regulations that may be issued thereunder.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective January 26, 1977 and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that the issuance of this order amending the Cotton Research and Promotion Order is favored or approved by at least two-thirds of the cotton producers who participated in a referendum on the question of its approval, and who, during calendar year 1976 (the period determined to be a representative period for the purpose of such referendum) were engaged in the production of Upland cotton in the United States for the 1976 crop.

It is therefore ordered, that at the time hereinafter specified, the aforesaid Cotton Research and Promotion Order is hereby amended as follows, shall become effective:

1. Revise § 1205.302 to read:

§ 1205.302 Act.

"Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 et seq., 90 Stat. 991; 7 U.S.C. 2101–2118).

§ 1205.327 [Amended]

2. Amend § 1205.327(b) by adding "s" to the word "assessment".

3. Revise § 1205.330 to read:

§ 1205.330 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(b) The Board shall reimburse the Secretary (1) for expenses up to $200,000 incurred by him in connection with any referendum conducted under the Act and (2) for expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The funds to cover such expenses incurred under paragraphs (a) and (b) of this section shall be paid from assessments received pursuant to § 1205.331.

4. Revise § 1205.331 to read:

§ 1205.331 Assessments.

Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Board and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Board, assessments as prescribed in paragraphs (a) and (b) of this section to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart:

(a) An assessment at the rate of $1 per bale of cotton handled.

(b) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in Cotton Board rules and regulations. For the 1977 and subsequent crops of cotton this supplemental assessment shall be at the rate of four-tenths of one percent of the value of cotton: *Provided,* That for any crop of cotton, beginning with the 1978 crop, the rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on (1) the current value of cotton, or (2) an average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

§ 1205.334 [Amended]

5. Amend § 1205.334(c) by adding "s" to the word "assessment".

(Secs. 5 and 10, 80 Stat. 279 et. seq.) 90 Stat. 991 (7 U.S.C. 2101–2118).)

Issued at Washington, D.C. this 21st day of January 1977.

Effective date: January 26, 1977.

RICHARD L. FELTNER,
Assistant Secretary for Marketing and Consumer Services.

[FR Doc.77-2556 Filed 1-25-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 500—MANDATORY GASOLINE AND DIESEL FUEL RATIONING REGULATIONS

Adoption of New Part Establishing Contingency Rationing Plan for Gasoline and Diesel Fuel

On May 25, 1976, the Federal Energy Administration (FEA) issued a notice of proposed rulemaking and public hearing (41 FR 21918, May 28, 1976) to amend Chapter II, Title 10 of the Code of Federal Regulations, to establish a new part setting forth regulations with respect to mandatory gasoline and diesel fuel rationing. Written comments were invited through June 28, 1976. Public hearings were held on June 21, 22 and 24, 1976, in Washington, Atlanta, Kansas City, San Francisco and Anchorage.

One hundred and seven written comments were received in response to the notice of proposed rulemaking and 37 oral presentations were made at the five public hearings. Those making comments included representatives of the travel industry, vehicle rental companies, firms engage in direct sales, refiners and others associated with the petroleum industry, Federal, State and local government, agriculture, transportation industry and firms engaged in energy production.

This contingency rationing plan, required by section 203 of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163), if approved by the Congress, would remain in standby status unless the President finds that putting the plan into effect is required by a severe energy supply interruption or in order to fulfill obligations of the United States under the international energy program and transmits such finding to the Congress, together with a statement of the effective date and manner for exercise of such plan. Pursuant to section 203(b) of EPCA, the President would also be required in order to implement a standby rationing plan to find that such plan is necessary to attain, to the maximum extent practicable, the objectives specified in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973 (EPAA) (Pub. L. 94–163), as amended, and the purposes of the EPCA. For the rationing contingency plan to become effective and be converted from standby status, the President's request to the Congress to put the plan into effect must not be disapproved by either House of Congress. After these steps are completed, the rationing contingency plan would be implemented for the period specified in the plan but for not more than nine months.

The basic provisions of the contingency gasoline and diesel fuel rationing plan adopted today are essentially the same as proposed. FEA will issue ration coupons and ration credits ("ration rights") for each ration period equal to the total estimated available supply of gasoline for the ration period. FEA would then distribute these ration rights through four basic programs. First, FEA would provide ration coupons to all eligible individuals. Second, FEA would provide ration credits to all firms which are engaged in priority activities for which a ration credit level has been established. These ration credits would be in addition to any ration coupons received by a person as an eligible individual. Third, FEA would distribute three percent of all ration rights through the State Hardship Reserves which would be used to meet the needs of certain specified users; e.g., handicapped persons, migrant workers, etc. Fourth, FEA would reserve one percent of the ration rights to distribute itself through the National Ration Reserve.

Persons to whom ration rights are issued would redeem their ration rights for gasoline or could sell them in a ration rights exchange market or give them away.

A supplier of gasoline would be required to collect, redeem, and deposit in the supplier's redemption account ration coupons, ration credit checks or redemption checks for all gasoline sold. Retail sales outlets could agree to supply gasoline to a consumer without ration rights provided the retail sales outlet itself obtained ration rights to cover the transaction within ten days of the sale.

Ration periods for coupons would vary in length depending upon projected supply conditions and other factors and would be announced by FEA's publication of a notice in the FEDERAL REGISTER at least ten days in advance of the ration period. The reason for providing for variable ration periods for coupons is to permit FEA to adjust the number of ration coupons to correspond to the available supply after deduction for the State Hardship Reserves, the National Ration Reserve, and the number of ration credits issued to firms entitled to a ration credit level.

Eligible individuals would apply for ration coupons at issuance points to be designated by FEA, on days designated by FEA. Issuance of ration coupons to eligible individuals would be, for the most part, dependent upon the person's having a valid driver's permit issued by a State. Indians living on reservations under the jurisdiction of the Bureau of Indian Affairs and Alaska Natives may in certain circumstances qualify as eligible individuals even though they do not have driver's permits.

Firms entitled to a ration credit level would be issued ration credits rather than ration coupons. The ration credits would be deposited by FEA each month on the first day of the month in the firm's primary ration credit account maintained with an FEA Regional Processing Center. The firm could then withdraw its ration credits by issuing a ration credit check drawn on its primary ration account to the order of its gasoline supplier. The firm could also issue a ration credit acount for its subsidiaries so that any person; the check could then be deposited in a secondary ration credit account or exchanged for coupons at a ration coupon issuance point. Typically, a firm would open a secondary ration credit account for its subsidiaries so that those subsidiaries could write their own ration credit checks for the purchase of gasoline.

Any firm that was not in operation during a base period could apply to FEA for assignment of a base period use and ration credit allotment. FEA would determine the appropriate base period use, taking into account the typical gasoline or diesel fuel consumption patterns of similar firms.

FEA would establish Regional Processing Centers to perform automated account posting activities in support of the majority of FEA's ration banking activities. FEA would determine the number and location of these Centers, which would serve as sole processing facilities for all ration credit and redemption accounts within given geographic regions. The Regional Processing Centers would establish a check file for each ration credit account. The Centers would arrange to supply the necessary ration credit checks and deposit forms to account owners.

Although not part of the regulations issued today, guidelines are being developed to set forth the procedures which FEA and participating banks and issuance points would follow in carrying out the regulatory program for issuing ration rights and clearing primary and secondary ration credit accounts and redemption accounts. Representatives from the commercial banking industry are assisting in the development of these guidelines.

The functions of the State Rationing Offices and Local Rationing Boards remain essentially as proposed. Hardship allotments could be made by Local Rationing Boards to handicapped persons; low-income, long distance commuters; migrant workers; and, as discussed in more detail below, certain persons engaged in household moves. Other hardship needs could also be handled through the Local Rationing Boards.

The regulations adopted today include the limited diesel fuel rationing program as proposed. Eligible individuals would use their allotments of gasoline ration coupons for their diesel fuel requirements. Firms which have an allocation level under the middle distillate allocation program and which operate diesel-powered vehicles would be issued a diesel fuel entitlement card for each such vehicle, to be used at the time of purchase of diesel fuel at a retail sales outlet. The entitlement card would be linked to a ration credit account maintained by FEA for all firms purchasing diesel fuel at retail sales outlets. A firm having an entitlement card would be able to purchase volumes of diesel fuel comparable to what it would be entitled to receive under the allocation level established in Subpart G of 10 CFR Part 211 (the Mandatory Petroleum Allocation Regulations), but without application of an allocation fraction.

The regulations adopted today contain several modifications to the proposed regulations. The most significant changes are the following:

Relationship of allocation to rationing and maintenance of base period supplier/purchaser relationships. As proposed, the regulations included provisions for the allocation of gasoline from suppliers to wholesale purchaser-resellers utilizing the bulk of the allocation concepts currently contained in 10 CFR Part 211. The existing allocation program would have been substantially modified by eliminating the concept of supplier/purchaser relationships between suppliers and ultimate consumers.

FEA determined that it was preferable to continue to require the maintenance of base period supplier/purchaser relationships between suppliers and bulk purchasers of gasoline. Incorporation of this concept essentially adopts all of 10 CFR Part 211 as it relates to the allocation of motor gasoline. This being so, there is no longer any need to set forth separate gasoline allocation regulations in the Rationing Contingency Plan since the allocation regulations as set forth in 10 CFR Part 211 are adequate.

In reaching the decision to require the maintenance of base period supplier/purchaser relationships between suppliers and bulk purchasers of gasoline, FEA believed that it would make little sense to provide ration rights to bulk purchasers of gasoline without requiring their historical suppliers to supply them with their pro-rata share of gasoline. Therefore, the existing requirement that a bulk purchaser's base period supplier must continue to supply the bulk purchaser is included in the Rationing Contingency Plan. This concept is effectuated by permitting the allocation program in 10 CFR Part 211 to operate as currently in effect and to tie ration credit levels to the allocation levels set forth in Subpart F of the Mandatory Petroleum Allocation Regulations.

It should be noted that the obligation of a supplier to continue to supply its base period customers applies only to those customers which are bulk purchasers as defined in 10 CFR 211.102. Firms (including individuals) which are not bulk purchasers will, of course, be entitled to receive allotments of ration rights, but such purchasers are not entitled to an allocation level and do not have supplier/purchaser relationships which must be maintained for the duration of the Mandatory Petroleum Allocation Program.

In making allotments to firms entitled to a ration credit level, the FEA will deposit ration rights into such firms' primary ration credit accounts in amounts equal to the volume of gasoline those firms would be entitled to receive under the allocation regulations as modified at the time rationing becomes effective, whether or not those firms qualified as bulk purchasers. Also, the number of ration rights allotted to such firms will be calculated without the application of an allocation fraction. For example, a firm entitled to an allocation level of 100 percent of base period use subject to an allocation fraction, which had a base period use of 10,000 gallons of gasoline and whose supplier is applying an allocation fraction of 0.9, would have an allocation entitlement of 9,000 gallons of gasoline (10,000 gallons base period use $\times 0.9$ fraction $= 9,000$ gallons). The number of ration rights which FEA would allot to that firm, however, would be 10,000 since that is 100 percent of the firm's base period use.

As proposed, the rationing regulations established three gasoline ration credit levels depending on the end use of the gasoline—100 percent of current requirements, 100 percent of base period use, and 90 percent of base period use. The regulations then specified the types of end uses which qualified for each ration credit level. Since the ration credit levels are now tied to the allocation levels, set forth in the Mandatory Petroleum Allocation Regulations, the ration credit to be allotted to a particular firm will be based on the allocation levels in Subpart F of 10 CFR Part 211 as amended at the time rationing begins. Also, the definitions of the various end uses (e.g., Department of Defense use, agricultural production, sanitation services, etc.) shall be the definitions set forth in 10 CFR 211.51 as amended at the start of the rationing program as discussed below.

Definitions and ration credit levels. As indicated above, the definitions of end uses of gasoline for purposes of the rationing regulations shall be the same as set forth for the allocation regulations. It is anticipated that, if the rationing regulations are put into effect, the definitions of the following terms will be changed as indicated.

The definition of "Department of Defense use" would be modified from the proposed definition to substitute "national defense operations" for "strategic defense operations" in recognition of the difficulty of separating strategic activities from other essential national defense activities.

The definition of "agricultural production" would also be modified. The new definition would permit firms producing essential food for human consumption to be eligible for 100 percent of current requirements for gasoline for their essential food producing activities, with non-essential food production and all non-food agricultural activities eligible for 90 percent of base period use. FEA recognizes that the use of Standard Industrial Classification (SIC) codes is an imperfect means of distinguishing essential foods from non-essential foods, but feels that other definitions of essential foods would lead to greater problems of definition and interpretation than the SIC codes.

The definition of "emergency services" would be modified to include emergency road services, including snow removal, and the repair of essential public utilities.

The definition of "passenger transportation services" would be restricted to include only vehicles with a manufacturer's seated-capacity rating of greater than 10 persons, counting the driver. FEA has chosen to exclude taxicabs on the gorunds that taxicabs can achieve gasoline savings through reduced cruising, increased use of taxi stands, and greater use of radio call equipment. Carpool vehicles would benefit from the pooled ration coupon allotments of all drivers sharing the pool vehicle.

