facilities of PGT and Northwest in the vicinities of Stanfield, Oregon, and Spokane, Washington.

Petitioner now requests authorization to continue the importation of up to 30,000 Mcf of gas on an average day and upon to 125,000 Mcf of gas on a peak day through October 31, 1977, at the Kingsgate point pursuant to an agreement between Petitioner and Westcoast dated August 16, 1976, and an agreement between Westcoast and A&S also dated August 16, 1976. It is stated that that the volumes made available by A&S to Westcoast would be an a best-efforts basis and that pursuant to an agreement dated January 6, 1977 between PGT and Petitioner PGT has agreed to transport and deliver to Petitioner at Stanfield, Oregon, and Spokane, Washington, such volumes of gas that it is able to accept in excess of its other sales and transportation obligations. It is further stated that Petitioner would pay Westcoast $1.94 per Mcf, as established by the National Energy Board of Canada and that Petitioner would pay PGT a transportation charge under PGT's Rate Schedule T-1.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 11, 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 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4254 Filed 2-8-77;8:45 am]

FEDERAL RESERVE SYSTEM

AMERICAN, INC.

Formation of Bank Holding Company and Retention of Insurance Agency Activities

American, Inc., Oswego, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 85.2 percent (or more) of the voting shares of The American State Bank, Oswego, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

American, Inc., Oswego, Kansas, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain insurance agency activities involving the sale of credit life and credit accident and health insurance and casualty and fire insurance directly related to collateral securing extensions of credit by subsidiary bank. Notice of the application was published on January 20, 1977 in The Oswego Independent-Observer, a newspaper circulated in Labette County, Kansas.

Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence of the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 28, 1977.

Board of Governors of the Federal Reserve System, February 2, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-3989 Filed 2-8-77;8:45 am]

SECURITY BANCORP, INC.

Order Approving De Novo Expansion of the Activities of United Bankers Life Insurance Company

Security Bancorp, Inc., Southgate, Michigan, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to expand the activities of its subsidiary, United Bankers Life Insurance Company, Phoenix, Arizona ("Company"), to include underwriting, as reinsurer, credit accident and health insurance directly related to extensions of credit by Applicant's subsidiaries in Michigan. Such activity has been determined by the Board to be closely related to banking (12 CFR 225.4(a)(10)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (41 FR 58353 (1976)). The time for filing comments and views has expired, and the Board has considered the application and all comments received in the light of the public interest factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1842(c)(8)).

Applicant, the fourteenth largest banking organization in Michigan, controls 2 banks with combined deposits of approximately $391.4 million, representing 1.3 percent of the total deposits in commercial banks in the State.[1] Company was incorporated under the laws of the State of Arizona for the express purpose of engaging in the activity of underwriting, as reinsurer, credit life insurance in connection with extensions of credit by Applicant's subsidiaries. By Order dated May 17, 1974, the Board approved Applicant's application to acquire Company and thereby to engage *de novo* in such activity. Because Applicant's direct underwriter, a company unaffiliated with Applicant or Company, was not at that time qualified to underwrite credit accident and health insurance in Michigan, the Board's Order did not grant Applicant authority to reinsure credit accident and health insurance. Applicant's direct underwriter is now qualified to underwrite credit accident and health insurance in Michigan, and Applicant has applied to so expand Company's activities. Since this proposal involves only a *de novo* expansion of activities, consummation of the transaction would not have any adverse effect upon existing or potential competition in any relevant market.

Credit life and credit accident and health insurance is generally made available by banks and other lenders and is designed to assure repayment of a loan in the event of death or disability of the borrower. In connection with its addition of the underwriting of such insurance to the list of permissible activities for bank holding companies, the Board stated:

> To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally, such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service. (12 CFR 225.4(a)(10) n. 7.)

Applicant has stated that following approval of this proposal, Company will offer credit accident and health insurance in connection with extensions of credit by Applicant's subsidiaries in Michigan, at a premium rate 5 percent below the prima facie rate allowable under Michigan law. The Board is of the view that the reduced insurance premium rate that Applicant proposes to establish is, and will continue to be, in the public interest.

Based upon the foregoing and other considerations reflected in the record, including a commitment by Applicant to maintain on a continuing basis the public benefits which the Board has found to be reasonably expected to result from this proposal and upon which the approval of this proposal is based, the Board has determined that the balance of the public interest factors the Board is required to consider under 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Chicago.

By order of the Board of Governors,[2] effective February 2, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.3988 Filed 2-8-77;8:45 am]

[1] Unless otherwise indicated, all banking data are as of December 31, 1975.

[2] Voting for this action: Chairman Burns and Governors Wallich, Jackson, Partee and Lilly. Absent and not voting: Governors Gardner and Coldwell.

FEDERAL TRADE COMMISSION

[Docket 9049]

GENERAL ELECTRIC CO.

Consent Agreement With Analysis To Aid Public Comment

Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34, 40 FR 15236, April 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited on or before March 31, 1977. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14), 40 FR 15236, April 4, 1975). Comments should be directed to:

Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

GENERAL ELECTRIC CO.

[Docket 9049]

ANALYSIS OF PROPOSED CONSENT TO AID PUBLIC COMMENT

The Federal Trade Commission has provisionally accepted an agreement to a proposed consent order from the General Electric Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charged respondent with disseminating advertisements containing several false, misleading and unfair representations regarding its color television sets. In particular, the complaint alleged that respondent falsely and unfairly claimed that independent tests showed its color television sets, purchased or in use in 1973, required less service than all other U.S. brands of color television receivers. The complaint also alleged that General Electric unfairly continued to advertise the 1973 service performance of its color television while it knew of subsequent evidence which contradicted the 1973 test data. Finally, the complaint alleged that General deceptively offered to forward full details of the 1973 test data to consumers upon request.

The consent order contains the following provisions designed to remedy the advertising violations charged. Part I of the consent order [Covering Parts I(A) through I(D)] extends to certain advertising claims for both color and monochrome television sets and also for the following products: clothes washers, clothes dryers, ranges, dishwashers, trash compactors, refrigerators, freezers, room air conditioners, stereophonic consoles and non-portable stereophonic sound systems and components.

Part I(A) of the consent order prohibits the citation of any "evidence" as support for advertising claims unless certain conditions are met. "Evidence" is defined to mean tests, experiments, demonstrations, studies or surveys, and the requirements on the use of evidence vary with the type of claim that the evidence is used to support, show or prove.

I(A)(1) If thet claim concerns any fact or feature about a covered product, then the cited evidence must in fact support or prove the stated claim.

I(A)(2) If respondent claims that cited evidence supports or proves that a covered product is superior to any competing product, then the cited evidence must support or prove that superiority. Also, the respondent must either (a) disclose in what way or by how much the product is superior, or (b) it must have a reasonable basis for believing that the superiority will be discernible to or of benefit to consumers.

I(A)(3) If the claim refers to different models or to competing products, then the cited evidence must support or prove the claim with respect to each model or product referred to in the advertisement.

I(A)(4) If evidence is cited to support a "less service" claim, then the evidence must in fact support or prove that claim, and the respondent must disclose the exact nature of its product's superior service performance unless the cited evidence shows that the product requires both less costly service and less frequent service than its competitors.

I(A)(5) If the evidence is cited to support or prove a greater dependability or reliability claim, then the cited evidence must support or prove that claim and the respondent must disclose in what way its product is more dependable or more reliable.

Part I(B) of the Consent Order prohibits the use of any "evidence" to support, show or prove any of the claims covered in Part I(A) when the respondent knows of any valid, reliable or substantially identical evidence which is inconsistent with or which contradicts the cited evidence unless a qualified expert states in an affidavit that the inconsistent evidence can be disregarded and gives reasons.

Part I(C) prohibits respondent from representing that the details of any "evidence" will be forwarded upon request unless it furnishes a full, fair and accurate summary of all the details of such evidence as to all products referred to in the advertisement.

Part I(D) of the Consent Order deals with any service, dependability or reliability claim—whether or not that claim cites "evidence" as support. Whenever the claim is comparative, respondent must possess a reasonable basis consisting of competent and reliable studies, surveys or scientific or engineering tests. However, for a reasonable period following the introduction of a new product feature or model, the respondent may make comparative service claims based on literature or generally recognized scientific principles while it is awaiting the results of the studies, surveys or tests required. If these studies, surveys or tests do not provide a reasonable basis for the comparative claims, respondent must cease making them. Respondent must also possess a reasonable basis for any non-comparative service-related claim.

Part II of the Consent Order is limited to claims made for television sets which was the product involved in the alleged unlawful advertising.

Part II A requires a reasonable basis for any comparative or non-comparative claim for any aspect of television set performance.

Part II B(1) requires the respondent either to identify the nature or extent of any claimed superiority of its television sets or to have a reasonable basis for believing that a claimed superiority will be discernible to or of benefit to consumers.

Part II B(2) prohibits claims which imply that particular types or models of television sets possess attributes of other types or models when such is not the case.

Part III of the Consent Order requires the Commission to rule upon any motion by respondent to modify the consent order in light of other, less restrictive rules or guides promulgated by the Commission within at least 120 days of receipt of respondent's motion.

Part IV of the Consent Order provides for a one year moratorium on parts I and II of the consent order solely with respect to printed materials other than media advertisements and point-of-purchase displays.

Part V of the Consent Order requires respondent to distribute the order to appropriate operating divisions; to notify the Commission of any corporate structural change affecting compliance with the Consent Order; and to file an initial compliance report within sixty (60) days of the effective date of the Consent Order.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

[Docket No. 9049]

General Electric Co.

Agreement containing consent order to cease and desist

The agreement herein, by and between General Electric Company, a corporation, by its duly authorized officers, respondent in the above proceeding initiated by the Federal Trade Commission, and its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedure.

1. Respondent General Electric Company (hereinafter sometimes referred to as respondent), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and a principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut 06431.

2. Respondent has been served with the Commission's complaint charging it with violation of Section 5 of the Federal Trade Commission Act, together with a form of order the Commission believes warranted in the circumstances.

3. Respondent admits all the jurisdictional facts set forth in the said copy of the complaint of the Commission.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within sixty (60) days after the acceptance, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

6. No agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or to contradict the terms of the order.

7. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated or that any of the facts are true as alleged in the said complaint of the Commission issued in this proceeding.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(d) of the Commission's Rules, the Commission may, without further notice to respondent (1) issue its decision containing the following order to cease and desist in disposition of the proceedings, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final on service. Mailing of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order.

9. Respondent has read the complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty of up to $10,000 for each violation of the order after it becomes final.

10. Respondent agrees to file with the Commission a report, within sixty (60) days after the effective date of this order, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the agreed-to order.

Order

I

It is ordered, That respondent General Electric Company, a corporation, its successors and assigns, either jointly or individually, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, distribution or sale of any and all of the following household products manufactured or marketed by respondent: monochrome (i.e., black and white) television receivers, color television receivers, clothes washers, clothes dryers, ranges, dishwashers, trash compactors, refrigerators, freezers, room air conditioners, stereophonic consoles and nonportable stereophonic sound systems and components (any or all of which products are hereafter referred to in this Part I as "such product(s)"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Advertising or offering such product(s) for sale by referring to any test, experiment, demonstration, study or survey, or any or all of the results thereof (hereafter "evidence"), which evidence is represented, either directly or by implication, as supporting, showing or proving:

(1) The existence or nature of any fact or product feature respecting such product(s) when such evidence does not support, show or prove such fact or product feature;

(2) That such product(s) is superior to any or all competing products in any respect unless such evidence supports, shows or proves that such product(s) is superior in each respect in which it is represented to be superior, and respondent either:

(a) Identifies the particular aspect of such superiority and discloses the nature or extent of such superiority in terms reasonably understandable to the class of persons to whom the representation is directed (e.g., consumers, dealers or others); or

(b) Has a reasonable basis for concluding that, in connection with the possession or use of such product(s), the nature or extent of such superiority will be discernible to or of benefit to the class of persons to whom the representation is directed;

(3) That any representation about such product(s) or any competing product applies to each type or model of such product(s) or competing product, when the evidence does not support, show or prove the application of such representation to each type or model or such product(s) or such competing product referred to, either directly or by implication;

(4) That such product(s) requires less service or has any other superior service characteristic when compared to any or all competing products unless the evidence at the time such representation is made supports, shows or proves such representation and:

(a) Respondent clearly and conspicuously discloses the particular aspect of such product's(s') superior service characteristic which such evidence supports, shows or proves; or

(b) If respondent represents that such product(s) requires less service and such evidence supports, shows or proves that such product(s) requires both less frequent and less costly service, then respondent need not make the disclosure required by this Subparagraph (4); or:

(5) That such product(s) is more dependable or more reliable when compared to any or all competing products unless the evidence at the time such representation is made supports, shows or proves such representation and respondent clearly and conspicuously discloses the particular aspect of such product's(s') greater dependability or reliability which such evidence supports, shows or proves.

B. Advertising or offering such product(s) for sale by referring to evidence to support, show or prove any representation covered by Paragraph A of Part I when such evidence is inconsistent with or contradicted by any valid, reliable or substantially identical evidence known to respondent unless at the time such representation is made:

(1) Respondent relies on an affidavit by a person qualified by training or experience to evaluate such evidence who, relying on standards generally recognized by qualified experts in that particular field, concludes that the inconsistent or contradictory evidence may be disregarded; and

(2) The affidavit states the qualifications of the affiant and sets forth the generally recognized standards on which he relied in reaching his conclusion.

C. Representing, directly or by implication, that the details of any evidence will be forwarded upon request, unless respondent furnishes a fair and summary of all the details of such evidence as to all products to which such representation extends, including the methodology used and any qualifications respecting the applicability of the results.

D. Representing, directly or by implication:

(1) That such product(s), when compared to any or all competing products:

(a) Is or will be more dependable or more reliable; or

(b) Has required or does or will require less service or less frequent or less costly service,

Unless and only to the extent that respondent has a reasonable basis for such representation which, for the purpose of this Subparagraph D(1), shall consist of competent and reliable studies, surveys or scientific or engineering tests. This definition of "reasonable basis" is subject to this exception: for a reasonable period following the introduction of a new feature or a new model of such product, respondent may make representations encompassed by this Subparagraph D(1) on the basis of literature or generally recognized scientific or engineering principles, but only if respondent immediately undertakes competent and reliable studies, surveys or scientific or engineering tests relating to such representations. If the results of such studies, surveys or tests do not provide a reasonable basis for such representations with respect to the new feature or new model, respondent shall forthwith cease and desist from making such representations;

(2) That such product(s) when compared to any or all competing product has, had or will have any superior service characteristic other than frequency or cost of service, unless and only to the extent that respondent has a reasonable basis for such representation; or

(3) That such product(s) has, had or will have service needs or requirements, unless and only to the extent that respondent has a reasonable basis for such representation.

It is ordered, That respondent General Electric Company, a corporation, its successors and assigns, either jointly or individually, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of any and all monochrome (i.e., black and white) television receivers and color television receivers manufactured or marketed by respondent (any or all of which products are hereafter referred to in this Part II as "such product(s)"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, with respect to the performance or a performance characteristic of such product(s):

(1) The existence or nature of any fact or product feature;

(2) That such product(s) is superior to any or all competing products in any respect; or

(3) That any representation about such product(s) or any competing product applies to each type or model of such product(s) or such competing product referred to, either directly or by implication,

Unless and only to the extent that respondent has a reasonable basis for such representation; provided, however, that this Paragraph A of Part II shall not apply to representation encompassed by Subparagraph A(2) of Part I or Paragraph D of Part I.

B. Representing, directly or by implication: (1) That such product(s) is superior to any or all competing products in any respect unless such product(s) is superior in each respect in which it is represented to be superior, and respondent either:

(a) Identifies the particular aspect of such superiority and discloses the nature or extent of such superiority in terms reasonably understandable to the class of persons to whom the representation is directed (*e.g.*, consumers, dealers or others); or

(b) Has a reasonable basis for concluding that, in connection with the possession or use of such product(s), the nature or extent so such superiority will be discernible to or of benefit to the class of persons to whom the representation is directed; or:

(2) That any representation about such product(s) or any competing product applies to each type or model of such product(s) or competing product when such representation does not apply to each type or model of such product or such competing product referred to, either directly or by implication.

III

If the Federal Trade Commission hereafter promulgates any trade regulation rule or guide governing the advertising of offering for sale of any product governed by this Order, which rule or guide is less restrictive than the corresponding provision(s) of this Order, and respondent files a motion with the Federal Trade Commission to modify this Order to correspond to such less restrictive rule or guide, the Federal Trade Commission

shall rule upon respondent's motion within 120 days after such motion is filed or, if respondent's motion to modify is filed at least 60 days prior to the effective date of such rule or guide, then the Federal Trade Commission shall rule upon respondent's motion within 60 days after the effective date of such rule or guide. Should the Federal Trade Commission fail to rule upon respondent's motion to modify within such time periods, then such rule or guide shall automatically be deemed to modify and replace the corresponding provision(s) of this Order.

IV

The provisions of Parts I and II of this Order will not apply for a period of one year from the date of signature of this Order to printed materials other than media advertisements and point-of-purchase displays.

V

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating divisions engaged in the preparation or placement of advertisements of any product listed in Part I.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

It is further ordered, That respondent shall, within sixty (60) days after the effective date of this Order, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this Order.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-4086 Filed 2-8-77;8:45 am]

[Docket No. 9027]

NATIONAL MERIDIAN SERVICES, INC., ET AL.

Consent Agreement With Analysis To Aid Public Comment

Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34, 40 FR 15236, April 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited on or before March 18, 1977. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14), 40 FR 15236, April 4, 1975). Comments should be directed to:

Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

NATIONAL MERIDIAN SERVICES, INC. AND MERIDIAN WATERPROOFING CORP., ET AL.

[Docket No. 9027]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement containing a proposed consent order from National Meridian Services, Inc. and Meridian Waterproofing Corporation, et al.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60), days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint in this matter alleges that National Meridian Services, Inc., Meridian Waterproofing Corporation, and their officers Michael C. Pascucci and Austin Royle, who market a basement waterproofing process to homeowners and, to a lesser degree, to commercial establishments, engaged in certain unfair or deceptive acts and practices, including: misrepresenting that (a) their waterproofing process seals all types of basement walls, floors, and foundations and that such waterproofing stops basement water damage completely and permanently; (b) their method of combining termite control with their waterproofing service provides a complete termite barrier and shield and that such termite barrier or shield is permanent; (c) certain of the waterproofing materials (bentonite or "Meridian Seal") used in their basement waterproofing treatment is a completely effective or permanent method of basement waterproofing; (d) their waterproofing process is guaranteed to keep basements dry permanently or completely; and (e) their process is installed from the outside with no digging and no damage to shrubs, walls, or driveways.

The complaint also alleges that respondents made specific representations relating to the efficacy, effectiveness and performance of their products and services without having a reasonable basis for making such representations. The complaint further alleges that respondents falsely and deceptively represented that their services were being offered for sale at special or reduced prices and misrepresented savings afforded purchasers because of reductions from respondents' regular selling prices.

The proposed consent order would require respondents to cease and desist from the practices set forth in (a) through (e) above. The terms of the consent order would also require that they (a) maintain a responsible customer relations department; (b) disclose clearly and conspicuously, in all contracts and advertising materials, in the specific language set forth in the order, the limitations of their bentonite and Meridian Seal waterproofing process; (c) respond to requests for service within seven (7) days; (d) refrain from making any representations relating to the efficacy, effectiveness or performance of their services without having a reasonable basis for such representation; (e) to provide a three (3) day "cooling-off" period during which time the customer may cancel the transaction for any reason and receive a prompt refund; and (f) to institute a surveillance program designed to uncover violations of the order by their employees.

The proposed consent agreement differs from the Notice Order previously issued by the Commission in the following respects:

(1) The cooling-off period has been changed from seven (7) to three (3) business days;

(2) The period within which respondents must honor a valid notice of cancel lation and refund all payments made under the contract has been extended from seven (7) to fifteen (15) days; and

(3) The affirmative disclosure required in all respondents' advertising has been changed to conform with disclosure requirements in the Northerlin Co., Inc. case (File No. 732-3007).

The proposed consent order is designed to correct the abuses alleged in the complaint and to give customers sufficient information to enable them to make a reasoned decision about the relative costs of the company's products and services. Also, the "cooling-off" requirement allows consumers to reconsider their decision to purchase without the presence of the salesperson.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

[Docket No. 9027]

NATIONAL MERIDIAN SERVICES, INC., ET AL.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of National Meridian Services, Inc., a corporation, and Meridian Waterproofing Corporation, a corporation, and Michael C. Pascucci, individually and as an officer and director of said corporations, and Austin Royle, individually and as an officer of Meridian Waterproofing Corporation, and as an officer and director of National Meridian Services, Inc.

The Agreement herein, by and between National Meridian Services, Inc., and Meridian Wateproofing Corporation, by their duly authorized officer, and Michael C. Pascucci, individually and as an officer and director of said corporations, and Austin Royle, individually and as an

officer of Meridian Waterproofing Corporation, and as an officer and director of National Meridian Services, Inc., respondents in a proceeding initiated by the Federal Trade Commission, and their counsel, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedure.

1. Respondent National Meridian Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 175 Crossways Park West, Woodbury, New York.

Respondent Meridian Waterproofing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 175 Crossways Park West, Woodbury, New York.

Respondent Michael C. Pascucci is an officer and director of said corporations. Respondent Austin Royle is an officer of both corporations and a director of National Meridian Services, Inc. They formulate, direct and control the policies, acts and practices of said corporations, and their address is the same as that of said corporations.

2. Respondents have been served with a complaint issued by the Commission charging them with violations of section 5 of the Federal Trade Commission Act. Subsequently, during the prehearing procedure, the parties entered into further negotiations and motions were filed to withdraw the matter from adjudication pursuant to § 3.25(b) of the Commission's Rules.

3. Respondents admit all of the jurisdictional facts set forth in the said copy of the complaint the Commission has issued.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

5. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it together with the complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate. The Commission may at any time pending final acceptance of this order, require hearings on the relief requirements provided by this order.

6. This Agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint the Commission has issued.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondents have read the complaint and order contemplated thereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

A. *It is ordered*, That respondents National Meridian Services, Inc., a corporation, Meridian Waterproofing Corporation, a corporation, their successors and assigns, and their officers and directors, and Michael C. Pascucci, individually and as an officer and director of said corporations, and Austin Royle, individually and as an officer of Meridian Waterproofing Corporation, and as an officer and director of National Meridian Services, Inc., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of residential and commercial waterproofing and related termite control products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing, that respondents employ an exclusive or unique process in their basement waterproofing or related termite control business.

2. Representing, directly or by implication, orally or in writing, that respondents are the nation's largest waterproofing company, or that respondents have offices from coast to coast, unless such are facts, or otherwise misrepresenting in any manner the size, extent or nature of respondents' business.

3. Representing, directly or by implication, orally or in writing, that respondents are the recipients of praise, acclaim or approval for their waterproofing or related termite control process or services from The New York Times, Better Homes and Gardens, Popular Science, and the Sunday News (New York), or otherwise misrepresenting, in any manner, that respondents are the recipients of praise, acclaim or approval from any publication, organization or person.

4. Failing to disclose, clearly and conspicuously, in all advertising, that respondents do not, in many instances, provide prompt service to their customers following completion of any waterproofing or related termite control work, but, in many instances, keep their customers waiting for weeks or months before any such service is rendered; provided, that the foregoing disclosure will not be required so long as respondents:

(a) Maintain an address and telephone number to which customers may direct complaints or requests for repair work, contract adjustments, or correction of faulty products or services;

(b) Furnish each customer at the time of sale of any waterproofing or related termite control services the address and telephone number to which such complaints or requests may be directed; and

(c) Respond to such complaints and requests within seven (7) days from the date of receipt thereof from past purchasers of respondents' waterproofing and related termite control services.

5. Failing to maintain (a) adequate records which disclose the date and nature of all service calls, the date and nature of all demands for refunds made by respondents' customers, the date, amount and reason for any refunds given to respondents' customers, and related documents in connection with the implementation of Paragraph 4 (a), (b), and (c), and (b) sample copies of each type of advertisement, including newspaper, radio and television advertisements, direct mail solicitation literature, and any promotional material utilized for the purpose of obtaining leads for the sale of waterproofing or related termite control products and services.

6. Using the words, "permanently" or "completely," or other words or phrases of similar import or meaning, to describe respondents' basement waterproofing or related termite control process or services; representing, in any manner, that respondents have the training, experience or ability to waterproof leaky basements completely or to keep them dry permanently.

7. Representing, directly or by implication, orally or in writing, that a basement can be waterproofed, without digging, or without damage to shrubs, driveways, walls, floors or foundations.

8. Failing to mail to any homeowner who so requests the waterproofing and

termite control bulletins so advertised by respondents; and failing to disclose clearly and conspicuously in each advertisement wherein such bulletins are mentioned the following notice set off from the text of the advertisement by a black border:

The purpose of this solicitation is to obtain your name and address so that a Meridian salesman may call upon you. Such waterproofing and termite control bulletins do not ordinarily provide sufficient information to enable you to waterproof or termite proof your basement without professional assistance.

9. Using in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements and representations are made, orally or in writing, directly or by implication, in order to obtain leads or prospects for, or to induce, the sale of goods or services.

10. Making any claim or representation, orally or in writing, relating to the efficacy or performance of respondents' waterproofing or related termite control process or services unless, at the time such claim or representation is made, respondents have a reasonable basis for such claim or representation.

11. Failing to maintain accurate records which may be inspected and copied by Commission staff members upon ten (10) days' notice:

(a) Which consist of documentation to support any and all claims made after the effective date of this order in advertising of sales promotion material concerning the efficacy and performance characteristics of any waterproofing or related termite control process or services marketed by the respondents.

(b) Which provide the basis upon which respondents relied as of the time those claims were made; and

(c) Which shall be maintained by respondents for a period of three years from the date such advertising or sales promotion material was last disseminated.

12. Misrepresenting, in any manner, the education, training or experience of any of respondents' employees.

13. Representing, directly or by implication, orally or in writing, that any of respondents' water-proofing or related termite control products or services are guaranteed, unless the nature, extent, and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in any advertisements, brochures, contracts or other printed materials wherein the terms "guarantee" or "warranty" are used, and orally, prior to the signing of any contract, and unless the guarantor will, in fact, perform as stated in the disclosed guarantee.

14. Representing, directly or by implication, orally or in writing, that respondents' method of pumping bentonite or the chemical substance $Na_4 S_3O_4+Ca Cl_2+H_2O$, trade named "Meridian Seal," or any other substantially similar substance, is a completely effective or permanent method of basement waterproofing. Misrepresenting, in any manner, the efficacy of bentonite or "Meridian Seal."

15. Inducing the sale of waterproofing or termite control services, or any other product or service, by employing "scare tactics" to create an exaggerated impression of the risk of serious termite, water, or other damage or injury, or the immediacy of such risk, or misrepresenting in any manner the nature and extent of the threat that water leakage or termites present to property.

16. Representing, directly or by implication, orally or in writing, that any price for waterproofing or related termite control products or services is a special or reduced price from the price respondents normally charge, unless (a) respondents have made bona fide sales at a higher reference price in the recent past; (b) the reference price is the immediately preceding price or is disclosed to be otherwise; and (c) either the reference price, the dollar savings computed therefrom, or the percentage savings computed therefrom is disclosed.

17. Contracting for any sale of basement waterproofing or related termite control products or services in the form of a sales contract or other agreement which shall become binding on the buyer prior to midnight of the third business day, excluding Sundays and legal holidays, after the date of execution of the contract or other agreement.

18. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

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

19. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point bold face type the following information and statements in the same language; e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(Enter date of transaction)

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (name of seller), at (address of seller's place of business), not later than midnight of (date). I hereby cancel this transaction.

(Date)

(Buyer's signature)

20. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

21. Failing or refusing to honor any valid notice of cancellation by a buyer and within fifteen (15) business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale.

22. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness executed by the purchaser, with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

(a) The disclosures, if any, required by Federal law or the law of the state in which the instrument is executed;

(b) Where negotiation of the instrument to a third party is not prohibited by the law of the state in which the instrument is executed, that the trade acceptance, conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party.

23. (a) Failing to disclose in writing on the face of every contract for the pressure pumping process, in bold print, on an easily detachable form which shall be executed by the customer and retained by the seller and orally, prior to the signing of any such contract, and in ten point bold face type in all advertisements, promotional materials and similar documents for such process, the following notice:

Meridian provides two kinds of waterproofing services: Channeling water away from the basement and pressure pumping a bentonite mixture against walls and footings. The bentonite material used in the pressure pumping process will not prevent leaks in your basement under certain types of soil and water table conditions. If you have not had engineering tests conducted on your property by a qualified engineer, you cannot be sure the process you have contracted for will work on your home.

(b) Failing to disclose in radio and electronic media advertisements for the pressure pumping process the following notice:

The bentonite material used in the pressure pumping process will not prevent leaks in your basement under certain types of soil and water table conditions. If you have not had engineering tests conducted on your property by a qualified engineer, you cannot be sure this process will work.

B. *It is further ordered,* That respondents:

1. Deliver a copy of this order to cease and desist to all present and future employees, salesmen, agents, independent contractors, or other representatives engaged in (a) the offering for sale, sale, or servicing of any of its waterproofing or related termite control products and services, or (b) any aspect of preparation, creation, or placing of advertising, and secure a signed statement acknowledging receipt of that order from each such person.

2. Inform all recipients of this order pursuant to subsection 1 above that respondents are obligated by the order to discontinue dealing with any person who commits acts or practices prohibited by it.

3. Institute a program of continuing surveillance to reveal whether respondents' employees, salesmen, agents, independent contractors or other representatives are engaging in acts or practices which violate this order.

4. Discontinue dealing with or terminate the use or engagement of any person described in paragraph 1 above, as revealed by the aforesaid program of surveillance, who continues on his own any act or practice prohibited by this Order.

5. Maintain complete records for a period of no less than three years from the date of the incident, of any written or oral information received which indicates the possibility of a violation of this order by any employee, salesman, agent, independent contractor or other representative; and to maintain complete recors of terminations as required by subparagraph 4 of this paragraph. Any oral information received indicating the possibility of a violation of this order shall be reduced to writing, and shall include the name, address and telephone number of the informant, the name and address of the individual involved, the date of communication and a brief summary of the information received. Such records shall be available upon request to representatives of the Federal Trade Commission during normal business hours upon reasonable advance notice.

6. That respondents, for a period of one (1) year from the effective date of this order, provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sales of waterproofing or related termite control products and services, with a copy of the Commission's News Release setting forth the terms of this order.

It is further ordered:

A. That respondents notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

B. That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-4085 Filed 2-8-77;8:45 am]

COMMISSON ON FEDERAL PAPERWORK

PUBLIC MEETING

Notice is hereby given of the ninth regular meeting of the Commission on Federal Paperwork to be held on February 24 and 25, 1977, in Room 2154, Rayburn House Office Building, Washington, D.C.

The meeting will begin each day at 9:00 a.m. and will continue until approximately 1:00 p.m. The meeting is open to the public. The Commission will review progress on approved projects, staff proposals for future projects, and proposed Commission positions on specific paperwork problems.

Anyone wishing to attend the meeting is invited. For further details, contact the Commission on Federal Paperwork, Room 2000, 1111 20th Street, NW., Washington, D.C. 20582, telephone—(202) 653-5400.

FRANK HORTON,
Chairman.

[FR Doc.77-3996 Filed 2-8-77;8:45 am]

FOREIGN-TRADE ZONES BOARD

[Docket No. 1-77]

TRI-CITY REGIONAL PORT DISTRICT, GRANITE CITY, ILLINOIS (ST. LOUIS CUSTOMS PORT OF ENTRY)

Application for a Foreign-Trade Zone: Public Hearing Scheduled

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-City Regional Port District (Tri-City), an Illinois municipal corporation, 2801 Rock Road, Granite City, Illinois 62040, requesting a grant of authority for establishment of a foreign-trade zone in the Tri-City Industrial Center on the western limits of Granite City, Illinois, within the St. Louis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 27, 1977. Tri-City was created as an Illinois incorporated port district under Illinois Revised Statutes, Chap. 19, Sec. 284, et seq. Authority to apply for the right to establish and operate foreign-trade zones was added to its charter in 1975 (Illinois P.A. 79-613, Sec. 1).