The definition of "telecommunications services" would be changed to delete the reference to "periods of substantial disruption of normal service" and to exclude sales and routine administrative activities.

The definition of "sanitation services" would be changed to delete reference to "during emergency conditions."

It is FEA's current view that the definitions described above would read as follows:

"Department of Defense use" means those activities of the United States armed forces directly connected with and essential to national defense operations excluding administrative activities.

"Agricultural production" means: (a) all of the activities classified under the industry code numbers specified below, as set forth in the Standard Industrial Classification Manual, 1972 Edition:

011 Cash Grains (excluding 0119, Cash Grains Not Elsewhere Classified)
0133 Sugar Crops
0134 Irish Potatoes
016 Vegetables and Melons
017 Fruits and Tree Nuts (excluding Vineyards)
0182 Food Crops Grown Under Cover
021 Livestock, except Dairy, Poultry, and Animal Specialties (excluding 0214, Sheep and Goats)
024 Dairy Farms
025 Poultry and Eggs
091 Commercial Fishing (excluding 0919, Miscellaneous Marine Products)
201 Meat Products
202 Dairy Products (excluding 2024, Ice cream and Frozen Desserts)
203 Canned and Preserved Fruits and Vegetables
2041 Flour and Other Grain Mill Products
2043 Cereal Breakfast Foods
2044 Rice Milling (except Brewers' Rice)
2045 Blended and Prepared Flour
205 Bakery Products (except dessert products such as pastries, pies, cookies and cakes)
2061 Cane Sugar, Except Refining Only
2062 Cane Sugar Refining
2063 Beet sugar
209 Miscellaneous Food Preparations and Kindred Products;

(b) The following activities classified in the industry code numbers specified below, but only to the extent that they relate to production (including transportation) of food for human consumption:

0119 Cash Grains, Not Elsewhere Classified
0139 Field Crops, Except Cash Grains, Not Elsewhere Classified
0181 Ornamental Floriculture and Nursery Products (limited to vegetable seed production and growing of fruit stocks)
019 General Farms, Primarily Crop
0214 Sheep and Goats
027 Animal Specialties
029 General Farms, Primarily Livestock
071 Soil Preparation Services
072 Crop Services
0741 Veterinary Services for livestock, Except Animal Specialties
0751 Livestock Services, Except Services for Animal Specialties
076 Farm Labor and Management Services
0849 Gathering of Forest Products, Not Elsewhere Classified (limited to gathering of maple sap)
0919 Miscellaneous Marine Products
092 Fish Hatcheries and Preserves
147 Chemical and Fertilizer Mineral Mining
2046 Wet Corn Milling
2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified
207 Fats and Oils
2819 Industrial Inorganic Chemicals, Not Elsewhere Classified
286 Industrial Inorganic Chemicals (limited to pesticides and intermediates for the manufacture of pesticides)
287 Agricultural Chemicals
421 Trucking, Local and Long Distance (limited to trucking of fresh produce, perishable foods, livestock and poultry)
497 Irrigation Systems

"Emergency services" means fire fighting, emergency police activities (excluding routine activities), emergency medical services, emergency repair of essential public utilities, and emergency road services including snow removal.

"Passenger transportation services" means (a) surface passenger-carrying services and facilities (excluding water and rail transportation) which serve the general public, whether publicly or privately owned, excluding vehicles with a maufacturer's seated-capacity rating of ten (10) or fewer persons, counting the driver; (b) bus transportation of pupils to and from school.

"Sanitation services" means the collection and disposal for the general public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.

"Telecommunications services" means the repair, operation, and maintenance of voice, data, telegraph, video, and similar communications services to the public by a communications common carrier, excluding sales and routine administrative activities.

With respect to regulations dealing with ration credit levels, it was proposed that non-governmental firms not otherwise accorded a ration credit level would be given a level of 90 percent of base period use if they reported gasoline as an expense to the Internal Revenue Service or were engaged in religious, charitable, educational or other eleemosynary activities. Because gasoline is not always reported as a separate expense but rather is included usually in overall business expenses, FEA currently anticipates that the regulations on allocation levels in 10 CFR 211.103 would be amended to provide an allocation level of 90 percent of base period use (subject to an allocation fraction) for nongovernmental uses by firms not otherwise accorded an allocation level which include gasoline as an expense, whether or not separately identified, on schedules or forms filed with the Internal Revenue Service. Ninety percent of base period use (subject to an allocation fraction) would be the allocation level proposed for religious, charitable, educational or other eleomosvnary activities not otherwise accorded an allocation level.

It is anticipated that at the time rationing would be put into effect the allocation levels currently in 10 CFR 211.103 for cargo, freight and mail hauling by truck, aviation ground support vehicles and equipment, industrial use, commercial use, governmental use and social service agency use would all be subsumed within the allocation level for all other non-governmental uses not otherwise accorded an allocation level (90 percent of base period use subject to an allocation fraction). Ration credit levels would be the same as the allocation levels without application of a fraction. As in the case of all other currently anticipated amendments to the allocation regulations, these amendments would be subject to public comment and further consideration by FEA before any of them were adopted.

Based on the revised definitions of end use activities described above, it is currently anticipated that the allocation levels in 10 CFR 211.103 would be amended at the time rationing is implemented to reflect the following changes in order of precedence of end uses:

(1) *One hundred percent of current requirements (not subject to an allocation fraction)*. Department of Defense use; Agricultural production; Emergency services; and Passenger transportation services.

(2) *One hundred percent of base period use (subject to an allocation fraction)*. Telecommunication services; Sanitation services; and Energy production.

(3) *Ninety percent of base period use (subject to an allocation fraction)*. All other government uses; All other uses by firms which include gasoline as an expense, whether or not separately identified, on schedules or forms filed with the Internal Revenue Service; and All other uses for religious, charitable, educational or other eleemosynary purposes not otherwise accorded a ration credit level.

Ration credit levels for all of the foregoing uses would be the same as the suggested allocation levels but without application of an allocation fraction.

The definitions of "firm" and "retail sales outlet", which are adopted in the rationing regulations issued today, would require amendment to conform to the definitions used in the Mandatory Petroleum Allocation Regulations. The definition of "firm" specifies that the various departments, agencies, offices and instrumentalities of the Federal Government are to be treated as separate firms since the Federal Government does not have centralized records with respect to gasoline consumption. The definition of "retail sales outlet" has been narrowed from the meaning originally proposed so as to make it clear that the entity to which that term applies is clearly understood to be the typical service station where sales of gasoline are made to owners of passenger cars and trucks. The term does not refer to rack sales by jobers or refiners to commercial accounts. To qualify as a retail sales outlet, the maximum amount of fuel, either gasoline or diesel fuel, which could be pumped into a vehicle's fuel tanks would be 130 gallons. The volume of 130 gallons was chosen because it was FEA's understanding that that is the maximum fuel tank size of any vehicle for which fuel would be purchased at a service station.

Alaska Natives. In response to a unique situation in the State of Alaska, the definition of the term "eligible individuals" has been modified to include Alaska Natives of at least age 16 who have no driver's permit but who use gasoline in snowmobiles, boats, or other vehicles or tools. Persons other than Alaska Natives who are similarly situated should apply to their local Rationing Board for assistance.

Invalidation of ration coupons. Several comments addressed the proposed provisions as to the invalidation of ration coupons. Under the regulation issued today, FEA could declare a particular series of ration coupons invalid. Invalidation would occur only where there is evidence of counterfeiting or other severe threat to the integrity of a particular ration coupon series. Invalidation would only occur after sufficient advance notification to the public. It is not anticipated that FEA would exercise this authority except in the most severe situation. FEA recognizes that the authority to invalidate a coupon series may affect the operation of the ration rights exchange market. This provision, however, which would be exercised only upon sufficient advance notice and only when the circumstances clearly require its exercise, is essential to protect ration coupon integrity. Since it is unlikely that invalidation would ever be required, it would have minimal impact on the ration rights exchange market.

Base period use for vehicle rental companies. There was considerable comment with respect to the special meaning of "base period use" for vehicle rental companies. As proposed, and adopted, the base period use for a vehicle rental company includes volumes of gasoline purchased or obtained by a vehicle rental company for its direct use but not including any volumes used by the vehicle rental company's customers. Concern was expressed that customers which have long-term leases with vehicle rental companies would not have available the information to determine their base period use for rented vehicles. It was also suggested that vehicle rental companies should be able to include in their base period use those volumes which were supplied to all customers who leased vehicles during the base period since the vehicle rental company supplies the gasoline as part of an overall service. FEA believes that vehicle rental companies should experience little difficulty in supplying base period consumption information to their customers. With this information, the lessee can apply, as would any other firm, to establish a base period use.

To the extent that a vehicle rental company supplies gasoline as part of its overall service to a customer, that vehicle rental company would be acting as a wholesale purchaser-reseller of gasoline. If a vehicle rental company wishes to acquire supplies from its supplier of gasoline to enable the rental company to continue this service activity, the rental company would have to open a redemption account and pay for its purchases like any other wholesale purchaser-reseller.

The regulations permit a vehicle rental company to require advance payment of ration rights by a lessee. For example, a vehicle rental company could require its lease customer to issue to the rental company on the first day of each month a ration credit check for the estimated amount of gasoline the lessee would use during a month. The vehicle rental company would then be able to deposit this ration credit check into its redemption account and still be able to issue a redemption check to its supplier within 10 days of receipt of the gasoline from its supplier. The vehicle rental company would obviously have to adjust the amount of the next succeeding ration credit check to be requested from the customer to reflect the difference in the estimated amount of gasoline for which it received a ration credit check and the actual volumes of gasoline supplied to the customer.

Base period use for firms with independent sales representatives. As proposed, the Rationing Contingency Plan permitted firms having commissioned direct sales representatives to include in their base period uses the volumes of gasoline used in the sales activities of the firms' commissioned direct sales representatives. On the basis of comments received, the regulations adopted today deal with independent sales representatives rather than commissioned sales representatives. The regulation has also been modified to define more precisely the method by which such firms may include their representatives' gasoline volumes in determining base period use. Those representatives associated with the firm during the base period may, if they themselves would otherwise qualify as firms, agree with the firm to have their base period uses included in the firm's base period use provided the representatives certify to the firm in writing the amount of their base period uses and that they have not and will not include such base period uses in any application to any other firm or to FEA.

New representatives may agree with the firm to have base period uses for their needs included in the firm's total base period use. The volume to be included for each such new representative would be the amount of gasoline equal to the average of all other such representatives' base period uses in the same period. Sales representatives who have entered into an agreement pursuant to the special regulation establishing base period use for firms having independent sales representatives would receive their ration rights directly from the firm.

A firm which includes existing and new independent sales representatives in the firm's base period use must submit a monthly report to FEA indicating the number of such representatives included in the firm's base period use, and the corresponding base period gasoline volumes, broken down by market area or other basis to be specified by FEA. The firm must also agree to make its records available at its headquarters office for FEA audit.

Discrimination between purchasers. The proposed regulations included a provision (proposed § 700.51) which would have prohibited a supplier from discriminating between purchasers. This provision has been eliminated since to some extent a supplier must discriminate in favor of its base period customers which are bulk purchasers of gasoline. In addition, FEA believes 10 CFR 210.62 already prohibits discrimination among purchasers of allocated products where such acts would circumvent the objectives of the EPAA. Therefore, the regulations adopted today do not contain an explicit provision against discrimination among purchasers.

A supplier must accept from a consumer valid ration coupons which are tendered as evidence of entitlement to redeem gasoline if they are offered at the time of sale. A firm, including a supplier, may accept a ration credit check, but the burden of accepting a check for which there are insufficient ration credits is on the payee, who will be responsible for acquiring valid ration rights to cover any deficiency. Of course, except for a firm entitled to a ration credit level of 100 percent of current requirements, anyone who issues a ration credit check for which there are insufficient credits in the owner's ration credit account will be in violation of the Mandatory Gasoline and Diesel Fuel Rationing Regulations. See 10 CFR 500.42(e) and 500.43(d).

Procedural amendments. At the time rationing is implemented, in addition to the amendments to the Mandatory Petroleum Allocation Regulations already discussed, amendments would be proposed to the Administrative Procedures and Sanctions, 10 CFR Part 205, to provide the necessary procedures in Subpart Q of that part for the administration of those sections of the rationing program delegated to the various States and Local Rationing Boards. 10 CFR Part 205 would also be amended to subject violations of the rationing program to the various remedial provisions, including sanctions set forth in that part. Public comment would be sought when these amendments are proposed.

Impact on tourism. Representatives of the tourist industry were concerned that the Rationing Contingency Plan would have a severe and adverse impact upon their businesses. FEA agrees that, during a period in which rationing is in effect, it is likely that there would be substantial impact on the tourist industry. However, the cause for the disruption would not be the rationing program, but rather would be the lack of available gasoline and the need to structure that program so that priority uses receive equitable treatment.

FEA believes that the implementation of rationing during a period of shortage will in fact be of value to the tourist industry. Because the issuance of ration coupons and ration credits is determined by the actual supply of gasoline, holders of ration rights will be reasonably certain of finding available supplies as they travel throughout the United States. Thus, the fear of being unable to locate supplies during a trip to another section of the country will be greatly reduced since if one has ration rights, there should be available product wherever he travels. However, the rationing program cannot overcome the probable psychological impact of the shortage on most drivers who will understandably attempt to conserve their ration rights for periods of emergency or other unexpected needs, which in all likelihood will mean that most drivers will not engage in what they perceive to be non-essential activities. FEA emphasizes that this would be a consequence of a gasoline shortage and not of the Rationing Contingency Plan.

Hardship allotments for persons engaged in household moves. Several persons commented that there should be a provision for granting an allotment of ration rights from the State Hardship Reserves for persons who must make household moves. It was pointed out that without such a provision, a household would be forced to use the services of a commercial moving company or would have to absorb the cost of purchasing ration rights on the ration rights exchange market sufficient to meet the needs of the vehicle(s) involved in the move. Since many persons must move themselves because they cannot afford either of these alternatives, they would be effectively barred from moving. To avoid this undesirable result, provisions have been included for such households to seek additional ration rights from the State Hardship Reserves.

Adjustments to base period use. In the proposed regulations, there were provisions that firms entitled to a ration credit level would have their base period uses adjusted downward if their requirements for gasoline decreased by 25 percent as compared to volumes used during the base period. Since the regulations as adopted today tie ration credit levels to allocation levels, it is appropriate that the adjustment for decreased base period use be determined by the provisions of 10 CFR 211.13. Any increase in base period use accorded a firm pursuant to 10 CFR 211.13 would, of course, serve to increase the base period use for purposes of the Rationing Contingency Plan. It is anticipated that if rationing were implemented, FEA would propose to amend 10 CFR 211.13 to increase the threshold for unusual growth from ten percent to twenty percent.

Allocation entitlements for the construction industry would continue to be subject to the special provisions of 10 CFR 211.27. The base period use for allocation purposes which is established for a specific construction project will serve as the base period use for calculation of the ration credit allotment.

Current requirements. In the notice of proposed rulemaking, FEA sought comments with respect to retaining the concept of providing 100 percent of current requirements for selected end uses. Those persons addressing this issue supported the continuation of the concept for those uses of clearly high priority. Therefore, the concept of providing 100 percent of current requirements to certain end-uses will be continued.

To prevent an inequity in the operation of the ration rights exchange market, a new provision has been added to prevent firms entitled to a ration credit level of 100 percent of current requirements from overdrawing their ration credit accounts in excess of their true needs and selling the unneeded volume of ration rights on the ration rights exchange market. As adopted, the regulations provide that the FEA will deposit into the primary ration credit account of a firm entitled to a ration credit level of 100 percent of current requirements a volume of ration credits equal to 100 percent of such firm's base period use. If that firm needs less than 100 percent of its base period use, it, like any other firm, may sell the remaining ration rights on the ration rights exchange market. However, if a firm entitled to 100 percent of current requirements needs greater than 100 percent of its base period use, it may overdraw its account to the extent of its actual needs. The resulting overdraft will be recorded at the FEA Regional Processing Center at which time FEA will credit a supplemental ration credit allotment to the firm's account to offset the overdraft. In succeeding months, FEA will again allot to such firm 100 percent of its base period use, and if necessary, that firm may again overdraw its ration credit account without penalty so long as the overdraft is used to reach 100 percent of the current requirements of that firm. However, any firm which overdraws its ration credit account to meet 100 percent of its current requirements may not thereafter sell any of its ration rights in the ration rights exchange market. FEA will monitor those firms which overdraw their ration credit accounts to assure that such firms are not participating in the ration rights exchange market and need the additional ration rights to satisfy those activities accorded a ration credit level of 100 percent of current requirements.

State and Local Rationing Offices. Although there was some disagreement, there was general acceptance of the proposed regulations which set forth the roles of the State and Local Rationing Office. Therefore, the regulations adopted today are essentially the same as the regulations proposed. The criteria for delegation of authority to State Rationing Offices will not be addressed until the Congress approves the rationing plan. FEA will seek additional public participation in shaping the criteria for delegation of authority to State Rationing Offices after Congressional approval has been obtained for the remainder of the Rationing Contingency Plan.

Mid-period eligibility. It was suggested that there would be an inequity if an eligible individual with a valid driver's permit failed to obtain his ration coupons by the first day of rationing and thereafter was prohibited from obtaining ration coupons for that ration period. To permit flexibility to cope with such a situation, the regulations adopted today permit FEA to declare a grace period during which eligible individuals (including new eligible individuals) will be given additional time to acquire ration coupons for a ration period already in progress, as well as for succeeding ration periods.

Initial redemption account credit. As proposed, the rationing regulations did not address the issue of how a retail sales outlet or other supplier would pay its suppliers for initial deliveries of gasoline. The regulations adopted today provide that an initial redemption account credit would be entered into each redemption account when the redemption account is opened equal to the greater of (1) the amount of an average single delivery during the base year or (2) 10 days' average gasoline receipts during the base year. In addition, within 30 days after the start of rationing, each firm would report its initial inventory levels measured on the first day of rationing before any sales or deliveries are made. On this report, each supplier would compute its adjusted redemption account credit which would be equal to a volume of an average single delivery received during the base year or ten days' average receipts in the base year, whichever is greater, plus 20 percent of total gasoline inventory capacity, minus inventory on the first day of rationing. If the result of this computation is less than zero, the adjusted redemption account credit would be equal to zero.

Special redemption account. FEA recognizes that there are some suppliers in remote regions in the United States (especially in Alaska) which are subject to infrequent supply schedules or which are in areas subject to highly seasonal demand. These suppliers may apply to FEA for a special redemption account credit if the adjusted redemption account credit computed in accordance with the immediately preceding paragraph is insufficient to cover actual gasoline receipts less the amount of ration credits and redemption checks which are received or expected to be received from customers during the first 20 days of the rationing program.

Sales by retail sales outlets to customers not having ration rights. There was some confusion over the purpose of the provision in the proposed regulations which permits a retail sales outlet to sell gasoline to customers without requiring them to transfer ration rights at the time of sale. The purpose of the provision is to permit a retail sales outlet at its option to make sales to customers without ration rights on the assumption that the retail sales outlet will be able through purchase of ration rights from the ration rights exchange market to cover those transactions. The retail sales outlet must obtain the additional ration rights within 10 days of making a sale to a customer who does not have ration rights. The purpose of the 10-day period is not to permit the customer who purchases from the retail sales outlet to go out and find ration rights and then present them to the retail sales outlet. The customer who purchases from a retail sales outlet without transferring ration rights is under no obligation to return ration rights. Presumably such a customer would have paid the retailer the value of the coupons required for the sale in addition to the cost of the gasoline purchased. The obligation is on the operator of the retail sales outlet to either collect ration rights at the time of sale or to use the ration rights exchange market and obtain the necessary ration rights within 10 days of having made the sale.

Excess acquisition of product. Several suppliers commented that in many cases a wholesale purchaser-reseller picks up product directly from its supplier's storage area without any monitoring by the supplier's personnel. This arrangement permits a customer to overdraw his entitlement in violation of the Mandatory Petroleum Allocation Regulations. It was suggested that liability for such excess acquisitions be placed on the customer and that the supplier be exonerated from any such violations. Existing regulations (10 CFR 211.25) permit suppliers and wholesale purchasers to agree between and among themselves to either borrow from future allocations or defer current allocations, or both, on a volume for volume basis within the total allocations for one calendar year as long as such arrangements do not result in an involuntary reduction in allocations to other wholesale purchasers. FEA does not believe it would be in the best interests of the Mandatory Petroleum Allocation Program to shift responsibility for adherence solely to the purchaser when the obligations should fall equally on seller and purchaser to comply with the regulatory program. If the supplier is concerned that its customers will pick up excess supplies of product, it must exercise prudent judgment and station personnel at its storage area to prevent such violations.

Precedence of delivery. Section 203(a)(1)(B) of the EPCA requires that the gasoline and diesel fuel rationing contingency plan provide, among other things, that there be a system whereby end users may obtain gasoline or diesel fuel in precedence to other classes of end users not similarly situated. In the proposals for the Rationing Contingency Plan, a provision to effectuate this provision of the EPCA was not included. The regulations adopted today contain a provision which requires that suppliers who have customers who would be accorded priority one status under 10 CFR 211.10(c) of the Mandatory Petroleum Allocation Regulations must arrange mutually acceptable delivery schedules with those customers before making commitments for deliveries to its other customers who are not in priority one status. The adoption of this provision does not preclude States from adopting complementary plans to augment this regulation. See FEA Ruling 1974-6 (39 FR 6111, February 19, 1974).

Restrictions on endorsements. In the proposed regulations there was a total prohibition against endorsement of ration credit checks to third parties. To permit greater flexibility in the rationing program, the regulations adopted today permit endorsement of ration credit checks by the payee to designated ration coupon issuance points when the payee wishes to exchange a ration credit check for ration coupons. Endorsements to other third parties, however, remain prohibited.

Ration credit levels for diesel fuels. As originally proposed, the ration credit levels for those firms which purchase diesel fuel at retail sales outlets were to be equal to the allocation entitlements specified in the allocation regulations for middle distillates. As proposed, the regulations would have required that the ration credit level incorporate the concept of an allocation fraction. Since the FEA would not be aware of the allocation fraction being applied by a particular supplier until after ration credits were allotted each month, the regulations adopted today with respect to ration credit levels for purchasing diesel fuel at retail sales outlets parallel the gasoline rationing program in specifying that the ration credit level for a firm entitled to a ration credit level shall be equal to the volume of diesel fuel to which such firm is entitled under the allocation regulations prior to the application of any allocation fraction.

Banking service fees and secondary ration credit accounts. In its proposed regulations, FEA had included a provision for the collection of fees for opening and maintaining ration bank accounts. The principal purpose of these fees would have been to discourage the indiscriminate opening and excessive use of ration bank accounts. In light of comments received from representatives of the banking industry, FEA has decided to eliminate these fees altogether.

To prevent the excessive use of secondary ration credit accounts the regulations issued today include a provision that a minimum initial deposit of 300 gallons of ration rights will be required to open a secondary ration credit account.

These changes will simplify the banking system required for the rationing program while maintaining a barrier to improper use of ration bank accounts. Participating banks like other program participants will be compensated by FEA for their rationing activities from the per gallon fees collected by FEA on each gallon of gasoline sold.

ENVIRONMENTAL ASSESSMENT

By notice issued August 27, 1976 (41 FR 36823, September 1, 1976) FEA advised interested persons that it had completed an environmental assessment of the Rationing Contingency Plan. Copies of the environmental assessment are available for review and comment as indicated in the August 27, 1976 notice.

ECONOMIC ANALYSIS AND INFLATIONARY IMPACT

As required by section 201(f) of the EPCA, an economic analysis has been prepared with respect to the Rationing Contingency Plan. Copies of this economic analysis are available for public review in the FEA Freedom of Information Office, Room 2107, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

As required by Executive Order 11821 and Office of Management and Budget Circular A-107, the inflationary impact of the Rationing Contingency Plan has been considered.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended Pub. L. 93-511, Pub. L. 94-99, Pub. L. 93-133 and Pub. L. 94-163; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163; E.O. 11790 (39 FR 23185); E.O. 11912 (41 FR 15825).)

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is amended to add a new Part 500, as set forth below, subject to the approval by a resolution by each House of Congress in accordance with the procedures specified in in section 552 of the Energy Policy and Conservation Act (Pub. L. 94-163), said Part 500 only to become effective as provided in section 201(b) of that Act.

Issued in Washington, D.C., January 18, 1977.

DAVID G. WILSON,
Acting General Counsel.

10 CFR Chapter II is amended by adding Part 500, to read as follows:

Subpart A—General Provisions

§ 500.1 Scope.

(a) This part applies to the end-use rationing of gasoline and diesel fuel produced in or imported into the United States.

(b) *Effective date.* The subparts of this part shall become effective severally or in toto on a date or dates to be specified by the Federal Energy Administration and published in the FEDERAL REGISTER, subject to the provisions of section 201 (b) and (c) of the Energy Policy and Conservation Act (Pub. L. 94-163).

(c) *Relationship to other parts.* Unless otherwise specified, the provisions of parts 205, 210 and 211 of this chapter shall apply to this part. The pricing provisions applicable to this part are provided in Part 212 of this chapter.

§ 500.2 Relationship of subparts.

Unless otherwise specified in a particular subpart, the general provisions set forth in this subpart apply to the mandatory rationing of gasoline and diesel fuel.

§ 500.3 General definitions.

For purposes of this part—

"Allotment" means the value in gallons of gasoline or diesel fuel of the ration rights issued to an eligible individual or any firm.

"Base period" means the calendar month in the base year corresponding to the current calendar month.

"Base period use" means base period use as defined in § 500.25(c).

"Base year" means a calendar year to be determined by FEA and published in the FEDERAL REGISTER.

"Bulk purchaser" means bulk purchaser as defined in § 211.102 of this chapter.

"Current requirements" means the amount of gasoline or diesel fuel needed by a firm to meet its present supply requirements for a particular use of those products, but does not include any amounts which the firm (a) purchases or obtains for resale, (b) accumulates as an inventory in excess of that firm's customary inventory maintained according to its normal business practices, or (c) uses in excess of the supply necessary to meet present supply requirements as constrained by the implementation of the energy conservation program required in § 211.21 of this chapter.