The proposal calls for a general purpose foreign-trade zone of 47 acres within the 127 acre Tri-City Industrial Center on the western limits of Granite City, Illinois and adjacent to the Chain of Rocks Canal, within 10 miles of downtown St. Louis. Tri-City owns and operates the Center and is keeping open the option of contracting for operation of the zone to a private firm. A 100,000 square foot warehouse/processing facility will be built by Tri-City for zone tenants. Additional buildings will be constructed to suit the needs of future users. The zone is intended to serve firms engaged in international trade-related activities by providing procedures which permit the deferral of a formal Customs entry on foreign goods until they leave the zone area for the domestic market. Exports are exempt from such entry requirements.

The application includes economic data and information concerning the need for zone services. Among the anticipated zone tenants are firms involved in the importation of antibiotics for animal use, pharmaceuticals, textiles, shoe parts, dyes and fruit oils. The firms would use the zone for storage, inspection, light manufacturing or assembly.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The committee consists of: Hugh J Dolan, Chairman, Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230; William L. Duncan, District Director, U.S. Customs Service, St. Louis District, 120 S. Central Ave., St. Louis Clayton), Missouri 63105; and Colonel Leon E. McKinney, District Engineer, U.S. Army Engineer District St. Louis, 210 North 12th Street, St. Louis, Missouri 63101.

In connection with its investigation of the proposal, the Examiners Committee will hold a public hearing on March 9, 1977, in the Mississippi Room, University Center, Southern Illinois University, Edwardsville, Illinois, beginning at 9:00 a.m. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views and to obtain information useful to the Examiners Committee.

Interested persons or their representatives will be given the opportunity to present their views at the hearing. Such persons should by February 25 notify the Board's Executive Secretary in writing at the address below of their desire to be heard. In lieu of an oral presentation, written statements may be submitted to the Examiners Committee, care of the Executive Secretary, at any time from the date of this notice through April 8, 1977. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Tri-City Regional Port District, 2801 Rock Road, Granite City, Illinois 62040.
Office of the District Director, U.S. Customs Service, 120 South Central Avenue, Suite 408, St. Louis (Clayton), Missouri 63105.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886–B, Washington, D.C.

Dated: February 2, 1977.

JOHN J. DA PONTE, Jr.,
Executive Secretary,
Foreign-Trade Zones Board.

[FR Doc.77–4013 Filed 2–8–77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on February 1, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB and FEA requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before February 28, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5033, 441 G Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

CIVIL AERONAUTICS BOARD

CAB requests an extension no change clearance of Form 239, Report of Freight Loss and Damage Claims. Form 239 is filed by certificated route and supplemental air carriers, air freight forwarders, commuter air carriers and foreign route air carriers. Submission of Form 239 by these respondents is mandatory under Section 407 of the Federal Aviation Act of 1958, as amended. CAB estimates respondent burden to be 100 hours per response for Schedule A and 8 hours each for Schedules B, C and D per response. Schedules A, B and C are filed quarterly; and Schedule D is filed annually.

FEDERAL ENERGY ADMINISTRATION

FEA requests an extension no change clearance of Form 25, Certification of Requirements for Use Under Allocation Levels Not Subject to an Allocation Fraction. This form is filed annually, with updates if necessary, by resellers of petroleum products with their suppliers. This information is collected according to 10 CFR 211.12(d) issued pursuant to Public Law 93–275 and Public Law 94–163. The information is used to document the volume of petroleum products designated for first priority uses. The number of respondents has been as many as 30,000 and FEA estimates annual burden to be one hour per respondent.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.77–4088 Filed 2–8–77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

COOPERATIVE HEALTH STATISTICS ADVISORY COMMITTEE TASK FORCE ON COST-SHARING

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to assemble during the month of March 1977:

Name: Task Force on Cost-Sharing of the Cooperative Health Statistics Advisory Committee.

Date and Time: March 10–11, 1977, 9:00 a.m.

Place: Center Inn, 231 Ivy Street NE., Atlanta, Georgia 30303.

Open the entire meeting.

Purpose: The Cooperative Health Statistics Advisory Committee felt that one of the key issues that should be explored and developed by a Task Force was the matter of cost-sharing as it relates to the Cooperative System. As the funding of the Cooperative Health Statistics System continues and increases, it is essential that valid evaluation criteria and cost-sharing mechanisms be developed in support of this funding to insure that each participating level of government contributes its fair share to the System and that each of the seven components is funded adequately and on the basis of equitable formulae.

Agenda: Review cost-sharing guidelines of the vital statistics components; study and develop cost-sharing guidelines for the manpower and facilities component; discuss development of "core staff" for State Centers.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information, should contact Mr. James A. Smith, Room 8–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Agenda items are subject to change as priorities dictate.

Dated: February 3, 1977.

JAMES A. WALSH,
Associate Administrator
for Operations and Management.

[FR Doc.77–4003 Filed 2–8–77;8:45 am]

National Institute for Occupational Safety and Health

CERTAIN TESTED COMPOSITE COAL MINE DUST PERSONAL SAMPLER UNITS

MESA/NIOSH "Acceptance"

CROSS REFERENCE: For a document issued jointly by the Department of Health, Education, and Welfare, National Institute for Occupational Safety and Health, and the Department of Interior, Mining Enforcement and Safety Administration, on the subject of acceptance of certain tested composite coal mine dust personal sampler units, see FR Doc. 77–4002, appearing in the notices section of this issue under the Department of Interior, Mining Enforcement and Safety Administration.

Office of Education

COMMITTEE ON PUBLIC AND ORGANIZATIONAL RELATIONS; NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), that the Committee on Public and Organizational Relations of the National Advisory Council on Adult Education will meet on March 11, 1977, from 8:30 a.m. to 3:00 p.m., United Airline Red Carpet Room, O'Hare Airport, Chicago, Illinois.

The National Advisory Council on Adult Education is established under Section 311 of the Adult Education Act (80 Stat. 1216.20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Committee shall be open to the public.

The proposed agenda includes:

Developmental tasks for radio and TV public service announcements

Relationships with Presidential and secretarial advisory Councils

Study and recommendations of the ADELL Clearinghouse resource profiles.

Records shall be kept of all Committee proceedings (and shall be available for public inspection at the Office of the National Advisory Council on Adult Education located in Room 323, Pennsylvania Bldg., 425 13th Street NW., Washington, D.C. 20004).

Signed at Washington, D.C., on February 2, 1977.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc.77–4109 Filed 2–8–77;8:45 am]

Office of Education

ARTS EDUCATION PROGRAM

Extension of Closing Date for Receipt of Applications for Fiscal Year 1977

A. EXTENDED CLOSING DATE

Notice is hereby given that the March 1, 1977 deadline for filing applications under the Arts Education Program as authorized by section 409 of the Education Amendments of 1974, Pub. L. 93-380 (20 U.S.C. 1867), which deadline was published in the FEDERAL REGISTER at 42 FR 1516 on January 7, 1977, is extended to 4:00 p.m., Washington, D.C. time, March 23, 1977. Applicants who have already filed such applications will be permitted (but are not required) to review, revise, and refile their applications by the extended deadline.

Applications must be received by the U.S. Office of Education Application Control Center on or before March 23, 1977.

B. APPLICATIONS SENT BY MAIL

An application sent by mail should be addressed as follows: U.S. Office of Education, Grant and Procurement Management Division, Application Control Center, 400 Maryland Avenue, S.W., Washington, D.C. 20202; Attention 13.566. An application sent by mail will be considered to be received on time by the Application Control Center if:

1. The application was sent by registered or certified mail not later than March 18, 1977, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

2. The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

C. HAND DELIVERED APPLICATIONS

An application to be hand delivered must be taken to the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, S.W., Washington, D.C. Hand delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m., Washington, D.C. time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after 4:00 p.m. on the closing date.

D. OTHER INFORMATION

Other information published in the January 7, 1977 Notice, including information concerning State review of the applications, is unchanged. (42 FR 1516)

(20 U.S.C. 1867.)

(Catalog of Federal Domestic Assistance Number 13.566, Arts Education Program.)

Dated: February 4, 1977.

WILLIAM F. PIERCE,
Acting U.S. Commissioner of Education.

[FR Doc.77-4301 Filed 2-8-77;8:45 am]

Social Security Administration

VOCATIONAL FACTORS IN DISABILITY DETERMINATIONS

Public Meetings

The Social Security Administration regulations with respect to disability determinations under titles II and XVI of the Social Security Act (20 CFR Part 404, Subpart P and 20 CFR Part 416, Subpart I, respectively) provide that when a disability determination cannot be made on medical considerations alone and the individual is unable to return to past work, the determination as to disability rests on the individual's ability to do other substantial gainful work. Determinations must be made on this basis in a significant percentage of the claims adjudicated.

The evaluation of ability to do other work requires consideration of impairment severity in conjunction with the vocational factors of age, education, and past work experience. Rules for evaluating these factors have been developed over the years on the basis of the Social Security Administration's operating experience and are utilized by State agencies and the Social Security Administration in making initial and reconsidered determinations of disability. These rules, however, have not yet been incorporated into the regulations and thus are not currently used by Administrative Law Judges in holding hearings and reaching decisions on appeals.

The Social Security Administration has drafted a notice of proposed rulemaking which would incorporate into the regulations rules and criteria for evaluating vocational factors.

A public meeting was held in Baltimore, Maryland, on December 8, 1976, to provide the public an opportunity to comment on the draft notice of proposed rulemaking prior to promulgation, and to discuss the related issues regarding the inclusion of disability vocational factors rules and criteria into the Social Security Regulations. Several public interest and advocacy groups suggested that it would be beneficial to hold similar meetings more convenient to the southwestern and western public.

Such meetings have been scheduled for Tuesday, March 1, in Dallas, Texas, and Thursday, March 3, in San Francisco, California. The time for both meetings is from 9:00 a.m. to 4:00 p.m. The Dallas meeting will be held in the Ambassador and House of Commons Rooms at the Le Baron Hotel, 1055 Regal Row, Dallas, Texas 75247. The San Francisco meeting will be held in the Crystal Ballroom at the San Franciscan Hotel, 1231 Market Street, San Francisco, California 94103.

The meetings will be conducted along the lines of an informal forum. They will open with a presentation by the federal participants of the history, development, and current application of the rules which govern the way disability determinations are presently made. The meetings will continue with a panel discussion of the proposed draft regulations and significant issues regarding the proposed codification of disability vocational factors rules and criteria into the social security regulations. Some of the issues and concerns planned for discussion, as raised previously by the public, are listed below. Public participants and public organization representatives in attendance will be given an opportunity to make a 5-10 minute oral statement for the record.

The meetings are designed to facilitate a full understanding of these matters so that all interested parties will have a better basis for later comment on the substance of the regulations. The meetings will not substitute for the opportunity to submit extended written comments at and after the meeting, and later when such rules may be published.

Written comments are encouraged and will be received at the meeting. "Addendum" written comments will also be received following the meeting. The deadline for such comments will be 20 working days following the mailing of meeting transcripts. Requests for transcripts may be made at the meeting or by writing D. Dwight Dowling, Social Security Administration, P.O. Box 1535, Baltimore, Maryland 21203. Addendum comments should also be mailed to Mr. Dowling at the same address.

In order to assure adequate scheduling for those attending the meetings, persons interested in attending the Dallas meeting are requested to notify Elbert Winn, Social Security Regional Office, 1200 Main Tower Room 2535, Dallas, Texas 75202, Telephone (214) 655-4222. Those interested in attending the San Francisco meeting are requested to notify Edward Kramer, Social Security Regional Office, 100 Van Ness Avenue, 26th Floor, San Francisco, California 94102, Telephone (415) 556-4270. Mr. Winn and Mr. Kramer may also be contacted for additional information regarding the meeting and for advance draft copies of the proposed draft notice of proposed rulemaking.

DISCUSSION ISSUES AND CONCERNS

1. These regulations have been presented in the Draft as a codification of existing rules. Is this an accurate presentation of the rules currently being applied or do the regulations introduce substantial and significant changes in the disability program?

2. Is the Secretary empowered to promulgate regulations of this nature under existing legislative authority or is additional legislative authority required?

3. Are the regulations criteria based on an "average man" concept, insofar as they treat claimants by categories or classes, with the result that all individuals in a class can be determined to be disabled or not to be disabled in accordance with the tables?

4. If the regulations are a departure from the individualized concept of locating specific jobs for specific individual capabilities, are not the proposed regulations in conflict with the Act and the court cases which have interpreted the Act?

5. How accurate are the factual assumptions made in the regulations? To what extent have the factual assumptions been verified or are they speculative as to their accuracy? Can "administrative notice" be utilized to the extent the Social Security Administration attempts to do?

6. Do the regulations interfere with the independence of the Administrative Law Judges (ALJ) since they support to decide "adjudicative weight" to be accorded many factors and mandate the "correct decision" that must be reached in many individual cases under the rules?

7. Are the regulations in fact intended to apply only to cases involving "exertional" limitations? If not, how can cases of nonexertional limitations be evaluated in the framework of these regulations since the criteria of the regulations are defined solely in exertional terms?

8. How can transferability be determined for an entire range of work? Does the definition of transferability in the regulations require the comparison of two specific jobs rather than a specific job with broad ranges of work?

9. How will these regulations affect cases already adjudicated under the present regulations?

10. Does the insertion of the term "severe impairment" into the draft reflect any substantive change in the medical requirements for disability?

11. Does the insertion of the phrase "objective evidence" into the regulations bar consideration of subjective evidence as proof of disability?

12. Will the regulations require an ALJ to make judgments on issues such as transferability of skills which are beyond his expertise and which have heretofore been viewed as matters calling for expert testimony?

13. Will the regulations place an increased premium on the need of a claimant for legal representation at a disability hearing?

14. Should the regulations establish a set of rebuttable presumptions rather than hard and fast categories? Should they be presented as adjudicative guidelines rather than rigid rules?

15. Will the regulations result in an ALJ denial rate similar to the current denial rate at the initial and reconsideration levels and cause more individuals to come onto the public assistance rolls? What impact will the proposed regulations have on ALJ workloads?

16. Will the regulations result in vocational experts being used to a lesser degree than currently at the hearing level? How might this effect the outcome of a hearing?

17. Should employers' hiring practices and attitudes be included as factors in determining disability?

(Catalog of Federal Domestic Assistance Program No. 13.802, Social Security-Disability Insurance; Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: February 1, 1977.

J. B. CARDWELL,
Commissioner of Social Security.

[FR Doc.77-4005 Filed 2-8-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Doc. No. Nfd-408; FDAA-3028-EM]

INDIANA

Emergency Declaration and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on February 2, 1977, the President declared an emergency as follows:

I have determined that the impact of an abnormal accumulation of snow and ice resulting from a series of blizzards and snowstorms in the State of Indiana is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefore declare that such an emergency exists in the State of Indiana.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert E. Connor, FDAA Region V, to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas to have been adversely affected by this declared emergency:

THE COUNTIES OF:

Cass	La Grange
Fulton	St. Joseph
Jay	

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: February 2, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-4143 Filed 2-8-77;8:45 am]

[Docket No. NFD-407; FDAA-3026-EM]

PENNSYLVANIA

Amendment to Emergency Declaration

Notice of emergency for the State of Pennsylvania dated January 29, 1977, is hereby amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 29, 1977:

THE COUNTIES OF:

Beaver	Schuylkill
Carbon	Venango
Crawford	Washington
Luzerne	Wayne
Potter	

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: February 2, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster, Assistance Administration.

[FR Doc.77-4141 Filed 2-8-77;8:45 am]

[Doc. No. NFD-406; FDAA-3018-EM]

VIRGINIA

Amendment to Emergency Declaration

Notice of emergency for the State of Virginia dated October 15, 1976, and amended on November 30, 1976, and January 7, 1977, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of October 15, 1976:

THE COUNTIES OF:

Augusta	Goochland

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: January 31, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-4142 Filed 2-8-77;8:45 am]

Office of the Secretary

[Doc. No. N-77-704]

"SECTION 312" REHABILITATION LOANS

Applicability of Federal Labor Standards Provisions to Loans for the Rehabilitation of Residential Properties

Notice is hereby given that the Department is changing its policy governing Federal Labor Standards requirments applicable to "Section 312" loans for the rehabilitation of residential properties.

The Department provides low interest loans for the rehabilitation of properties

under authority of Section 312 of the Housing Act of 1964 (42 U.S.C. 1452b). Official policies, procedures and guides for this program are promulgtaed pursuant to the HUD Unified Issuance System under Rehabilitation Financing Handbook, 7375.1 REV., issued by the Department to all Local Public Agencies administering the program. The Handbook is available for inspection or copying by the public at the offices of any such Agencies or at any HUD Area Office.

Under present Handbook policy, construction contracts and subcontracts for the rehabilitation of residential structures that will contain 12 or more dwelling units after rehabilitation financed with a Section 312 loan are subject to the Federal Labor Standards Provisions of Forms HUD–3200 and 3200A, pertaining to the payment of wages and other requirements applicable to laborers and mechanics employed under such contracts in connection with federally assisted projects or programs.

Section 116(e)(2) of Title I of the Housing and Community Development Act of 1974 (Pub. L. 93–383) amended Section 312 of the Housing Act of 1964 to include the authority to make such loans where the rehabilitation is a part of, or is necessary or appropriate to the execution of, an approved Title I Community Development Program.

Title I authorizes the provision of grant assistance for community development programs by the Department of Housing and Urban Development to States and units of general local government. The Department's Title I regulations for Community Development Block Grants (24 CFR Part 570) were published in the FEDERAL REGISTER of June 9, 1975, 40 F.R. 24692.

The use of Title I funds by the block grant recipients for making loans for the rehabilitation of privately owned property is an eligible activity under 24 CFR 570.200(a)(4)(ii). Federal Labor Standards applicable to Title I assistance pursuant to 24 CFR 570.605 are limited with respect to rehabilitation of residential properties to structures designed for residential use for eight or more families.

In order to afford uniform treatment under both federally assisted programs to all loan applicants seeking to rehabilitate residential properties, the Department's policy for Section 312 loans is being made consistent with the labor standards provisions of the regulations for Title I. Accordingly, the Rehabilitation Financing Handbook, 7375.1 REV., February 1974, is being revised to reflect that projects under the Section 312 loan program subject to the Federal Labor Standards Provisions of Forms HUD–3200 and 3200A include the rehabilitation of any residential properties which contain eight or more dwelling units after the rehabilitation.

The Department has determined that an environmental impact statement is not required with respect to this item. The finding of inapplicability is available for examination during business hours in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C.

It is hereby certified that the economic and inflationary impacts of the notice have been carefully evaluated in accordance with OMB Circular A–107.

Issued at Washington, D.C., February 2, 1977.

PATRICIA ROBERTS HARRIS,
Secretary of Housing and Urban Development.

[FR Doc.77–4140 Filed 2–8–77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

BIG VALLEY RANCHERIA IN CALIFORNIA AND INDIVIDUAL MEMBERS THEREOF

Termination of Federal Supervision Over Property: Correction

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

On March 15, 1960, "A Plan for the Distribution of Assets of the Big Valley Rancheria according to the provisions of Pub. L. 85–671, August 18, 1958," was approved by H. Rex Lee, Deputy Commissioner of Indian Affairs, and accepted by the distributees in a referendum held at the Big Valley Rancheria on April 5, 1960.

Notice of the termination of the Federal trust relationship over the Big Valley Rancheria in Lake County, California, in accordance with that Plan was executed November 3, 1965, by Stewart L. Udall, Secretary of the Interior and published in the FEDERAL REGISTER of November 11, 1965, on pages 14222–3 (30 FR 14222–3). The names of David George Mitchell, Jr. and Marlene Lynn Mitchell as dependent members of the immediate family of Ruth Holmes, a distributee, appeared on the list of persons affected by the termination action and such appearance has hampered the said David George Mitchell, Jr. and Marlene Lynn Mitchell in the exercise of their civil rights.

Notice is hereby given that the names of David George Mitchell, Jr. and Marlene Lynn Mitchell is hereby stricken from "A Plan for the Distribution of the Assets of the Big Valley Rancheria according to the provisions of Pub. L. 85–671, August 18, 1958," nor shall said names appear in any of the official Federal documents relating to the termination of Federal supervision over the affairs and assets of the Big Valley Rancheria.

THEODORE C. KRENZKE,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.77–4110 Filed 2–8–77;8:45 am]

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant. Larry McQuinty Braswell, Route 2, Norman Park, Georgia 31771.

OMB NO. 42-R1673

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (In only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED: To procure Pheasants on Endangered Species List & have Shipped to me (Interstate Comm) Then raise their offspring & ship to others in other States.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Larry McGinty Braswell
Rte 2
Norman Park, Georgia 31771
912 985-9936

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5'11" WEIGHT: 190
DATE OF BIRTH: 23rd Jan. 1932 COLOR HAIR: Brown COLOR EYES: Blue
PHONE NUMBER WHERE EMPLOYED: 912 985 3719 SOCIAL SECURITY NUMBER: 259-50-5023
OCCUPATION: Quality control Inspector
ANY BUSINESS/AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: N/A.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED: Colquitt County Moultrie Georgia Take Hwy 37 East to Wannamans Store Turn left & Birdfarm is at Second white house on righthand side up dirt road Appx. 1/2 mile from paved Road

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of document) Game Holding Permit (Ga) #191

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $ N/A

10. DESIRED EFFECTIVE DATE: 15 Dec 1976 ASAP

11. DURATION NEEDED: Two years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED: yes

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): Larry McGinty Braswell
DATE: 13th November 1976

3-200
86/740
GPO 895-042

(1) Pheasants:

Bartailed—*Symaticus humiae*, 1 pair (2); Brown-eared—*Crossoptilon mantchuricum*, 1 pair (2); Edward's—*Lophura edwardsi*, 1 pair (2); Mikado—*Symaticus mikado*, 1 pair (2); *Imperial*—*Lophura imperialis*, 1 pair (2); and Western Tragopan—*Tragopan melanocephalus*, 1 pair (2).

I would like to purchase the above pheasants and have them shipped via Air-freight to me and would like to ship the above Pheasants and in addition to Swinhoe's (*Lophura swinhoii*), Elliot's (*Syrmaticus elliotti*) which I now own (1 pair each) located at my home. All of the above species are from 9 months to one year old. Also Pheasants that I wish to purchase are the same age. The activity to be covered under this permit will be shipping interstate commerce to people wishing to purchase from me. I need to receive the Endangered Species above through Interstate commerce shipments.

(2) (iii) They were hatched in captivity.

(3) I have contacted several people who will sell and ship those birds to me, they live in the United States. But I need this permit where they can go ahead and ship by the 15th December 1976. These Pheasants should be settled by 1st Jan. 1977 so as they will reproduce next spring. These birds were also hatched in captivity some years ago.

(4) The United States of America is where they were hatched. Most of them would come from Tennessee, Texas, New York, Ohio, and Wisconsin.

(5) Appx. 2 acres of land on which I live at Norman Park, Georgia, Route 2, Zip 31771. To be a Breeding and Rearing farm for Pheasants.

(6) (I) Attached to this is a diagram of pens we now have for this operation. All pens are of best material we could find, for safety and comfort pheasants.

(II) First experience was in 1953 with ringnecks and raised several of these for 3 or 4 years. Have raised livestock and fowl all of my Adult life and am now 44 years old. Have knowledge of feed mixtures, additives, antibiotic and vaccinations for all types of animals and fowls as well as syringes to administer these as a preventive or a cure. Made all my supplement from Morrison Feed and Feeding Books. Also have obtained info from Michigan State University also Clemson, about types of housing, rearing, space needed per bird. Feed requirements, consumption per day also all known cures for diseases of birds plus the "Pheasants of the World Book" which has about the same info in it. I raised Goldens, Amherst, Ringnecks last year.

(III) I would like to share knowledge and experience with anyone who desires to raise Pheasants. As of now I keep records (All up to date) on purchases, egg laid, hatchability, mortality rate, sales, files on people I have contacted about buying from and what kind they raise. I do not purchase birds that are related unless I know where I can swap cocks and make an unrelated pair or trio.

(IV) A box made of ½" plywod 16" high 24" long and 12" wide with reinforced screen wire covering one end for light. To this we fasten a waterer to side of box, also use foam rubber as a padding for top so birds will not skin their heads.

(V) Have had very low mortality rate only loses due to chilled birds when it rained and turned cold. I now have a barn that is weathertite for my ele. Brooders to keep this from occurring again. Also use medicated feed and administer Antibiotics in draining water during any period of stress until birds are grown. I also use dinoate 2 times weekly on all feed for all Birds. This is a mineral-vitamin compound that can't be beat. It makes for healthy and more content birds, with a much better plumage. I have raised for the last two years Dark-throated Goldens, Amherst, Silvers, Southern Greens and Ringnecks.

(7) I have no contracts to raise or supply Pheasants with anyone nor do I wish to. I only want to raise and sell these birds to people like myself. The persons responsible for this operation are myself. Larry M. Braswell my son Larry M. Braswell Jr. (Chip) now 14 years old. We both enjoy raising and caring for anything that is alive.

(8) Chip and myself: We desire to raise, keep, help preserve these beautiful birds. Also to help refurnish and replenish these species from extension. We have the know-how, the equipment, the time and ability to do all these things.

(I) The activities will be to procure the Pheasants that I have listed and have shipped to us, to raise and sell these birds to others and ship to them also.

(II) When the eggs are hatched and sex can be determined then we will advertise and sell some of the offspring in 1977 then we will need to ship to other people in other States because insofar as can be determined there will not be enough sales in our State for supply we hope to raise.

(III) The relation: to propagate these in Georgia as we do not have these birds in South Georgia as yet. They can be seen by 4 Hers F.F.A. on school groups that wish to except during breeding season. The more to raise these birds the lessor chance there will be of extinction.

(IV) This activity will not be terminated as I would consider raising them after retirement for a hobby and enjoyment.

Resume: We have traveled a great number of miles and spent a considerable amount of

money to see these rare and wonderful birds. So "why shouldn't" other people have an opportunity to see the same as we have. In other words We "Should like" to have us a place such as we have seen before for the sake of longevity of the "Endangered Species" a place where others can enjoy as we have. No it will not be an amusement park, nor will it be a charge to see place. Only for us and you the people who care for something Beautiful and would (As we do) replenish the "Species".

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-474-07; please refer to this number when submitting comments. All relevant comments received on or before March 11, 1977, will be considered.

Dated: February 4, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-4007 Filed 2-8-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant. L & J Game Bird Farm, 4850 Alcorn Road, Fallon, Nevada 89406, C. J. (Jim) Chamberlain.

OMB NO. 42-R1870

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
XXX IMPORT/EXPORT LICENSE ☐ PERMIT
Export Permit, one time only - this application

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Export one (1) pair of Brown Eared Manchurian pheasants (Crossoptilon mantchuricum) from applicants address to Mr. J. Szydlowski, Jenwick, Ontario, Canada for propagation purposes.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
C. J. (Jim) Chamberlain
4850 Alcorn Rd.
Fallon, Nevada 89406
Ph. (702)867-2237

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT 5'-7"	WEIGHT 140
DATE OF BIRTH 18 Feb. 1911	COLOR HAIR Brn.	COLOR EYES Blue
PHONE NUMBER WHERE EMPLOYED 867-2237 (area 702)	SOCIAL SECURITY NUMBER 530-30-0581	

OCCUPATION
Retired (Civil Service, Navy)

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
N.A.

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
N.A.

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
N.A.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
N.A.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Export from Nevada, U.S.A.
to
Jenwick, Ontario, Canada.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)
PRT 2-352-07 and } pending
PRT 2-353-25 }

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Nevada State Commercial License #1

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$ N.A.

10. DESIRED EFFECTIVE DATE
A.S.A.P.

11. DURATION NEEDED
60 days

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Please refer to attachments on applicant assigned PRT 2-352-07 and 2-353-25

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (Do not) C. J. (Jim) Chamberlain
DATE 28 September 1976

3-200
(6-74)

Fenwick, Ontario, Canada.
Dec. 22, 1976.

Mr. Jim Chamberlain,
4850 Alcorn Rd.,
Fallon, Nevada 89406.

Dear Mr. Chamberlain,

I received a phone call from Mr. Len Glover of Stouffville, telling me you need more information.

I live in Fenwick, name now changed to Pelham, but to everyone its still Fenwick. It's in the Welland county, 25 miles west of Niagara Falls and I have 26 acre farm here. I used to raise pigs but am retired, 76 years old now, and converted my pig pen 70' x 21' into 13 cages for peacocks. My chicken house for pheasants and I also built 22 outdoor fenced in cages, 16' x 10' x 7'.

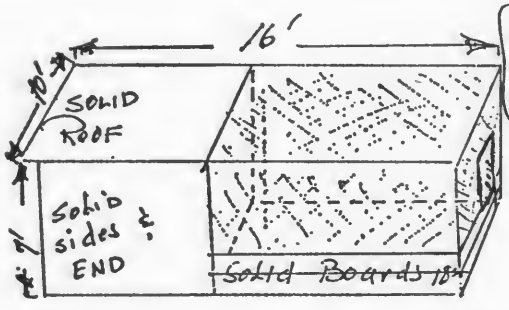
This summer I made 4 new cages 16' x 10' x 6' 1 x 2 wire mesh, 14 gage, with wooden boards 18" from ground up and in the back a shelter, insulated to keep rain, snow and wind out. These are still empty. This is where I'll keep your pheasants.

Every week particularly Sunday people stop in to admire my birds. Children by the classrooms come and walk through. It keeps me busy and I enjoy it very much.

Am enclosing an envelope if you need any more information, kindly let me know.

Yours truly,

I. Szydlowski,
930 Church St.,
Fenwick, (Pelham),
Ontario, Canada.



PRT. ? 493 ?

Additional required information on Export Permit Application

on one (1) pair of Brown Eared Manchurians (Crossoptilon - mantchuricus) pheasants for Mr. I. Szydlowski, of Fenwick, Ontario, Canada.

(1) Shipping Containers:

All birds will be shipped in unused wire bound crates, suitably padded with foam rubber to prevent any scalping or injury. Food and water containers will be securley wired to the shipping crates which will be of sufficient size for the young birds to stand and turn around in, approximately 15" x 24" x 17" high. Crates will be newly painted and marked "Live Birds" on all four sides. One (1) bird only will be shipped in each crate.

(2) Designated Port:

As Toronto is the "pick-up" point in Canada of these birds it would seem that Chicago would probably be the better "designated port" for the birds to pass them.

References: FWS/LE PRT 2-352-07
PRT 2-353-25

Export Permit - Title 50, 17:22

Attachment to Form 3-200

(1) Common & Scientific names:

One (1) pair of Brown Eared Manchurian pheasants, (Crossoptilon-mantchuricum). Both birds are of 1976 hatchs (1) male and (1) female. Birds are to be exported to Canada to Mr. Len Glover of Stouffville, Ontario, Canada for for new blood for his existing flock and for the enhancement of propagation and survival of this species.

(2) The above birds were bred and hatched in captivity by Jim Chamberlain of Fallon, Nevada, U.S.A. during 1976.

(3) No attempt has ever been made, nor is one contemplated by the applicant to obtain birds from the wild or in any other manner that would cause injury or death to this specie.

(4). As in (2) above the birds were raised in captivity by Jim Chamberlain in Fallon, Nevada during 1976.

(5) Birds covered by this application will be housed at R.R.#4, Stouffville, Ontario, Canada.

(6) (6i): Not known.

(6) (6ii): I have never met Mr. Glover personnaly nor have I been to his averies, however I do know he has been raising rare pheasants for a good number of years and has a very good reputation as a breeder.

(6) (6iii): I feel positive Mr Glover will participate in a cooperative breeding program.

(6) (6iv): All birds will be shipped in unused wire bound crates, suitably padded with foam rubber to prevent any scalping or injury. Food and water containers will be sec securley wired to the corners of the crates which will be of sufficient size for the young birds to stand and turn around in, approximately 18" x 24" x 13" high. Crates will be newly painted and marked "Live Birds" on all four sides. One (1) bird only will be shipped in each crate.

(6) (6v): Unknown.

(7) There are no contracts or agreements with Mr. Glover except for the purchase price of $150.00. - There are no other participants in this transaction.

(8) to (8iv): I do not have the intimate knowledge of Mr. Glover's breeding operating facilities, objectives or future plans, but I can and do vouch for his sincerety and his ability as a breeder of rare pheasants.

(9): As Toronto, Ontario, Canada is the "click-up" point of these birds it would seem that Chicago would be the better "designated Port" for the birds to pass thru.

Import Permit

Title 50

17:22

Attachment to Form 3-200

(1). Common & Scientific names:

1 - Pair White Eared Manchurian Pheasants
(Crossoptilon - crossoptilon

2 - Pair Brown Eared Manchurian Pheasants
Crossoptilon - mantchuricum

All six (6) birds are of 1975 hatch
3 male and 3 females.

Birds are to be imported from Canada and forwarded to C. J. Chamberlain, 4850 Mccorn road, Fallon, Nevada for purposes for the enhancement of propagation and survival.

(2). The above birds were bred and hatched in captivity by Mr. Jack Schultesen, Of Devlin, Ontario, Canada during 1975.

(3). No attempt has ever been made, nor is one contemplated by the applicant to obtain birds from the wild or in any other manner that would cause injury or death to this species.

(4). As in (2) above, the birds covered under this application were raised in captivity by Jack Schultesen of Devlin, Ontario, Canada during 1975.

(5). The birds covered by this application will be housed at 4850 Mccorn Road, Fallon, Nc located on a 5 acre parcel of land 5 miles from Fallon in a rural farming area.

(6).

(6i) Pens for the White Eared Manchurians will be 10' x 50' x 6' high with an adjacent pen the same size along side for use if deemed necessary for any reason. The Brown Eared pens will be 10' x 30' x 6' high. See Enclosures (1), (2), & (3), for diagrams and pictures of interior and exterior of facilities.

(6) (ii) I have been raising the Manchurian pheasants for the past nine (9) years and hav been very successful in the propagation of this species. I hold the Master Breeder Award, the Star Breeder Award, and Outstanding Propagation Awards for each year since 19 issued by the American Game Bird Breeder's Cooperative Federation.
In 1973 I was awarded the "Pheasant Trophy" by the Canadian Ornamental Pheasant and Game Bird Association as the outstanding pheasant breeder of that year.
That particular year I raised thirty (30) Brown Eared Manchurians. This year, 1976, I ha successfully raised 24 of these fine birds from one single pair.

(6) (iii). I shall be very happy to participate in any cooperative breeding program and maintain or contribut data to a "Stud Book" as desir . or directed by the U.S. Fish & Willife Service.

(6) (iv). Any and all birds shipped will be in unused wire bound crates, suitably padded to prevent any scalping or injury. Food and water containers will be securley wired to the corners of the shipping crate which will be of sufficient size for birds to stand and turn around in, approximately 18" x 24" x 14" high for yearling Manchurians.

(6) (v). During the past five (5) years the only loss of birds, by any cause, was the loss o d Blue Eared Manchurians and 1 Brown Eared. A skunk dug under the back fence and did his th The following day an electric fence (two wire) was installed around the perimeter of the pen No loss to predators or disease has occured since.

(7). There are no contracts or agreeacnts with Mr. Schuiteman except for the purchase price of the birds. $125.00 per pair for the Brown Eared and $1000.00 for the White Eared. Birds will be sold by Mr. Jack Schuiteman of Devlin, Ontario, Canada to the above applicant there are no other participants in this transaction.

(8). It is hopefully and sincerely believed that the statements in (6)(ii) and (6)(v), above will justify the issuance of the requested Import Permit.

(8)(i). It is firmly believed that the requested Permit will enable me to establish a strong blood line in the Brown Eared and will truly enhance the propagation and survival of the White Eared based on my past performance with the Manchurian species.

(8)(ii). If the requested Import Permit is granted I plan to cross the imported Canadian birds with the excellent breeding stock I now possess (Brown Eared), this new blood I am certain will greatly enhance the propagation success I have had in the past - I have every confidence I can do the same with the White Eared.

(8)(iii). It is my feeling that no endangered species of animal, or bird should be quartered in one central location. Endangered species should be spread out to many and various [illegible] locations. In the event of a serious disease outbreak in one location birds or animals in another would tend to enhance the survival of that species.

(8)(iv). It is certainly my hope that the termination of the activity covered by the requested Permit will be a long way in the future. However, at the time when a surplus does occur in the above mentioned birds, these will be disposed of to qualified aviculturist as directed by the latest regulations of the U.S. Fish and Wildlife Service.

(Enclosures #1 thru #6 attached)

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-493-07; please refer to this number when submitting comments. All relevant comments received on or before March 10, 1977, will be considered.

Dated: February 4, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-4008 Filed 2-8-77;8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: William W. Lemburg, R.R. 1, Box 96, Calre, Nebraska 68824.

OMB NO. 42-R1370

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
To buy or sell within the United States the following waterfowl:
Hawaiian duck
Laysan teal
Nene goose
Mexican Duck

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
William W. Lemburg
R.R. 1 Box 96
Cairo, Nebraska 68824

Phone (308) 485-4620

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5' 11" WEIGHT: 165
DATE OF BIRTH: May 1, 1925
COLOR HAIR: Brown COLOR EYES: Blue
PHONE NUMBER WHERE EMPLOYED: (308) 485-4620
SOCIAL SECURITY NUMBER: 507-48-5056
OCCUPATION: Farming and Game Birds
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
On farm 4½ miles north of Cairo, Nebraska 68824

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit numbers)
PRT 7-148 P-2 (KC)
9628 Bird Banding
PRT 7-230.2.2 (KC)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Nebraska Commerical Game Breeder Permit #4021

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $

10. DESIRED EFFECTIVE DATE: As soon as possible

11. DURATION NEEDED: 2 years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Threatened Wildlife Section 17.33 Permit-captive, self-sustaining populations

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

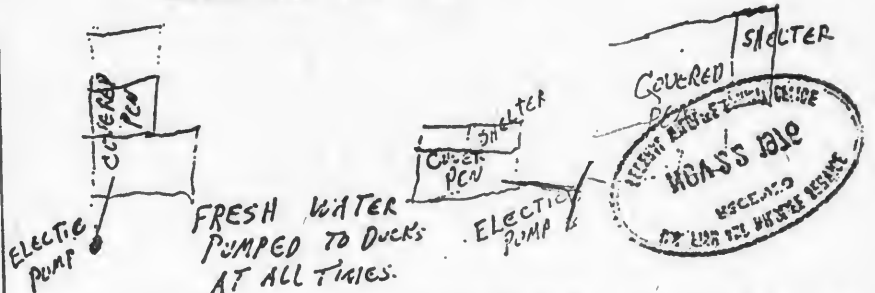
SIGNATURE (In ink): Wm. W. Lemburg
DATE: 11-9-76

9-200
10/76

GPO 888-842

I wish a permit to sell, trade or buy the following waterfowl to or from persons within the United States.

Nene Geese (Branta sandvicensis)
Hawaiian duck (Anas wyvilliana)
Laysan teal (Anas laysanensis)
Mexican Duck (Anas diazi)



I have had experience rearing waterfowl ever since I was old or big enough to carry a bucket of feed. I rear several hundred waterfowl each year such as Canvasback, Ringnecks, Scaups, Teals, Shovelers, Wigeons, Woodducks, etc. I have reared many Hawaiian duck, Laysan teal and Mexican ducks. I still do rear some of the last three. A few years back, I reared and returned to the State of New Mexico, over 200 Mexican ducks. I did not charge them any money for them.

I am willing to participate in a cooperative breeding program and to maintain or contribute data on a studbook. This is one reason for wanting a permit, to introduce new blood by trading or buying from other breeders.

Since air freight is used to send and receive birds, they are not in the crate over two days. I make wooden crates and use wood chips for bedding. A water container is placed in the crate and head lettuce is also provided.

I have not kept a record of the exact number of Hawaiian, Laysan and Mexican ducks loss in the past 5 years. Several were lost to Horned owls but I now keep them in pens with covered wire to prevent lost to owls. Because some birds are inBred they go blind so are not too long lived birds. Introducing new stock would help for this. I have had Laysan males kill the female. Keeping only one male in a pen, helps prevent this.

With this permit I hope to have new breeders work with these birds and I hope to bring in new birds to make my stock stronger. I hope to continue rearing them for years to come.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-497-25; please refer to this number when submitting comments. All relevant comments received on or before March 10, 1977, will be considered.

Dated: February 4, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-4009 Filed 2-8-77;8:45 am]

Geological Survey

PACIFIC AND THE GULF OF MEXICO AREAS

Revision of Outer Continental Shelf Order No. 11

Notice is hereby given that the Geological Survey intends to revise Outer Continental Shelf (OCS) Order No. 11 for the Gulf of Mexico and Pacific Areas.

The purpose of this revision is to modify the provisions of the Order in the following areas:

1. Rate Sensitivity: Reservoirs which may be demonstrated to be nonrate-sensitive may not be subject to balancing requirements.

2. Review of Maximum Efficient Rate (MER): The date for an annual review of all reservoir MER's may be established.

3. Reporting Procedures: Procedures currently in existence for reporting MER information and test period production clearances may be modified and simplified.

4. Well Testing: Well potential test procedures and reporting requirements may be modified.

5. Flaring and Venting of Gas: Language will be modified for specificity.

6. Multiple and Selective Completions: The system specified for numbering well completions may be modified. The requirement for packer tests may be eliminated.

7. Competitive Reservoir Operations: The provisions for competitive reservoir determination and operation may be modified.

In addition to the above stated subject areas, interested persons may submit comments by March 1, 1977, on other sections of OCS Order No. 11 to the Acting Chief, Conservation Division, U.S. Geological Survey, Mail Stop 600, National Center, Reston, Virginia 22092.

V. E. MCKELVEY,
Director.

[FR Doc.77-3991 Filed 2-8-77;8:45 am]

RESEARCH AND DEVELOPMENT ASSESSMENT ON SAFETY AND POLLUTION CONTROL FOR OCS OPERATIONS

Availability of Final Report

Notice is hereby given as to the availability of a report entitled "Final Report: Research and Development Assessment on Safety and Pollution Control for Outer Continental Shelf Operations."

This is a report of a study, conducted by specialists from the Harry Diamond Laboratories, Department of Defense, at the request of the Geological Survey, of research, development, and data gathering to increase safety and decrease pollution hazards in offshore oil and gas operations.

The general headings of the report are as follows:

1. Introduction
2. Structures
3. Drilling Operations
   - 3.1 Measurements while Drilling
   - 3.2 Gas Sensing
   - 3.3 Equipment Testing Program
   - 3.4 Computer Use
   - 3.5 Blowout-Preventer Pressure-Relief Valve
4. Subsurface Production
   - 4.1 Production Requirements
   - 4.2 Subsurface Production Systems
   - 4.3 Subsea Completions
   - 4.4 Subsea Workovers
5. Transportation of Men, Equipment, and Hydrocarbons
   - 5.1 Improved Stabilization of Workboat
   - 5.2 Transfer of Hydrocarbons to and from Tankers
   - 5.3 Corrosion, Erosion, and Location of Leaks in Pipeline Systems
6. Data Collection and Distribution
   - 6.1 Requirements
   - 6.2 Present Procedures
   - 6.3 Other Practical Procedures
   - 6.4 Recommendations
7. Summary and Conclusions
   - 7.1 Summary of Recommendations
   - 7.2 Conclusions

The purpose of the study was to identify safety and antipollution equipment and services for which additional research and development should be encouraged. The Geological Survey is interested in obtaining comments on the report and on the specific recommendations. Information concerning pertinent research and development already underway is also solicited. Copies of the report can be obtained from:

Acting Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 600, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

Comments on the report should be sent to the above address by March 15, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc.77-3992 Filed 2-8-77;8:45 am]

Mining Enforcement and Safety Administration

CERTAIN TESTED COMPOSITE COAL MINE DUST PERSONAL SAMPLER UNITS

MESA/NIOSH "Acceptance"

On January 19, 1977, the Administrator, Mining Enforcement and Safety Administration and the Director, National Institute for Occupational Safety and Health issued a letter to all coal mine operators notifying them that certain tested composite coal mine dust personal sampler units had been "accepted" for use until July 19, 1977, for the purpose of taking respirable dust samples as required by 30 CFR Part 70. The specifics are set forth in the letter below:

JANUARY 19, 1977.

TO ALL COAL MINE OPERATORS: The attached is a copy of the National Institute for Occupational Safety and Health (NIOSH) revocation of the certificates of approval issued to Bendix Corporation for its coal mine dust personal sampler units. In anticipation of the total impact this action would have on the coal mine respirable dust sampling program, NIOSH and MESA have been testing a number of prototype composite units submitted by the Bendix Corporation. These units consist of a Bendix pump, a Bendix adapter, and a Mine Safety Appliance Company pre-weighed filter cassette. This composite unit has been found by both agencies to meet the performance requirements of 30 CFR Part 74. However, due to the quality control requirement in 30 CFR Part 74 which relate to a total system, NIOSH has determined that they cannot at this time formally approve the composite unit. NIOSH is attempting to resolve the quality control issue as expeditiously as possible.

Under the circumstances and with the concurrence of the Director of NIOSH, the Administrator of MESA has determined, in the interest of protecting the health of our Nation's coal miners, to accept the use of such a composite unit for an interim period. The composite unit consists of the following:

Bendix Pump

Micronair II, Model C115, Micronair II with Koehler connector, Super Sampler Models 30, 31 and 44.

Adapter

National Mine Service Part No. P8110-0125 (available at no charge to coal mine operators currently using Bendix samplers).

Lapel Holder

National Mine Service Part No. 81100109

Pre-weighed Filter Cassette

Mine Safety Appliance Company Part No. 457193

Safeguard notices will be issued giving operators sufficient time to acquire the components needed to assemble the composite unit. Notices of violation will not be issued, provided the operator demonstrates a good faith effort to obtain the necessary components of the composite unit. The acceptance of the composite unit will expire July 19, 1977.

JOHN F. FINKLEA, M.D.,
Director, National Institute for Occupational Safty and Health.
ROBERT E. BARRETT,
Administrator, Mining Enforcement and Safety Administration.

The notice of revocation by NIOSH of the certificates of approval issued to the Bendix Corporation appeared in the

FEDERAL REGISTER for January 19, 1977 (42 FR 3714).

Dated: January 31, 1977.

ROBERT E. BARRETT,
Administrator, Mining Enforcement and Safety Administration.

Dated: February 3, 1977.

JOHN F. FINKLEA, M.D.,
Director, National Institute for Occupational Safety and Health.

[FR Doc.77-4002 Filed 2-8-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[USITC SE-77-13]

GOVERNMENT IN THE SUNSHINE

Commission Meeting for February 17, 1977

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on Thursday, February 17, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436. Except as hereinafter specified, the Commission plans to consider the following agenda items in open session:

1. Discussion of policy regarding the release of studies prepared for the President when authorization for such release has not been granted by the President;
2. Any items left over from previous agenda; and
3. Reorganization.

If you have any questions concerning the agenda for the February 17, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the February 17, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No. 3) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) The discussion would only concern internal personnel practice and procedures; and (2) The information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
Will E. Leonard, Commissioner
George M. Moore, Commissioner
Catherine Bedell, Commissioner
Italo H. Ablondi, Commissioner
Kenneth R. Mason, Secretary
E. Bernice Morris, Staff Assistant
Charles R. Ramsdale, Director, Personnel
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available)
Bruce N. Hatton, Assistant to Commissioner Leonard

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of February 17, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b (d) (1) and in conformity with proposed 19 CFR 201.37(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and proposed 19 CFR 201.37(b) (2) and (6).

Issued: February 4, 1977.

By order of the Commission:

KENNETH R. MASON,
Secretary.
RUSSELL N. SHEWMAKER,
General Counsel.

[FR Doc.77-4138 Filed 2-8-77;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. ALBERTSON'S, INC., ET AL.

Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed consent judgment and a competitive impact statement have been filed with the United States District Court for the District of Idaho at Boise in Civil Action No. 1-74-66. The complaint in this case alleged that the 1972 acquisition of Mountain States Wholesale Company by Albertson's, Inc. threatened to substantially lessen competition and create a monopoly in the wholesale and retail distribution of groceries and related products in southern Idaho and eastern Oregon.

The proposed judgment directs Albertson's to divest itself of all of its interest in Mountain States' wholesale grocery business to a person approved by the Government or the Court. The Government has informed Albertson's that, based upon its present information, the Government has no objections if Albertson's accomplishes the required divestiture by a sale of the assets to American Strevell, Inc. The proposed judgment also prohibits Albertson's for a period of five years from making any further acquisitions of retail grocery chains or wholesale grocery businesses in the State of Idaho and in Eastern Oregon without the prior approval of the Government or the Court.

Public comment is invited on or before March 28, 1977. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Anthony E. Desmond, Chief, San Francisco Office, Antitrust Division, Department of Justice, San Francisco, California 94102.

Dated: January 28, 1977.

DONALD I. BAKER,
Assistant Attorney General, Antitrust Division.

UNITED STATES DISTRICT COURT, DISTRICT OF IDAHO

United States of America, Plaintiff v. *Albertson's, Inc., et al.*, Defendants.
Civil Action No. 1-74-66.
Filed: January 28, 1977.

STIPULATION

It is stipulated by and between the undersigned parties, plaintiff United States of America, and defendant Albertson's, Inc., by their respective attorneys, that:

1. The parties consent that a final judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either plaintiff United States of America or defendant Albertson's, Inc. or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16] and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent which it may do at any time before the entry of the proposed final judgment by serving notice thereof on all defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff United States of America and defendant Albertson's, Inc. in this or any other proceeding.

Dated: January 28, 1977.

For the plaintiff: United States of America, Donald I. Baker, *Assistant Attorney General;* William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, James E. Figenshaw, Steven L. Weinstein, John L. Wilson, *Attorneys, Department of Justice.*

For the Defendant: Albertson's, Inc., Berman & Giauque, 500 Kearns Building, Salt Lake City, Utah; Richard W. Giauque, Albertson's Inc., 1623 Washington, Boise, Idaho; David Wolfe, *Attorneys for Alberson's, Inc.*

UNITED STATES DISTRICT COURT, DISTRICT OF IDAHO

United States of America, Plaintiff v. *Albertson's, Inc., et al.* Defendants.
Civil Action No. 1-74-66.
Filed: January 28, 1977.

FINAL JUDGMENT

Plaintiff United States of America, having filed its complaint herein on April 19, 1974, and defendant Albertson's, Inc., having appeared by its attorney, and both parties by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein and without this Final Judgment constituting evidence or admission by any party with respect to any issue of law or fact herein;

Now, therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby o*rdered, adjudged,* and *decreed:*

I

This Court has jurisdiction over the subject matter herein and the parties consenting hereto. The complaint states a claim upon which relief may be granted under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. § 18), as amended, commonly known as the Clayton Act.

II

The Mountain States wholesale grocery business means the wholesale grocery business of the Mountain States Wholesale Division of Albertson's, Inc. It shall include inventories, customer accounts other than Albertson's, real and personal property and goodwill. It shall not include the sundries business of that division.

III

The provisions of this Final Judgment shall apply to the defendant Albertson's, Inc. and to each of its subsidiaries, successors and assigns, and to each of their officers, directors, agents, and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant Albertson's, Inc., is hereby ordered and directed to divest within eighteen (18) months from the date of entry of this Final Judgment all of its interest in the Mountain States wholesale grocery business to a person approved by the plaintiff, or failing such approval, by the Court.

V

Each sixty (60) days until divestiture has been completed, the defendant Albertson's, Inc. shall file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment.

VI

For a period of five (5) years, defendant Albertson's, Inc. is enjoined from acquiring any retail chain of grocery stores (with more than 4 retail outlets or combined annual sales exceeding $5 million) or wholesale grocery business in the State of Idaho or Eastern Oregon (within 200 miles of Boise, Idaho), except with the approval of the plaintiff or of this Court upon a showing that such acquisition will not substantially lessen competition or tend to create a monopoly. Nothing in this section shall be construed to prohibit, or require said prior consent as to the creation of de novo retail stores or the reorganization of existing retail stores.

VII

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written report, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant markets each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

IX

Entry of this Final Judgment is in the public interest. DATED:

United States District Judge

UNITED STATES DISTRICT COURT, DISTRICT OF IDAHO

United States of America, Plaintiff v. Albertson's, Inc., et al., defendants.

Civil Action No. 1–74–66.

Filed: January 28, 1977.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. §§ 16(b)–(h), Pub. L. 93–528 (December 21, 1974)], the United States of America hereby files this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On April 19, 1974, the United States filed a civil complaint under Section 15 of the Clayton Act [15 U.S.C. § 25], alleging that the defendants had violated Section 7 of the Clayton Act [15 U.S.C. § 18]. The complaint charged that the June 13, 1972 sale of the assets and business of Mountain States Wholesale Company by DiGiorgio Corporation to Albertson's, Inc. threatened to substantially lessen competition and create a monopoly in the wholesale and retail distribution of a general line of groceries and related products in southearn Idaho and eastern Oregon.

II

PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

The wholesale distribution of a general line of groceries and related products in southern Idaho and eastern Oregon, also sometimes referred to as the Snake River Valley, is performed principally by three companies, with Mountain States Wholesale Company having the largest market share. The retail distribution of a general line of groceries and related products within this area is performed by a large number of independent retail grocery stores and by several retail grocery chains, with Albertson's, Inc. having the largest market share. Both Albertson's and Mountain States are headquartered in Boise, Idaho. At the time of the acquisition, Albertson's was a large customer of Mountain States, accounting for over 40 percent of Mountain States' total sales. In addition to supplying Albertson's stores and other independent retail customers with groceries and related products, Mountain States also sponsored a group of some 30 affiliated retail stores known as Foodland and Clover Farm Stores which were located in various cities and towns throughout southern Idaho and eastern Oregon.

In 1972, total wholesale sales of groceries and related products in southern Idaho and eastern Oregon were estimated to be about $124 million and total retail sales were estimated to be about $250 million. The complaint alleged that Albertson's acquisition of Mountain States would injure competition in several respects, including the following: (1) Wholesale competitors of Mountain States would be foreclosed from access to Albertson's as a customer; (2) Retail competitors of Albertson's might be foreclosed from access to Mountain States as a supplier; and (3) The acquisition generally reduced competition between Albertson's and Mountain State's group of affiliated stores throughout southern Idaho and eastern Oregon and in Boise, Idaho in particular. To remedy these and other effects, the complaint asked that Albertson's be required to divest itself of all the assets and business of Mountain States.

III

EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment directs Albertson's to divest itself of all of its interest in Mountain States' wholesale grocery business within eighteen months from the date the decree is entered to a person approved by the Government, or failing such approval, to a person approved by the Court. Albertson's has informed the Government that it has negotiated but not yet closed an agreement with American Strevell, Inc. which provides for the sale of said wholesale grocery business to American Strevell, Inc. The Government has informed Albertson's

by letter that, based upon its present information, the Government has no objection to said divestiture.

American Strevell is a grocery wholesaler headquartered in Salt Lake City, Utah, that presently competes in southern Idaho only in that portion of the state east of Twin Falls, Idaho. American Strevell presently has no sales in the area of Boise, Idaho, the state's largest city, and, by its purchase of Mountain States' wholesale grocery business, would be a new competitor in that area. Mountain States presently does compete to a small extent with American Strevell in a portion of southern Idaho east of Twin Falls, however, the Government believes that after sale of Mountain States' wholesale grocery business to American Strevell, all communities of southern Idaho and eastern Oregon will generally be served by the same number of wholesale distributors of groceries and related products and with comparable service as are other communities of similar size in adjacent geographical markets. Under the terms of the proposed consent judgment American Strevell would acquire the customer accounts of Mountain States' wholesale grocery business other than Albertson's. These accounts would include Mountain States' group of affiliated Foodland and Clover Farm Stores.

Prior to advising defendant Albertson's of its tentative approval of American Strevell as the purchaser of Mountain States' wholesale grocery business, the Government contacted and interviewed several executives in the wholesale grocery industry to ascertain whether such a sale would be in the public interest. Based upon those interviews and other investigation which it has conducted, the Government believes such a sale will remedy the anticompetitive effects charged by the complaint, restore competition in both the wholesale and retail distribution of groceries and related products in southern Idaho and eastern Oregon, and otherwise satisfy the public interest.

The proposed consent judgment also enjoins Albertson's for a period of five years from acquiring any retail grocery chain or wholesale grocery business in the State of Idaho or within Eastern Oregon except with the approval of the Government or the Court upon a showing that such acquisition will not substantially lessen competition or tend to create a monopoly.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent judgment not entered. However, pursuant to Sections 5(a) of the Clayton Act [15 U.S.C. § 15(a)], as amended, this judgment may not be used as prima facie evidence in private litigation.

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation by and between the United States and the defendant, which provides that the United States may withdraw its consent to the proposed judgment at any time until the Court has found that entry of the proposed judgment is in the public interest. The Government has advised Albertson's that, if it should have any objection to Albertson's contemplated sale of Mountain States' wholesale grocery business to American Strevell, Inc. before the proposed consent judgment is entered by the Court, it will withdraw its consent to the judgment. By its terms, the proposed consent judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit either of the parties thereto to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)], any persons wishing to comment upon the proposed judgment may, for a sixty-day period prior to the effective date of the proposed judgment, submit written comments to the United States Department of Justice, Attention Anthony E. Desmond, Chief, San Francisco Office, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102. The Department of Justice will file with the Court and publish in the FEDERAL REGISTER such comments and its response to them. In evaluating any and all such comments, the Department will determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI

DETERMINATIVE DOCUMENTS

Since there are no materials or documents which were considered determinative in formulating the proposed consent judgment, none are being filed by the United States pursuant to Section 2(b), of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)).

VII

ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT CONSIDERED BY THE UNITED STATES

Under the terms of the proposed consent judgment, Albertson's will divest itself of Mountain States' wholesale grocery business but will retain Mountan States' sundries business. Sundries consist of several hundred non-food items such as drugs, housewares, and apparel. Their manner and method of distribution is generally both separate and different from that of groceries. The Government has not insisted that Albertson's dispose of Mountan States' sundries business because the contemplated purchaser of Mountain States' grocery business, American Strevell, already has sufficient sundry supply centers of its own to meet the demand for sundries by Mountain States' non-Albertson's customers.

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this consent judgment. The Department of Justice believes the substantive language in the consent judgment to be of sufficient scope and effectiveness to make litigation for relief unnecessary as the judgment provides for all of the relief requested in the Complaint.

Dated: January 28, 1977.

Respectfully submitted,

JAMES E. FIGENSHAW,
STEVEN L. WEINSTEIN
Attorneys, Department of Justice.

[FR Doc.77-3693 Filed 2-8-77;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on February 24 and 25, 1977 in Conference Room B, Departmental Auditorium, between 12th and 14th Streets on Constitution Avenue, N.W., Washington, D.C.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor and the Secretary of Health, Education and Welfare on matters relating to the administration of the Act.

The meeting will begin at 9 a.m. The public is invited to attend. Agenda items will include an update of OSHA and NIOSH activities and action on reports from the subgroups.

For additional information contact:

J. Goodell, Chief, Committee Management Office, Occupational Safety and Health Administration, Department of Labor—OSHA, Room N-3635, Third Street and Constitution Avenue, NW., Washington, D.C. 20210. Phone: 202-523-8024.

Any written data or views concerning these agenda items or suggestions for future agenda items which are received by the Committee Management Office before the meeting, preferably with 20 copies, will be presented to the Committee and included in the official record of the meeting.

Anyone wishing to make an oral presentation should notify the Committee Management Office before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Chairman, depending on the extent to which time permits.

Official records of the meeting will be available for public inspection at the above address.

Signed at Washington, D.C., this 7th day of February, 1977.

J. GOODELL,
Executive Secretary.

[FR Doc.77-4363 Filed 2-8-77;10:02 am]

NATIONAL CAPITAL PLANNING COMMISSION

CITIZENS PARTICIPATION AND INTERGOVERNMENTAL LIAISON

Proposed Procedures

The National Capital Planning Commission will consider the adoption, at its March 10, 1977 meeting, of the following proposed procedures for citizen participation and intergovernmental liaison.

Interested organizations, agencies, and citizens are requested to submit their views thereon in writing to the Commission prior to March 7, 1977, addressed to:

Daniel H. Shear, Secretary, National Capital Planning Commission, Washington, D.C. 20576.

1. COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL—DISTRICT ELEMENTS (SEC. 2—FEDERAL INTEREST REVIEW [1]

A. *Citizen Participation.* (Comments and Statements on the Effect of the District Element or Amendment on the Federal Establishment and/or Federal Interests in the National Capital Region.)

1. Written comments to NCPC following publication in the FEDERAL REGISTER of notice that NCPC will review and act on a District element or amendment thereto; the notice would also be sent to the NCPC mailing list.

2. Oral comments at an open session Commission meeting.

B. *Intergovernmental Liaison.* Referral to affected Federal agencies for review and written comments.

II. COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL—FEDERAL ELEMENTS (SEC. 4)—PREPARATION

A. *Citizen participation.* 1. For each element written comments following publication in the FEDERAL REGISTER of notice that NCPC is circulating a draft statement of goals, objectives, criteria and alternative policies for review and comment.

2. Oral comments at an open session Commission meeting.

B. *Intergovernmental Liaison.* 1. Data gathering from interested and affected agencies as required.

2. Coordination with interested and affected agencies regarding staff drafts for each element.

3. Referral of relevant Comprehensive Plan materials to the following for informal review:

a. Appropriate Federal authorities,
b. Appropriate District authorities,
c. MWCOG (and through COG to local governments),
d. Local planning agencies,
e. State Clearinghouses,
f. Regional and subregional authorities.

III. COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL—FEDERAL ELEMENTS AND AMENDMENTS THERETO (SEC. 4)—ADOPTION

A. *Citizen participation.* 1. Written comments following publication in the FEDERAL REGISTER of notice that NCPC will review and act on a Federal element or amendment thereto. The notice will be sent to the NCPC mailing list.

2. Oral comments at an open session Commission meeting.

B. *Intergovernmental Liaison.* Referral as relevant to the following for review and written comments:

1. Appropriate Federal authorities,
2. Appropriate District authorities,
3. MWCOG (and through COG to local governments),
4. Local planning agencies,
5. State clearinghouses,
6. Regional and subregional authorities.

[1] Section 2(a)(4)(A) of the National Capital Planning Act of 1952, as amended, permits only 60 days for the initial NCPC review and Federal interest determination.

IV. FEDERAL AND DISTRICT PLANS AND PROJECTS (SEC. 5)—AGENCY PREPARATION

A. *Citizen Participation if Agency has Citizen Participation Process.* Agency to advise Commission at earliest possible time of citizen participation; Commission staff to participate in process as appropriate and where feasible to encourage agencies to provide for citizen participation as agencies develop their plans.

B. *Intergovernmental Liaison.* 1. Data gathering by agency as required—NCPC informed.

2. Coordination by NCPC with appropriate authorities in conjunction with sponsoring agency (early consultation).

V. FEDERAL AND DISTRICT PLANS AND PROJECTS (SEC. 5)—COMMISSION PLAN AND PROJECT REVIEW

A. *Citizen participation.* (All comments and statements on District plans and projects, except "in lieu of zoning" matters, should be limited to the effect of the plan or project on the Federal establishment and/or Federal interests in the National Capital Region.)

1. Written comments to NCPC following publication in the FEDERAL REGISTER of notice that NCPC will review and act on plan or project; the notice will also be sent to the NCPC mailing list.

2. Oral comments at an open session Commission meeting.

B. *Intergovernmental Liaison.* Referral to all or some of the following:

	By agency	By commission
1. State governments	Required by A-95.[1][2]	
2. MWCOG	Required by A-95.[1]	Pursuant to agreement with COG.[3]
3. Subregional agencies		Pursuant to sec. 5(d) of Planning Act outside District of Columbia.
4. Local governments		Through COG pursuant to informal agreement between COG and NCPC.
a. Executive administrative.		
b. Legislative.		
5. Local planning agencies		Pursuant to sec. 5(d) of Planning Act outside District of Columbia.
6. Other jurisdictions		

[1] Except for District plans, referral is presently by the Commission.
[2] No referral to District of Columbia.
[3] Master plans outside of District of Columbia only.