"Diesel fuel" means No. 2-D diesel fuel as defined in American Society of Testing and Materials (ASTM) D975-71 and No. 1-D diesel fuel as defined in ASTM D975-71. Excluded from the definition is No. 4-D diesel fuel as defined in ASTM D975-71.

"Eligible individual" means (a) a natural person having a valid motor vehicle operator's permit, other than a learner's permit, issued by a State in his or her name, (b) an Indian residing on a reservation under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior who has no State driver's permit but who is permitted by the Bureau of Indian Affairs to drive a motor vehicle on the reservation, (c) an Alaska Native of age sixteen (16) or over who has no driver's permit but who uses gasoline in a snowmobile, boat, or other vehicle or tool, or (d) any other natural person designated as an eligible individual by FEA.

"End-user" means end-user as defined in § 211.51 of this chapter.

"FEA" means the Federal Energy Administration or its delegate.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including a charitable, educational, or other eleemosynary institution, State and local governments and the various departments, agencies, offices, corporations and other instrumentalities of the Federal Government. The FEA may, in regulations and forms issued in this part, treat as a firm:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a firm.

"Gasoline" means motor gasoline as defined in § 211.51 of Part 211 of this chapter excluding, however, aviation fuels as defined in § 211.142 of this chapter.

"Individual" means a natural person.

"Local Rationing Board" means the group consisting of the Local Rationing Panel, the Local Rationing Board Manager and the Local Rationing Board Staff.

"National Ration Reserve" means the ration rights reserved by FEA for each ration period for distribution to meet special or urgent needs during that ration period pursuant to Subpart E of this part.

"Ration credit level" means ration credit level as defined in § 500.25(d).

"Ration period" means the period from the date on which one ration coupon series becomes valid to the date the immediately following ration coupon series becomes valid.

"Ration rights" means ration coupons and ration credits made available pursuant to Subparts B, E, F, and G which shall be evidence of an eligible individual's or firm's right to purchase specified volumes of gasoline and diesel fuel.

"Rationed product" means gasoline distributed pursuant to Subparts B and F of this part and diesel fuel distributed pursuant to Subparts F and G.

"Retail sales outlet" means a site on which a supplier maintains an on-going business of selling any rationed product to any ultimate consumer, provided that the major activity of that supplier is to supply during the course of any single transaction one hundred thirty (130) gallons or less of a rationed product into supply tanks on a vehicle for use as fuel for that vehicle.

"Scrip" means any certificate, writing or token which represents less than five (5) gallons of a rationed product, and which a retail sales outlet may offer to any firm (including an individual) which has accepted less rationed product than the gallon amount of the ration rights surrendered to the retail sales outlet.

"State" means any one of the fifty States, the District of Columbia, Puerto Rico or any territory or possession of the United States.

"State Rationing Office" means the office established by the Chief Executive of each State to carry out the authorities delegated to that office by FEA pursuant to Subpart F of this part.

"State Hardship Reserves" means the ration rights provided to the State Rationing Offices by FEA for distribution within the States to meet the hardship needs of firms (including individuals) having needs for rationed products in addition to the amounts, if any, allotted to such firms pursuant to Subparts B and G.

"Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which currently, during the base period, or during any period between the base period and the present, supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated or rationed product to wholesale purchasers or end-users, including, but not limited to refiners, importers, resellers, jobbers, and retailers.

"Wholesale purchaser" means wholesale purchaser as defined in § 211.51 of this chapter.

"Wholesale purchaser - consumer" means wholesale purchaser-consumer as defined in § 211.51 of this chapter.

"Wholesale purchaser-reseller" means wholesale purchaser-reseller as defined in § 211.51 of this chapter.

"Vehicle rental company" means a firm which rents or leases motor vehicles to other firms (including individuals) who are bailees of the motor vehicles for the period of the rental or lease.

§ 500.4 Ration coupons as obligations of the United States; crimes and offenses.

(a) Ration coupons are an obligation of the United States within the meaning of 18 U.S.C. 8. The provisions of title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting and alteration of obligations of the United States and the uttering, dealing in, etc., of counterfeit obligations of the United States are applicable to ration coupons.

(b) Any firm having custody, care and control of ration coupons shall at all times, in receiving, storing, transmitting, or otherwise handling ration coupons, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit ration coupons and to avoid any unauthorized transfer, negotiation, or use of ration coupons. Such firms shall also safeguard ration coupons from theft, embezzlement, loss, damage, or destruction.

Subpart B—Rationing of Gasoline

§ 500.21 General.

(a) For the duration of the Mandatory Gasoline Rationing Program, no supplier shall supply and no firm shall obtain gasoline from any supplier without transferring to the supplier within ten (10) days valid ration rights or redemption checks for redemption by the supplier equal on a gallon basis to the amount of gasoline transferred, except that any retail sales outlet may transfer gasoline to any firm (including an individual) other than a supplier without obtaining and redeeming ration rights from such firm if the retail sales outlet agrees to obtain and redeem the appropriate amount of ration rights from any source within ten (10) days of the transaction.

(b) For purposes of this subpart, "ration rights" means ration coupons and ration credits issued pursuant to this subpart.

§ 500.22 Ration rights.

(a) For each ration period, FEA shall issue ration rights equal to the estimated total available supply of gasoline for that ration period, as follows:

(1) One (1) percent shall be reserved for distribution pursuant to Subpart E (the National Ration Reserve).

(2) Three (3) percent shall be reserved for distribution to the States based on population and other relevant factors pursuant to Subpart F.

(3) FEA shall issue ration rights to all firms, but not eligible individuals, each calendar month pursuant to § 500.25 of this subpart. The total amount of ration rights issued to firms in a ration period is determined by adding together the pro-rata shares of all firms' allotments for calendar months which fall wholly or partially within the ration period.

(4) The remaining ration rights not issued according to paragraphs (a) (1) through (3) of this section will be issued to eligible individuals pursuant to § 500.24.

(b) Ration rights issued to firms will be distributed in the form of ration credits deposited into a primary ration credit account for each firm. Ration rights issued to eligible individuals will be distributed in the form of ration coupons. Ration credits may be used directly for gasoline or exchanged for coupons at coupon issuance points designated by FEA. Valid ration coupons may be deposited in ration credit accounts, and be subsequently withdrawn as ration credits.

§ 500.23 Validity of ration rights.

(a) *Ration credits.* Unless withdrawn by FEA, ration credits are valid from the date of issuance by FEA through the end of the Mandatory Gasoline Rationing Program. Ration credits may be accumulated in ration credit accounts or may be withdrawn at any time after their issuance.

(b) *Coupons.* Unless declared invalid by FEA or redeemed or cancelled pursuant to Subparts C and D of this part, ration coupons of any series shall be valid from the first day of the ration period for which they are issued through the end of the Mandatory Gasoline Rationing Program even though the ration period for which the ration coupons were issued has ended. FEA may by advance public notice in the FEDERAL REGISTER declare any series or any portion of a series of ration coupons to be invalid. By notice to any holder of particular ration coupons, FEA may declare any ration coupons held by that holder to be invalid and require that such invalid ration rights be immediately surrendered to FEA.

§ 500.24 Issuance of ration rights to eligible individuals.

(a) *Ration periods.* (1) A ration period shall be designated by FEA at least ten (10) days prior to the first day of that ration period by notice published in the FEDERAL REGISTER. A notice designating a ration period may designate more than one ration period and shall establish the term of each ration period designated in the notice.

(2) FEA may by notice published in the FEDERAL REGISTER advance the commencement date of a previously designated ration period.

(b) *Eligible individual's ration allotment.* (1) For each ration period, FEA shall distribute ration rights to eligible individuals equal to the difference between the total ration rights issued for that ration period minus the ration rights to be distributed pursuant to Subparts E and F and § 500.25 of this subpart.

(2) Each eligible individual shall be entitled to receive ration rights as determined pursuant to § 500.26. FEA shall provide notice of the number of ration rights to be issued each eligible individual for a ration period at least ten (10) days prior to the commencement of the ration period.

(c) *Ration coupons.* A ration coupon shall be redeemable for five (5) gallons of gasoline, unless pursuant to advance notice in the FEDERAL REGISTER FEA orders that a ration coupon shall be redeemable for a different volume of gasoline.

(d) *Distribution of ration rights to eligible individuals.* (1) Each eligible individual may obtain his or her ration allotment at an issuance point designated by FEA. For the first three (3) ration periods, an eligible individual will be required to fill out an application form and present his or her State driver's license. Unless otherwise provided by notice published in the FEDERAL REGISTER, for ration periods subsequent to the first three (3) ration periods an eligible individual will be issued his or her ration allotment for three (3) ration periods upon surrender of an authorization card, as provided by paragraph (e) of this section, issued to that eligible individual which is valid for those three (3) ration periods. FEA by notice will designate the day or days on which eligible individuals may apply for their ration allotments. Upon an eligible individual's presentation of a valid authorization card and delivery of his or her ration allotment for one or more designated ration periods, the eligible individual's authorization card for the series of ration rights issued shall be retained and marked or cancelled at the issuance point.

(2) The procedures of paragraph (d) (1) of this section may be followed by agents of eligible individuals unable to apply personally for ration rights. Such agents must present documents authorizing the agent to act on behalf of a particular eligible individual signed by the eligible individual in accordance with FEA forms and instructions.

(3) Indians residing on reservations under the jurisdiction of the Bureau of Indian Affairs may apply to the Bureau of Indian Affairs for their allotments. Alaska Natives may apply to the State agency for their allotments.

(4) Except as provided in paragraph (d) (5) of this section, any eligible individual who applies for a ration allot-

ment after the start of a ration period will receive no allotment for the ration period in progress, but may be given allotments for the next subsequent ration period or periods.

(5) Notwithstanding the provisions of paragraph (d)(4) of this section, FEA may provide additional time at the beginning of any ration period during which any eligible individual may apply for a ration allotment for that ration period.

(e) *Authorization cards.* (1) Any person who is an eligible individual shall be provided with valid authorization cards by the State agency authorized by FEA to issue and distribute authorization cards to licensed drivers holding driver's licenses from that State.

(2) Each eligible individual shall be issued one authorization card for designated ration periods by the appropriate State agency in accordance with notice given by FEA. No eligible individual shall accept or use more than one authorization card for any designated ration period.

(3) Appropriate State agencies shall be authorized by FEA to issue and distribute authorization cards.

(4) State agencies which enter into agreements with FEA to issue and distribute authorization cards which have been approved by FEA in writing shall do so in accordance with forms and instructions issued by FEA.

(5) *Records and reports.* Each State agency authorized by FEA to issue authorization cards shall keep records and submit such reports and other information as FEA may from time to time require.

(6) *Retention of records.* Each State agency shall retain all records and reports submitted to it for possible FEA audit for a period of three (3) years.

(7) *Lost, stolen, or misplaced authorization cards.* Any eligible individual whose authorization card is lost, stolen or misplaced shall immediately report such fact to the State agency. The State agency may issue to such eligible individual a new authorization card in accordance with procedures developed by the State agency and approved in writing by FEA. Within five (5) days of notification, the State agency must transmit the name and number of the lost, stolen, or misplaced authorization card to FEA.

(8) *Appeals concerning authorization cards.* Any individual aggrieved by any act or omission of the State agency with respect to any authorization card may file an appeal in accordance with the provisions of Subpart Q of Part 205 of this chapter.

(9) Each State agency shall establish procedures approved by FEA to ensure timely distribution of authorization cards to eligible individuals.

§ 500.25 Issuance of ration rights to firms entitled to a ration credit level.

(a) For each calendar month, FEA shall issue and distribute ration credits equal to the sum of the ration credit allotments of all firms entitled to a ration credit level and which have primary ration credit accounts with FEA.

(b) *Allotments.* (1) On the first day of each calendar month a firm entitled to a ration credit level of one hundred (100) percent of current requirements and with a primary ration credit account shall receive from FEA an initial allotment equal to one hundred (100) percent of the firm's base period use. If a firm's current requirements exceed one hundred (100) percent of its base period use, the provisions of § 500.42(f) shall determine the manner in which supplementary allotments shall be made to meet the firm's current requirements.

(2) On the first day of each calendar month a firm entitled to a ration credit level other than one hundred (100) percent of current requirements and with a primary ration credit account shall receive from FEA an allotment equal to the firm's ration credit level multiplied by the firm's base period use.

(c) *Base period use.* (1) Except as otherwise specified in paragraphs (c)(2) and (3) of this section, base period use means base period volume or adjusted base period volume, as appropriate. A wholesale purchaser-consumer's or end-user's base period use is the volume of gasoline purchased or obtained in a base period for a use for which there is a ration credit level, including gasoline used by employees or agents of such a wholesale purchaser-consumer or end-user, provided that the gasoline was used for activities authorized as within the scope of the business activities of that wholesale purchaser-consumer or end-user and the employees or agents were reimbursed for the cost of the gasoline they obtained. In the case of a new wholesale purchaser-consumer or new end-user, base period use means the volume assigned by FEA. Suppliers do not have a base period use for the purposes of this subpart except when acting as a wholesale purchaser-consumer or new end-user, base period use means the volume user.

(2) *Vehicle rental companies.* For vehicle rental companies, base period use means the base period volume or adjusted base period volume, as appropriate, used by employees or agents of the firm on firm business. Volumes of gasoline used by customers of the vehicle rental company are not included in the firm's base period use. In those instances where a vehicle rental company has not distinguished between gasoline used by customers and gasoline used by employees and agents of the firm, reasonable estimates based on actual mileage records may be used in establishing the firm's base period use. For the purposes of this part, if a vehicle rental company supplies gasoline for a customer's use, that vehicle rental company shall be deemed to be a wholesale purchaser-reseller for such volumes of gasoline supplied.

(3) *Independent sales representatives.* (i) Any firm using independent sales representatives who are not employees of the firm may include the base period use of such representatives in the firm's base period use provided (A) that each such representative would otherwise qualify as a firm for the purposes of receiving an allotment from FEA, (B) that each such representative certifies the amount of his or her base period use, and that he or she has not and will not include such base period use in any application to any other firm or to FEA, and (C) that the firm agrees to provide each such representative with an amount of ration rights equal to the amount such representative would have received from FEA by separate application for uses connected with carrying out the firm's activities.

(ii) Subject to FEA approval, a firm may also include in its base period use for each new such representative who has no base period use an amount of gasoline equal to the average of all other such representatives' base period uses in the same period.

(iii) Any firm which includes in its base period use the volumes permitted in paragraphs (c)(3) (i) or (ii) of this section must attach to its application and submit monthly thereafter a certification showing the current number of such representatives by market area or other basis established by FEA, and the corresponding volumes associated with such representatives which are included in the firm's base period use.

Each such firm must also maintain records of the names, addresses, and telephone numbers of all such representatives, and must make these records available to FEA upon request by FEA at the firm's principal office address shown on its application form. FEA or its representatives may perform audits of these records to verify their accuracy.

(d) *Ration credit level.* A ration credit level is the percentage of current requirements or of base period use of an end-user or wholesale purchaser-consumer, whether or not a bulk purchaser as defined in § 211.102 of this chapter, that FEA shall use in computing the allotment for such firms each calendar month. The ration credit levels for gasoline shall be the same as the allocation levels for motor gasoline specified in § 211.103 of this chapter without application of an allocation fraction.

(e) *Basis of entitlement to ration credits.* A firm entitled to a ration credit level shall receive ration credits based on its conduct of an ongoing business or maintenance of an established end-use for which there is a ration credit level.

(f) *End-users and wholesale purchaser-consumers as firms.* For purposes of defining an end-user or wholesale purchaser-consumer in this part, a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls and which act as ultimate consumers, including all sites, storage tanks and other facilities or entities of the end-user or wholesale purchaser-consumer that use or store gasoline.

(g) *Loss of ration credit entitlement for discontinued activities.* A firm shall not be eligible to receive ration rights based upon discontinued activities and no firm shall accept or use ration rights issued or distributed to that firm or any other firm based upon discontinued activities.

(h) *New wholesale purchaser-consumers and end-users.* Wholesale purchaser-consumers and end-users which did not purchase gasoline during any base period may apply to FEA for assignment of a base period use pursuant to this subpart and to § 211.12(e) of this chapter. In determining base period use for a firm which was not in operation during the base year, FEA shall among other things review the firm's gasoline purchases preceding the firm's application to FEA, the types of vehicles used, and the number of miles driven. FEA will also consider typical consumption patterns of similar firms.

(i) *Adjustments to base period use.* Any firm entitled to a ration credit level which receives an adjustment to its base period use pursuant to § 211.13 and Subpart D of this chapter shall receive an identical adjustment to its base period use for purposes of this part.

(j) *Distribution of ration rights to firms.* (1) Each firm other than a Federal department, agency, office, or other instrumentality, may submit an application for a ration allotment and a primary ration credit account at a participating bank or other initial processing point designated by FEA, during a period to be designated by FEA.

(2) Each Federal department, agency, office or other instrumentality may submit an application for a ration allotment and a primary ration credit account to the FEA National Office.

(3) Following the acceptance and approval of its application by FEA, each firm will receive ration checking materials, forms and instructions to enable it to draw on its primary ration credit account in accordance with Subpart D of this chapter.

§ 500.26 Calculations.

(a) This section establishes the formulae for calculating a firm's ration credit allotments, the total available supply, the adjusting term, and the length of the ration period. A "computation period" is used in these calculations initially, since the precise length of the ration period is not known until the final calculation is made. The first computation period will be 30 days; once rationing has begun the computation period will have the same number of days as the immediately preceding ration period.

(b) For purposes of paragraphs (c)–(i) of this section, the following symbols have the following meanings:

Symbol	Units	Meaning
REF	Gallons	Projected refinery output of gasoline during computation period.
IMP	do	Projected imports of gasoline during computation period.
EXP	do	Projected exports of gasoline during computation period.
LOS	do	Projected losses of gasoline from spillage, evaporation, and casualty losses during computation period.
NEI	Persons	Number of eligible individuals (latest count from State agencies and Bureau of Indian Affairs).
BM_iV	Gallons	The base period use of a firm in month *i*.
DM_i	Days	Number of days in calendar month *i*.
DM_iC	do	Number of days in calendar month *i* which fall within the computation period.
INV	Gallons	Amount of desired gasoline inventory drawdown during computation period from industry and any Government-held (strategic) inventories.
NRR	do	Amount of allotment to be reserved for use in the National Ration Reserve for the upcoming ration period.
ΣSHR	do	Amount of allotment to be provided for the State Hardship Reserves for the upcoming ration period.
CP	Days	Length of the computation period.
BA	Gallons per individual per ration period.	The basic allotment for each eligible individual in a ration period (equal to $NCU \times VCU$).
NCU	Coupons per ration period	Number of coupons to be given to each eligible individual in a ration period.
VCU	Gallons per coupon	Gallon value of each coupon.
RCL	Fraction expressed as a decimal.	Ration credit level for a firm (90 pct=0.9; 100 pct=1.0)
TAS	Gallons	The total available supply of gasoline to be rationed during a ration period.
ADJ	do	An adjusting term representing errors, roundings, authorized overdrafts, and returned allotments in previous periods.
NAS	do	The net available supply of gasoline during a computation period, equal to the TAS minus amounts necessary for the National Ration Reserve and the State Hardship Reserves.
NDAS	do	The net daily available supply equal to the NAS divided by the number of days in the computation period.
FA_i	do	The allotment for the firm in month *i*.
FD_{cp}	do	The weighted average daily allotment for a firm in the computation period.
ΣFD_{cp}	do	The total weighted average daily allotment for all firms in the computation period (computed by adding FD_{cp} for all firms).
RP	Days	The length of a ration period.

(c) *Total available supply (TAS).* The total available supply (TAS) of gasoline which can be sold during the computation period is determined from data available on the refining and importing of gasoline, adjusted for exports, losses, and inventory changes.

$$TAS = REF + IMP - EXP - LOS + ADJ + INV$$

(d) *Adjusting term (ADJ).* The adjusting term is the sum of adjustments required as a result of errors, roundings, authorized overdrafts, and unclaimed allotments from previous ration periods.

ADJ equals $\Sigma(TAS_{\text{Current est}} - TAS_{\text{prior est}})$ for all previous ration periods,
plus UNCLAIMED ALLOTMENTS from individuals, especially those with multiple licenses,
plus RETURNED ALLOTMENTS from firms with reduced or eliminated activities,
plus ROUNDING ADJUSTMENT in computing the prior ration period, where ROUNDING ADJUSTMENT equals

$$\frac{RP\ \text{Rounded} - RP}{RP} \times BA \times NEI$$

minus Authorized overdrafts by firms entitled to ration credit level of one hundred (100) percent of current requirements.

(e) *Net available supply (NAS).* The net available supply is computed by subtracting from the TAS the allotments necessary to replenish or increase the National Ration Reserve and the State Hardship Reserves.

$$NAS = TAS - NRR - \Sigma SHR$$

(f) *Net daily available supply (NDAS).* The net daily available supply (NDAS) is computed by dividing the NAS by the number of days in the computation period.

$$NDAS = \frac{NAS}{CP}$$

(g) *Allotment for each firm* (FA_i). The monthly allotment for each firm is determined by multiplying the firm's base period use times the appropriate ration credit level.

$$FA_i = BM_iV \times RCL$$

(h) *Average daily allotment for each firm* (FD_{cp}). The average daily allotment for each firm during a computation period is calculated using a weighted average to take into account the fact that a computation period will usually overlap two calendar months.

$$FD_{cp} = \left[\frac{FA_1}{DM_1} \times \frac{DM_1C}{CP}\right] + \left[\frac{FA_2}{DM_2} \times \frac{DM_2C}{CP}\right]$$

(i) *Length of ration period.* The length of the ration period is determined as follows:

$$RP = \frac{BA \times NEI}{NDAS - \Sigma FD_{cp}}$$

The ration period length computed above will be rounded up to the nearest whole day.

§ 500.27 Recordkeeping requirements.

All firms must maintain at their principal business address records on gasoline purchased, supplied, or obtained during each base period and during each month the Mandatory Gasoline Rationing Program is in effect. The records shall be subject to FEA audit and must be retained for three (3) years after the termination of the Mandatory Gasoline Rationing Program.

Subpart C—Redemption, Invalidation of Ration Rights, Scrip and Precedence of Delivery

§ 500.31 General.

(a) Subject to the provisions of § 500.42 (f), ration rights may be freely transferred for or without consideration provided that such ration rights have not been redeemed, cancelled or invalidated by FEA.

(b) No supplier (including a retail sales outlet) shall require any purchaser to purchase ration rights from any firm (including itself) as a condition of transferring gasoline.

(c) For purposes of this subpart, "ration rights" means ration coupons or ration credits issued pursuant to Subpart B of this part.

(d) No supplier, including a retail sales outlet, may refuse to accept valid ration coupons offered as evidence of entitlement to purchase gasoline if such coupons are tendered by a wholesale purchaser-consumer or end-user at the time of sale. A supplier may accept ration credit checks from a wholesale purchaser-consumer or end-user as evidence of entitlement to purchase gasoline, but if there are insufficient ration credits in the ration credit account on which the check is drawn, it shall be the payee's responsibility to secure valid ration rights to cover the deficiency.

§ 500.32 Invalidated ration rights.

Ration rights which have been invalidated by FEA are not transferable for value and shall be surrendered to FEA.

§ 500.33 Cancelled ration rights.

(a) Ration rights which have not been redeemed for gasoline may be deposited into a ration credit account. Such ration rights are cancelled when deposited.

(b) An owner of a ration credit account shall endorse ration rights to be deposited into that ration credit account with the account owner's name and account number, and shall indelibly mark ration rights with the legend "cancelled" at the time of deposit.

§ 500.34 Redeemed ration rights.

(a) Ration rights and redemption checks shall be redeemed by exchanging them for gasoline and shall be surrendered as provided by these regulations.

(b) A supplier (including a retail sales outlet) which accepts ration rights or redemption checks in exchange for gasoline shall redeem such ration rights and redemption checks by indelibly marking them with the supplier's name, its redemption account number and the legend "redeemed".

(c) A supplier (including a retail sales outlet) shall deposit redeemed ration coupons, ration credit checks and redemption checks in its redemption account.

(d) No supplier (including a retail sales outlet) shall accept from any firm ration coupons, ration credit checks or redemption checks marked "redeemed," "cancelled," or "specimen." No supplier shall deposit in its redemption account any redeemed ration rights or redemption checks which the supplier did not redeem for gasoline.

§ 500.35 Restriction on endorsements.

Except when surrendered for ration coupons by the payee at ration coupon issuance points, ration credit checks must be deposited by the payee and may not be endorsed to third parties.

§ 500.36 Scrip.

A retail sales outlet may issue scrip for any unused value on a ration coupon or ration credit check transferred for a purchase of gasoline. The type and form of the scrip are discretionary with the issuer. The scrip must be redeemed upon demand by the retail sales outlet which issued it. Retail sales outlets may agree among themselves to accept scrip issued by other retail sales outlets.

§ 500.37 Precedence of delivery.

Prior to agreeing to any other delivery schedules, suppliers shall first establish mutually satisfactory delivery schedules with all their wholesale purchaser-resellers and bulk purchasers entitled to the first priority level of allocation pursuant to § 211.10(c)(1) of this chapter.

Subpart D—Ration Credit and Redemption Accounts

§ 500.41 General.

(a) FEA shall establish, maintain and administer primary ration credit accounts, secondary ration credit accounts, redemption accounts and any other accounts required by FEA at FEA Regional Processing Centers.

(b) FEA may authorize certain firms to act as participating banks to accept applications to establish primary ration credit accounts, secondary ration credit accounts, redemption accounts and any other accounts required by FEA, to accept deposits into such accounts and to perform such other duties and services as FEA may authorize.

(c) For purposes of this subpart, "ration rights" means ration coupons or ration credits issued pursuant to Subpart B of this part.

(d) Ration credit checks drawn on either primary or secondary ration credit accounts and redemption checks shall only be issued on forms approved and distributed by FEA.

§ 500.42 Primary ration credit accounts.