VI. FEDERAL CAPITAL IMPROVEMENTS PROGRAM (SEC. 7)—PREPARATION

A. *Intergovernmental Liaison.* 1. Data gathering from interested and affected agencies.

2. Coordination with interested and affected Federal agencies regarding agency capital budget and program submissions.

3. Coordination with relevant local, state and regional capital budgets and programs.

VII. FEDERAL CAPITAL IMPROVEMENTS PROGRAM (SEC. 7)—ADOPTION

A. *Citizen participation.* 1. Written comments following publication in the FEDERAL REGISTER of notice that NCPC is circulating a draft program for review and comment. The notice will be sent to the NCPC mailing list.

2. Oral comments at an open session Commission meeting.

B. *Intergovernmental Liaison.* Referral of draft program as relevant to the following:

1. Appropriate Federal authorities,
2. Appropriate District authorities,
3. MWCOG (and through COG to local governments),
4. Local planning agencies,
5. State Clearinghouses,
6. Regional and subregional authorities.

VIII. ZONING (SEC. 8)

A. *Citizen participation.* 1. Federal interest review:

a. Written comments to NCPC following publication in the FEDERAL REGISTER of notice that NCPC will review and act on a Zoning Commission of the District of Columbia proposal; the notice will be sent to the NCPC mailing list.

b. Oral comments at an open session Commission meeting.

2. Pre Zoning Commission or BZA hearing interventions (Federal interest and Comprehensive Plan consistency review) (Should NCPC intervene? NCPC position?) and post Zoning Commission Hearing (pre final order) referrals pursuant to statute: Oral comments at an open session Commission meeting.

B. *Intergovernmental Liaison.* Referral to affected Federal agencies.

DANIEL H. SHEAR,
Secretary.

[FR Doc.77-3922 Filed 2-8-77;8:45 am]

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

WORKSHOP ON EFT RELATED STANDARDS

Meetings

The National Commission on Electronic Fund Transfers and the National Bureau of Standards are cosponsoring a two day workshop on EFT related standards.

The meetings will be held on March 7 and 8 in Lecture Room D of the Administration Building at the National Bureau of Standards, Gaithersburg, Maryland. The meetings will begin at 9:00 and close at 4:30 each day.

The purpose of the workshop is to bring together experts and leaders in EFT standards field to determine the status of existing EFT related standards and identify specific areas where new standards are needed.

The meetings are open to the public on a first call basis to the extent space

permits. Any person interested in attending should first call Jack McDonnell at 202–254–7400 or Seymour Jeffrey at 301–921–3531 to check on the availability of space.

Dated: February 4, 1977.

JAMES O. HOWARD, Jr.,
General Counsel.

[FR Doc.77–4105 Filed 2–8–77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR MOLECULAR BIOLOGY

Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, it is hereby determined that the renewal of the Advisory Panel for Molecular Biology is necessary and is in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Office of Management and Budget (OMB), pursuant to section 14(a)(1) of the Federal Advisory Committee Act and OMB Circular No. A–63, Revised.

Authority for this advisory panel shall expire on February 25, 1979, unless the Director of the National Science Foundation formally determines that continuance is in the public interest.

RICHARD C. ATKINSON,
Acting Director.

FEBRUARY 3, 1977.

[FR Doc.77–4101 Filed 2–8–77;8:45 am]

ADVISORY PANEL ON PUBLIC UNDERSTANDING OF SCIENCE

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), it is hereby determined that the establishment of the Advisory Panel on Public Understanding of Science is necessary, appropriate, and in the public interest in connection with the performance of the duties imposed upon the Director, National Science Foundation (NSF) by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Office of Management and Budget (OMB), pursuant to Section 9(a)(2) of the Federal Advisory Committee Act and OMB Circular No. A–63, Revised.

1. *Name of group:* Advisory Panel on Public Understanding of Science.

2. *Purpose:* To provide advice and guidance in identifying problems and priorities in the area of public understanding of science and in increasing the effectiveness of the Public Understanding of Science Program; and to review and evaluate specific proposals, projects, and applications via peer review.

3. *Effective date of establishment and duration:* The establishment of the Advisory Panel on Public Understanding of Science is effective upon filing the charter with the Director, NSF and with the standing committees of Congress having legislative jurisdiction of the National Science Foundation. The Advisory Panel on Public Understanding of Science will continue for two years from the effective date.

4. *Membership:* The membership of the Advisory Panel on Public Understanding of Science will be fairly balanced in the terms of the points of view represented and the group's function. Membership of the Advisory Panel on Public Understanding of Science will consist of individuals from the public, private, and academic communities with expertise in the public understanding of science field. There will be no discrimination on the basis of race, color, national origin, religion, or sex.

5. *Advisory group operation:* The Advisory Panel on Public Understanding of Science will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), Foundation policy and procedures OMB Circular No. A–63, Revised, and other directives and instructions issued in implementation of the Act.

RICHARD C. ATKINSON,
Acting Director.

FEBRUARY 3, 1977.

[FR Doc.77–4100 Filed 2–8–77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

SERVICE CONTRACT ACT

Procurement Policy

In memoranda for the Secretary of Defense, Secretary of Labor, and Administrator of General Services, dated January 21 and 25, 1977, the Office of Federal Procurement Policy issued procurement policy for the Service Contract Act. Public comment was invited on this policy which was published as FEDERAL REGISTER document 77–3342, at 42 FR 6033, and FEDERAL REGISTER document 77–3341, at 42 FR 6035.

The issuances of January 21 and January 25, 1977 are cancelled by the memorandum which is included in this notice for those interested.

Dated: February 7, 1977.

HUGH E. WITT,
Administrator.

FEBRUARY 4, 1977.

Memorandum for: Secretary of Defense, Secretary of Labor, Administrator of General Services

Subject: Procurement Policy for the Service Contract Act

In view of the need of the new Administration to consider the issues involved, my memoranda, subject as above, dated January 21 and January 25, 1977 are hereby cancelled.

HUGH E. WITT,
Administrator.

[FR Doc.77–4266 Filed 2–8–77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–5801, 34–13227, 35–19862; (S7–673)]

ACCOUNTNG AND FINANCIAL REPORTING FOR OIL AND GAS PRODUCERS

Solicitation of Comments

Public Law 94–163, the Energy Policy and Conservation Act, in Title V, Sec. 503, requires that the Commission "* * * take such steps as may be necessary to assure the development and observance of accounting practices to be followed in the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States."

The Act gives the Commission "* * * authority to prescribe rules applicable to persons engaged in the production of crude oil or natural gas, or make effective by recognition, or by other appropriate means indicating a determination to rely on, accounting practices developed by the Financial Accounting Standards Board, if the Securities and Exchange Commission is assured that such practice will be observed by persons engaged in the production of crude oil or natural gas to the same extent as would result if the Securities and Exchange Commission had prescribed such practices by rule."

The Commission views its responsibilities under this Act as being divided between two related areas. The first area involves financial reporting by oil and gas producers. The Commission, consistent with its policy most recently expressed in Accounting Series Release No. 150 [39 FR 1260], contemplates that the Financial Accounting Standards Board (FASB) will be providing the leadership in establishing financial accounting principles and standards for producers of oil and gas. As provided in the Act, the Commission currently contemplates that it will solicit public comment on whether it should rely on the standards which it expects the FASB to promulgate.

The second area of the Commission's responsibilities under the Act is closely related but may be considered separately from financial reporting. The Act specifies certain financial and operating data which are required to be compiled by domestic producers of oil or gas and reported to the Federal Energy Administrator. These accounting practices to be developed pursuant to the Act must permit, to the greatest extent practicable, the compilation of these data.

The FASB has recently published a discussion memorandum entitled "An Analysis of Issues Related to Financial Accounting and Reporting in the Extractive Industries." This discussion memorandum is a neutral document which solicits written comments by all parties interested in the subject. The comments received in response to the discussion memorandum will constitute a part of the FASB's public record on this project and, in accordance with its customary public record procedures, will

be made available to all interested parties. In addition, the Financial Accounting Standards Board will hold a public hearing on this subject beginning March 30, 1977.

The Commission encourages all interested parties to obtain and comment on the FASB's discussion memorandum and to participate in the public hearing. The Commission will review all written comments submitted to the FASB, and a representative of the Commission will observe the public hearings. The Commission considers these proceedings to be extremely important in meeting its responsibilities under the Act.

Furthermore, the discussion memorandum in Part Two of Chapter XIII solicits comments on the development of accounting practices needed to compile the financial and operating data to be reported to the Federal Energy Administrator under the Act's provisions. The Commission encourages all interested parties to submit their views on these matters to the FASB. The Commission considers these responses to be an important step in the development of accounting practices in this area as required by the Act. These comments will provide, in part, the basis for any future rulemaking to be proposed for public comment by the Commission.

Written comments to the FASB's discussion memorandum are due March 7, 1977. A copy of the discussion memorandum and a copy of the notice of the FASB's public hearing may be obtained without charge by mailing a request to the following address:

Publications Division, File Reference 1015, Financial Accounting Standards Board, High Ridge Park, Stamford, Connecticut 06905.

In addition to encouraging interested parties to comment on the FASB's discussion memorandum, the Commission would welcome expressions of other views directly to the Commission on issues involved in this project by any parties who wish to do so at the present time. Such correspondence, which will be available for public inspection, should refer to File No. S7-673 and should be sent to the following:

George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 31, 1977.

[FR Doc.77-4091 Filed 2-8-77;8:45 am]

[Release No. 34-13212; File No. SR-Amex-76-19]

AMERICAN STOCK EXCHANGE, INC.

Proposed Rule Change By Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1976, the American Stock Exchange, Inc. (the "Amex"), filed with the Securities and Exchange Commission a proposed rule change as follows:

AMEX'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Amex proposes to establish a schedule of charges to subscribers of Amex market communication services. A copy of the proposed schedule of charges is annexed as Exhibit A.

AMEX'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing rule change is as follows:

The purpose of the establishment of charges for communication services is to help defray the costsof providing such services.

The basis under the Act for the proposed rule change is Section 6(b)(4).

The Amex has not formally solicited comments regarding this proposed change, nor has the Amex received any unsolicited written comments from members or other interested parties.

The proposed rule change will not impose any burden on competition.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 24, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 27, 1977.

EXHIBIT A

AMERICAN STOCK EXCHANGE, INC.

General rate structure

Subject to receipt of requests from potential subscribers or vendors as appropriate, charges for computer input of current bid/ask data will be comprised of the following elements:

An access charge; that is, the charge would be based upon the method (high speed line, data base interface arrangement or low speed line) by which the information is transmitted.

A charge for each type of computer program used at each location.

Special charges, where applicable.

All charges would apply to the beneficial users even though the actual programs may reside in service bureau or vendors computers.

Access charge

Users of the Current Bid-Ask Computer Input Service will each be charged a single data-base access charge at the highest rate applicable of the following:

Access method:	*Monthly charge*
1. Via the high-speed line whether accessed directly, or indirectly without significant reprocessing under approved arrangements.	$250.
2. Via an approved data-base vendor and a recipient, where the vendor has significantly reprocessed the data for the recipient, whether transmitted continuously or upon request. (NOTE. — This access charge is not applicable when only category 3 operations control programs are performed to produce a low-speed ticker—see below.)	$150.
3. Via low-speed ticker. (NOTE.—Although no access charge is applicable to low-speed ticker input, all other charges relative to the ticker network are applicable.)	No charge.

Program category charges

Five broad categories of computer programs utilizing bid-ask data have been established. Users of Current Bid-Ask Computer Input Service will be charged for each classification utilized at each location.

Special charges

All charges above are for standard equipment, circuit installation and data arrangements. Additional charges, generally on a cost recovery basis would apply to special arrangements not covered above.

	Monthly charge (Per class, per location)
Rate classes:	
Category 1 refers to nonanalytical reformatting of data-base information for the purpose of servicing interrogation devices by: (a) Responding to specific inquiries for bid-ask prices or associated data, or (b) reporting, as they occur, changes in bid-ask prices or associated data for a limited number of stock or bonds.	No charge.
Category 2 refers to the compilation and dissemination of stock tables by press associations for newspaper purposes from data, to be paid by the news services.	$200.
When combined with last sale computer input services, total price.	$275.*

	Monthly charge (Per class, per location)
Category 3 refers to operations control programs designed for monitoring and surveillance purposes, order/report price validation, limit order switching, order status, checking and related activities.	$200.
When combined with current last sale computer input services, total price.	$275.*
Category 4 refers to analysis programs leading to purchase/sales or other trading decisions; e.g., arbitrage programs and options analysis.	$50.
(NOTE.—Standard analysis programs, offered by a vendor to all users equally, result in a charge to vendor. Programs having elements unique to users result in charges to the users.)	
Category 5 refers to market making programs which generate quotations or execute transactions in an automatic or semiautomatic manner.	$1,000.
When combined with current last sale computer input service, total price.	$1,350.

NOTE.—Any and all other uses of current bid-ask data for computer input would be prohibited prior to appropriate request, classification, and rate determination.

When current bid-ask computer input service is paired with CTA Network B Current Last Sale Computer Input Service in categories 2, 3, and 5, a lower total "common usage rate" applies as indicated by those charges marked with an asterisk (*)—CTA Network B Last Sale Computer Input Service rates may be obtained from the American Stock Exchange, Market Communications Department, 86 Trinity Place, New York, N.Y. 10006.

[FR Doc.77-4095 Filed 2-8-77;8:45 am]

[Release No. 34-13224; File No. SR-BSPS 77-1]

BRADFORD SECURITIES PROCESSING SERVICES, INC.

Proposed Rule Change by Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 5, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The proposed rule change is the implementation of a Fixed Income Accounting Service (FIAS). Bradford Securities Processing Services, Inc. (BSPS) is developing a fixed income accounting service which together with sophisticated data processing equipment will provide an automated system of fixed income securities accounting for securities broker/dealers. The system will provide such firms with reports on a day to day basis from input data provided by such firms. Output supplied by the FIAS system meets and exceeds the minimum recordkeeping requirements for registered broker/dealers and will aid them in keeping their books and records current. The system has been designed in such a way to insure the integrity of each customer's processing and assures the confidentiality of each firm's records.

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the FIAS system is to make available to securities brokers and dealers sophisticated computer processing capabilities which will greatly enhance their recordkeeping capabilities. The output from the system meets and exceeds the present recordkeeping requirements for securities broker/dealers as outlined in Rules of the Securities and Exchange Commission.

The implementation of this system will enable the brokers and dealers to more easily comply with the rules and regulations relative to their brokerage activities.

Verbal comments received from our existing customers and potential customers indicates a need to have an automated fixed income accounting service.

BSPS is of the opinion that the implementation of this system will not impose any burden on competition but rather will supply a needed service where nothing comparable exists.

On or before March 16, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before?

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 31, 1977.

[FR Doc.77-4089 Filed 2-8-77;8:45 am]

[Rel. No. 9627; 811-2204]

CAPITAL RESOURCE CORP.

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

FEBRUARY 1, 1977.

Notice is hereby given that Capital Resource Corporation ("Applicant"), 3825 82nd Street, Urbandale, Iowa 50322, and Iowa corporation registered as a closed-end, nondiversified management investment company under the Investment Company Act of 1940 ("Act"), filed an application on November 6, 1975, and amendments thereto on July 14 and October 27, 1976, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized on July 7, 1970 and registered under the Act on June 29, 1971. Applicant states that because of market conditions, disappointing investment performance and a high level of expenses in relation to income, its Board of Directors recommended and its shareholders approved on October 23, 1975, a proposal to terminate Applicant's registration under the Act. Applicant therefore filed an application on November 6, 1975 for an order of the Commission declaring that Applicant had ceased to be an investment company as defined in the Act.

Applicant states that in the course of its review of the application, the staff of the Commission undertook an examination of the affairs of Applicant. At the conclusion of its examination, the staff observed various deficiencies in Applicant's compliance with provisions of the Act, and various deficiencies on the part of William R. Sloane & Associates, Inc., the former investment adviser to Applicant, under the Act and the Investment Advisers Act of 1940. With respect to Applicant, these deficiencies were reviewed by counsel for Applicant with the Board of Directors at a meeting held on March 4, 1976. At such meeting, the Board of Directors initiated action to bring the affairs of Applicant into compliance with the Act to the extent it was able to do so, and at the same time, adopted a Plan of Liquidation and Dissolution for submission to Applicant's shareholders. A special meeting of Applicant's shareholders was held on June 17, 1976, at which the Plan of Liquidation and Dissolution was approved. In connection with such meeting, the shareholders were furnished an Information Statement which included detailed information about the deficiencies observed by the Commission's staff in its examination of Applicant.

Applicant represents that on October 1, 1976, an initial liquidating distribution was paid to shareholders of record on

September 1, 1976, and on the same date a Statement of Intent to Dissolve was filed by Applicant with the Secretary of State of the State of Iowa. Applicant states that the Board of Directors has reserved the sum of $6,000.00 to pay anticipated additional corporate operating expenses, liquidation and dissolution expenses, and the expenses of accountants and counsel which may be incurred prior to dissolution. Any portion of such reserve not required for such purposes will be distributed as a final liquidating distribution. Applicant notes that all of its assets available for distribution to its shareholders have been and will be distributed pro rata to all shareholders in accordance with the number of shares held by each, except with respect to 3,000 shares held by William R. Sloane, the former President of Applicant and its former investment adviser, for which a written waiver of the right to receive any distribution thereon has been received.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 28, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication shall be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–4090 Filed 2–8–77;8:45 am]

[Rel. No. 19863; 70–5736]

CENTRAL AND SOUTH WEST CORP. ET AL.

Proposed Acquisition of Interests in Coal and Lignite Acquisition and Development Projects

FEBRUARY 1, 1977.

In the Matter of Central and South West Corporation, P.O. Box 1631, Wilmington, Delaware 19899; Transok Pipe Line Company, P.O. Box 3008, Tulsa, Oklahoma 74101; Public Service Company of Oklahoma, P.O. Box 201, Tulsa, Oklahoma 74102.

Notice is hereby given that Central and South West Corporation ("CSW"), a registered holding company, Public Service Company of Oklahoma ("PSO"), a CSW subsidiary electric utility company, and Transok Pipe Line Company ("Transok"), a subsidiary pipe line company of PSO, have filed a post-effective amendment to their application-declaration, previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, 9, 10 and 12 (f) of the Act and Rules 43 and 100 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated June 14, 1976 (HCAR No. 19572) issued in this proceeding, PSO and Transok were authorized to acquire various interests relating to fuel exploration and development activities through December 31, 1977. PSO and Transok were authorized to spend a total of $50,816,300 for such activities, including $10,607,500 for fuel exploration, $770,000 for property acquisition, $31,438,800 for fuel resources development and $8,000,000 then unallocated.

The prior order issued in this proceeding did not contemplate or authorize the conduct of coal and lignite exploration and development activities by PSO and Transok as a part of their fuel exploration and development program. It is now proposed that the program be expanded to include such coal and lignite projects. The budget limitations for the fuel activities are not proposed to be changed from the amounts authorized in the prior order.

PSO states that it has entered into four joint ventures in east Texas with the other CSW operating utility subsidiaries for the exploration and development of lignite resources. PSO has an undivided 10% interest as a tenant in common in the ventures. Through September 30, 1976, PSO had acquired 11,079 net acres and PSO had spent $552,472 on the ventures. PSO states that it has also spent $40,586 on a project in Southern Arkansas which has been terminated. PSO expects to spend approximately $869,000 during 1977 to acquire interests in these ventures.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses to be incurred in connection with the proposed transaction are estimated to consist of legal fees of $100.

Notice is further given that any interested person may, not later than February 28, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as further amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as further amended by said post-effective amendment, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the of the General Rules and Regulations promulgated under the Act, or the Commission may grant exception from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–4093 Filed 2–8–77;8:45 am]

[Rel. No. 9625; 812–3730, 813–43]

PARCO MANAGERS CORP. AND UNITED PARCEL SERVICE OF AMERICA, INC.

Notice of and Order for Hearing

FEBRUARY 1, 1977.

In the matter of Parco Managers Corporation, Room 745, 643 West 43rd Street, New York, New York 10036 and United Parcel Service of America, Inc., Greenwich Office Park 5, Greenwich, Connecticut 06830 (812–3730) (813–43).

Notice is hereby given that Parco Managers Corporations ("Parco") and United Parcel Service of America, Inc. ("UPS") (collectively, "Applicants") filed an application on November 27, 1974, and amendments thereto on January 16, 1976, June 25, 1976, and December 3, 1976, pursuant to Section 6(b) and 6(c) of the

Investment Company Act of 1940 (the "Act") for an order exempting Parco from Sections 2(a)(13), 10(a), 16(a), 17 (a), (d) and (f), 18(a), (c) and (i), 19 (b), 20(a), 23 (b) and (c), and 30 (a), (b) and (d) of the Act as conditioned in the application, so that Parco may register under the Act and make a public offering as described therein. All interested persons are referred to the application, as amended, on file with the Commission for a statement of the representations made therein, which are summarized below.

Parco is in the business of investing in UPS capital stock. It owns no securities other than such UPS stock and prime short-term debt securities. Parco was organized to afford certain key managerial UPS employees the opportunity for increased ownership interest in UPS. Parco has issued three outstanding classes of stock. All of the common stock is owned by UPS managerial employees, and all of the Class A stock, par value $10 and callable at $10.30, yielding 6% (issued as dividends on the common), is owned by UPS employees and former employees. All of the outstanding preferred stock, par value $100 and callable at $102.50, yielding 7%, has been issued and sold to UPS at par value, and, in turn, has been donated by UPS to charitable institutions.

Parco represents that it does not have more than 100 shareowners and is not making, nor without an order under the Act would it propose to make, a public offering of its stock. However, if the order requested is granted, Applicants intend to register stock of Parco under the Securities Act of 1933 and to offer additional selected UPS employees but in any event not more than 1% of all UPS employees, the opportunity to purchase Parco common stock.

UPS, a corporation registered under Section 12(g) of the Securities Exchange Act of 1934, through its wholly owned subsidiary companies is engaged in providing specialized transportation services, principally the delivery of small packages and parcels throughout most of the United States, primarily as a common carrier. UPS is the largest parcel delivery service in the United States and employs approximately 80,000 people. Approximately, 99.3% of UPS' outstanding capital stock is owned by or for the benefit of UPS employees, former employees, their estates and families, and donees and charitable foundations established by the founder of UPS and members of his family.

UPS capital stock is not traded on a national securities exchange or in the organized over-the-counter market. Most purchases of UPS capital stock have been by UPS itself, and most of the shares purchased have been distributed to managerial employees as incentive awards under the UPS Managers Incentive Plan. UPS periodically notifies its shareowners of its willingness to purchase shares of its capital stock at prices determined by the Board of Directors. In determining the prices, the Board has considered a variety of factors, including past and current earnings and prospective earnings estimates, the ratio of UPS capital stock to the debt of UPS, other factors affecting the business and outlook of UPS and general economic conditions, as well as opinions furnished from time to time by Citibank N.A. of New York and by Scudder, Stevens & Clark, a New York firm of registered investment advisers, as to the value of UPS shares.

Applicants represent that UPS annually selects the UPS employees to whom offers of Parco common stock will be made. UPS also determines the amount of Parco preferred stock which it will purchase. As of December 31, 1975, for each dollar of Parco common stock, UPS has invested $19.49 in Parco through the purchase of preferred stock. Applicants submit that substantially all of the proceeds from the sale of the Parco common and preferred stock have been used by Parco to purchase shares of UPS capital stock and to supplement funds used for the payment of cash dividends on the preferred and Class A stock. The price of such UPS stock is determined as described above. Because Parco preferred stock has a fixed yield, Parco common stock appreciates (and depreciates) at a greater rate than the UPS stock itself. Applicants represent that the issuance of senior securities by Parco does not increase unduly the speculative character of Parco common stock but it permits increased identification of the interests of these UPS employees with those of UPS.

UPS and Parco seek an exemption for Parco, pursuant to Section 6(c), from Section 2(a)(13) of the Act to permit consideration of its other requests for exemption as if it were an employee's securities company. Section 2(a)(13) of the Act defines "employees' securities company" to include "any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees * * * of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees * * * or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons." Applicants state that the only disqualification from meeting the standards of Section 2(a)(13) is based on the fact that Parco's preferred stock is held by certain charitable donees after it is purchased by the employer of its other shareholders.

Parco and UPS have also requested that, pursuant to Section 6(b) of the Act, or alternatively pursuant to Section 6(c) of the Act, the Commission exempt Parco as an employees' securities company from those sections of the Act enumerated in the first paragraph hereinabove. Section 6(b) of the Act provides that "upon application by any employees' security (sic) company, the Commission shall by order exempt such company from the provisions of [the Act] and of the rules and regulations [t]hereunder, if and to the extent that such exemption is consistent with the protection of investors. In determining the provisions to which such an order of exemption shall apply, the Commission shall give due weight, among other things, to the form of organization and the capital structure of such company, the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, the prices at which securities issued by such company are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the issuer of any such security." Section 6(c) of the Act provides that the Commission by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants assert that those sections of the Act from which exemption is sought would be significant impediments to the functioning of Parco, and, therefore, would deprive UPS managerial and supervisory employees of the benefits of stock ownership in Parco. Parco and UPS further believe that the Act was not intended for the regulation of a company such as Parco, whose securities are owned almost entirely by persons holding important managerial positions in UPS, in whose equity securities Parco invests.

Section 10(a) of the Act provides that no registered investment company may have a board of directors of which more than 60% of the members are interested persons of such company. Parco's board consists of three directors, each of whom is a UPS officer or employee so that Parco may be deemed not to comply with Section 10(a) of the Act. Applicants assert, however, that compliance with Section 10(a) would require that Parco's board no longer be representative of its shareholders.

Section 16(a) of the Act provides, in pertinent part, that no person shall serve as a director of a registered investment company unless elected by shareholders, except that vacancies occurring between meetings can be filled in any otherwise legal manner if immediately following such appointment at least two thirds of the directors shall have been elected; and that if at any time less than a majority of the directors have been elected by a vote of shareholders, a special meeting must be held within 60 days to fill existing vacancies.

Applicants state that Parco's intention is to continue to have a board of directors comprised of UPS employees or Parco shareholders. They further state that the expense of holding a special meeting to fill interim vacancies on Parco's board is unjustified.

Section 17(a) of the Act, in pertinent part, provides that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, knowingly to sell any security or other property to such registered company or knowingly to purchase from such registered company any security or other property; Section 17(b) provides that an application may be filed for an order of exemption from such prohibitions. Section 17(d) of the Act and Rule 17d–1 thereunder, in pertinent part, provide that no affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, shall participate in or effect any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which such registered company is a participant, unless an application has been filed, and an order granted, which permits such transaction.

Because of the control of Parco by UPS, Applicants may be deemed to be affiliated persons of each other as defined in Section 2(a)(3) of the Act, and most Parco shareholders may be deemed to be affiliated persons, or affiliated persons of affiliated persons, of Parco and UPS. Accordingly, Applicants request that the following transactions be exempted from Section 17(a) of the Act: (1) sales by UPS to Parco of UPS capital stock (at prices no greater than the price at which UPS is, at such times, offering to purchase such stock from its shareholders); (2) purchases by UPS from Parco of UPS capital stock (at prices at which UPS is at such times offering to purchase such stock from its shareholders); and (3) continuation of the option granted by Parco to UPS to purchase, at UPS's discretion, the shares of UPS owned by Parco (at prices which UPS is offering, at such times, to purchase its stock from its shareholders).

Because of the aforementioned relationship, Applicants also request permission to engage in the following transactions to the extent that they might be deemed to be prohibited by Section 17(d) of the Act: (1) transactions for which exemption is sought from Section 17(a) hereunder; (2) the voting of shares of UPS owned by Parco, any affiliate of Parco, or any affiliate of UPS; (3) sales by Parco of its preferred stock to UPS (at a price equal to its par value); (4) sales by Parco of its common stock to persons affiliated with Parco or UPS (at the net asset value of such stock); (5) redemption by Parco of Parco preferred and Class A stock owned by UPS or persons affiliated with UPS or Parco (at the respective redemption prices thereof); and (6) purchases by Parco of its common stock from persons affiliated with Parco or UPS (at the net asset value of such stock).

Applicants assert that although Section 17(b) of the Act and Rule 17d–1 under the Act provide bases upon which orders relieving Applicants from the prohibitions of Section 17(a) and (d) may be granted, it would be impractical to file an application each time such a transaction was proposed. Such transactions are all in the ordinary course of business for Parco and UPS. Moreover, the prices of UPS stock for these transactions are established by the UPS board in the manner described above for purposes of all UPS stock transactions, not only those involving Parco. All transactions involving Parco stock will be at its net asset value, as calculated, or, in the case of the preferred stock, par value. Finally, Applicants assert that Section 36(a) will remain applicable to any Parco director or officer engaging in any act constituting a breach of fiduciary duty involving personal misconduct in respect to Parco.

Section 17(f) of the Act and the rules thereunder provide that every registered management company must place and maintain its securities either in the custody of a bank, or in the custody of a member of a national securities exchange, or in its own custody in accordance with such rules. Parco presently maintains its UPS securities at UPS corporate headquarters and UPS maintains records of Parco's ownership. Parco's short-term securities are held by the Chase Manhattan Bank N.A. The one UPS employee who has access to these securities, will be bonded pursuant to the provisions of Section 17(g) and Rule 17g–1. The Parco officers who can examine such securities will not be bonded. Applicants state that compliance with Section 17(f) is unnecessary for the protection of Parco shareholders and request an exemption from it.

Section 18(a) provides, in pertinent part, that it shall be unlawful for any closed-end company to issue or sell any class of senior security which is a stock unless (A) immediately after issuance or sale, it will have an asset coverage of at least 200 per centum; (B) the declaration of any dividend or other distribution upon the common stock and any purchase of common stock is prohibited unless the senior security has at the time an asset coverage of at least 200 per centum after deducting the amount of such dividend, distribution or purchase; (C) the holders of such senior sceurities can elect at least two and, under some conditions, a majority of the directors of the company; (D) the vote of a majority of such senior securities is needed to approve any plan of reorganization; and (E) such class shall have complete priority over any other class as to the distribution of assets and payments of dividends. Section 18(c) provides, in pertinent part, that it shall be unlawful for any closed-end company to issue or sell any senior security if immediately thereafter such company will have more than one class of senior security. Section 18(i) requires, in pertinent part, that every share of stock issued by a registered management company shall be voting stock.

Applicants state that Parco preferred and Class A stock are each senior securities. When such stock is issued and when dividends are declared on Parco common stock, the preferred and Class A have substantially less than the required 200% asset coverage. In addition, neither the preferred nor the Class A have voting rights, except that the preferred stock has limited voting rights when dividends are in arrears for two years or longer. Accordingly, Applicants request an exemption to permit the continuation of the present capital structure and voting arrangement. In support, Applicants note that the two classes of senior security have priority over the Parco common stock as to the distribution of assets and declaration of dividends, and that the preferred has priority over the Class A stock. In addition, Applicants assert that the New York Business Corporation Law provides protection for Parco shareholders from the declaration of dividends without adequatae asset coverage. Voting rights are asserted to be unnecessary because the holders of preferred stock have tendered no consideration for their stock and because the Class A stockholders are virtually the same persons as the common stockholders who have all voting rights. Finally, Applicants state that Parco's capital structure is an integral element of its ability to provide increased identification of the interests of the UPS employees who purchase Parco stock with the interests of UPS, because such capitalization provides Parco shareholders with opportunities to increase the value of their investment as the value of UPS stock increases in higher ratios than would otherwise be possible.

Section 19(b) of the Act provides, in pertinent part, that it shall be unlawful, in contravention of rules, to distribute long-term capital gains more than once annually; and Rule 19b–1(b) prohibits any non-"regulated investment company" as defined in the Internal Revenue Code, as amended, from making such distributions of long-term capital gains more than once annually.