(a) Upon application by any firm (including an individual) entitled to a ration credit level, and in accordance with forms and instructions to be issued by FEA, FEA shall establish a primary ration credit account for such firm.

(b) On the first day of each calendar month, FEA shall deposit ration credits for that calendar month in a firm's primary ration credit account in an amount equal to the firm's ration credit allotment.

(c) A firm may deposit additional ration rights in its primary ration credit account; *Provided*, That such ration rights have not been previously canceled, redeemed or declared invalid.

(d) A firm may withdraw ration credits from its primary ration credit account by issuing a ration credit check to the order of the firm to which it wishes to transfer ration credits.

(e) Except as provided in paragraph (f) of this section, no firm shall issue a ration credit check drawn upon a primary ration credit account in which there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

(f) Notwithstanding the provisions of paragraph (e) of this section, a firm entitled to a ration credit level of one hundred (100) percent of current requirements may draw upon its primary ration credit account in excess of the balance in that account; *Provided*, That such firm has not previously or shall not in the future transfer ration rights to another firm except to redeem its ration rights for gasoline to be utilized for activities having a ration credit level of one hundred (100) percent of current requirements.

§ 500.43 Secondary ration credit accounts.

(a) Upon application of any firm in accordance with forms and instructions to be issued by FEA, FEA shall establish secondary ration credit accounts for that firm. The minimum initial deposit required to open a secondary ration credit account shall be three hundred (300) gallons.

(b) A firm may deposit ration rights in its secondary ration credit account; *Provided*, *That* such ration rights have not been previously cancelled, redeemed or declared invalid by FEA.

(c) A firm may withdraw ration credits from its secondary ration credit account by issuing a ration credit check to the order of the firm to which it wishes to transfer ration rights.

(d) No firm shall issue a ration credit check drawn upon a secondary ration credit account in which there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

§ 500.44 Redemption accounts.

(a) Every supplier including every retail sales outlet shall apply to FEA for the establishment of a redemption account in accordance with forms and instructions issued by FEA.

(b) Suppliers shall deposit in their redemption accounts all redeemed ration rights and redemption checks which they have accepted.

(c) Within ten (10) days of purchasing or obtaining gasoline from any supplier, a wholesale purchaser-reseller must issue a redemption check to such supplier drawn on its redemption account in exchange for gasoline received.

(d) Participating banks shall accept redeemed ration rights and redemption checks on behalf of FEA for deposit in a supplier's redemption account.

§ 500.45 Recordkeeping requirements and reports.

Participating banks shall maintain such records and issue such reports as may be required from time to time by FEA.

§ 500.46 Redemption account credits.

(a) Based on information contained in the supplier's application for a redemption account, every supplier shall receive an initial redemption account credit equal to the greater of (1) the amount of an average single delivery during the base year or (2) ten (10) days' average gasoline receipts during the base year, computed by dividing the base year volume by three hundred sixty-five (365) and multiplying the result by ten (10).

(b) Within thirty (30) days from the date ration rights are required for the purchase of gasoline, every supplier shall report in accordance with FEA forms and instructions its initial inventory levels measured on the first day of rationing before any sales or deliveries of gasoline are made. On this report form each supplier must compute its adjusted redemption account credit, which shall be equal to the volume of an average single delivery received during the base year, or ten (10) days' average receipts during the base year, if greater, plus twenty (20) percent of total gasoline inventory capacity, minus inventory on the first day of rationing. If the result is less than zero, the adjusted redemption account credit is equal to zero.

(c) Suppliers which are located in remote areas subject to infrequent or irregular supply schedules, and suppliers in areas subject to highly seasonal demand may apply to FEA for a special redemption account credit, if the adjusted redemption account credit computed according to paragraph (b) above will be insufficient to cover actual gasoline receipts less the amount of ration credits and redemption checks received or expected to be received from customers during the first twenty (20) days of the rationing program.

Subpart E—National Ration Reserve

§ 500.51 National Ration Reserve.

(a) The National Ration Reserve shall be used by FEA to meet national disaster relief needs or for emergency replenishment of a State Hardship Reserve or for any other emergency need at the discretion of the Administrator of the FEA.

(b) Each ration period, one (1) percent of the ration rights issued by the FEA pursuant to Subpart B of this part shall be reserved for distribution at the discretion of the FEA National Office through the National Ration Reserve. The percentage of ration rights to be retained in the National Ration Reserve may be increased or decreased during subsequent ration periods upon notice published in the FEDERAL REGISTER.

Subpart F—State Rationing Offices and Local Rationing Boards

§ 500.61 State Rationing Office.

(a) Any State may apply to the FEA National Office to create a State Rationing Office within the State. The Bureau of Indian Affairs shall be treated as a State Rationing Office with respect to the Indian reservations under its jurisdiction.

(b) After FEA review of the criteria in paragraph (d) of this section and upon certification by FEA, such State Rationing Office will be delegated authority (1) to administer the State Hardship Reserve alloted by FEA to that State, (2) to receive petitions from any user of rationed products with respect to the priority and entitlement of such user under these regulations, and (3) consistent with these regulations and guidelines issued by FEA, to order a reclassification or modification of any prior determination made with respect to such user's rationing priority or rights specified in paragraph (b)(2) of this section subject to review by FEA.

(c) Each State shall maintain a primary ration credit account into which FEA shall deposit each month ration credits equal to that State's Hardship Reserve. No State shall issue a ration credit check drawn upon this ration credit account if there are insufficient ration credits to cover that ration credit and other outstanding ration credit checks drawn on that account.

(d) The State Rationing Office may redelegate the authority given to it by FEA to one or more Local Rationing Boards.

(e) *Criteria for delegation of authority to State Rationing Offices.* [Reserved]

§ 500.62 Local Rationing Boards.

(a) Local Rationing Boards may be established within a State by the State Rationing Office pursuant to § 500.61.

(b) Each Local Rationing Board shall include a Local Rationing Panel selected pursuant to § 500.64.

(c) The Local Rationing Board shall be allotted an equitable portion of the State Hardship Reserve by the State Rationing Office. The Local Rationing Board shall maintain a secondary ration credit account into which it shall deposit the portion of the State Hardship Reserve it receives from time to time. From this secondary account, the Local Rationing Board may issue ration rights to eligible individuals determined to be experiencing hardships pursuant to § 500.63. The Local Rationing Board shall not issue a ration credit check drawn upon its secondary ration credit account if there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

(d) Each Local Rationing Board shall accept hardship applications pursuant to § 500.63 and either approve or disapprove such petitions pursuant to instructions and guidelines to be issued by FEA.

(e) Each week the Local Rationing Board shall report to the State Rationing Office with respect to the preceding week (1) the number of hardship applications received per category of hardship alleged, (2) the disposition made of hardship applications, and (3) the amount of ration rights issued to individuals found to be experiencing hardships.

(f) The Local Rationing Panel shall review and decide all appeals of decisions made by the Local Rationing Board pursuant to § 500.63(d) and in accordance with guidelines to be issued by FEA. The Local Rationing Panel shall also review and decide appeals filed by any person aggrieved by a decision of the Local Rationing Board with respect to any matters redelegated to it by the State Rationing Office pursuant to § 500.61. Appeals from the decision of the Local Rationing Panel may be further appealed pursuant to § 500.67.

(g) The Bureau of Indian Affairs may establish Local Rationing Boards on Indian reservations under its jurisdiction. Such boards will carry out the duties and functions of Local Rationing Boards as set forth in this subpart.

§ 500.63 Hardship applications.

(a) An individual may file a hardship application for rationing rights in addition to the rationing rights, if any, which he or she is entitled to receive pursuant to Subpart B of this part. The application shall be made in accordance with FEA forms and instructions.

(b) Hardship applications will be received by the Local Rationing Board for review and determination if the applicant alleges any one or more of the following hardships:

(1) *Handicapped persons.* Any individual who, by reason of disease, injury, age, congenital malfunction, or other permanent incapacity or disability, is unable without special facilities, planning or design to utilize mass transportation vehicles, facilities and services, who has a substantial, permanent impediment to mobility and whose needs for rationed products exceed the amount, if any, represented by the ration rights issued pursuant to Subpart B of this part may file a hardship application.

(2) *Low-income, long-distance commuters.* Persons who without ration rights in addition to the amount, if any, allotted to them pursuant to Subpart B of this part would be forced to spend over five (5) percent of their adjusted gross incomes purchasing ration rights for travel to and from their place of employment, and for whom carpooling or public transportation is not a reasonable alternative, may file a hardship application.

(3) *Migrant workers.* An individual who holds a drivers licensed by a State, who travels from one agricultural work site to another agricultural work site, and whose needs for rationed products exceed the amount represented by the ration rights, if any, issued pursuant to Subpart B of this part may file a hardship application with the Local Rationing Board which serves the community in which the current work site is located. The applicant should be awarded sufficient ration rights to assist the individual in traveling to his or her next work site.

(4) *Persons engaged in household moves.* Persons who are driving vehicles as part of their own household move and who in order to complete the move will need more than twenty-five (25) percent of the total amount of ration rights for one ration period allotted to all members of the household pursuant to Subpart B of this part may file a hardship application. Rationed products needed by firms engaged in household moving for hire may not be obtained through the Local Rationing Board.

(5) *Other recurring or one-time hardship needs.* Any individual experiencing severe hardships on a recurring or one-time-only basis, who is not specified in paragraphs (b) (1), (2), (3) and (4) above, may file a hardship application. The Local Rationing Board must review and decide any application filed pursuant to this paragraph (b)(5) consistent with the objectives of the Mandatory Gasoline Rationing Program.

(c) *Processing of applications.* (1) The Local Rationing Board may initiate an investigation of any statement in an application, whether written or verbal, and use in its evaluation any relevant facts obtained by such investigation. The Local Rationing Board may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the Local Rationing Board may consider any other source of information. The Local Rationing Board on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(2) If the Local Rationing Board determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the Local Rationing Board may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the Local Rationing Board may dismiss the application with prejudice.

(3) After processing, the Local Rationing Board or upon appeal the Local Rationing Panel shall either grant or deny a hardship application. If the application is granted, the Local Rationing Panel or the Local Rationing Board shall determine the amount of ration rights to be granted, shall notify the applicant in writing of the amount determined, and shall issue ration rights to the applicant in that amount. If the Local Rationing Board or the Local Rationing Panel determines that the application is not to be granted, the applicant shall be notified in writing promptly upon such determination.

(d) An applicant who does not receive as many ration rights as he or she applied for or an applicant whose application is not granted may appeal to the Local Rationing Panel. The appeal must be filed within fifteen (15) calendar days of receipt of the notice of determination specified in paragraph (c)(3) of this section. There has not been an exhaustion of administrative remedies until an appeal has been filed and decided, and all further appellate proceedings provided in § 500.67 of this subpart have been completed.

§ 500.64 Selection of Local Rationing Panel and Local Rationing Board Manager.

The Local Rationing Panel shall consist of an odd number of volunteers selected by the local government in which the panel serves in accordance with FEA guidelines. The members of the Local Rationing Panel shall designate one of their members as the individual responsible for calling meetings of the panel to determine local procedures and to carry out the duties of the Local Rationing Panel. The Local Rationing Board Manager shall be selected by the Chief Executive of the State in which the Local Rationing Board is located.

§ 500.65 State Hardship Reserves.

(a) Pursuant to Subpart B of this part, FEA shall distribute ration rights to each State Rationing Office to be used by Local Rationing Boards to meet the needs of approved individual hardship applicants pursuant to § 500.63 of this subpart and to meet the needs of approved hardship applications filed with the State Rationing Office by firms pursuant to paragraph (b) of this section.

(b) *Application by firms experiencing severe hardships.* (1) A firm entitled to a ration credit level, other than as a supplier or a wholesale purchaser-reseller, may file an application with the State Rationing Office for rationing rights in addition to any rationing rights it is entitled to receive pursuant to Subparts B and G of this part. The application shall be made in accordance with FEA forms and instructions.

(i) The State Rationing Office may initiate an investigation of any statement in an application, whether written or verbal, and use in its evaluation any relevant facts obtained by such investigation. The State Rationing Office may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the State Rationing Office may consider any other source of information. The State Rationing Office on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(ii) If the State Rationing Office determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the State Rationing Office may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the State Rationing

Office may dismiss the application with prejudice.

(2) The State Rationing Office shall notify the applying firm in writing of the decision made with respect to the application and the amount, if any, of ration rights the firm is to receive from the State Hardship Reserve.

(3) Any firm aggrieved by the decision of the State Rationing Office with respect to its application may appeal that decision pursuant to § 500.67(c) of this subpart.

(c) Each month the State Rationing Office shall report to FEA with respect to the preceding month (1) the number of hardship petitions received per category of hardship alleged, (2) the disposition made of hardship applications, and (3) the amount of ration rights issued from the State's Hardship Reserve.

(d) Within ten (10) days of the end of a ration period, any ration rights remaining in the State Hardship Reserve shall be reported to FEA. FEA may, among other courses of action, add it to the State Hardship Reserve for the next ration period, transfer all or a portion of the balance to another State Hardship Reserve, or treat the balance as an advancement on the State Hardship Reserve for the next ration period.

§ 500.66 Timeliness.

(a) If the Local Rationing Board, the Local Rationing Panel or the State Rationing Office fails to take action on an individual's or a firm's application, respectively, within ten (10) days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in § 500.67.

(b) Notwithstanding paragraph (a) of this section, the Local Rationing Board or the State Rationing Office may temporarily suspend the running of the 10-day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the Local Rationing Board or the State Rationing Office serves upon the individual or firm notice that the additional information has been received and accepted or that the application has been properly filed as appropriate. Unless otherwise provided in writing, the 10-day period shall resume running on the first day that is not a Saturday, Sunday, or Federal legal holiday and that follows the day on which the Local Rationing Board or the State Rationing Office serves upon the person the notice described in this paragraph.

§ 500.67 Appeals.

(a) An individual aggrieved by a decision made by a Local Rationing Board may appeal that decision to the Local Rationing Panel pursuant to § 500.63(d).

(b) An individual aggrieved by an appeal decision of a Local Rationing Panel may appeal that decision to the State Rationing Office in accordance with the procedures established by the State office. The appeal shall be filed within fifteen (15) days of serivce of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

(c) Any person aggrieved by a decision made by a State Rationing Office with respect to any matters coming within the authority delegated to it pursuant to § 500.61 or relating to its decisions on applications for additional ration rights made pursuant to § 500.65 or on an appeal decision made pursuant to paragraph (b) of this section may file an appeal of that decision pursuant to Subpart Q of Part 205 of this chapter.

Subpart G—Diesel Fuel Rationing

§ 500.71 General.

(a) No firm shall obtain diesel fuel at retail sales outlets from any supplier without transferring to the supplier valid ration rights equal on a gallon basis to the amount of diesel fuel transferred and no supplier (including a retail sales outlet) shall transfer diesel fuel at retail sales outlets to any wholesale purchaser-consumer or end-user, without obtaining and redeeming ration rights from such wholesale purchaser-consumer or end-user, except that a supplier at a retail sales outlet may transfer diesel fuel to any firm other than a supplier without obtaining and redeeming ration rights from such firm if the supplier at a retail sales outlet agrees to obtain and redeem the appropriate amount of ration rights from any source and does so within ten (10) days of the transaction.

(b) For purposes of this subpart, "ration rights" means ration coupons issued pursuant to Subparts B and F of this part or charges against a diesel fuel entitlement card issued by FEA pursuant to § 500.72.

§ 500.72 Issuance of ration rights.

(a) Ration coupons issued for gasoline pursuant to the provisions of Subparts B and F of this part may be used to purchase diesel fuel at retail sales outlets in lieu of gasoline at the option of the holder. However, no ration coupon may be used for both gasoline and diesel fuel.

(b) Ration coupons issued pursuant to Subparts B and F of this part which the holder uses to purchase diesel fuel at retail sales outlets shall be valid in the same manner as specified in § 500.23.

(c) A firm which purchases diesel fuel at retail sales outlets may apply to FEA for establishment of a diesel fuel ration credit account and for issuance of a diesel fuel entitlement card which shall enable the holder to purchase diesel fuel at retail sales outlets. The amount of the ration allotment which FEA will make for each diesel fuel primary ration credit account shall be the same as the allocation levels for middle distillate specified in Part 211 of this chapter prior to the application of an allocation fraction.

(d) Firms applying for a diesel fuel entitlement card shall be provided a diesel fuel ration credit account to which FEA will credit in each calendar month the amount of diesel fuel to which the firm is entitled pursuant to paragraph (c) of this section.

(e) A firm which wishes to purchase diesel fuel at retail sales outlets in excess of volumes purchased at retail sales outlets during the base period may petition FEA pursuant to Subpart D of Part 205 to increase the amount of the firm's ration credits to be issued by FEA in a calendar month. A firm which did not purchase diesel fuel at retail sales outlets during a base period may apply for assignment of a base period use pursuant to Subpart C of Part 205.

(f) A firm may apply to FEA for a diesel fuel entitlement card in accordance with FEA forms and instructions. The applicant shall be required to determine its base period use of diesel fuel and to indicate for each period corresponding to a base period how much by volume of its base period use of diesel fuel was purchased at retail sales outlets.

(g) FEA may invalidate any diesel fuel entitlement card by notice to the firm to which it was issued if FEA finds, among other things, that the card is being improperly used or is reported lost or stolen.

(h) Sales to holders of diesel fuel entitlement cards at retail sales outlets of diesel fuel shall be made by imprinting the information on the card on an FEA form which shall, among other information, indicate the volume of diesel fuel sold; the date of sale; the name of the retail sales outlet; and certification by the card holder that he or she is currently authorized by the firm (including an individual) to which the card was issued to use the card for purchases of diesel fuel at retail sales outlets. A copy of the completed form shall be provided to the holder; a second copy held for transmittal to the FEA regional processing center; and a third copy maintained by the retail sales outlet.

§ 500.73 Redemption.

(a) The retail sales outlet of diesel fuel shall collect all ration rights exchanged for diesel fuel and after stamping any ration coupons redeemed for diesel fuel with the legend "redeemed for diesel," keep all such ration rights separate from ration rights exchanged for gasoline. Those ration rights exchanged for diesel fuel shall not be deposited in a wholesale purchaser-reseller's redemption account.

(b) From time to time and upon prior notification by FEA, retail sales outlets of diesel fuel may be required to transmit to a FEA regional processing center all ration rights exchanged for diesel fuel including copies of the transaction forms used by holders of diesel fuel entitlement cards which the owner of the retail sales outlet retained at the time of sale pursuant to § 500.72(h).

[FR Doc.77-2244 Filed 1-19-77;12:27 pm]

CHAPTER III—U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PART 711—GUIDELINES FOR ENVIRONMENTAL REVIEW

Miscellaneous Amendments

On February 14, 1974, guidelines were promulgated and published in the FEDERAL REGISTER (39 FR 5620) establishing policies and procedures for the discharge of the responsibilities of the Atomic Energy Commission (AEC)—operations with respect to the National Environmental Policy Act of 1969 (NEPA) and other related authorities. The Energy Research and Development Administration (ERDA), the statutory successor to the operational functions of the AEC as a result of the Energy Reorganization Act of 1974, adopted those guidelines on March 3, 1975 (40 FR 8794). The purpose of those regulations was explained in the preamble to the AEC operations guidelines.

Experience with these guidelines has indicated that certain changes are needed for the sake of clarity, particularly in amending the guidelines to conform to ERDA's organizational structure. Accordingly, Part 711 of Title 10, Code of Federal Regulations is amended as set forth below.

These amendments will apply to all units of ERDA. They will apply to all reviews of proposed actions not yet commenced and will also apply to the maximum extent practicable to reviews currently in process. These amendments are promulgated as final amendments to the guidelines since they are matters relating to agency procedures and the agency desires that these procedures be available immediately for application to the large number of environmental reviews currently in process. For these reasons, the agency has determined that it is not necessary to provide notice of proposed rulemaking, opportunity for public participation or delay of effective date. However, in order to provide the public with an opportunity to comment on these guidelines, interested persons may submit, on or before March 14, 1977, written comments to the Director, Office of NEPA Coordination, Mail Station E-201, U.S. Energy Research and Development Administration, Washington, D.C. 20545. These comments will be considered with respect to the desirability of further amendment of this Part.

These amendments are promulgated under authority provided in Section 105, 88 Stat. 1238 (42 USC 5815), and section 102, 83 Stat. 853 (42 USC 4332) and are effective January 26, 1977. Part 711 is hereby revised to read as follows.

Dated at Germantown, Maryland, this 8th day of December 1976.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator, for Environment and Safety.

AUTHORITY: Sec. 105, 88 Stat. 1238 (42 U.S.C. 5815); Sec. 102, 83 Stat. 853 (42 U.S.C. 4332).

Subpart A—General

§ 711.1 Background.

(a) The National Environmental Policy Act of 1969 (NEPA), implemented by Executive Order 11514 (E.O. 11514) dated March 5, 1970 (35 FR 4247), and the Guidelines of the Council on Environmental Quality (CEQ) of August 1, 1973 (40 CFR Part 1500, 38 FR 20550), require that all agencies of the Federal Government prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into the Federal agency decisionmaking process, beginning at the earliest possible point, an appropriate and careful consideration of environmental aspects of proposed actions in order that adverse environmental effects may be avoided or minimized. In addition, section 309 of the Clean Air Act (CAA), as amended, provides that the Administrator of the Environmental Protection Agency (EPA) shall review and comment on any matter relating to EPA's authority contained in such proposed legislation or such other major Federal action. Office of Management and Budget (OMB) Bulletin No. 72-6 of September 14, 1971, and OMB Circular No. A-95 (Revised) of January 2, 1976, provide guidance in connection with the evaluation, review and coordination of Federal projects and activities.

§ 711.2 Purpose.

(a) This Part establishes policy and procedure for discharging the Energy Research and Development Administration's (ERDA) responsibilities with respect to NEPA, E.O. 11514, section 309 of the CAA, OMB Bulletin No. 72-6, OMB Circular No. A-95 (Revised) and the CEQ Guidelines, as they may be amended from time to time. This Part will be reviewed and revised, in consultation with CEQ, to ensure full compliance with these directives. This Part is intended to provide guidance for:

(1) Identifying the agency environmental appraisal process, those ERDA actions requiring environmental impact assessments and statements and the time schedule for appropriate participation prior to agency decision of applicable Federal, State and local governmental units and members of the public;

(2) Obtaining information to allow the potential environmental impact of administrative and legislative actions to receive full consideration in the agency decisionmaking process;

(3) Obtaining information and internal ERDA review required for the preparation of environmental impact assessments and statements;

(4) Designating the ERDA officials who are to be responsible for preparation, review and approval of environmental impact assessments and statements.

§ 711.3 Policy.

(a) Consistent with ERDA's statutory responsibilities and other essential considerations of national policy, ERDA shall conduct its activities in a manner calculated to promote the general welfare, to encourage productive and enjoyable harmony between man and his environment, to minimize damage to the environment, to enhance environmental quality, to restore environmental quality lost previously, and to preserve natural systems and resources to the greatest possible extent.

(b) To this end, ERDA will incorporate into its planning and decisionmaking processes, a careful consideration of the environmental consequences which may be caused by its proposed actions by:

(1) Evaluating both the long-range and short-range implications of such actions to man, including his physical and social surrounding, and to nature;

(2) Exploring, developing and analyzing alternative actions that may avoid, minimize or compensate adverse impacts;

(3) Providing for disclosure of the potential environmental effects of such proposed actions to agency and other decisionmakers, including Congress and the President, and to the public.

§ 711.5 Applicability.

(a) This part applies to all ERDA organizations.

(b) This part covers ERDA administrative actions and legislative proposals, including those actions and proposals sponsored jointly with other agencies. In this latter connection, if an environmental impact assessment or statement is to be prepared, the agencies involved shall determine as early as possible their respective responsibilities the preparation and processing of that document including designation of a single agency to assume leadership responsibilities where appropriate. Where a lead agency prepares the document, the other agencies involved are expected to provide assistance with respect to their areas of jurisdiction and expertise. Factors relevant in determining an appropriate lead agency include time sequence in which the agencies become involved, the magnitude of their respective involvement, and their relative expertise with respect to the anticipated environmental effects of the proposed action. Whether an assessment or statement is prepared by a lead agency or is prepared jointly by several agencies, the document should:

(1) Evaluate the environmental consequences of the full range of Federal actions involved;

(2) Reflect the views of all participating agencies;

(3) Be prepared before major or irreversible actions have been taken by any of the participating agencies.

(c) This part applies to proposed actions which may have a significant environmental effect even though they arise from projects or programs initiated prior to enactment of NEPA.

(d) The following actions are not subject to the requirements of this part:

(1) Administrative procurements (e.g., general supplies);

(2) Contracts for personal services;

(3) Personnel actions;

(4) Legislative proposals originating in another agency;

(5) Legislative proposals not relating to or affecting matters within ERDA's primary areas of responsibility;

(6) Legislative or administrative actions in the nature of conceptual design, architectural and engineering studies, basic research, and other administrative matters or legislative proposals having no foreseeable impact on the quality of the human environment.

§ 711.7 Definitions.

(a) An "action" as used in this Part is one which may affect the quality of the human environment.

(1) An "administrative action" is an ERDA action, other than a legislative action (as defined herein), which includes but is not necessarily limited to:

(i) A new or continuing project or program, or expansion or revision to a continuing program:

(A) Directly undertaken by ERDA;

(B) Supported in whole or in part through ERDA contracts, grants, loans, guarantees, subsidies, or other forms of financial assistance;

(C) Involving an ERDA lease, permit, or license.

(ii) The establishment or modification by ERDA of rules, regulations, or policies.

(2) A "budgetary action" is a legislative action (as defined herein), involving an ERDA request to Congress for authorization and appropriation of funds for a proposed construction line item, or other proposed major activity or program.

(3) A "legislative action" is a favorable report or recommendation on a proposal for legislation sponsored by ERDA, including a budgetary action as defined herein.

(b) An "environmental development plan" (EDP) is generally anticipated to be the basic ERDA management document for planning, budgeting, managing, and reviewing the broad environmental implications of an ERDA energy research, development and demonstration program.