Parco requests an exemption so that it can continue to make two divided distributions annually, each of which could reflect long-term capital gains. Parco asserts that it distributes surplus resulting from income and UPS stock appreciation, subject to New York Business Corporation Law ("NYBCL") which adequately protects against most of the same problems with which Rule 19b–1 deals. Section 510(b) of the NYBCL provides that dividends may only be paid out of surplus and Section 510(c) provides that dividends paid from sources other than earned surplus must be accompanied by a disclosure regarding the sources of the dividend. Accordingly, if

there is insufficient appreciation and no surplus capital, Parco will have to reduce its dividends.

Section 23(b) of the Act provides, in pertinent part, that no closed-end investment company may sell common stock of which it is the issuer below its current net asset value. Parco asserts that it does sell its common at net asset value and must do so as a condition to the requested relief from Section 17. Applicants request an exemption, to the extent necessary, so that Parco may continue to determine such net asset value by referring to the UPS stock prices as determined by the UPS board of directors so long as the Parco determination of such value is made by its directors in good faith.

Section 23(c) of the Act and the rules thereunder, in pertinent part, provide that no close-end investment company may purchase any class of its own securities except under certain circumstances not met in this case. Parco requests an exemption so that it may continue to repurchase its preferred, Class A and common stock. Preferred and Class A stock can be purchased by Parco at their predetermined prices. Parco has a right of first refusal on all proposed sales of its common and Class A stock. Parco has the right to purchase its common stock from retiring UPS employees, and Parco has exercised this right at all such times. If this order is granted, Parco will grant its shareholders the right upon termination of employment to require such repurchase. The purchases of common stock by Parco are required to be at current net asset value as determined above. Accordingly, Parco may be deemed to violate section 23(c) of the Act, and Applicants request an exemption therefrom.

The right of Parco to repurchase its securities is represented to enable it to limit the ownership of common stock to active UPS employees. Moreover, the repurchase prices are calculated on the uniform predetermined basis which is disclosed to all shareholders and is nondiscriminatory between shareholders of a class. Applicants represent that no repurchases at higher prices have occurred and that no persons except the Parco offerees have purchased Parco common or Class A stock.

Section 20(a) of the Act and Rule 20a–1 thereunder require that every registered investment company in soliciting proxies comply with the standards of Section 14(a) of the Securities Exchage Act of 1934 relating to such proxy material. Parco requests an exemption from this section on the basis that the cost of providing its shareholders such material would be excessive and unnecessary in view of the other information available to its shareholders in the form of the UPS proxy statement and annual report and the Parco annual financial statements.

Section 30 of the Act requires all registered investment companies to prepare various reports for the Commission, including certain financial information, and to transmit to its shareholders, at least semi-annually, certain financial information. Parco is prepared to comply with the various reporting requirements of Section 30 except that its audited financial statement is not prepared until June of each year. It requests exemption from the requirements of Section 30 so that unaudited financials may be submitted with its reports until the audited financials are available.

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application. Accordingly,

It is ordered, pursuant to Section 40(a) of the Act, that a hearing on the aforesaid application under the applicable provisions of the Act and the rules of the Commission thereunder be held on the 14th day of March 1977 at 10:00 a.m., in Room 776 of the Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. Any person, other than the Applicants, desiring to be heard to otherwise wishing to participate in the proceeding is directed to file with the Secretary of the Commission, on or before the 28th day of February 1977, his request pursuant to Rule 9(c) of the Commission's Rules of Practice, setting forth the nature and extent of his interest in the proceeding and any issues of fact or law which he desires to controvert or any additional issues which he deems raised by this Notice and Order or by such application. A copy of such request shall be served personally or by mail upon Applicants at the addresses noted above, and proof of service (by affidavit, or in case of any attorney-at-law, by certificate) shall be filed contemporaneously with the request. Persons filing requests to participate or be heard will receive notice of any adjournment of the hearing as well as other actions of the Commission involving the subject matter of this proceeding.

It is further ordered, That any officer or officers of the Commission, designated by it for that purpose shall preside at said hearing. The officer so designated by it for that purpose is hereby authorized to exercise all the powers granted to the Commission under Section 41 and 42(b) of the Act, and to an Administrative Law Judge under the Commission's Rules of Practice.

The Division of Investment Management has advised the Commission that it has made a preliminary examination of the application, and that upon the basis thereof the following matters are presented for consideration without prejudice to its specifying additional matters upon further consideration:

(1) whether in consideration of the requests for exemption from Section 10(a), Section 17 (a) and (d), and section 23 of the Act, the method by which the prices of Parco stock are and will be determined is in accordance with the appropriate standards for exemption contained in Section 17(b) of the Act and Rule 17d–1 under the Act and Sections 6(b) and 6(c) of the Act;

(2) whether, in consideration of the exemption requested from Section 18 of the Act, the right of the preferred and Class A shareholders are adequately protected and the investments in common stock are unduly speculative in contravention of the policies of the Act; and

(3) whether, in consideration of the requests for exemption from Sections 17 (f) and 20(a), the investors of Parco are adequately protected.

It is further ordered That at the aforesaid hearing attention be given to the foregoing matters, and

It is further ordered That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing copies of this Notice and Order by certified mail to the Applicants, and that notice to all other persons shall be given by publication of this Notice and Order in the "SEC Docket," and that an announcement of the aforesaid hearing shall be included in the "SEC News Digest."

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–4092 Filed 2–8–77;8:45 am]

[Release No. 34–13237; File No. SR–MSE–76–19]

MIDWEST STOCK EXCHANGE, INC.

Proposed Rule Change by Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on September 20, 1976, the Midwest Stock Exchange, Inc. (the "MSE") filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF THE PROPOSED RULE CHANGE

(Brackets indicate deletions; italics, new material)

ARTICLE XIX OF THE MIDWEST STOCK EXCHANGE RULES

Rule 3(d)(2) Margins

(E) If both a put and call for the same number of shares of the same security are issued, guaranteed or carried "short" for a customer, the amount of margin required shall be the margin on the put or call whichever is greater, *as required pursuant to (C) above, plus any unrealized loss on the other option. The $250 minimum margin requirement, however, shall not apply to the other option,* [except that (i) both the put and call shall each be subject to a minimum requirement of $250 and (ii) if there is unrealized loss on both the put and the call, the amount of margin required shall be not less than the combined unrealized loss of both the put and the call.]

(F) Where a call that is listed or traded on a registered national securities exchange is carried "long" for a customer's account and the account is also "short" a call listed or traded on a registered national securities exchange, expiring on or before the date of expiration of the "long" listed call and, written

on the same number of shares of the same security, the margin required on the "short" call shall be the lower of (i) the margin required pursuant to (C) (ii) above or (ii) the amount, if any, by which the exercise price of the "long" call exceeds the exercise price of the "short" call.

Where a put that is listed or traded on a registered national securities exchange is carried "long" for a customer's account and the account is also "short" a put listed or traded on a registered national securities exchange, expiring on or before the date of expiration of the "long" listed put and, written on the same number of shares of the same security, the margin required on the "short" put shall be the lower of (i) the margin required pursuant to (C) (ii) above or (ii) the amount, if any, by which the exercise price of the "short" put exceeds the exercise price of the "long" put.

(G) Where a call is issued, guaranteed or carried "short" against an existing net "long" position in the security under option or in any security exchange able or convertible within a reasonable time without restriction other than the payment of money into the security under option, no margin need be required on the call, provided (*i*) such net long position is adequately margined in accordance with this Rule *and* (*ii*) *the right to exchange or convert the net "long" position does not expire on or before the date of expiration of the "short" call* except that where a call is issued, guaranteed or carried "short" against a net "long" position in an exchangeable or convertible security, as outlined above, margin shall be required on the call equal to any amount by which the conversion price of the "long" security exceeds the exercise price of the call. Where a put is issued, guaranteed or carried "short" against an existing net "short" position in the security under option, no margin need be required on the put, provided such "short" position is adequately margined in accordance with this Rule. In determining net "long" and net "short" positions, offsetting "long" and "short" positions in exchangeable or convertible securities or in the same security, as discussed in Paragraphs (c) (1) and (c) (4) of this Rule, shall be deducted. In computing margin on such an existing net stock position carried against a put or call, the current market price to be used shall not be greater than the call price in the case of a call or less than the put price in the case of a put [.] *and when a payment of money is required to exchange or convert the net "long" security such security shall have no value for purposes of this Rule.*

STATEMENT OF BASIS AND PURPOSE

The purposes of the proposed rule change are as follows:

a. To impose, in lieu of the existing $250 margin requirement on a short put option hedged by a short call option, a requirement equal to the unrealized loss, if any, on the short put option. The unrealized loss represents the amount by which the specified price of the short put option exceeds the current market value of the security. The short call option will continue to be margined as currently prescribed by the Rule. This insures protection to the full amount of any unrealized loss on the short put option. If there is no unrealized loss on the short put option, there will be no requirement on that option. The same treatment will apply when a short call option is hedged by a short put option, which is the reverse of the situation cited above.

b. To allow, for margin purposes, a listed put carried long to serve as a hedge against the risk on a short put in the same security in the customer's account. This permits lower margin requirements on the short put, under the same conditions and requirements as currently applied to listed cal spreads. Thus, listed put spreads are permitted the same benefits granted listed call spreads.

c. To prevent a short call position from being hedged by a long position in a security exchangeable or convertible into the same security underlying the option (such as a warrant or a convertible bond) when the conversion privilege expires on or before the expiration date of the short call. Thus, a warrant expiring on July 1, 1976, may not be used to hedge a short call in the underlying security expiring on July 17, 1976.

d. To provide that where a payment of money is required to exchange or convert a security being used to hedge a short call, the security will have no value for margin purposes. This prevents a convertible or exchangeable security (generally a warrant) from having *any value* in an account when the customer is required to pay additional funds to exchange or convert the security into the underlying security of the call option carried "short" in his account.

The proposed rule change promotes the just and equitable principles of trade and removes impediments to perfection of the mechanism of a national market system.

Comments were neither solicited nor received.

The Midwest Stock Exchange, Incorporated believes that no burden has been placed on competition.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

Further, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Approval of the proposed rule change at this time is necessary to expedite the establishment of uniform options margin rules among several options exchanges.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before March 2, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMON,
Secretary.

FEBRUARY 2, 1977.

[FR Doc.77-4097 Filed 2-8-77;8:45 am]

[Release No. 34-13230; SR-NASD-77-2]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Notice of Filing of Proposed Rule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-39 (June 4, 1975), notice is hereby given that on January 27, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

NASD STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule changes would amend the rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association") by adopting an Appendix E to Article III, Section 33 of the Rules of Fair Practice concerning transactions in options, by adopting a new Part XI to Schedule D of Article XVI, Section 3 of the By-Laws concerning NASDAQ System rules and regulations for NASDAQ options and by amending Schedule C of Article I, Section 2(d) of the By-Laws concerning registration of and qualifications for Registered Options Principals.

These proposed rule changes are part of a plan developed by the NASD for the quotation display of certain call options on its NASDAQ System. Initially, the options eligible for NASDAQ display (NASDAQ options), will be limited to options on over-the-counter underlying securities selected in accordance with the requirements and guidelines of the NASD, the Options Clearing Corporation (OCC) and the Securities and Exchange Commission (SEC). OCC will act as the issuer of all NASDAQ options.

Standardized as to exercise price, expiration date and unit of trading, con-

tinuous markets for the NASDAQ options will be maintained by qualified NASDAQ options market makers, registered as such with the NASD. The NASDAQ options program will permit market makers in underlying securities quoted on the NASDAQ System to make markets simultaneously in their NASDAQ options. NASDAQ options will be registered under the Securities Act of 1933 and in the various states by OCC. Covered by OCC's prospectus, each NASDAQ option will be exercisable through OCC which will also serve as the obligor of all NAS DAQ options. The trade comparison function for completed NASDAQ option transactions will be performed by the Securities Industry Automation Corporation (SIAC) under a contractual arrangement between the NASD and the American Stock Exchange.

The NASDAQ options program preserves the essential elements of a dealer market and, to the extent possible, incorporates standards comparable to those applied to exchange traded options, including rules and regulations governing members' trading and conduct with the investing public. Included among these are provisions for the last sale price reporting of completed NAS DAQ option contracts to the Options Price Reporting Authority (OPRA), as well as the reporting to the Association of sale transactions in underlying NASDAQ equity securities. The Association will interface its NASDAQ System with OPRA's new technical specifications scheduled to be implemented in September 1977.

The NASD intends to commence its program with call options in eleven underlying over-the-counter securities which meet the selection criteria in its proposed rules. The proposed selection criteria are designed to conform with the standards approved by the SEC and presently in force among OCC and its participant exchange owners now trading options. An exception to these standards is that an underlying security may be unlisted, traded over-the-counter and displayed on the NASDAQ System. Options on additional underlying securities will be added, subject to Commission approval, depending upon operating performance and capacity and the degree of interest shown in the NASDAQ options program.

Under the Association's program, the member executing the writing (sale) side of a completed transactions in a NAS DAQ option will be required to report last sale trade price information to the Association through the NASDAQ System or to the NASDAQ Supervisory office in New York City via TWX, Telex or telephone. This last sale trade price information will be required to be transmitted within one and one-half minutes after execution to permit processing by the NASDAQ System and distribution to vendors of interrogation devices. Thus, last sale information will be available to the public from the date of startup of the NASDAQ options program.

The Association will establish a class of options (that is, all option contracts of the same type on the same underlying security) eligible for NASDAQ display. Within each class of options, there will be three or more series of option contracts. A series of options will include all options in an underlying security having the same exercise price, expiration date and unit of trading. A group of options will include all option contracts of the same class of options having the same exercise price and unit of trading but separate expiration dates. A unit of trading for each NASDAQ option contract will cover 100 shares of the underlying security. The expiration dates or cycles for NASDAQ options will be set at 3, 6 and 9 month intervals and the expiration months will be March, June, September and December.

As with all options issued by OCC, the exercise prices of NASDAQ options will be set at prices which are reasonably close to the representative bid of the underlying security at the time a series is opened for display on the NASDAQ System.

A new series of options could be opened with the same expiration date but with a different exercise price to reflect price movements in the underlying security. The exercise prices of NASDAQ options will be fixed at five-point intervals for underlying securities trading below a $50 bid; ten-point intervals for underlying securities trading between a $50 and $200 bid; and, 20-point intervals for underlying securities trading above a $200 bid.

Upon commencement of the program, secondary markets for NASDAQ options will be maintained in a manner comparable to the secondary markets for NASDAQ equity securities. Market Makers, qualified and registered with the Association specifically for NASDAQ options, will create and maintain over-the-counter markets in NASDAQ options. They will purchase and sell (write) for their own accounts and maintain inventories in the NASDAQ options in which they have elected to make a market. Market makers in underlying securities quoted on the NASDAQ System will be able to make markets simultaneously in NASDAQ options written on these securities. These maket makers will be referred to as "dual market makers".

The Association's rules will impose the following specific requirements on dual market makers:

(1) In order for a member to simultaneously make a market in an underlying security and the options relating thereto, there would have to be a total of at least five registered market makers in such underlying security and at least five registered market makers in each option group in respect to which dual market making is intended.

(2) Dual market makers would be required to report information with respect to transactions and positions in "conventional" or "traditional" over-the-counter options covering those securities in which NASDAQ options markets are being made; and,

(3) In effecting a NASDAQ option transaction with or for a customer, a dual market maker would be required to disclose such dual function on the confirmation sent to the customer.

In addition to the above, the Association's NASDAQ options program will provide for the simultaneous surveillance and regulation of markets in both NASDAQ options and their underlying NASDAQ equity securities. Through a comprehensive monitoring program, all transactions executed by dual market makers, market makers and members in both NASDAQ options and equities will be closely surveilled. This surveillance will be accomplished primarily through last sale price reporting in NASDAQ options and transaction reporting in the underlying NASDAQ equity securities by all members, including dual market makers, equity market makers and all other non-market making members.

In addition to the specialized rules pertaining to dual market makers, other specialized rules have been developed to govern option trading by all members and public customers. These rules are comparable to the standards presently applied to options trading on the various exchanges. They are intended to minimize or prevent manipulative abuses in NASDAQ options and their underlying securities and to assist in the detection of manipulative activities. These rules include the following:

(1) *Position Limits.*—The size of positions, whether long or short, permitted to be held by any market maker, member, associated person or public customer would be limited. The limits to be imposed would prevent purchasers and sellers from holding more than 1,000 option contracts of the same class of options or 500 option contracts of the same class and the same expiration date.

(2) *Exercise Limits.*—The number of long positions which may be exercised within a specified period by a market maker, member, associated person or public customer would be limited. The limits to be imposed would prohibit the exercise of more than 1,000 option contracts of the same class of options within five (5) consecutive business days.

(3) *Liquidation of Positions.*—Aggregate positions of a market marker, member, associated person or public customer in option which exceed the position limits referenced in paragraph (1) above, would be required to be reduced by the amount of excess. Reduction of the excess position must be accomplished within seven (7) calendar days.

(4) *Limit on Uncovered Short Positions.*—The Association's rules would also permit it to impose limitations as to the total number of uncovered short positions in a given class of options. These limitations would prohibit further uncovered opening writing transactions and/or the uncovering of existing covered short positions in option contracts for one or more series of options in a given class.

(5) *Restrictions on Option Transactions and Exercises.*—Restrictions on transactions in out-of-the-money options would be in effect for opening transactions. Subject to certain exceptions, these

restrictions would prohibit an opening transaction in any call option contract wherein the exercise price of the option is more than $5 above the closing representative bid of the underlying security for the previous trading day *and* the representative bid for the call was less than $.50 per unit of trading on the last previous trading day. Additionally, the Association's rules would permit it to impose restrictions on exercise in one or more series of options.

(6) *Reporting of Options Positions.*—Reports concerning each account, other than a proprietary trading account, having (a) an aggregate long position, (b) an aggregate short position, or, (c) an aggregate uncovered short position in excess of 100 or more option contracts of any single class of options would be required to be filed on a next-day basis with the Association. A monthly report would be required to be filed for any account which has an uncovered short position in any class of options. Additional reports would be required whenever an account of a member, other than a trading account of a registered NASDAQ options market maker, effects five (5) or more option contracts of the same class during a trading day.

In addition to the above specialized rules governing NASDAQ options trading, any member engaged in options activities will be required to have a person associated with it registered with the Association as a "Registered Options Principal." Additionally, persons associated with a member who are actively engaged in the management, direction or supervision of its day-to-day options activities will be required to be registered as Registered Options Principals. To achieve this status, an appropriate qualifications examination for Registered Options Principals must be successfully completed. These requirements will apply to all members and associated persons who effect transactions in conventional or traditional over-the-counter options.

In addition to the above, all such transactions in exchange-listed options by access firms would be subject to all rules and requirements pertaining to the Association's options program. Transactions in exchange-listed options by members of the exchange on which the option is listed would not be subject to the Association's rules.

A key feature of the NASDAQ options program will be the unified surveillance and regulation of the trading markets for both the NASDAQ options and their underlying NASDAQ equity securities. This simultaneous surveillance and regulation will be performed by the Association's Market Surveillance Section in a manner comparable to that in which NASDAQ equity securities are presently surveilled.

From quotation data for options and their underlying equity securities, from last sale trade information for options and from transaction and aggregate volume information for underlying equity securities, a series of daily computerized reports will be produced by the NASDAQ System. The information on these reports will be arranged in such a manner as to facilitate the review of every transaction and/or quotation for an option and its underlying security, particularly those which exceed pre-established parameters.

The Market Surveillance Section will also receive for review various reports produced by OCC, SIAC, and the National Securities Clearing Corporation (NSCC) and members. By means of these reports, the Association will have the capability to conduct a thorough and comprehensive monitoring of trading in both NASDAQ options and their underlying securities and to perform such surveillance on a comparative basis.

These surveillance procedures will aid in the prompt identification and/or detection of fraudulent activities in a NAS DAQ option or its underlying security. When fraudulent activities are detected, the Association, where necessary and appropriate in the public interest, would have the authority to suspend a NAS DAQ option and/or its underlying security from quotation on the NASDAQ System.

As a complement to its daily market surveillance activities, the Association's field inspection program of members will be expanded to include comprehensive coverage of all rules, regulations and procedures pertaining to the Association's option program and the NASDAQ options marketplace.

In connection with rules and regulations governing members' trading, the regulatory scheme established for NAS DAQ options includes comprehensive safeguards designed to ensure the protection of investors in the public interest. These public customer-related standards include:

(1) *Confirmation.*—Each option transaction must be confirmed in writing to every customer who is a party to such transaction. Information required to be furnished to customers must contain details of the option contract and the transaction, including whether a member was acting as a dual market maker.

(2) *Prospectus.*—A current prospectus of OCC must be delivered to a customer prior to, but not later than, the time a trade is entered or accepted on his behalf.

(3) *Issuers.*—A member would be prohibited from entering into the sale (writing) of any option contract for the account of an issuer, control person or affiliate of an issuer which is subject to the underlying security of such issuer.

(4) *Restricted Stock.*—A member would be prohibited from accepting shares of underlying securities for the covering of short positions, satisfying margin requirements or complyng with an exercise notice if the securiteis necessitate special registration under the provisions and rules of the Securities Act of 1933.

(5) *Statement of Accounts.*—A member would be required to forward a monthly statement of account to each public customer having a transaction in, or an entry with respect to, an option contract during the preceding month. Additionally, a quarterly statement of account would be required to be forwarded to each public customer having an open position or money balance in an options account.

(6) *Opening of Accounts.*—A member would be required to specifically approve a customer's account for options trading prior to the execution of an option transaction. Prior to approving a customer's account for options trading, a member would be required to develop a detailed profile for such customer. Further, within fifteen (15) days of approval, the member would be required to obtain a written agreement from the customer which states that such customer is aware of and agrees to be bound by the applicable rules of the Association and OCC.

(7) *Discretionary Accounts.*—A member would be required to obtain written authorization from a public customer specifically authorizing discretionary option transactions in that customer's account. Each discretionary order for an option transaction would be required to be approved by a Registered Options Principal.

(8) *Suitability.*—In recommending an option transaction to a public customer, a member would be required to base such recommendation on the customer's investment objectives and financial situation in order to ensure that the recommendation would not be unsuitable. A member would be required to know or have reason to believe in advance of effecting an uncovered writing transaction that the customer is capable of meeting the potential financial obligations related to such.

(9) *Supervision.*—The Registered Options Principal of a member would have the primary responsibility with respect to the supervision of the public customer's options account.

Pursuant to the agreements to be concluded between OCC and the NASD, the Association will be responsible for the trade comparison function of NASDAQ options trading. Comparison of completed NASDAQ option contracts will be accomplished by the Association through an agreement with the American Stock Exchange (AMEX) allowing the NASD to utilize AMEX's trade comparison package, which employs SIAC as processor, for the NASDAQ options program. Any member who elects to trade NASDAQ options will be required to report all of its completed NASDAQ option trades to the SIAC center in New York City. To satisfy SIAC requirements for data submission, a reporting firm must be a member of OCC and have a New York City office or must establish a clearing arrangement with a member of OCC located in New York City.

Subsequent to market close at 4:00 p.m. (Eastern Time), all clearing members will be required to submit information for NASDAQ option trades individually for each business day by 6:00 p.m., to SIAC's designated location in New York City. The Association, utilizing

SIAC as a processor, will perform a comparison and matching of each item of information reported. Preliminary comparison pass reports will be made available for pickup by clearing members at 7:00 p.m. at the SIAC center. Clearing members will be required to check each report received, reconcile all uncompared and advisory trades, including any errors or omissions and report corrected trade information by 9:00 p.m. Upon receipt of the corrected trade reports, a final comparison pass report will be made available for clearing members by 10:00 p.m. This report will again contain all uncompared and advisory trades, if any, for a clearing member. Clearing members will have an opprtunity to reconcile such trades on the following day. Buyers and sellers holding rejected (uncompared) trades will be required to attend a meeting between the hours of 8:30 a.m. and 10:00 a.m. in offices provided by the AMEX. To resolve a rejected trade, a buyer and a seller must agree on the terms of the trade. Only the party that failed to submit trade data or the party that submitted erroneous trade data will be required to input corrected information.

Trades which are reconciled during the above-referenced meeting shall be submitted by clearing members to the Association at the SIAC center on that same day. Clearing members which are unable to resolve uncompared trades prior to 10:00 a.m. on the first business day following the trade date will be required to close out each such uncompared trade no later than 3:30 p.m. on that day pursuant to prescribed procedures.

A transmission of all matched option trades will be made to OCC. Prior to 10:00 a.m. on the business day following the trade date, OCC will provide each clearing member with a daily position report for each account maintained by the clearing member with OCC. In addition to listing each NASDAQ option transaction due for settlement, the report will show the net daily premium due to or from OCC for each such account. On or before 10:00 a.m., money balance settlements will be required to be deposited with OCC.

Additionally, margin deposits with respect to short positions maintained by the clearing member, as well as money balances and/or securities deposits for option contracts to which an exercise notice has been assigned, will be required to be made with OCC prior to 10:00 a.m.

Subject to the rules of OCC and the NASD, a NASDAQ option contract will be exercisable by its holder on any business day on or before the expiration date of the option contract. An exercise notice must be submitted to OCC by a clearing member acting on behalf of an exercising holder of an unexpired long option contract. An exercise notice accepted by OCC will be assigned on a random basis to a clearing member(s) maintaining an open short position in the series of options involved. Within five (5) business days of receipt of the exercise assignment, the clearing member, representing the writer, will be obligated to deliver the subject underlying securities against payment to the exercising clearing member.

Although the settlement of transactions between exercising and assigned clearing members may take place directly between such clearing members, OCC has established certain interfaces with various clearing corporations to handle the exercise settlement process.

The provisions of the Association's proposed options rules would embrace transactions in listed options executed by members who are not members of the particular exchange upon which the option is listed (access firms). Although this application of rules in ancillary to the NASDAQ options program, it is nonetheless an important part of the Association's over-all rules package respecting options trading by members. The scope of the Association's proposed options rules has been extended to embrace transactions in listed options by approximately 400 access firms in order to eliminate a regulatory void which now exists. Although these firms engage in exchange options activity through clearing members of the various options exchanges, they are not themselves exchange members and, consequently, are not subject to the specialized options rules which apply to exchange members. The Association's rule proposals would fill this void. In connection with the above, however, it should be noted that transactions in exchange-listed options by members of an exchange on which the option is listed would not be subject to the options rules being proposed by the NASD.

NASD'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed new rules are as follows:

The statutory basis of the proposed rules is contained in Section 15A of the Act.

The membership of the NASD approved Article III, Section 33 of the Association's Rules of Fair Practice which authorized the Board of Governors to adopt rules, regulations and procedures for the governance of options trading deemed necessary and appropriate for the protection of investors in the public interest. The proposed rules contained herein were adopted by the Board of Governors pursuant to that authority on January 17, 1977.

The purpose of the proposed rules is to provide a regulated environment for the trading of NASDAQ options with standardized provisions, conventional options and access firms.

The proposed rule changes give the NASD the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act and the rules and regulations thereunder in the area of their options activity.

Comments on the proposed new rules and rule amendments were solicited in both Notice to Members No. 76-8 and 76-31. The Board of Governors considered the comments received in the development of the instant 19b-4 filing. Although the provisions of Article VII of the Association's By-Laws do not require the Board to submit these particular proposals to the membership for approval, notice of certain limited modifications in the instant filing was published and submitted, in the public interest, to interested parties and the membership in Notice to Members No. 77-5, dated January 28, 1977. To date no comments thereon have been received.

It is the position of the National Association of Securities Dealers, Inc. that the proposed rules impose no burden on competition that is not necessary and in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

On or before March 16, 1977, or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission will:

(A) by order approve such proposed rule changes; or

(B) institute proceedings to determine whether the proposed rule changes should be approved.

In any event, the above-mentioned Commission action will not occur within 35 days of this publication.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before March 11, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

FEBRUARY 1, 1977.

[FR Doc.77-4098 Filed 2-8-77;8:45 am]

[Release No. 34-13231; File No. SR-PSE-77-4]

PACIFIC STOCK EXCHANGE INC.

Proposed Rule Change by Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 19, 1977 the above-mentioned self-regulatory organization filed with the Securities and

Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Pacific Stock Exchange Incorporated ("PSE") hereby requests to amend Section 1 of Rule VI of the Rules of its Board of Governors by adding the phrase "and the same unit of trading" to subparagraph (a)(11) as follows (brackets indicating deletions and italics indicating additions):

RULE VI, EXCHANGE OPTIONS TRADING

APPLICABILITY, DEFINITIONS AND REFERENCES

Sec. 1.(a) Definitions. The following terms as used in Rule VI shall, unless the context otherwise indicates, have the meanings herein specified:

(11) Series of Options.—The term "series of options" means all option contracts of the same class of options having the same expiration date and exercise price[.], *and the same unit of trading.*

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to conform with the definitions of the Options Clearing Corporation and other Exchanges that trade options.

The proposed change to the Definitions Section of Rule VI is intended to update and clarify a term used in the Rules of the Exchange and is consistent with the Options Clearing Corporation and other Exchanges that trade options.

Comments have neither been solicited nor received from members on the proposed rule change.

The proposed rule change imposes no burden upon competition.

On or before March 16, 1977, or within such longer period (i) as the Commission may designate up to ninety (90) days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before March 11, 1977. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

FEBRUARY 1, 1977.

[FR Doc.77-4094 Filed 2-8-77;8:45 am]

[Rel. No. 9626; 812-4077]

STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA

Notice of Filing of Application for an Order Pursuant to Section 17(d) of the Act and Rule 17d-1 Thereunder

FEBRUARY 1, 1977.

Notice is hereby given that State Mutual Life Assurance Company of America (the "Insurance Company"), 440 Lincoln Street, Worcester, Massachusetts 01603, a mutual life insurance company organized under the laws of The Commonwealth of Massachusetts, has filed an application on January 5, 1977 for an order, pursuant to Section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, permitting the acquisition by the Insurance Company of $2,000,000 in principal amount of a new issue of 8¾% Senior Notes due 1992 (the "Notes") of Standex International Corporation ("Standex"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Pursuant to an order of the Commission issued on February 12, 1973 (Investment Company Act Release No. 7665), corrected on February 27, 1973 (Investment Company Act Release No. 7698, and amended on July 28, 1976 (Investment Company Act Release No. 9371) (collectively referred to as the "Order"), the Insurance Company, which acts as investment adviser for State Mutual Securities, Inc. (the "Fund"), a closed-end, diversified investment company registered under the Act, is permitted to invest concurrently in each issue of securities purchased by the Fund at direct placement in an amount equal to the amount invested in such issue by the Fund and to exercise warrants conversion privileges and other such rights at the same time and in the same amount as the Fund unless the security to be purchased is a long-term debt obligation without equity participation. The Order is subject to several conditions, one of which requires, generally, that purchases at direct placement of securities which would be consistent with the investment policies of the Fund be shared equally by the Insurance Company and the Fund. Another condition is that once the Insurance Company and the Fund have acquired interests in an issuer, neither the Insurance Company nor the Fund, unless otherwise permitted by order of the Commission, may acquire any further interest in such issuer or in any affiliated person of such issuer, or in securities issued by such issuer or affiliated person, other than interests in all respects identical.

The Insurance Company represents that it has made a commitment to purchase at direct placement $2,000,000 in principal amount of the Standex Notes out of an issue expected to total $10,000,000 principal amount. It is represented that, since the Insurance Company and the Fund each concurrently hold $2,000,000 in principal amount of the 9 percent Senior Notes due 1989 of Standex (the "Outstanding Senior Notes") issued in May 1974, the Insurance Company may not individually, pursuant to the terms of the Order, purchase the Notes unless it obtains an order of the Commission specifically permitting such purchase.

Under Section 17(d) of the Act, and Rule 17d-1 thereunder, an affiliated person of a registered investment company may not effect any transaction in which such investment company is a joint participant without the permission of the Commission. In passing upon applications for orders granting such permission, the Commission is required to consider whether the participation of the investment company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from, or less advantageous than, of other participants.

It is submitted that the proposed acquisition by the Insurance Company of the Notes is not disadvantageous to the Fund and is consistent with the provisions, policies, and purposes of the Act. The Insurance Company represents that the Fund currently has approximately 2 percent of its assets invested in the Outstanding Senior Notes and a further investment in the Notes is not an appropriate investment for the Fund because it would expose the Fund to an excessive credit risk. The application states that the Fund's Board of Directors has unanimously voted to decline participation by the Fund in the proposed acquisition of the Notes. It is asserted that the proposed acquisition of the Notes by the Insurance Company is in no way connected with the sale of the Outstanding Senior Notes to the Fund and the Insurance Company in 1974 other than by virtue of the fact that the holders of the Outstanding Senior Notes were offered the Notes on a basis proportional to their holdings of the Outstanding Senior Notes. It is stated that the proposed investment by the Insurance Company in the Standex Notes will not be disadvantageous to the Fund because (1) Standex will be receiving significant new value in consideration for issuing the Notes, (2) a major portion of the proceeds received from the sale of the Notes will be used by Standex to repay presently outstanding senior debt maturing within the next three years owed to banks, and (3) the Outstanding Senior

Notes owned by the Fund mature prior to the Notes.

The Insurance Company believes that the Notes would be an attractive investment for it and that it will be disadvantaged if not permitted to acquire a portion of the Notes. Accordingly, the Insurance Company requests an order, pursuant to Section 17(d) of the Act, and Rule 17d–1 thereunder, permitting it to acquire $2,000,000 in principal amount of the Notes of Standex, notwithstanding the prior ownership by it and the Fund of the Outstanding Senior Notes.

Notice is further given that any interested person may, not later than February 25, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–4099 Filed 2–8–77;8:45 am]

[SR–Amex–77–1]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

On January 17, 1977, the American Stock Exchange ("Amex"), 86 Trinity Place, New York, New York 10005, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b–4 thereunder, copies of a proposed rule change. The proposed rule change would rescind the requirement that members obtain prior Amex approval of advertisements, radio and television broadcasts and telephone market reports, unless such public communication is subject to a similar pre-clearance requirement of the New York Stock Exchange.

Notice of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13203, (January 25, 1977)) and is expected to be given by publication of the terms of substance of the proposal in the FEDERAL REGISTER during the week of January 31, 1977.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, the requirements of section 6, and the rules and regulations thereunder.

Further, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. The Commission has approved a similar rule change filed by the New York Stock Exchange (SR–NYSE–76–53, Securities Exchange Act Release No. 13238, (February 2, 1977)) which rescinds similar requirements of that Exchange. Absent accelerated approval of this proposal, the Amex would be required under its rules to perform pre-clearance of advertising by its members who are also NYSE members. Prior to the rescission, regulatory responsibility for such pre-clearance had been allocated to the NYSE.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on January 17, 1977, be, and it hereby is, approved.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–4125 Filed 2–8–77;8:45 am]

[SR–Amex–76–29]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

On December 16, 1976, the American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006 ("Amex") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b–4 thereunder, copies of a proposed rule change which adds sections 220 and 337 to the Amex Company Guide and thereby provides a simplified listing procedure for companies whose securities currently are listed on the New York Stock Exchange ("NYSE") as well as companies seeking to list simultaneously on the Amex and the NYSE. The proposal also establishes an original listing fee of $7,500 for such securities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13128 (January 3, 1977)) and by publication in the FEDERAL REGISTER (42 FR 2145 (January 10, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to register national securities exchanges, and in particular, the requirements of section 6, and the rules and regulations thereunder.

In its December 16, 1976 submission, Amex requested that the Commission accelerate the effectiveness of the proposal because it would streamline the listing procedure for those companies seeking to be dually listed on the Amex and the NYSE and, in so doing, promote interexchange competition through such dual listings. The Commission believes that the Amex proposal will facilitate dual listing of securities traded on the NYSE and that it will provide a greater opportunity for fair competion among brokers and dealers and among exchange markets. Further, the comment period with respect to the proposed rule change expired on January 31, 1977 and no comments have been received thereon. The Commission therefore finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change filed with the Commission on December 16, 1976, be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–4127 Filed 2–82–77;8:45 am]

[70–5966]

MASSACHUSETTS ELECTRIC CO.

Proposed Redemption of One Series of Preferred Stock

Notice is hereby given that Massachusetts Electric Company ("Mass Electric"), 20 Turnpike Road, Westborough, Massachusetts 01581, an electric utility subsidiary company of New England Electric System, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating section 12(c) of the Act and Rule 42(a) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Mass Electric proposes to redeem the 100,000 shares of its authorized outstanding 9.44 percent series preferred stock ("9.44 percent preferred"). The redemption will be at the currently applicable redemption price of $108.59 per share together with dividends accrued to the date of redemption.

Funds required for the redemption are to be obtained from cash on hand and

temporary cash investments. It is stated that Mass Electric presently has cash exceeding its needs for immediate operating expenses, minor contingencies and compensating bank balances. It is also stated that it is not expected that Mass Electric will have to undertake any permanent financing within the next four or five years. Two reasons are stated to account for these circumstances: (1) Mass Electric's construction has been substantially reduced from its previous level as a result in a slowdown in load growth for the geographic area being served and (2) Mass Electric has changed from bi-monthly to monthly billing of its residential and small commercial and industrial customers.

Mass Electric states that by redeeming the 9.44 percent preferred, cumulative cash saved during the four year period from 1977 to 1981 (at which time it is estimated that Mass Electric will need to reissue preferred stock) will total approximately $2,700,000. This saving represents the difference between annual dividends on the 9.44 percent preferred over the next four years ($3,776,000) and the sum of the redemption premium ($859,000) together with expenses of the call of the 9.44 percent preferred and costs of issuing preferred stock in 1981.

At November 30, 1976, the capitalization of Mass Electric, actual and pro forma (adjusted to give effect to the proposed redemption of the 9.44 percent preferred) was as follows:

	Actual (in thousands of dollars)	Percent	Proforma (in thousands of dollars)	Percent
Common stock [1]	$132,172	32.2	$131,306	32.9
Preferred stock	60,000	14.6	50,000	12.5
First mortgage bonds	218,300	53.2	218,300	54.6
Total capitalization	410,472	100.0	399,606	100.0

[1] Including premium on capital stock and retained earnings to be reduced by $3,000 and $863,000, respectively upon redemption of the 9.4 percent preferred.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,000. In addition, New England Power Service Company will provide certain services at cost, such cost being estimated not to exceed $4,000.

Notice is further given that any interested person may, not later than February 22, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed, or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20 (a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-4128 Filed 2-8-77;8:45 am]

[SR-NYSE-76-53]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

On October 15, 1976, the New York Stock Exchange ("NYSE"), 11 Wall Street, New York, New York 10005, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The proposed rule change would have rescinded the requirement that members obtain prior NYSE approval of advertisments, radio and television broadcasts and telephone market reports.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 12919, (October 22, 1976)) and by publication in the FEDERAL REGISTER (41 FR 48009 (November 1, 1976)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on October 15, 1976, be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-4126 Filed 2-8-77;8:45 am]

[70-5963]

SOUTHERN CO.

Proposed Amendments of Certificate of Incorporation and Solicitation of Proxies in Connection Therewith

Notice is hereby given, That the Southern Company ("Southern"), 64 Perimeter Center East P.O. Box 720071 Atlanta, Georgia 30346, a registered holding company, has filed a declaration with this Commission designating sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 62 promulgated thereunder as applicable to the following proposed transactions. All interestetd persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Southern's Certificate of Incorporation presently authorizes the issuance of 150,000,000 shares of common stock of which 122,806,633 shares are currently issued and outstanding. Southern proposes to amend its Certificate of Incorporation to increase the number of authorized shares of common stock from 150,000,000 shares to 185,000,000 shares to provide a reasonable amount of authorized but unissued shares of common stock to be used for financing additional common equity capital requirements of Southern's subsidiaries and for general corporate purposes, including investments by stockholders under the corporation's dividend reinvestment and stock purchase plan. It is stated that during the three-year period 1974 through 1976 Southern was required to issue and sell 41,557,133 shares of common stock in order to provide to its subsidiary companies the additional common equity portion of the capital needed to finance their construction programs required to service their rapidly developing business. Southern has no present plans for the issuance of any shares of its common stock other than for cash.

Southern also proposes to amend its Certificate of Incorporation so as to add to the exceptions from preemptive rights: (1) Sales to security holders of the company or of any subsidiary pursuant to a dividend reinvestment and/or stock purchase or similar plan and (2) stock sold to employees of the company or any subsidiary, or to a trust for their benefit, pursuant to a thrift, savings, employee stock ownership, pension, or other employee benefit plan. The purpose of this proposed amendment is to facilitate the sale by Southern of shares of its common stock pursuant to one or more of

the types of plans referred to. By expanding the potential market for its shares, the corporation would thus be able to obtain necessary and desirable additional equity capital at prices related to current market values of shares of its common stock without payment of underwriting discounts or commissions. It is stated that this is in the best interests of the corporation and its stockholders.

Southern intends to submit the proposed amendments to its stockholders for consideration and vote at its 1977 annual meeting to be held on May 25, 1977. The favorable vote of a majority of the outstanding shares of common stock is necessary for the adoption of the amendments increasing the number of authorized shares. The adoption of the amendments relating to preemptive rights requires the favorable vote of at least two-thirds of the outstanding shares of the common stock of the company. Southern proposes to solicit proxies from its common stockholders in connection with the proposed amendments.

The fees and expenses to be incurred in connection with the proposed transactions are to be supplied by amendment. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given, That any interested person may, not later than February 28, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegation authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-4124 Filed 2-8-77;8:45 am]

[812-4065]

VANDERBILT INCOME FUND, INC., ET AL.

Filing of Application for an Order Exempting Certain Litigation Trusts From All Provisions of the Act and All Rules and Regulations Thereunder, and, to a Limited Extent, Exempting Said Trusts and Pegasus Income and Capital Fund, Inc.

Notice is hereby given that Vanderbilt Income Fund, Inc. ("VIF"), Vanderbilt Growth Fund, Inc. ("VGF"), and Pegasus Income and Capital Fund, Inc. ("PIC") (hereinafter referred to collectively as "Applicants"), 1901 Avenue of the Stars, Suite 700, Los Angeles, California 90067, each of which is registered as a diversified, open-end, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on December 15, 1976, and an amendment thereto on January 18, 1977, for an order pursuant to section 6(c) of the Act exempting certain trusts proposed to be created by VIF and VGF from all provisions of the Act and all rules and regulations thereunder other than sections 9, 17, 31, 34, 36 and 37 and the rules and regulations thereunder. Applicants also seek, pursuant to section 6(c) of the Act, an order exempting, to a limited extent, such trusts and PIC from section 17(h) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that VIF and VGF each intend to create a trust in connection with certain mergers to which VIF and VGF expect to be parties; said trusts are collectively referred to herein as the "Litigation Trusts."

BACKGROUND OF PROPOSED MERGERS

Applicants state that each of them formerly had as investment advisers and principal underwriters companies which were subsidiaries of Charter Diversified Services, Inc. ("Charter"). On August 29, 1974, the Securities and Exchange Commission ("Commission") filed an action in the United States District Court for the Central District of California ("Court") alleging that during 1973 and 1974 Charter and certain other named defendants had engaged in and carried out fraudulent schemes against Applicants. Specifically, the complaint alleged, among other things, that Applicants' former investment advisers improperly received benefits in violation of the federal securities laws in various ways, including the investing of assets of Applicants in certain companies in exchange for the lending of money or the providing of collateral for loans to Charter by those companies.

Applicants state further that on September 3, 1974, a special counsel was appointed for Applicants by the Court; the special counsel was directed to (1) investigate the affairs of Applicants; (2) report his findings and recommendations for action to the Court, the Applicants' Boards of Directors, and the Commission; and (3) take appropriate action to recover the Applicants' assets, including the pursuit of any litigation. Applicants represent that, based on information developed during this period, the Boards of Directors of Applicants cancelled the investment advisory agreements with Applicants' respective investment advisers.

Applicants state that on November 8, 1974, the Court entered an order appointing six new independent directors to serve as directors of each of the Applicants, and that said directors constituted a majority of the directors of each of Applicants. On September 24, 1975, the Court, by its order, terminated its supervision of the administration of Applicants. Applicants state further that, since such appointments, the Boards of Directors of Applicants have continuously investigated and evaluated alternative avenues by which the shareholders of Applicants could realize their investment objectives. Applicants state that after considerable discussion and deliberation, their Boards of Directors determined that the combination of VIF and VGF with a larger mutual fund would be desirable, but that a combination of PIC with a larger fund was not possible, in large part because of the differing rights and preferences of its two classes of securities. Accordingly, the Boards of Directors of VIF and VGF commenced a comprehensive evaluation and selection procedure to select such a fund to be recommended to the shareholders of VIF and VGF. Applicants state that after due consideration of each of the proposals received, the Boards of Directors of VIF and VGF, at a meeting held on May 25, 1976, voted to recommend to their shareholders that they approve the sale of substantially all of their assets to Imperial Capital Fund, Inc. ("ICF"), in exchange solely for the equivalent value of shares of ICF. Applicants represent that VIF and VGF will enter into separate Plans of Reorganization with ICF and that neither of the proposed reorganizations is contingent upon the consummation of the other. According to the application, the shareholders of VIF and VGF will shortly be solicited to approve the proposed reorganizations.

THE LITIGATION

Applicants state that on June 30, 1975, and July 2 and 3, 1975, Applicants filed three actions in the United States District Court for the Central District of California. Applicants state further that the allegations made in the first of these complaints closely paralleled those made by the Commission in its action, discussed above; however, additional companies and persons were named as defendants and additional causes of action were asserted on behalf of Applicants premised on legal theories arising under both federal and state law. Applicants state that the most significant of these

additional causes of action were those arising out of the improper purchase by Applicants of a total of approximately $4,210,000 of securities ("Unmarketable Securities"), many of which were later determined to be worthless.

Applicants state that the second and third complaints filed focused on the circumstances under which Charter's subsidiaries were retained as investment advisers to VIF and PIC in 1973 and on the transfer of the management of VIF and PIC to persons associated with Charter. Applicants represent that said actions seek to recover over $1,000,000 from persons who received payments from Charter and its subsidiaries in connection with said transfers of management and to recover the damages that Applicants allege were sustained by all of them as a consequence of such transfers.

Applicants state that certain defendants have filed counterclaims to the foregoing litigation, alleging that Applicants (1) failed adequately to investigate the allegations of misconduct and wrongdoing, and (2) improperly terminated the investment advisory and management agreements between Applicants and their former investment advisers. Applicants state that such defendants, in their counterclaims, seek damages in the sum of $4,815,000.

Applicants represent that the litigation described above ("Litigation") is presently in the pre-trial discovery stage, and that its prosecution is expected to take several years and will involve the expenditure of substantial funds. According to the application, prior to December 31, 1975, the Applicants have expended approximately $325,191 in legal fees and expenses of former counsel in connection with the Litigation. Applicants' present counsel has acted as counsel in connection with the Litigation since December, 1975. The agreement between counsel and Applicants provides, in part, that if no recoveries are made in the Litigation, the maximum fee to counsel will not exceed $250,000 (including fees of $132,000 paid prior to establishment of the Litigation Trusts).

The Litigation Trusts

Applicants state that the Boards of Directors of VIF, VGF, and ICF have determined that it would be inappropriate for ICF to undertake the burdens or receive the possible benefits of the Litigation. Applicants represent that if the claims of VIF and VGF in the Litigation were to be transferred to ICF under the mergers, all of the shareholders of ICF, and not only those shareholders who were formerly shareholders of VIF and VGF, would be required to pay the continuing expenses of the Litigation, and all of ICF's shareholders at the time of the final determination of the Litigation would enjoy any benefits thereof. Since the wrongs alleged in the Litigation did not affect ICF or its present shareholders, the Boards of Directors of VIF and VGF and of ICF determined to limit the burdens and the benefits of the Litigation to the shareholders of VIF and VGF.

Applicants state, therefore, that it has been determined that, prior to the consummation of their respective Plans of Reorganization, VIF and VGF will each transfer to a Litigation Trust its claims in the Litigation and the Unmarketable Securities, together with cash to support the prosecution of such claims. Such transfers are conditions to the consummation of each Plan of Reorganization. The beneficiaries ("Beneficiaries") of the Litigation Trusts will be the shareholders of record of the Applicant creating such Litigation Trust on the last business day preceding the closing under the applicable Plan of Reorganization. Each Beneficiary will have a beneficial interest in the Litigation Trust created by his Applicant which is the same as his proportionate interest in his Applicant at that time. The trustees ("Trustees") of each of the Litigation Trusts will be the same persons and are expected to be Messrs. Thomas S. Loo, Esq. and Gerald Rosen, Esq., the present members of the Executive Committee of the Board of Directors of each of the Applicants, who are currently responsible for coordinating the Litigation. Applicants state that Messrs. Loo and Rosen are among those persons appointed to the Board of Directors of each of the Applicants by the Court.

Applicants further state that the Proxy Statements and Prospectuses relating to the proposed reorganizations of VIF and VGF contain a description of the Litigation applicable to the Applicant in question, the fee arrangements in connection therewith, and the expense and recovery arrangements among the Litigation Trusts and PIC (including tax information with respect thereto). Each Proxy Statement and Prospectus also contains a copy of the proposed form of the applicable Litigation Trust. Applicants represent that the powers and authority of the Trustees under each of the Litigation Trusts are, inter alia: (a) To prosecute, settle, or compromise the Litigation or any part thereof; (b) to authorize counsel to incur expenses and charges in furtherance of the Litigation; (c) to use the assets of the Litigation Trust, including all income therefrom, to pay (i) any claims arising out of the Litigation and any judgment against the Litigation Trust or any of the Applicants, and (ii) the fees and expenses of counsel and any other expenses of the Litigation; (d) to invest its cash assets in government securities or to place those assets in bank accounts or bank certificates of deposit; and (e) to take any and all other action necessary and proper for the accomplishment of the Litigation Trust's powers and management of its activities and of its assets.

Applicants state that each Litigation Trust also provides that, within ninety days after the end of each year, the Trustees shall transmit to the Beneficiaries, and to such other persons as the Trustees may deem necessary or advisable, a report, which shall contain an accounting (which need not be audited) of income and expenses of the Litigation Trust and distributions of the Trust Assets made during such year, and any other information which the Trustees deem necessary or appropriate.

Applicants state that, under each Litigation Trust, the Trust Assets shall be distributed to the Beneficiaries on the basis of each Beneficiary's beneficial interest in the Trust in such manner and at such time as the Trustees shall deem necessary or appropriate; provided, however, that a final distribution of all remaining Trust Assets shall be made promptly after the determination or settlement of all of the Litigation.

Applicants state that under each Litigation Trust, the interests of the Beneficiaries in the Trust shall not be evidenced by certificates, shall not be transferable or assignable except by will or the laws of descent and distribution or, in the case of any Beneficiary other than a natural person, upon the legal termination of such entity, and shall not be subject to attachment or levy by any creditor of any Beneficiary or any person asserting any claim against any Beneficiary.

The Exemption Request

Applicants submit that, in view of the limited nature of the activities of the Litigation Trusts and the burdens which would be placed upon the Litigation Trusts in complying with all of the provisions of the Act and the rules and regulations thereunder, the proposed exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants state that the question of whether or not each of the Litigation Trusts is an "investment company" as defined in the Act is not an issue in the application, since Applicants undertake to register each of the Litigation Trusts as an investment company under the Act. Nevertheless, Applicants assert that the policies of the Act, as reflected in the provisions of the Act exempting certain persons from the coverage of the Act, may be relevant to the question of the desirability of exempting the Litigation Trusts from certain provisions of the Act. In this regard, Applicants submit that, except for the Unmarketable Securities, the Litigation Trusts will hold no investment securities as defined in the Act. They concede that, by reason of ownership of the Unmarketable Securities, each Litigation Trust may be deemed to own investment securities exceeding forty percent (40 percent) of the value of such Litigation Trust's total assets (exclusive of government securities and cash items). However, Applicants submit that each Litigation Trust will be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, within the meaning of sections 3(b)(1) and 3(b)(2) of the Act (which sections provide exceptions from the definition of "investment company" for purposes of the Act), in that the business of the

Litigation Trusts will be the prosecution of the Litigation. Further, Applicants submit that, although during the term of the Litigation Trusts' existence the Litigation Trusts will be required to conserve and invest the sums transferred to them for furtherance of the Litigation and will attempt to make reasonable dispositions of the Unmarketable Securities, the Litigation Trusts will not be, or hold themselves out as being, engaged primarily in the business of investing, reinvesting or trading in securities.

Applicants also submit that each provision of the Act and the rules and regulations thereunder, other than those from which exemption is not sought, is either inapplicable to each Litigation Trust or, if applied to any Litigation Trust, would be either in conflict with the purpose and structure of such Litigation Trust or unduly burdensome as to it.

No exemption is requested by Applicants for the Litigation Trusts from: Section 9, which relates to the ineligibility of certain persons to serve in certain capacities; sections 17(a) through 17(g) inclusive, 17(i) and (17(j), which prohibit or regulate certain transactions involving investment companies and their affiliates; section 31, which requires the maintenance and preservation of records of registered investment companies; section 34, which makes it unlawful to destroy or falsify various records and reports; and sections 36 and 37, which relate to breaches of fiduciary duty, larceny and embezzlement.

Section 17(h) of the Act provides, in part, that no instrument pursuant to which a registered investment company is organized or administered shall contain any provision which protects any director or officer of such company against liability to the company or to its security holders to which he might otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office. Applicants do not propose that the officers or directors of PIC, or the Trustees of the Litigation Trusts, shall be indemnified with respect to liability for such misconduct. They do propose, however, that advances be made by PIC, or the Litigation Trusts, of litigation expenses incurred by such officers, directors or Trustees prior to a final determination that the recipients are entitled to indemnification. In connection with any such advances, Applicants undertake that the entity making the advance will obtain a written promise by the recipient to repay that amount of the advance which exceeds the amount which is ultimately determined that he is entitled to receive by reason of indemnification, such promise to be secured by a surety bond or other suitable insurance ("Bond"). Applicants request an exemption from section 17(h) only to the extent necessary to permit each Litigation Trust to pay the expenses of obtaining such Bonds and to permit PIC to pay such expenses in connection with each advance it may make in connection with litigation arising out of, or in any way related to, the Litigation or the subject matter thereof.

Applicants undertake further that each Litigation Trust will, within 30 days after its formation, register as an investment company under the Act.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 28, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-4123 Filed 2-8-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

CLEVELAND DISTRICT ADVISORY COUNCIL

Meeting

The Small Business Administration Cleveland District Advisory Council will hold a public meeting at 9:00 a.m., Tuesday, March 1, 1977, at the Greater Cleveland Growth Association, Conference Rooms A & B, 690 Union Commerce Building, Cleveland, Ohio 44199, to discuss such business as may be presented by members, staff of the Small Business Administration and others present. For further information write or call S. Charles Hemming, U.S. Small Business Administration, AJC Federal Building, Room 317, 1240 East Ninth Street, Cleveland, Ohio 4199, (216) 293-4182.

Dated: February 2, 1977.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.77-4113 Filed 2-8-77;8:45 am]

[Declaration of Disaster Loan Area #1287]

MARYLAND

Declaration of Disaster Loan Area

As a result of the President's declaration, I find that the City of Baltimore and the following counties and adjacent Counties, within the State of Maryland, constitute a disaster area because of damage resulting from ice conditions in the Chesapeake Bay Region beginning about January 1, 1977:

Anne Arundel	Kent
Baltimore	Queen Annes
Calvert	St. Marys
Caroline	Somerset
Cecil	Talbot
Charles	Wicomico
Dorchester	Worcester
Harford	

Eligible persons, firms and organizations may file applications for loans for physical damage caused by the ice, until the close of business on March 28, 1977, and for economic injury until the close of business on October 28, 1977 at:

Small Business Administration, District Office, 7800 York Road, Towson, Maryland 21204.
Small Business Administration, District Office, Suite 250, 1030 15th Street, N.W., Washington, D.C. 20416.

or other locally announced locations.

Dated: February 2, 1977.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.77-4114 Filed 2-8-77;8:45 am]

[Declaration of Disaster Loan Area No. 1288]

VIRGINIA

Declaration of Disaster Loan Area

As a result of the President's declaration, I find that the following counties, cities and adjacent counties, within the State of Virginia constitute a disaster area because of damage resulting from ice conditions in the Chesapeake Bay Region and the Atlantic Coast of Virginia, beginning about January 1, 1977:

Counties of:

Accomack	Lancaster
Arlington	Mathews
Charles City	Middlesex
Chesterfield	New Kent
Essex	Northampton
Fairfax	Northumberland
Gloucester	Prince George
Henrico	Prince William
Isle of Wight	Richmond
James City	Stafford
King and Queen	Surry
King George	Westmoreland
King William	York

Cities of:

Alexandria	Petersburg
Chesapeake	Poquoson
Colonial Heights	Portsmouth
Hampton	Richmond
Hopewell	Suffolk
Newport News	Virginia Beach
Norfolk	

Eligible persons, firms and organizations may file applications for loans for physical damage caused by the ice, until the close of business on March 28, 1977, and for economic injury until the close of business on October 28, 1977 at:

Small Business Administration, District Office, Federal Building, Room 3015, 400 North Eighth Street, Richmond, Virginia 23240.

Small Business Administration, District Office, Suite 250, 1030 15th Street, N.W., Washington, D.C. 20416.

or other locally announced locations.

Dated: February 2, 1977.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.77-4115 Filed 2-8-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/25]

STUDY GROUP 1 OF THE U.S. NATIONAL COMMITTEE OF THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Group 1 of the U.S. CCITT National Committee will meet on March 2-3, 1977 at 10:00 a.m. in Room 511 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The Committee will consider the development of U.S. positions to be taken at international CCITT meetings now scheduled for March and April, 1977 in Geneva, Switzerland. The Committee will discuss questions relating to the settlement of accounts in international telecommunications relations on March 2, and aspects of mobile maritime services on March 3, 1977.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Dated: February 1, 1977.

ARTHUR L. FREEMAN,
Chairman,
U.S. CCITT National Committee.

[FR Doc.77-4116 Filed 2-8-77;8:45 am]

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 SIXTH meeting of the Board for International Food and Agricultural Development on March 14, 1977. The purpose of the meeting is to review the annual report on Title XII activities to be submitted to Congress on April 1, 1977, to continue discussion on implementation of the Joint Committees, and to receive briefing on the Sea Grant program.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m., and will meet in Room 5951, 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: February 2, 1977.

ERVIN J. LONG,
Federal Officer, Board for International Food and Agricultural Development.

[FR Doc.77-4083 Filed 2-8-77;8:45 am]

ADVISORY COMMITTEE ON VOLUNTARY FOREIGN AID

Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a)(2), Public Law 92-463, Federal Advisory Committee Act, notice is hereby given of the meeting of the Advisory Committee on Voluntary Foreign Aid which will be held on February 25, 1977, from 2:00 p.m. to 5:00 p.m., in Room 1107, New State Building, 21st and Virginia Avenue, N.W.

The purpose of the meeting is for the Advisory Committee to formulate recommendations to the Administrator regarding the composition, structure and procedures of the Committee and to consider such other matters related to the foreign assistance advisory concerns of the Committee as may be appropriate.

The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the Committee in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Written statements may be filed before or after the meeting.

Dr. Fred O. Pinkham will be the A.I.D. representative at the meeting. Information concerning the meeting may be obtained from Mr. Robert S. McClosky, Telephone: AC202-632-1892. Persons desiring to attend the meeting should enter the New State Building through the Diplomatic Entrance, 22nd and C Streets.

Dated: February 7, 1977.

FRED O. PINKHAM,
Assistant Administrator for Population and Humanitarian Assistance.

[FR Doc.77-4291 Filed 2-8-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RFA 505-77-2]

PURCHASE OF REDEEMABLE PREFERENCE SHARES

Receipt of Application

Project. Notice is hereby given that the Columbus and Greenville Railway ("applicant"), 1302 Main Street, Columbus, Mississippi 39701, has filed an application with the Federal Railroad Administration ("FRA") under section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 825, seeking financial assistance through the sale to the United States of redeemable preference shares having an aggregate par value of $3,755,000. Applicant proposes a preferred stock with mandatory dividend and redemption requirements as set forth in section 506. In addition, applicant proposes to pay a 7¾ percent dividend out of earnings, when earned, subject to additional restrictions on payment relating to the adequacy of working capital and projected needs for rehabilitation and capital investment. Such provisions and terms are to be negotiated with FRA.

The proceeds of the sale of preference shares are to be used by the applicant to fund four projects, all associated with the rehabilitation of applicant's facilities.

Project:	*Funds required*
1. Bridge osmose treatment—190 bridges	$400,000
2a. Track alinement, surfacing, and new ties—163 to 168 main-line miles	2,140,000
2b. Bridge strengthening	565,000
2c. Installation of 28 miles of 80-lb rail—between Columbus and Indianola	650,000
Total amount of Federal assistance sought — preference - share financing	3,755,000

These four projects proposed are part of a rehabilitation program consisting of six projects which applicant believes merit Federal financial assistance. The remaining two projects anticipate loan guarantee financing of $3,245,000. Projects 1, 2a, and 2b are scheduled to begin in 1977. Project 2c and one of the loan guarantee projects are to begin in 1979. The other loan guarantee project has a 1980 starting date.

Justification for Project. The applicant states that the proposed projects are undertaken to improve service and safety on the railroad and to enhance the prospects for industrial development along the rail line and in the region. The applicant believes it offers unique east-west service in the region and states that it is the rate base making line for many products and commodities hauled to the Southeastern United States. The applicant suggests it is also a unique intermodal facility with its connections to the Mississippi River at Greenville and the Yazoo Waterway at Greenwood, and its

future connection with the Tennessee-Tombigbee Waterway at Waverly.

Comments. Interested persons may submit written comments on the application to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, not later than the comment closing date shown below. Such submission shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefore. The application will be made available for inspection during normal business hours in Room 5415 at the above address of the FRA.

The comments will be taken into consideration by the FRA in evaluating the application. However, formal acknowledgment of the comments will not be provided.

The FRA has not approved or disapproved this application, nor has it passed upon the accuracy or adequacy of the information contained therein.

(Sec. 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended)

Dated: February 3, 1977.

Comment closing date: March 11, 1977.

CHARLES SWINBURN,
Associate Administrator for Federal Assistance, Federal Railroad Administration.

[FR Doc.77-4004 Filed 2-8-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

SERIES A-1984

Treasury Notes of January 27, 1977

[Department Circular Public Debt Serials—No. 3-77]

FEBRUARY 4, 1977.

The Secretary of the Treasury announced on February 3, 1977, that the interest rate on the notes described in Department Circular—Public Debt Series—No. 3—77, dated January 27, 1977, will be 7¼ percent per annum. Accordingly, the notes are hereby redesignated 7¼ percent Treasury Notes of Series A-1984. Interest on the notes will be payable at the rate of 7¼ percent per annum.

DAVID MOSSO,
Fiscal Assistant Secretary.

[FR Doc.77-4139 Filed 2-8-77;8:45 am]

Customs Service

ASSESSMENT OF ANTIDUMPING DUTIES ON PORTABLE ELECTRIC TYPEWRITERS FROM JAPAN

Petition Filed by American Manufacturer, Producer, or Wholesaler

Pursuant to section 516 of the Tariff Act of 1930, as amended by the Trade Act of 1974 (19 U.S.C. 1516), and § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)), notice is hereby given that the Customs Service received on January 24, 1977, a petition filed on behalf of SCM Corporation alleging that antidumping duties should be assessed on those entries of portable electric typewriters from Japan where it has been determined that sales were being or were likely to be made at less than fair value (LTFV). As a result of a negative determination of injury rendered by the International Trade Commission on June 19, 1975 (40 FR 27079), a finding of dumping was not made in this matter, and therefore merchandise of the class or kind in question was not subject to appraisement under the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.).

This petition requested the following relief:

(1) The Secretary of the Treasury or his delegate should conclude that the International Trade Commission erred, as a matter of law, when it concluded that an industry in the United States was not being injured or likely to be injured or prevented from being established by reason of imports of portable electric typewriters from Japan sold at less than fair value ("LTFV");

(2) The Secretary of the Treasury or his delegate should publish a finding of dumping with respect to portable electric typewriters from Japan forthwith;

(3) Appropriate Customs officers should make Antidumping Act appraisements [Foreign market (or constructed) value and purchase (or exporter's sales) price] for every entry of portable electric typewriters from Japan, and

(4) Appropriate Customs officers should assess antidumping duties on those entries of portable electric typewriters from Japan where it has been determined that the foreign market (or constructed) value exceeds the purchase (or exporter's sales) price.

Before a decision is made with regard to this petition, consideration will be given to any relevant data, views or arguments submitted in writing. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than February 16, 1977.

Written submissions will be available for public inspection in accordance with section 103.8(b) of the Customs Regulations (19 CFR 103.8(b)), at the Classification and Value Division, Headquarters, U.S. Customs Service, Washington, D.C., during regular business hours.

VERNON D. ACREE,
Commissioner of Customs.

[FR Doc.77-4227 Filed 2-7-77;1:14 pm]

Fiscal Service

[Dept. Circ. 570, 1976 Rev., Supp. No. 9]

MORRISON ASSURANCE CO., INC.

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds has been issued by the Secretary of the Treasury to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $264,000 has been established for the company.

NAME OF COMPANY, LOCATION OF PRINCIPAL EXECUTIVE OFFICE, AND STATE IN WHICH INCORPORATED

MORRISON ASSURANCE COMPANY, INC.

MOBILE, ALABAMA

FLORIDA

Certificates of authority expire on June 30 each year, unless sooner revoked, and new certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: February 3, 1977.

D. A. PAGLIAI,
Commissioner, Bureau of Government Financial Operations.

[FR Doc.77-4087 Filed 2-8-77;8:45 am]

VETERANS ADMINISTRATION

VETERANS EDUCATION

Policies and Procedures

Notice is hereby given of the publication of Veterans Administration policies and procedures concerning the provisions of Pub. L. 94-502 (90 Stat. 2383), including specific publications entitled: Extended 85-15 Percent Ratio Requirements; Retention of Advertising, Sales and Enrollment Materials; Continuation of Work-Study Agreement; Pub. L. 94-502 Provisions Relating to Chapter 35 Benefits; Clock-Hour Measurement of Noncollege-Degree Courses; Prohibition of Educational Assistance Payments For Courses Not Counted to Satisfy Graduation Requirements; Definitions—Institutions of Higher Learning and Standard College Degree; and Unsatisfactory Progress.

In order to obtain the views of the public, interested persons are invited to submit written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 before March 10, 1977. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any field station will be informed that records are available for inspection only in Central Office and furnished the address and the above room number.

Notice is also given that the provisions of the publications and procedures will be effective as indicated in the body of

each appendix set out below. The material below is the contents of appendixes (H) Revised and (I) through (O) of DVB Circular 20–76–84. The numbering system used is that of the circular. DVB Circular 20–76–84 and appendixes (A) through (H) were originally published in the FEDERAL REGISTER of December 16, 1976 (41 FR 55021), for comment.

Approved: February 2, 1977.

R. L. ROUDEBUSH,
Administrator.

[DVB Circular 20–76–84]

APPENDIX H—REVISED

EXTENDED 85–15 PERCENT RATIO REQUIREMENTS

DECEMBER 17, 1976.

[NOTE.—Responses to appendix H have indicated that clarification of certain provisions is desirable. In particular, provisions for processing enrollments during the initial interim period have been altered, and requirements relating to waivers and submission of 85–15 percent certifications have been modified.

In addition to the changes referred to in the preceeding paragraph two additional changes were made by change 1 to appendix H. revised on January 7, 1977, and one by change 2 dated January 26, 1977. Continued difficulty with reporting requirements contained in the revision of appendix H has made further simplification necessary. This change provides for a waiver of 85–15 percent computations for most schools with nominal VA-supported enrollments. It also provides a temporary waiver which delays full implementation of the difficult, BEOG and SEOG portions of computation requirements. Finally, the wording of the 85–15 percent certification statement which will appear on individual enrollment documents has been altered to be consistent with the course or general certifications school will be furnishing. These changes are found following the introductory portion of paragraph 4 beginning with the word "IMPORTANT," in the introductory portion of paragraph 8 beginning with the word "ATTACHMENT" and in paragraph 8b beginning with the words "COMPUTATION REQUIREMENTS."

Most changes are for clarification rather than substantive change; changed material appears enclosed by brackets.]

1. *Purpose.* This appendix provides instructions for implementing the provision of Pub. L. 94–502 which extends the 85–15 percent ratio requirements to additional types of courses and specifies additional types of financial support which must be computed into the 85 percent portion of the ratio. This appendix also explains the conditions under which the Administrator may waive the requirements because it is determined to be in the best interest of the veteran and the Federal Government.

2. *General.* Pub. L. 94–502 amends title 38 U.S.C. 1673(d) to provide that, effective December 1, 1976, the enrollment of an eligible veteran (not already enrolled) may not be approved in any course for a period during which more than 85 percent of the students enrolled are having all or part of their tuition, fees, or other charges paid to or for them by the school, the Veterans Administration, and/or by grants from any Federal agency. Specifically excepted from computing 85–15 percent ratios are special assistance payments for the educationally disadvantaged (under subchapter V of chapter 34), farm cooperative courses, and courses offered under contract with the Department of Defense on or immediately adjacent to a military base and which are available only to active-duty military personnel and their dependents if approved by the SAA (State approving agency) in the State where the base is located. In the case of a military installation located outside of the United States, approval will be by the SAA in the State where the parent school is located. As noted in paragraph 1, certain requirements can and will be waived by the Administrator. The new law extends the 85–15 percent ratio requirement to degree-granting institutions, and the requirement now applies to both proprietary profit, proprietary nonprofit institutions and public and other tax-supported schools. In addition, students receiving grants from all Federal agencies other than the VA, with certain exceptions as explained below, must now be counted in the 85 percent portion of the ratio.

3. *Identification of affected courses.* An 85–15 percent ratio must be computed for each course of study or curriculum leading to a separate approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the SAA to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions must have an 85–15 percent ratio computed separately from the same course offered at the parent institution; the student figures from the branch may not be added to those of the parent institution even for the same courses or curricula. Courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added for 85–15 percent computation purposes to the same course at the parent institution. Pursuit of a course or curriculum that varies in any way, although it may have the same designation as another curriculum, will require a separate 85–15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, [ ] required unit subjects are different, required completion length is different, etc.

[a. For computation purposes, separate courses in IHL's (institutions of higher learning) will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared. After that point, 85–15 percent requirements must be met for each specific curriculum based on a major field of study as certified to the VA. School policy for declaring fields of study must be equal for veterans and nonveterans alike. Because of numerous inquiries and comments, serious consideration has been given to broadening the definition of "course" for 85–15 percent purposes, but it has been determined that the following guidelines are the most lenient possible within the language of the statute and the underlying intent of Congress.]

(1) In 2-year IHL's general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified will require separate computations. Specific curricula for associate degrees will require separate computation for each curriculum. Terminal 2-year courses (e.g., AAS (Associate of Applied Science) Dental Technology, Auto Mechanics Certificate) must be computed separately for each objective.

(2) Students attending 4-year IHL's and graduate schools may be counted in general curricula such as BA (Bachelor of Arts) and BS (Bachelor of Science) only until the normal point at which the student must declare a major subject at the particular school. Then the 85–15 percent computation must be made for each specific curriculum; e.g., BS (Bachelor of Science) in Electrical Engineering, MA (Master of Arts) in English, etc. The rules mentioned above regarding branches and extensions must be applied strictly to yield accurate computations and correct approvals.

b. NCD (noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded vocational objective, each must meet the 85–15 percent requirement separately, unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject, etc.). Once again, branch or extension courses will be computed as separate courses or curricula. Courses offered on full-time and part-time bases which are identical in length and content will be combined for computing the ratio.

4. *Waivers.* The following waivers for 85–15 percent computation have been determined by the Administrator to be in the best interest of veterans and the Federal Government, and authority to apply them is hereby delegated to all station Directors. [Note that when a type of assistance received by a student is waived, that student must still be counted in the ratio. However, that student will be counted in the non-VA, nonsupported portion of the ratio as a result of the waiver. (See subpar. f.)]

[IMPORTANT: Notwithstanding any type of waiver provided for below, station directors are authorized to waive 85–15 percent computations for institutions which certify that 35 percent or less of their enrollment receives Veterans Administration educational assistance (compute main campuses and branches separately). Such certifications must be provided to the VA on a continuing basis in accordance with the time limits shown in paragraph 7c. (Such waiver will not be granted for any course in which the percentage of VA-supported veterans enrolled exceeds 85 percent.) Station directors are responsible for taking forceful action to identify specific courses of study which may exceed 85 percent VA-supported enrollment even if such courses are offered by schools having 35 percent or fewer veterans in the total school population. All station directors will require full 85–15 percent ratio computations for such courses with extraordinarily disproportionate VA-supported enrollments to show compliance with the law. In addition, a temporary waiver is hereby granted to exclude counting recipients of BEOG (Basic Educational Opportunity Grants) and SEOG (Supplementary Educational Opportunity Grants) as federally supported students for purposes of 85–15 percent ratio requirements. This temporary waiver of the BEOG and SEOG computation requirements applies only to the 1976–1977 academic year ending June 30, 1977. After that date, computation and waiver provisions shown below relating to BEOG and SEOG will be in effect.]

a. Graduate Students; waive counting all Federal assistance (other than VA benefits) and all support from the institution. No specific application for this waiver is required from the school.

b. Undergraduate and NCD Students:

(1) Waive counting all assistance provided by an institution, if the institution policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike. [A specific application for this waiver from the school to the station Director is not required.]

(2) Waive computation of the 85–15 percent ratio for any course offered by an IHL or NCD if 35 percent or fewer of the students *in the course* receive VA educational benefits, and the percentage of VA-supported students in the course plus the percentage of the school's total enrollment receiving BEOG (Basic Educational Opportunity Grants) or SEOG (Supplementary Educational Opportunity Grants) totals 85 percent or less. For

example, if a school finds that 29 percent of the enrollees in a business AA degree curriculum receive VA payments and 52 percent of the school's total enrollment receives BEOG or SEOG support, the total of the percentages (81 percent) qualifies that business AA degree for a waiver of any further 85–15 percent ratio computation. Satisfactory compliance with the 85–15 percent requirement is assumed when the above conditions are fulfilled. If the total of the two percentages exceeds 85 percent, the ratio must be computed for that course with BEOG and SEOG recipients included in the 85 percent portion of the ratio.

(a) When more than 35 percent of the enrollment in a course receives VA assistance, the ratio must be computed for that course with BEOG and SEOG recipients included in the 85 percent portion of the ratio.

(b) This count of VA-supported students and BEOG or SEOG recipients must be completed within 30 days of the beginning of each regular academic term (summer sessions excluded) [or before the beginning date of the next term, whichever is earlier,] for application to the next term for the purpose of waiving computation of an 85–15 percent ratio for each affected course. For schools not operating on a term basis, [counts as of the last day of the quarter] must be completed within 30 days of the end of each calendar quarter (March, June, September, December). If this count is not submitted for a course which previously had its ratio computation waived, a complete computation will be required before any new enrollments of eligible veterans may be processed for that course.

(3) Waive counting all forms of Federal assistance other than BEOG and SEOG. Specific examples of this type of waiver are benefits administered by the Social Security Administration, Federal grants supporting specific programs such as law enforcement (LEEP, Safe Cities Act grants), nursing, etc., Government Employees Training Act support, and tuition paid by an Armed Service to active-duty personnel. No specific application is required for this waiver.

(4) Waiver for all so-called military aero clubs which were previously exempt from 85–15 percent requirements under VAR 14202(C)(3). No specific application is required for this waiver.

(5) Waiver for courses open only to military personnel, their dependents, and civilian employees of a military installation when the course is offered on or adjacent to the base under contract with the Department of Defense and the branch or extension is approved by the SAA in the State where the military installation is located. In the case of foreign military installations, approval will be by the SAA in the State where the parent school is located. This waiver is an expansion of the statutory exclusion explained in paragraph 2 above. If the course is offered to the other students, the 85–15 percent ratio requirement must be met. [No specific application is required for this waiver.]

[c. Schools which submit satisfactory certifications of 85–15 percent compliance based on use of one or more of the above waivers must maintain records for a period of 3 years following termination of the enrollment period showing the basis for the waiver and the separate percentages of students falling into each waived category. The waivers and supporting data will be reviewed during compliance surveys.]

d. Schools which offer courses not meeting the 85–15 percent requirement for any reason may apply to the appropriate station Director for a [specific waiver of the requirements except for VA benefits. This generally will be a request for a waiver for BEOG and SEOG.] The school must state the specific basis of the specific waiver request, show the computation of the ratio for the affected course, and submit sufficient information to allow the Director to judge the merits of the request against the criteria shown below. The Director should use all VA sources as well as school-submitted data and statements when considering a specific waiver request in relation to these criteria. [(See subpar. f below.)]

(1) Availability of comparable alternative educational programs effectively open to veterans in the vicinity of the school requesting a waiver.

(2) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of the notification of developing status from the Office of Education, if applicable. Otherwise, the school should submit data sufficient to allow the Director to judge whether the school is similar to officially classified developing institutions, according to the criteria and data categories published in Part 169, Subpart B, Title 45, Code of Federal Regulations. The requirement that a school be a "Public or Nonprofit" institution need not be met.

(3) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the VA.

(4) General effectiveness of the school's program in providing educational and employment opportunties to the particular veteran population it serves. Factors to be considered should include percentage of veteran students completing the first year of the course of study and completing the entire course, results of the 50 percent employment survey for vocational objective courses, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(5) If a school does not agree with a Director's determination concerning a specific 85–15 percent waiver, it may request that the application along with the Director's findings and recommendation be forwarded to Central Office (224C) for administrative review.

e. All waivers of 85–15 percent requirements, whether partial or total and whether granted by a station director under delegated authority or by Central Office decision, will be made part of the school approval folder and will be subject to annual review for continuation.

[f. Waivers will not be granted for courses in which the percentage of veterans enrolled exceeds 85 percent, except that the percentage may be exceeded in courses offered by military aero clubs. Of course, the 85 percent limitation may also be exceeded in courses exempted by law (see paragraph 2 above.)]

5. *Countable Assistance for 85–15 Percent Computations.* In conjunction with the delegated waivers provided for in the preceding paragraph, the following types of assistance must be counted for determining compliance with 85–15 percent requirements.

a. Accredited graduate and advanced professional courses; count [only VA assistance provided under chapters 31, 32, 34 and 35,] except for courses offered on or adjacent to a military installation as explained in paragraph 2.

b. All other courses:

(1) [Count only VA assistance provided under chapters 31, 32, 34 and 35] except farm cooperative, assistance under subchapter V of chapter 34, and courses offered on or adjacent to a military base open to only active-duty personnel and their dependents (and civilian employees of the base, if waived by the station Director).

(2) Count BEOG and SEOG as Federal assistance, unless computation for a course is waived by the station Director (see par. 4b(2)) under delegated authority or waived by Central Office.

(3) Count all support offered by the institution, unless waived by the Station Director or Central Office.

6. *Computation of 85–15 Percent Ratio.* To determine if this requirement has been met, the number of students in a course who are not veterans, are not receiving a form of Federal or institutional aid (exclusive of waivers and statutory exemptions), or are receiving a form of aid which has been waived, will be compared to the total number of students enrolled in the course. If the non-VA, nonsupported students (unless waived) do not comprise at least 15 percent of the total enrollment, the 85–15 percent requirement has not been met for that course.

a. If all students in a course are full-time trainees, the ratio is computed simply by dividing non-VA, nonsupported students by total students; e.g., 20 non-VA, nonsupported students divided by 100 total students equals .20; the 15 percent requirement would be met in this case.

b. Ratios which include less than full-time students may be computed by comparing full-time equivalent non-VA, nonsupported students to the total number of full-time equivalent students. For example, assume that there are 100 students enrolled in a particular course of study; 75 are full-time students and 25 are half time. The total full-time equivalency enrollment would be 75 plus 12.5 or 87.5. Similarly, if 20 non-VA, nonsupported students are full-time trainees and five are half-time students, the non-VA, nonsupported full-time equivalency would be 20 plus 2.5 or 22.5. The ratio is computed by dividing non-VA, nonsupported equivaleucies by total full-time equivalencies: 22.5 divided by 87.5 equals .26. In this example the 15 percent non-VA requirement would be fulfilled.

[c. This appendix does not alter methods of 85–15 percent computation previously required of flight and correspondence schools. However, these schools must recognize the additional forms of aid which may have to be computed into the supported (85 percent) portion of the ratio.]

7. *Certifications of 85–15 Percent Compliance.* [The provisions of the new law make it necessary to institute new procedures for initial and continuing certifications of compliance with the 85–15 percent requirements.]

a. [No initial 85–15 percent ratio computation is required for any course organized on a term basis which began before December 1, 1976. All computations for courses organized on a term basis beginning on or after December 1, 1976, must be received by the appropriate VA station within 30 days of the beginning date of the course or before February 1, 1977, whichever is later. Computations for all courses non organized on a term basis must be received by the VA before February 1, 1977. This extension for initial certifications of compliance is provided to allow both VA and school personnel to familiarize themselves with the new statutory and administrative requirements.]

b. [If schools will provide reasonable assurance of 85–15 percent compliance, enrollment certifications for courses beginning on or after December 1, 1976 will continue to be processed without individual certifications of 85–15 percent compliance only until actual computations are completed and submitted as specified in subparagraph a above. A school may provide reasonable assurance based on percentages of VA-supported and

otherwise federally-supported students enrolled in the school. If a station Director has reason to question any school's reasonable assurance, he or she is authorized to defer processing new chapter 34 enrollments for that school until actual computations are completed and certified to the VA. If a school cannot or will not provide reasonable assurance of compliance, new chapter 34 enrollments may be processed only if they are accompanied by the appropriate individual 85–15 percent certification.]

c. [After the initial computation for a course, continuing 85–15 percent ratio certifications for each course must be received by the VA no later than 30 days after the beginning date of the term (excluding summer sessions) or before the beginning date of the next term, whichever occurs first. Certification for courses not offered on a term basis must be received by the VA no later than 30 days after the end of each calendar quarter.

(1) New enrollments of eligible veterans in a course will be processed based on the most recent available computation and certification of the 85–15 percent ratio. Upon receipt of information that either the initial or any subsequent computation shows that the 85 percent limitation is not met for a course, processing of new chapter 34 enrollments in that course will be discontinued immediately. Processing such new enrollments for that course may be resumed only after the school submits a certification showing that the proper ratio has been reestablished. In cases where a school shows a reestablished 85–15 perent ratio, the school must individually compute each new veteran enrollment submitted after reestablishment into the ratio for the course to ensure that the 85 percent limitation is not again immediately exceeded. Individual computations will be required until the end of the term for which the ratio was reestablished.

(2) Schools will maintain the records and computations showing 85–15 percent compliance for each course for a period of 3 years after the ending date of the enrollment period.

[d.] Once a student is properly enrolled in a course either before December 1, 1976, or enrolls after November 30, 1976 in a course which meets the 85–15 percent requirement, such a student may not have benefits for that course terminated because the 85–15 percent requirement is subsequently not met, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

[e.] Compliance surveys performed after December 1, 1976 will include verification of 85–15 percent compliance under the criteria in this appendix for new enrollments effective on or after December 1, 1976. Item 10 on VA Forms 22–1936 and 22–1936A, Compliance Survey Worksheet for Students Pursuing Training Under Chapter 34 or 35, must be altered to delete the words "proprietary non-college degree". Revision of these forms will be accomplished soon in accordance with the new provisions of Pub. L. 94–502.

[8. *85–15 Percent Certifications on Enrollment Documents.* Once a school has computed and certified 85–15 percent compliance to the VA as required in paragraph 7a., all enrollment documents submitted subsequently must bear or have attached the individual 85–15 percent certification statement shown below. Attachment of such individual certifications is not required if the school has qualified for a waiver of 85–15 percent computations on the basis of 35 percent or fewer students receiving VA educational benefits, and the station Director has granted the waiver without reservation (see par. 4 above). If a school cannot qualify for this waiver, the individual certification statement must apear on or be attached to each enrollment document. In cases where a Director withholds the 35 percent waiver from a specific course or courses offered by a school, enrollment documents for only such courses must bear or have attached the individual certification statement. In order to apply this individual certification exception properly, liaison representatives will furnish to the adjudication division a list of schools which have been granted a 35 percent waiver. The list must also show individual courses from which the 35 percent waiver has been withheld at the Director's discretion.]

[a. VA Forms 22–1999 and 22–1999–1 are being revised to show the proper 85–15 percent certification statement. Availability of the revised forms cannot be predicted at this time.]

b. Until the revised enrollment documents become available, institutional certifying officials must use interim measures to show compliance with the law. The 85–15 percent certification statement currently shown on enrollment documents must be deleted and a signed certification worded as follows attached to each document certifying a new enrollment covering a period beginning on or after December 1, 1976: "It is hereby certified that for enrollments under chapter 34, [computation requirements (including allowable waivers) have been satisfied to show that not more than 85 percent of the students enrolled in this course], are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution, the Veterans Administration under title 38, U.S.C. and/or by grants from any Federal agency, unless such payments have been waived by the VA for purposes of this requirement."

NOTE.—This provision does not apply to persons pursuing courses under 38 U.S.C. 1691, farm cooperative courses, or courses offered on military bases solely for military personnel and their dependents if approved by the SAA in the State where the base is located.

Each statement should show the name and VA claim number of the student whose enrollment is being certified. The statement itself may be duplicated, but each statement must bear an original or acceptable facsimile signature of the appropriate school certifying official. [ ]

c. No student will be counted more than one time in any computation of an 85–15 percent ratio. If a student receives both VA or other countable benefits and noncountable or waived type of benefit, that student must be included in the countable (85 percent) portion of the ratio.

[9. Rescission: Appendix 2, dated November 22, 1976 to DVB Circular 20–76–84.]

RUFUS H. WILSON,
Chief Benefits Director.

[DVB Circular 20–76–84]

APPENDIX I

RETENTION OF ADVERTISING, SALES AND ENROLLMENT MATERIALS

NOVEMBER 24, 1976.

1. *Purpose.* This appendix provides instructions for implementing the provision of Pub. L. 94–502 which requires institutions to retain advertising, sales and enrollment materials.

2. *General.* Pub. L. 94–502 amends 38 U.S.C. 1796 effective December 1, 1976, to require all institutions approved for enrollment of eligible veterans and persons to maintain for a period of 12 months complete records and copies of all advertising, sales and enrollment materials used by or on behalf of the institution. This provision is intended to ensure compliance with the prohibition aganst erroneous, false, or misleading advertising, sales and enrollment practices.

a. Education liaison representatives will immediately notify all institutions of the new provision and emphasize that it applies to all materials utilized in any manner on or after December 1, 1976.

b. Records and materials to be maintained include (but are not limited to) direct mail pieces, brochures, printed literature used by salespersons, films, recordings, video and audio tapes disseminated through broadcast media or otherwise, material disseminated through print media, tear sheets, leaflets, handbills, fliers, and any sales or recruitment materials or manuals used to instruct sales personnel, agents, or representatives of the institution.

c. All records and materials retained under this provision must be available for inspection by authorized representatives of the State approving agency or the Veterans Administration.

d. In the absence of specific complaints or allegations against an institution, VA and SAA personnel need only spot check the retained records and materials during regularly scheduled compliance surveys and supervisory visits.

(1) Allegations of deceptive advertising, sales and enrollment practices will continue to be processed in accordance with the procedures outlined in DVB Circular 20–76–26.

(2) If any action has been taken against an institution regarding deceptive advertising, sales or enrollment practices, during the 12 months prior to a compliance survey, a 100 percent review of the materials and records retained by the school should be conducted during the survey.

RUFUS H. WILSON,
Chief Benefits Director.

[DVB Circular 20–76–84]

APPENDIX J

CONTINUATION OF WORK-STUDY AGREEMENT

NOVEMBER 26, 1976.

1. *Purpose.* This appendix provides instructions for implementing the provisions of Pub. L. 94–502 pertaining to work-study agreements.

2. *General.* Pub. L. 94–502 changes provisions concerning eligibility and unscheduled terminations for eligible veteran-students participating in the work-study program. The new law allows a veteran-student to complete a work-study agreement in the event he/she ceases to be a full-time student prior to completion of such agreement.

a. Completion of a work-study contract is allowed if the veteran-student reduces his/her training time load to less than full time at any time subsequent to his or her signing the work-study agreement. A new contract is not needed since the student is completing the old contract.

b. If the student is scheduled to fulfill a work-study agreement during an enrollment break period because it cannot be fulfilled during the term in which contracted, it now becomes irrelevant whether the intended reenrollment for the following term is at a full-time rate. The same would apply even if the fulfillment of the agreement carries over to the following term. However, at that time, any subsequent contract would again require full-time pursuit of an education or training program at the time the student signs the new agreement.

c. If a student terminates training, he/she may be permitted to work out only those hours of unperformed service for which he/she received an advance payment.

RUFUS H. WILSON,
Chief Benefits Director.

[DVB Circular 20–76–84]

APPENDIX K

PUB. L. 94–502 PROVISIONS RELATING TO CHAPTER 35 BENEFITS

DECEMBER 1, 1976.

1. *Purpose.* This appendix provides instructions on the implementation of the provisions of Pub. L. 94–502 which affect chapter 35 benefits.

2. *General.* Pub. L. 94–502 has brought about several changes in eligibility and entitlement determinations for eligible persons under chapter 35.

3. *New Provisions*—a. *Maximum period of entitlement.* The maximum period of entitlement is increased from 36 to 45 months effective October 1, 1976. The 45-month limit may be exceeded only in the following situations:

NOTE.—There has been no change from the present procedures.

(1) No entitlement is charged based on a course(s) pursued by a spouse or surviving spouse under the special assistance for the educationally disadvantaged program (VAR 14237).

(2) Special restorative training is prescribed and an additional period is needed to complete such training (VAR 13300).

b. *Special restorative training.* When special restorative training is pursued, the computed monthly allowance is changed effective October 1, 1976. While the eligible person is enrolled in and pursuing a full-time course of special restorative training, the parent or guardian is entitled to receive on behalf of such person a special training allowance computed at the basic rate of $292 per month. If the charges for tuition and fees applicable to any such course are more than $92 per calendar month, the basic monthly allowance may be increased by the amount that such charges exceed $92 a month, upon election by the parent or guardian of the eligible person to have such person's period of entitlement reduced by one day for each $9.76 that the special training allowance paid exceeds the basic monthly Allowance.

c. *Periods of eligibility and ending dates.* There are also changes in the computation of periods of eligibility and ending date extensions effective October 1, 1976. For the purposes of this subparagraph, no review of cases will be directed; however, any necessary adjustments will be made whenever the cases are reviewed in future routine processing.

(1) The ending date of chapter 35 benefits for a child, spouse or surviving spouse may be extended (not to exceed maximum entitlement) for 12 weeks or to the end of the course, whichever is less, for schools not operated on a quarter or semester system when the person is enrolled and: (a) The veteran is no longer rated permanently and totally disabled; (b) the veteran is no longer listed as POW, MIA or Forcibly Detained; or (c) the spouse is divorced from veteran without fault on his or her part. (See title 38, U.S.C. sec. 1711.) No change has been made in the extension provisions already in existence for schools operated on a quarter or semester basis; these may still be extended to the end of the quarter or semester in the above situations.

(2) The ending date (delimiting date) of chapter 35 benefits for a child only may be extended (not to exceed maximum entitlement) to the end of the quarter or semester if the person is enrolled in an educational institution regularly operated on the quarter or semester system and the ending date ends during the quarter or semester. Also, if the child is enrolled in an educational institution operated on other than a quarter or semester system and the ending date occurs after a major portion of the course is completed, such ending date will be extended to the end of the course, or until 12 weeks have expired, whichever first occurs (title 38, U.S.C. sec. 1712).

(3) The method of determining the period of eligibility for children has also changed. The period of eligibility will now be eight years from the date of death or effective date of rating or notice of rating, whichever is applicable (if the event occurs between the eligible person's 18th and 26th birthdays) and also eight years from the date of first discharge or release from active duty if the eligible person served on active duty between the 18th and 26th birthdays.

NOTE.—No extensions are allowed beyond the 31st birthday.

The basic termination date remains the 26th birthday. In addition, processing time will no longer be computed to extend the period of eligibility. When existing chapter 35 cases are processed in routine handling, the following modification will be made to Part III of VA Form 22–1994a, Determination of Basic Eligibility and Entitlement, and, if necessary, an 02V correction made to the master record:

NOTE.—02V correction to the delimiting date for chapter 35 cases must be made using flexotype or SYCOR input until further notice. This does not affect original actions first establishing a chapter 35 delimiting date nor does it affect using VA Form 22–1997S, Education Award Code Sheet, to change a delimiting date on a chapter 34 case.

(a) When the termination date from item 15B or 15C of the VA Form 22–1994a is to be changed from 5 to 8 years from the applicable date, and processing time (item 16) had been added to the 5-year date, the processing time will first be deducted and then the 3 additional years will be added to the basic termination date. For example, if item 15B had been February 3, 1980, and processing time of 1 month, 8 days had been added previously, resulting in an extended termination date of March 11, 1980, then the 1 month, 8 days would be deducted before adding 3 years to the basic termination date. The result would be the new basic termination date, February 3, 1983. This date would then be used to correct the delimiting date in the master record by 02V correction.

(b) When the termination date is from item 15A of VA Form 22–1994a, no action will be taken to deduct processing time and no correction will be made to the delimiting date in the master record.

c. For original award or Certificate of Eligibility actions being taken after receipt of these instruction, any processing time (item 16 of VA Form 22–1994a) will not be used in determining the delimiting date for chapter 35 children claimants.

RUFUS H. WILSON,
Chief Benefits Director.

[DVB Circular 20–76–84]

APPENDIX L

CLOCK-HOUR MEASUREMENT OF NCD COURSES

DECEMBER 3, 1976.

1. *Purpose.* This appendix provides detailed instructions for implementing the new provisions of 38 U.S.C. 1788(a), as amended by Pub. L. 94–502, pertaining to NCD clock-hour measurement.

2. *General.* Pub. L. 94–502 provides a new basis for clock-hour measurement of accredited NCD (noncollege-degree) courses approved under 38 U.S.C. 1775 and VAR 14253. This appendix also eliminates supervised study from clock-hour measurement of both accredited and nonaccredited NCD courses.

The effective date of this provision is December 1, 1976.

3. *New Measurement.* For accredited NCD courses, 27 hours per week of attendance is full time if shop practice is an integral part of the course. If theoretical or classroom instruction predominates, 22 hours per week of net instruction is full time. The following chart shows the breakdown of hours and training time based on the new measurement:

Training time	Accredited shop course (hours)	Accredited theory/class course (hours)
Full time	27	22
¾ time	20–26	16–21
½ time	13–19	11–15
Less than ½, more than ¼ time	7–12	6–10
¼ time or less	1–6	1–5

4. *Supervised Study.* Supervised study is generally a "study hall" in which students study or work on assigned homework with an instructor available to answer any questions. No time spent in supervised study, or the equivalent, is countable for clock-hour measurement of NCD courses, whether accredited or non-accredited. Also, unsupervised study is never included for measurement purposes.

5. *Revised Approvals.* The approvals for all the courses affected by this new provision must be reviewed and revised as appropriate

a. The liaison representative will review all the approval folders to identify all NCD courses measured on a clock-hour basis. The following course approvals will be referred to the SAA (State approving agency) for revision based on the new measurement and the exclusion of supervised study:

(1) All accredited NCD courses, and

(2) Nonaccredited NCD courses for which the approval folder (course outline, ccaalog, bulletin, etc.) shows or indicates the possibility that hours of supervised study are included in the current approval.

b. The SAA will be requested to submit revised approvals, effective December 1, 1976, which show the required weekly hours for measurement purposes excluding supervised study. The SAA should be given until April 1977, within which to revise the approvals.

c. The liaison representative will review the revised approval data received from the SAA to ensure that all the requirements of law and Veterans Administration Regulations have been met. A revised VA Form 22–1998b, Approval Information—Accredited NCD Courses or Nonaccredited Courses, will be prepared for each NCD course measured on a clock-hour basis when the approval is revised. A control will be maintained in the regional office to ensure that the revised approval data requested from the SAA is received for all affected courses by April 1, 1977.

6. *Award Adjustments.* When a revised approval is received which may result in either an increase or decrease in the training time for students at a particular school, a review must be made to ensure appropriate award action.

a. The liaison representative will request from each school a list of the names and file numbers of all VA education beneficiaries currently enrolled in each NCD course measured on a clock-hour basis requiring adjustment. If a school is unable to compile a

list because of a large enrollment or other difficulty, the liaison representative will request from DPC Hines a VA Form 20–8270a, Education Master Record—Audit Writeout, for each beneficiary in each course.

b. If award action is necessary, the list or the VA Forms 20–8270a will be referred to the Adjudication activity. If an increase in training time is appropriate, an award will be prepared to increase benefits effective December 1, 1976. If a reduction is appropriate, an award will be prepared to decrease benefits effective the earliest of the following dates:

(1) June 1, 1977, or

(2) The starting date of the first enrollment period beginning on or after April 1, 1977.

RUFUS H. WILSON,
Chief Benefits Director.

[DVB Circular 20–76–84]

APPENDIX M

PROHIBITION OF EDUCATIONAL ASSISTANCE PAYMENTS FOR COURSES NOT COUNTED TO SATISFY GRADUATION REQUIREMENTS

DECEMBER 10, 1976.

1. *Purpose.* This appendix provides instructions for the implementation of the provisions of Pub. L. 94–502 which prohibit payment of educational benefits for auditing a course or for a course which is not used in computing graduation requirements, including any course from which the student withdraws, unless there is a finding of mitigating circumstances causing the withdrawal.

2. *General.* Pub. L. 94–502 amends title 38 U.S.C. 1780(a), to provide that, effective December 1, 1976, no payment of educational benefits will be made to an eligible veteran or person for audited courses or courses for which the grade assigned is not used in computing graduation requirements. This includes prohibition of payments for courses from which the eligible veteran or person withdraws, unless the Administrator finds mitigating circumstances involved in the withdrawal.

3. *Definitions.* Proper implementation of these statutory provisions will be facilitated if the following concepts are used in determinations concerning benefit payments:

a. *Audited courses.* Any course which a student attends with a prior understanding between school officials and the student that such attendance will not result in credit being granted toward graduation. Because no credit toward an educational objective can be earned for such a course, it is not properly a part of the student's approved educational program.

b. *Nonpunitive grade.* Any grade assigned for pursuit of a course, whether upon completion of the course or at the time of withdrawal from it, which has the effect of excluding the course from any consideration in determining progress toward fulfillment of requirements for graduation. No credit toward graduation would be granted for such a grade, nor would there be any effect on other graduation factors imposed by school policy, such as a grade point average. A course for which a nonpunitive grade is assigned is thus equivalent to an audited course for purposes of advancement toward graduation.

c. *Punitive (failing) grades.* A grade assigned for pursuit of a course which indicates unacceptable course work and no credit granted toward graduation for that pursuit. Although this type of grade results in no credit, it is distinguished from a nonpunitive grade by the fact that it is considered in determining overall progress toward graduation in that a penalty is exacted on a school graduation requirement, such as grade point average. A course for which a punitive failing grade is assigned is not equivalent to an audited course because the grade is computed into a graduation requirement.

d. *Drop-add period.* A reasonably brief period at the beginning of a term (not to exceed 30 days) officially designated by a school for unrestricted enrollment changes by students.

e. *Mitigating circumstances.* Circumstances which directly hinder eligible veteran's or person's pursuit of a course and which are judged to be out of the student's control. Following are some general categories of mitigating circumstances (this list is not all-inclusive):

(1) Serious illness of the eligible veteran or person.

(2) Serious illness or death in the eligible veteran's or person's immediate family.

(3) Immediate family or financial obligations which require a change in terms, hours, or place of employment which precludes pursuit of a course.

(4) Discontinuance of a course by a school.

(5) Active duty military service, including active duty for training.

(6) Withdrawal from a course or receipt of a nonpunitive grade upon completion of a course due to unsatisfactory work may be considered to be under mitigating circumstances if the student can demonstrate good faith pursuit of the course up to the point of withdrawal or completion *and* the student submits evidence that he or she applied for tutorial aid, consulted a Veterans Administration counselor, or consulted a school academic counselor or advisor regarding an attempt to remedy the unsatisfactory work before withdrawal or completion.

4. *Payment and Termination Actions.* Depending on the type of grade assigned, the point during a term when a student withdraws, and/or the presence of mitigating circumstances, payment or award termination actions will be determined as follows:

a. No VA educational assistance will be paid for an audited course. This is consistent with long-standing VA policy, the only difference being that the policy is now expressed in the statute. Schools should never certify audited courses to the VA for payment of benefits. Such certifications, if they occur, will be considered false for purposes of considering school liability for overpayments.

b. If an eligible veteran or person withdraws from a course after the institution's drop-add period, receives a non-punitive grade for that course, and mitigating circumstances are not found, benefits for that course will be terminated effective the first date of enrollment or December 1, 1976, whichever is later.

c. If an eligible veteran or person completes a course but receives a nonpunitive (no credit *or* no failure) grade, and mitigating circumstances are not found, benefits for that course will be terminated effective the first date of enrollment or December 1, 1976, whichever is later.

d. As noted in subparagraphs a and b above, no overpayments will be created in accordance with these provisions for any period prior to December 1, 1976. School liability provisions will not be applied to overpayments resulting from withdrawals or nonpunitive grades unless a school fails to report changes in student status timely in accordance with VA regulations and administrative requirements.

e. If an eligible veteran or person withdraws from a course before the end of an institution's drop-add period regardless of circumstances, withdraws from a course and mitigating circumstances are shown, or withdraws from a course under curcumstances such that a punitive grade is or will be assigned for that course, reduction of benefits will be effective at the end of the month or the end of the term in which the withdrawal occurs, whichever is earlier. If the eligible person or veteran terminates all courses under these same conditions, termination of benefits will be effective the last date of pursuit. Last date of pursuit in a residence course is the last date of attendance.

f. If an eligible veteran or person terminates a correspondence, flight, farm cooperative, cooperative, or job-training course, termination of benefits will be effetcive on the following dates:

(1) Correspondence Training: Date last lesson serviced.

(2) Flight Training: Date last instruction received.

(3) Farm Cooperative Training: Date of last classroom attendance.

(4) Cooperative Training: Date of last training.

(5) Job Training: Date of last training.

5. *Mitigating Circumstances—Reporting, Development, and Award Actions.* As indicated previously, the involvement of mitigating circumstances in a student's termination or reduction of training will affect adjustment of the award of benefits.

a. All schools will be encouraged to show mitigating circumstances, provided this information is known, and the grade which is or will be assigned for the course(s) involved, when reporting training time reductions or terminations. Item 3C, Remarks, on VA Form 22–1999B or 22–1999B–1, Notice of Change in Student Status—Institutional Courses Only, will be used for this purpose. It should be pointed out to schools that their cooperation in this regard will avoid retroactive termination of benefits, if there were satisfactory mitigating circumstances, to the beginning of the course(s) from which withdrawn, and thus aid the veteran by maintaining proper benefit payments.

b. If the school shows acceptable mitigating circumstances, benefits will be reduced at the end of the month in which the reduction occurs if the student continues a part of his/her course, or terminated effective last date of pursuit when there is an interruption or discontinuance of all unit subjects with no further action required.

c. If mitigating circumstances are not shown on the notice of withdrawal or termination, reduction will be at end of the month in which reduction in training occurs or termination of the award will be effective last date of pursuit; and the following further actions will be required:

(1) A form or dictated development letter will be sent to the student (the computer-generated reduction or termination letter will be allowed to issue). The development letter will indicate the action taken and explain that the student will receive a computer-generated letter showing months of entitlement remaining, amount overpaid (if any), and information concerning repayment and waiver request. The student will be invited to give his or her statement regarding possible mitigating circumstances (not further specified) involved in the reduction or termination of training. Finally, the student will be advised that if no response is received by the VA within 30 days, reduction or termination of benefits will be made effective the beginning date of the course(s) involved, resulting in creation of an overpayment or additional overpayment.

NOTE.—A new VA Form Letter will be developed for this purpose. Until it is available, modified current form letters or dictated letters must be used.

(2) Each case developed in this manner will be placed under pending end product

control for 30 days using end product code 220.

NOTE.—A one-time code 220 may not be recorded in addition to establishing the pending 220 control.

If no response is received during this period, or if the student's claim of mitigating circumstances is not judged to be satisfactory, amended award action will be taken to reduce or terminate benefits effective the beginning date of the course(s) involved and final action recorded on the end product code 220. The computer-generated letter will be allowed to issue to explain remaining entitlement, amount of overpayment, etc., but a form or dictated letter must also be issued to explain the reason for retroactive termination or reduction of benefits. If mitigating circumstances are established, final action will be recorded on the pending end product code 220.

(3) The potential abuse of the provision for mitigating circumstances in order to obtain benefits otherwise not payable is obvious. Therefore, if a pattern of withdrawals or terminations develops with mitigating circumstances shown or claimed in each instance, the student will be required to submit a signed statement of circumstances before any further favorable judgments can be made. Other corroborative evidence, such as statements from employers or physicians, may also be required if deemed necessary. For purposes of this provision, a pattern of withdrawals or terminations will exist upon the third occurrence within a term or the third occurrence in consecutive terms.

RUFUS H. WILSON,
Chief Benefits Director.

[DVB Circular 20-76-84]

APPENDIX N

DEFINITIONS—INSTITUTIONS OF HIGHER LEARNING AND STANDARD COLLEGE DEGREE

DECEMBER 13, 1976.

1. *Purpose.* This appendix provides instructions for implementing the provisions of Pub. L. 94-502 which provide definitions of the terms "institution of higher learning" and "standard college degree."

2. *New Definitions.* Effective the date of enactment, October 15, 1976, Pub. L. 94-502 amended 38 U.S.C. 1652 to include definitions of the terms "institution of higher learning" and "standard college degree." The revised 38 U.S.C. 1652(g) follows the general wording of the definition of a "standard college degree" as stated in VAR 14200(E). The revised 38 U.S.C. 1652(f) defines an institution of higher learning not previously defined in regulations for course approvals and measurements. 38 U.S.C. 1652(f) provides: "For the purpose of this chapter and chapter 36 of this title, the term 'institution of higher learning' means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree."

a. Prior to Pub. L. 94-502, the term "institution of higher learning" was not specifically defined by either law or regulation. However, pursuant to PG 21-1, section M-10, par. 4, a school offering a "standard college degree" was considered to be an institution of higher learning by nature of this definition. Since the legislative intent of 38 U.S.C. 1652(f) was not to change existing Veterans Administration policy, if no degree-granting power rests with a State education authority but there is a State law which permits schools to be licensed or chartered as degree-granting institutions, the school may be recognized as an institution of higher learning if:

(1) The school has been licensed or chartered by the appropriate State authority as a degree-granting institution; and

(2) The school is a recognized candidate for accreditation as a degree-granting school by one of the recognized national or regional accrediting associations.

b. Course approvals should be reviewed to determine whether all presently approved degree courses are in fact being offered by an "institution of higher learning."

(1) If the school is not an institution of higher learning, the "degree" is not an acceptable educational objective within the meaning of VAR 14230(A), and course approval will have to be revised to reflect an acceptable professional or vocational objective under VAR 14230(B).

(2) If an acceptable objective cannot be shown (e.g., for a general education program) it will be necessary for the State approving agency to withdraw approval. In most other cases, the revised objective will tend to be vocational rather than professional, subjecting the course to the vocational placement requirements of VAR 14252(G).

(3) Also, if applicable, the school's facility code should be changed. In addition, since the course no longer leads to a "standard college degree" collegiate credit-hour measurement under VAR 14272 is not in order. (A prerequisite for applying VAR 14272 (B)(3) is that the course be offered by an institution of higher learning.) Consequently, measurement for payment must be based on clock hours per week or credit hours under VAR 14270, footnote 8. (A separate appendix will be issued shortly for other measurement provisions added by Pub. L. 94-502.)

3. In regard to the 2-year rule, neither such a new school nor a newly established branch or extension of an existing school would qualify for the exception provided by VAR 14251(A)(4) for a course offered by a nonprofit school of college level which is recognized for credit toward a standard college degree. (See Appendix C of this circular for other 2-year rule provisions added by Pub. L. 94-502.)

4. The SAA and any schools which may possibly be affected by 38 U.S.C. 1652(f) will be notified immediately. The SAA will be requested to review approvals under these guidelines. If withdrawal of course approval or reduction in training time is indicated, current approvals and measurement standards may be continued through the end of the 1977 spring term. This period will allow schools an opportunity to qualify as "institutions of higher learning" while protecting the interest of eligible students already enrolled for the standard academic year. However, all course approvals and awards for the ensuing summer term will reflect these guidelines.

RUFUS H. WILSON,
Chief Benefits Director.

[DVB Circular 20-76-84]

APPENDIX O

UNSATISFACTORY PROGRESS

DECEMBER 17, 1976.

1. *Purpose.* This appendix provides instructions for implementing the Pub. L. 94-502 provision pertaining to unsatisfactory progress under chapters 34 and 35.

2. *General.* Pub. L. 94-502 amends 38 U.S.C. 1674 and 1724 effective December 1, 1976, to expand the concept of unsatisfactory progress to include those students not progressing at a rate that will permit graduation within the approved length of the course, based upon the training time paid by the VA (Veterans Administration). This provision may be waived if there is a VA finding of mitigating or extenuating circumstances. Current provisions for determining satisfactory progress, such as a GPA (grade point average) or average grade requirement, remain in effect.

3. *Approved Length of Course.* a. The length of time required to complete a course depends on the rate of pursuit. A student pursuing a bachelor's degree program at full time and taking 15 credit hours per term can normally be expected to graduate in a 4-year period. However, a student taking 12 credit hours will normally require 5 years and a student taking 6 credit hours, 10 years.

b. The number of credit hours required for graduation must be considered in determining the length of a course. For instance, 60 semester hours are normally required for an associate degree and 120 semester hours for a bachelor's degree.

c. When a student is pursuing a course at various training times (e.g., half time for one term and full time for the next), the approved length of the course is determined by the credit hours required for graduation. To determine the number of terms remaining at any point during a student's program, the following procedures should be used:

(1) Determine the number of credit hours remaining for graduation by subtracting the hours completed (excluding hours for which nonpunitive grades are assigned) from the hours required.

(2) Then divide this figure by the minimum number of full-time hours (12, 13 or 14 depending on the school) to determine the number of terms remaining based on full-time enrollment.

(3) The student must be able to graduate within that number of terms in order to complete the program in the approved length of time.

Example

Hours required for graduation	120
Full-time requirement	12
Hours completed	84

120 hours required − 84 hours completed
= 36 hours remaining.
36 hours remaining ÷ 12 hours
= 3 terms remaining.

4. *Extension of Training.* a. When a student must extent his or her training beyond the aproved length of the course to be able to meet the requirements of graduation, progress is considered unsatisfactory in the absence of mitigating circumstances. This is true even though the student otherwise meets the regularly prescribed standards of the school, including maintaining the minimum passing grades or required GPA or average grades.

b. An accumulation of courses that are not successfully completed, based on the policies of the school, generally leads to an extension in length of training, since such courses must be repeated or otherwise made up. Courses that are not successfully completed include those for which a failing grade ("F" or the equivalent) is assigned or for which a grade below that required under school policy ("D" when the school requires a "C") is assigned.

c. All courses for which benefits are payable must be considered in a determination of unsatisfactory progress. Courses not successfully completed for which a nonpunitive

grade is assigned will not be considered in such a determination. (See DVB Circular 20–76–84, Appendix M.) A nonpunitive grade is one that has no effect in determining whether graduation requirements are met. A nonpunitive grade does not contribute to the accumulation of credits for graduation nor is it computed into a GPA or other measure of progress.

5. *School Determination.* a. A determination as to whether an extension in the length of the course will be required must be made by the school each time a course is not completed successfully. Such a determination must include the following variables: (1) The total credit hours needed to graduate, including the number to be repeated or otherwise made up; (2) the number of terms remaining based on the approved length of the course and the student's rate of pursuit; and (3) the maximum credit-hour load allowable per term based on school policy.

b. When the school determines that a student's progress is unsatisfactory under this provision, their report to the VA should indicate that unsatisfactory progress is due to an extension of training beyond the approved length of the course. Any circumstances, which the school feels the VA should consider as possible mitigating circumstances, should also be shown.

c. The following examples show determinations based on transcripts in which each unit subject represents 3 hours of credit attempted. No mitigating circumstances are shown.

Example 1: In this example the "F" grades are considered as punitive grades by the school. If they were nonpunitive, the school should report a reduction in training load at the end of each semester, in which case an overpayment would be created and the "F's" would not be considered in determining progress.

Semester 1

Subject	Grade
English 101	A
History 170	C
Mathematics 101	F
Economics 101	C

Semester 2

Subject	Grade
English 102	A
Political science 101	B
Mathematics 111	D
Physics 120	F

Semester 3

Subject	Grade
English 201	A
Philosophy 190	B
Biology 101	C
Chemistry 101	F

Cumulative GPA=2.083 (on a 4-point system).
Credits earned=27 semester hours.
Credits needed for AA degree=60 semester hours.

The approved length of the course at 12 hours per semester is 5 semesters. The student lacks 33 semester hours for graduation and has two semesters within which to graduate in the approved time. If the school will permit the student to enroll for 17 hours per semester, he or she could possibly graduate in the two remaining semesters. Therefore, progress would be considered satisfactory.

NOTE.—The student must reenroll in enough hours in semester 4 to allow graduation within the two remaining semesters. Otherwise, at the beginning of semester 4 the school will report that the student's progress is unsatisfactory.

However, if the maximum hours permitted by the school are 15, unsatisfactory progress should be reported by the school at the end of semester 3.

Example 2: The student in example 1 reenrolls in semester 4 and receives the following grades:

Subject	Grade
English 202	A
English 270	A
Phychology 101	B
Statistics 120	F
Business 190	F
Economics 102	F

Cumulative GPA=2.0 (on a 4-point system).
Credits earned=36 semester hours.

At the end of semester 4 the student lacks 24 semester hours for graduation. Since this student cannot possibly complete 24 hours in the one remaining semester, an extension in the length of the course is needed to meet the requirements for graduation. The need for such an extension constitutes unsatisfactory progress and should be reported by the school at the end of semester 4.

Example 3. The following transcripts include nonpunitive "W" grades for which benefits are not payable:

Semester 1

Subject	Grade
English 101	W
History 170	C
Mathematics 101	B
Physics 120	C

Semester 2

Subject	Grade
English 101	W
Biology 101	C
Mathematics 120	B

Semester 3

Subject	Grade
English 101	W
Philosophy 170	F
Chemistry 101	B

Semester 4

Subject	Grade
Mathematics 220	A
Chemistry 102	B
Political science 101	D
English 001	F

Semester 5

Subject	Grade
Statistics 201	A
Psychology 120	W
Mathematics 230	B
Philosophy 180	F

Cumulative GPA=2.143 (on a 4-point system).
Credits earned=33 semester hours.
Credits needed for AA degree=60 semester hours.

Since this student has been paid based on various training times, the approved length of the course is determined by the credit hours required for graduation and must be computed as if the student successfully completed all the courses for which benefits are payable. (All grades of "W" are excluded since they are nonpunitive grades.) The student completed 42 semester hours (the 9 hours failed plus the 33 hours earned). The 42 semester hours represent the number of hours that should have been successfully completed to allow the student to graduate within the approved length of the course. The student would then need 18 semester hours (60 hours required minus 42 hours completed), and could graduate within two semesters (18 hours ÷ 12 hours full time = 1.5 semesters). The student *actually* lacks 27 semester hours to graduate which could be completed in 2 additional semesters if the school permits 14 hours per semester. The student, therefore, is progressing satisfactorily.

Example 4: The student in example 3 enrolls in semester 6 and receives the following grades:

Semester 6

Subject	Grade
Sociology 170	W
History 201	F
Statistics 202	A
Political science 102	W
Economics 120	W

Cumulative GPA=2.125 (on a 4-point system).
Credits earned=36 semester hours.

The student completed 48 semester hours (the 12 hours failed plus the 36 hours earned). The AA degree should be reached in one semester of 12 hours (60 hours required minus 48 hours completed). Since more than one semester is needed to meet the actual remaining requirements (24 semester hours), progress is considered unsatisfactory.

6. *VA Determination of Mitigating Circumstances.* a. A student is considered to be making satisfactory progress in the above situations if there is an Adjudicative determination of mitigating or extenuating circumstances. Mitigating circumstances include, but are not limited to the following:

(1) Personal illness.

(2) Illness or death in the immediate family.

(3) Geographical transfer or a change in hours or conditions of employment.

(4) Financial emergency.

(5) Failure to satisfactorily complete a deficiency or remedial course without fault.

(6) Active duty military service, including active duty for training.

(7) Any other circumstances beyond the student's control which hampers pursuit of a course.

b. If a claim of mitigating circumstances is received from a student or if the school notice indicates possible mitigating circumstances, the Adjudication activity will follow the procedures outlined below:

(1) When the information concerning mitigating circumstances is not sufficient to make a determination, development will be required and, if there is a running award, benefits will be suspended. The circumstances which are claimed to have caused the unsatisfactory progress will be developed by means of a dictated letter to the student requesting a statement explaining the extenuating circumstances. The student will also be advised of the reason for the suspension of benefits if benefits were suspended and advised that if the requested statement is not received in 30 days, it will be necessary to terminate the award on the basis of unsatisfactory progress.

(2) If it is determined that mitigating circumstances exist, benefits will be resumed, if previously suspended, and the school will be notified of the course(s) which will be disregarded, because of the mitigating circumstances, in any future determination of unsatisfactory progress.

(3) If it is determined that no mitigating circumstances exist, benefits will be terminated, if not already in a terminated status, and the student will be notified by FL 22–337, unless an application (VA Form 22–1995, 22–5495 or 22–5495W) has already been submitted. In that instance, the case will be referred to the Counseling activity and the student will be notified by dictated letter of the termination and will be advised that a counseling appointment will be scheduled.

7. *Unsatisfactory Progress Reported Without Mitigating Circumstances.* When unsatisfactory progress is reported without any indication of mitigating circumstances, the Adjudication activity will terminate benefits if there is a running award. The student will be advised by dictated letter (or FL 22–337) in which the following sentence (or the

equivalent) will be included: "If you feel that there are extenuating circumstances surrounding your unsatisfactory progress, you should submit a statement explaining those circumstances."

8. *Counseling.* If educational benefits are terminated due to a determination of unsatisfactory progress, VA counseling is required before benefits may be reinstated even if the student continues in the same course at the same school (see VAR 14278). If the VA counseling psychologist determines that the cause of the unsatisfactory progress has been removed and that the program that the beneficiary proposes is suitable to his or her aptitudes, interests and abilities, benefits may be reinstated effective the date such conditions were met as determined by the counseling psychologist, or the date of reentrance, whichever is later. The effective date may be a future date, date of the counseling session or a retroactive date, depending on the circumstances in the individual case.

9. *Change of Program.* A revision of a program which results in an extension of time to be able to meet the requirements of graduation is considered a change of program. Unsatisfactory progress is not to be reported when an extension of training is due solely to such a change of program. However, if progress in the initial program is unsatisfactory, a change of program may not be approved in the absence of VA counseling (see VAR 14234(B)).

10. *Change of School.* If a change of school will result in an extension to the student's program, development should be undertaken to determine if a change of program should be charged or if progress at the first school was unsatisfactory.

11. *Effective Date.* This change affects all enrollment periods beginning on or after December 1, 1976. Unsatisfactory progress determinations under this change will be based on the length of time (or number of credit hours) required for graduation as of the first enrollment period beginning on or after December 1, 1976. Enrollment periods prior to that are not for consideration under this change.

12. *Form Letters.* New VA form letters will be developed to fit the situations outlined in paragraphs 6 and 7 above. Until they are distributed to regional offices, it will be necessary to use dictated letters or modified FL's 22-337.

RUFUS H. WILSON,
Chief Benefits Director.

[FR Doc.77-3985 Filed 2-8-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 321]

ASSIGNMENT OF HEARINGS

FEBRUARY 4, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 57697 (Sub-No. 3), Lester Smith Trucking, Inc., now assigned March 24, 1977, at Denver, Colo., is canceled and application dismissed.

MC 140303 (Sub-No. 2), Frank Quesanda Salazar, d/b/a Horse Broder Crossing Transportation Co., now being assigned April 18, 1977 (1 week) at San Diego, California, in a hearing room to be later designated.

MC 29613 (Sub-No. 8), Jayne's Motor Freight, Inc., now assigned March 23, 1977, at New York, N.Y., is postponed indefinitely.

F.D. 28255, Chesapeake and Ohio Railroad Company—Lease and Operate—The Baltimore and Ohio Railroad Company Between Clendenin and Charleston in Kanawha County, West Virginia now assigned March 8, 1977, at Charleston, West Virginia is being postponed indefinitely.

MC 82841 Sub 186, Hunt Transportation, Inc., now assigned March 3, 1977, will be held in Room 5A15-17, Federal Bldg., 1100 Commerce St., Dallas, Texas.

MC 133095 Sub 105, Texas Continental Express, Inc., now assigned March 2, 1977, at Dallas, Tex., will be held in Room 5A15-17, Federal Bldg., 1100 Commerce St.

MC 133655 Sub 94, Trans-National Truck, Inc., now assigned March 7, 1977, at Dallas, Texas, will be held in Room 5A15-17, Federal Bldg., 1100 Commerce St.

MC 109064 Sub 31, Tex-O-Ka-N Transportation Company, Inc., now assigned March 1, 1977, at Dallas, Texas, will be held in Room 5A15-17, Federal Bldg., 1100 Commerce St.

MC 117119 Sub 600, Willis Shaw Frozen Express, Inc., now assigned March 4, 1977, at Dallas, Texas, will be held in Room 5A15-17, Federal Bldg., 1100 Commerce St.

MC 142369, Clarence Cornish Automotive Service, Inc., d.b.a. Clarence Cornish Wrecker Service, now assigned March 9, 1977, at Dallas, will be held in Room 5A15-17, Federal Bldg., 1100 Commerce St.,

MC 115904 Sub 47, Grover Trucking Co., now assigned March 21, 1977, at Boise, Idaho, will be held in Room 214, Bankruptcy Courtroom, U.S. Post Office Bldg., North 8th & Bannock St.

MC 35358 Sub 38, Berger Transfer & Storage, Inc., now assigned March 14, 1977, at Los Angeles, Calif., will be held in Room 3123 Federal Bldg., 300 N. Los Angeles, St.

MC 107012 Sub 229, North American Van Lines, Inc., now assigned March 23, 1977, at Chicago, Ill., will be held at Tax Court, Room 1743, 219 S. Dearborn St.

MC 103066 Sub 41, Stone Trucking Company, now assigned March 21, 1977, at Chicago, Ill., will be held at Tax Court, Room 1743, 219 S. Dearborn St.

MC-F 12808, BN Transport, Inc.—Purchase (Portion)—Joliet Warehouse and Transfer Company, and MC 63562 Sub 54, BN Transport, Inc., now assigned March 15, 1977, at Chicago, Ill., will be held at Tax Court, Room 1743, 219 S. Dearborn St.

MC 135989 (Sub-2), Coast Express, Inc., now being assigned April 12, 1977 (1 day) at Los Angeles, California, in a hearing room to be later designated.

MC 142405, Nevada Bulk Corp., now being assigned April 13, 1977 (3 days) at Los Angeles, California, in a hearing room to be later designated.

MC 116763 Sub 345, Carl Subler Trucking, Inc., and MC 107515 1019, Refrigerated Transport Co., Inc., now assigned March 7, 1977, at Atlanta, Ga., will be held in Room 305, 1252, West Peachtree St., N.W.

MC 124004 Sub No. 34, Richard Dahn, Inc. now assigned March 15, 1977 at Washington, D.C. is being postponed to April 14, 1977, at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 113267 (Sub-No. 336), Central Truck Lines, Inc. now assigned April 18, 1977, at New Orleans, La. is canceled and application dismissed.

MC 134477 (Sub-No. 123), Schanno Transportation Inc., now assigned April 20, 1977, at New York, N.Y. is canceled and application dismissed.

MC 108247 Sub No. 1, Westchester Motor Lines, Inc. now being assigned March 23, 1977 (3 days) at New York, New York in a hearing room to be later designated.

MC 111871 Sub No. 10, Southeastern Freight Lines now assigned March 1, 1977 at Columbia, South Carolina is being postponed to May 3, 1977 (19 days) at Columbia, South Carolina in a hearing to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-4176 Filed 2-8-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 4, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before February 24, 1977.

FSA No. 43316—*Anhydrous Ammonia from and to Points in Southern, Southwestern and WTL Territories.* Filed by Southwestern Freight Bureau, Agent, (No. B-654), for interested rail carriers. Rates on anhydrous ammonia, in tank-car loads, as described in the application, from Rose Bluff, Louisiana, to points in southwestern and western trunk-line territories; also from Carlsbad, New Mexico, to Borger, Etter and Sheerin, Texas, Taft, Louisiana, points in Oklahoma, and points in western trunk-line territory.

Grounds for relief—Market competition.

Tariff—Supplement 75 to Southwestern Freight Bureau, Agent, tariff 273-G, I.C.C. No. 5188. Rates are published to become effective on March 6, 1977.

FSA No. 43317—*Liquid Fertilizers from Michaud, Idaho.* Filed by Western Trunk Line Committee, Agent, (No. A-2733), for interested rail carriers. Rates on liquid fertilizers, in tank-car loads, as described in the application, from Michaud, Idaho, to points in western trunk-line territory.

Grounds for relief—Market competition.

Tariff—Supplement 205 to Western Trunk Line Committee, Agent, tariff 120-L, I.C.C. No. A-4868. Rates are published to become effective on March 10, 1977.

FSA No. 43318—*Butene from Eldon, Texas.* Filed by Southwestern Freight Bureau, Agent, (No. B-656), for interested rail carriers. Rates on butene, in

tank-car loads, as described in the application, from Eldon, Texas, to Bay City and Midland, Michigan.

Grounds for relief—Market competition.

Tariff—Supplement 30 to Southwestern Freight Bureau, Agent, tariff 12–J, I.C.C. No. 5219. Rates are published to become effective on March 6, 1977.

FSA No. 43319—*Joint Water-Rail Container Rates—States Shipping Company.* Filed by States Shipping Company, (No. 102), for interested rail carriers. Rates on general commodities, from ports in Hong Kong, Japan, Korea, Philippines, Taiwan and Thailand, to rail stations on the U.S. Atlantic Seaboard.

Grounds for relief—Water competition.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77–4173 Filed 2–8–77;8:45 am]

[Notice No. 117]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 9, 1977.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212a(b) in connection with transfer application under Section 212a (b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC 76957. By application filed February 2, 1977, MAUST TRANSFER COMPANY, 64 Marion Street, Seattle WA 98104, seeks temporary authority to transfer a portion of the operating of EYRES TRANSFER & WAREHOUSE CO., 1762 Sixth Avenue S. Seattle, WA 98134, under section 210a(b). The transfer to MAUST TRANSFER COMPANY, of a portion of the operating rights of EYRES TRANSFER & WAREHOUSE CO., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77–4174 Filed 2–8–77;8:45 am]

[Notice No. 116]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 9, 1977.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212a(b) in connection with transfer application under Section 212a (b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC 76953. By application filed January 31, 1977, FLOYD A. RALEY, AN INDIVIDUAL, D/B/A RALEY TRUCKING, Route 2, Box 433, Mechanicsville, MD 20659, seeks temporary authority to transfer the operating rights of BERNARD A. BAILEY, AN INDIVIDUAL, Bushwood, MD 20618, under section 210a(b). The transfer to FLOYD A. RALEY, an individual, d/b/a RALEY TRUCKING, of the operating rights of BERNARD A. BAILEY, is presently pending.

By the Commission.

ROBERT L. OSBORN,
Secretary.

[FR Doc.77–4175 Filed 2–8–77;8:45 am]