(c) An "environmental impact assessment" (EIA) is a written document which evaluates the environmental impacts of proposed ERDA actions to assure that environmental values are considered at the earliest meaningful point in the decisionmaking process, and which provides the basis for a determination whether an environmental impact statement will be prepared.

(d) An "environmental impact statement" (EIS) is a written document prepared at the earliest meaningful point in the decisionmaking process which analyzes the environmental impacts associated with a proposed ERDA action and of reasonably available alternatives and reflects responsible public and governmental views and concerns.

(1) A "draft environmental impact statement" (DEIS), is a preliminary statement which is circulated for review and comment outside of ERDA as a vehicle for eliciting additional public and governmental participation in the ERDA environmental review process.

(2) A "final environmental impact statement" (FEIS) is a revised DEIS which considers and evaluates (a) the substantive issues and comments raised and (b) new information developed during the public review period.

(e) A "negative declaration" is a document prepared subsequent to a decision that an environmental impact statement will not be prepared for a proposed action where the action is one which: (1) Has been identified earlier in an EDP or EIA as an action for which a statement would be prepared; (2) Is similar to actions for which ERDA has prepared a significant number of statements; (3) Has previously been announced as being the subject of a statement; or (4) ERDA has determined not to prepare such a statement in response to a request from CEQ to prepare a statement. This document shall set forth the decision and briefly state the reasons therefor.

(f) "Programs" are aggregates of projects which share a common objective or purpose and are so inter-related that planning or decisionmaking with respect to any one component would be likely to significantly affect planning or decisionmaking with respect to any other component.

(g) "Projects" are individualized ERDA actions including, but not limited to, proposed construction of a facility which may, but need not, constitute a part of a larger program.

(h) "Responsible Assistant Administrator" is that Assistant Administrator who has been assigned overall responsibility for the conduct of a program, project, or other ERDA action which may be subject to this Part.

(i) "Appropriate ERDA official" is the program division, field organization, or any other subunit head within ERDA who has been assigned direct responsibility for the conduct of a program, project, or other ERDA action subject to this Part.

(j) "Summary sheet" is a brief summary of the significant aspects of an environmental impact statement which accompanies the EIS. It is prepared in accordance with Appendix I of the CEQ Guidelines (40 CFR 1500).

Subpart B—Environmental Impact Assessments

§ 711.23 Criteria for determining need for environmental impact assessments.

(a) An environmental impact assessment is ordinarily not required for actions and alternatives with respect to which an environmental impact assessment or statement has been formerly prepared by ERDA or another Federal agency and that in the opinion of the AES still reflects a current evaluation of such impacts and issues. In these instances, the relevant assessment or statement should accompany the proposal for such action through the ERDA review and decisionmaking process to the same extent as an assessment or statement prepared under this Part.

(b) The appropriate ERDA officials are responsible for the preparation of environmental impact assessments for all proposed administrative and legislative actions to which this Part is applicable and have not been previously identified as requiring environmental impact statements.

(c) The Assistant Administrator for Environment and Safety (AES), in consultation with the Office of the General Counsel (OGC), may request the responsible Assistant Administrator or appropriate ERDA official to prepare an environmental impact assessment for any proposed ERDA action under their respective jurisdiction, which, in the opinion of the AES, may impact the quality of the environment.

§ 711.25 Content of environmental impact assessments.

(a) Environmental impact assessments (EIA) should be brief, factual documents that evaluate and analyze the environmental consequences of proposed ERDA actions in enough detail to assure that environmental values are considered as early as possible in the decisionmaking process and to provide the factual basis for a determination of the need for the preparation of an environmental impact statement. Assessments should be structured in a manner that is most useful for planning and decisionmaking. EIA's should ordinarily contain the following information:

(1) *Description of the proposed action.* The proposed action should be briefly described and known environmental issues should be identified. Drawings, maps, and charts should be included only if directly pertinent to the assessment.

(2) *Description of the existing environment.* The existing environment affected by the proposed action should be described only in sufficient detail to permit a meaningful evaluation of the

potential environmental consequences of the proposed action.

(3) *Potential environmental impacts.* The potential impacts and risks of the proposed action should be assessed, including those adverse impacts which cannot be avoided should the proposal be implemented. The potential cumulative and long-term environmental effects, including any bentficial effects should also be evaluated. Any known issue identified in subparagraph (1) above, should be discussed. The risks and effects of significant credible accidents should be evaluated For proposed construction projects, potential impacts in the following three areas should be addressed:

(i) *Construction.* The probable environmental effects that may occur from site preparation, roads, excavation, utilities, parking lots, hauling, clean-up, etc., should be assessed. Included should be the effects of dust, earthmoving, silt, water and noise. Secondary impacts, such as increased labor force and effect on community resources, and new housing and services, should be discussed whenever appropriate.

(ii) *Operation.* The probable environmental impacts from the use of resources, such as materials, supplies, fuel, personnel, and from plant affluents, should be assessed.

(iii) *Site restoration.* The plans, if any, that may be required for site restoration and the resulting impacts should be briefly described.

(4) *Coordination with Federal, state, regional or local plans.* The potential conflicts of the proposed action with Federal, state, regional or local plans and policies and how any conflicts will be mitigated or resolved should be described.

(5) *Description of alternatives.* The reasonably available alternatives to the proposed action should be briefly described.

§ 711.27 Submission of environmental impact assessments.

(a) Environmental impact assessments shall be submitted to the AES through the responsible Assistant Administrator along with a recommendation as to whether an environmental impact statement should be prepared and the reasons therefor. If it is recommended that a statement should be prepared, the transmittal shall include the information specified in § 711.47(b).

§ 711.29 Review of environmental impact assessments.

(a) The AES, in consultation with OGC, shall review environmental impact assessments and accompanying recommendations in accordance with § 711.41 to determine whether proposed actions require the preparation of an environmental impact statement.

(b) If the AES determines that a statement is required, he will so inform the responsible Assistant Administrator who shall cause the preparation of an environmental impact statement in accordance with § 711.47, and Subpart D.

(c) A copy of all environmental impact assessments shall remain on file with AES who shall place copies of unclassified documents in appropriate ERDA public document room(s) for public inspection as soon as possible. Unless or until superseded by an environmental impact statement, environmental impact assessments shall accompany the proposed action through the agency decisionmaking process.

§ 711.31 Negative declarations.

(a) If it is determined that a proposed action does not require the preparation of an environmental impact statement and the proposed action meets the criteria of § 711.7(e), the AES shall so inform the appropriate ERDA official and cause a negative declaration to be prepared which documents the reasons for that determination. Negative declarations shall be published in the FEDERAL REGISTER. No action related to the subject of the negative declaration shall be taken sooner than 15 days following publication in the FEDERAL REGISTER.

(b) Lists of negative declarations shall be provided to CEQ at least quarterly in accordance with 40 CFR 1500.6(e).

Subpart C—Environmental Impact Statements

§ 711.41 Criteria for determining need for environmental impact statements.

(a) An environmental impact statement is ordinarily not required for actions with respect to which an environmental impact statement has been formerly prepared by ERDA or another Federal agency and that in the opinion of the AES still reflects a current evaluation of such impacts and the issues involved in ERDA's implementation of the proposed action. In these instances, the relevant statement should accompany the proposal for such action through the ERDA review and decisionmaking process to the same extent as a statement prepared under this Part.

(b) Environmental impact statements shall be prepared for those proposed actions identified in current environmental development plans as requiring such statements except as provided in § 711.31 and all other major ERDA actions having a potentially significant effect on the quality of the human environment.

(c) In determining what is a "major ERDA action having a potentially significant effect on the quality of the human environment", the following should be considered:

(1) The term "major ERDA actions" implies a threshold of magnitude of ERDA involvement which must be met before a statement is required. The action must be one where there is sufficient ERDA control and responsibility to influence the course of the action. In assessing the nature of the action, the role of ERDA funds, manpower, studies and discretionary decisions should be considered.

(2) The term "significantly affecting the quality of the human environment" implies a threshold of impacts which must be met before a statement is required. In assessing the significance of the impact, the following should be considered:

(i) The overall cumulative impact of the proposed action and related Federal actions;

(ii) The potential for degradation of the quality of the environment, curtailment of the range of beneficial uses of the environment, and the furtherance of short-term to the disadvantage of long-term environmental goals;

(iii) Effects on management, allocation or consumption of important scarce or nonrenewable resources; and

(iv) Whether expected environmental impacts are likely to be controversial.

(3) Significant effects may include secondary effects such as socioeconomic impacts and actions which could have both beneficial and adverse effects. Additional guidance is set forth in the CEQ Guidelines, 40 CFR 1500.6 (a), (b) and (c).

§ 711.43 Scope of environmental impact statements.

(a) Programmatic environmental impact statements. The scope of programmatic environmental impact statements should be determined on a case by case basis. The following is provided as general guidance only:

(1) Environmental impact statements covering a program as defined in § 711.7 (f), generally shall assess all reasonably foreseeable environmental consequences generic to component subprograms, projects, and actions; and shall focus on the cumulative effects of such related activities. In general, an analysis of specific impacts and alternatives dependent upon design, site, or other specific details of component projects or actions should be treated in environmental impact assessments or statements for specific projects or actions.

(2) Environmental impact statements covering technology research, development, demonstration, or commercialization programs generally shall discuss the anticipated impacts of commercial deployment of such technology, including discussion of any major uncertainties with respect to the environmental effects of such deployment.

(b) Project environmental impact statements. Environmental impact statements covering projects ordinarily should focus on the localized environmental impacts of a specific proposed action, such as the construction and operation of a proposed facility at a specific site.

(c) Site environmental impact statements. Environmental impact statements covering a site under ERDA jurisdiction generally should assess collectively the environmental consequences of a number of continuing and/or proposed individual actions such as the operation of facilities at the given site. They should also discuss the interrelationship of the cumulative environmental effects from past activities at the site with those expected from continuing and/or proposed activities at the site.

§ 711.45 Timing of environmental impact statements.

(a) Programmatic environmental impact statements. The planned timing for preparation of a programmatic environmental impact statement shall be determined on a case by case basis and identified as appropriate in the environmental development plan for the specific program.

(1) For research, development and demonstration programs, a programmatic environmental impact statement should be written late enough in the development process to contain meaningful information on the effects of application of the technology. However, it should be written early enough so that the environmental information contained can be factored into the decisionmaking process before the development process has reached a stage of investment or commitment to implementation likely to determine subsequent development or to foreclose or restrict later alternatives. Therefore, the following factors, among others, should be evaluated and periodically reevaluated (particularly when new information becomes available concerning the potential environmental impacts of the program) to determine the appropriate point for preparation of a program statement:

(i) The magnitude of Federal investment in the program.

(ii) The likelihood and proximity of widespread application of the technology.

(iii) The degree and controversial nature of the environmental effects of the program, individually and cumulatively, which are likely to occur in the event the technology were widely applied.

(iv) The pace at which the program is moving from basic research toward demonstration of a viable technology.

(v) The extent to which continued investment in the new technology is likely to foreclose or restrict future alternatives.

(2) For commercialization or other programs not identified in paragraph (a) (1) of this section, a programmatic environmental impact statement should be written late enough in the formulation of the proposed program to contain meaningful information on the likely environmental impacts of implementation but early enough so that the environmental information contained therein can be factored into the decisionmaking process prior to the foreclosure or restriction of reasonable alternatives.

(b) Project environmental impact statements. The environmental impact statement shall be prepared late enough in the development of the proposal to contain meaningful information on the potential localized environmental impacts at the site of the construction and operation of a proposed specific research, development, demonstration, or commercial facility but early enough to provide meaningful environmental input into the decisionmaking process. In all cases, the statement should be prepared before major resources are irrevocably or irreversibly committed and prior to taking an action with respect to the proposed project that has a potential for significant environmental impact.

(c) Legislative actions involving environmental impact statements. To the maximum extent practicable final environmental impact statements should be prepared in time for consideration by the Administrator before submission to the Congress of ERDA legislative actions. In cases where that is not practical and where the scheduling of Congressional hearings on such actions do not allow adequate time for the completion of a final environmental impact statement, a draft environmental impact statement may be furnished to the Congress with transmittal of comments as received. In any event, the text of the final environmental impact statement should be made available (1) when completed and (2) prior to administrative implementation.

§ 711.47 Responsibilities for preparation of environmental impact statements.

(a) Appropriate ERDA officials shall undertake the preparation of environmental impact statements in accordance with § 711.43 and Subpart D for proposed actions identified as requiring the preparation of an EIS (1) in an appropriate environmental development plan, (2) in accordance with § 711.29, or (3) by the AES, after consultation with OGC and the responsible Assistant Administrator.

(b) Before preparation of an environmental impact statement is initiated, the appropriate ERDA official shall submit through the responsible Assistant Administrator the following information to the AES for concurrence:

(1) A description of the proposed action and scope of the document.

(2) An outline of what is intended to be discussed in the statement, including identification of known environmental issues.

(3) The alternatives which will be analyzed.

(4) The anticipated dates of issuance for both draft and final statements.

(5) A description of activities, if any, which will continue, commence or occur with respect to the subject of the document prior to 30 days after issuance of the final environmental impact statement.

(6) Recommendations as to the need for, and composition of, intra-agency or inter-agency task forces to prepare or assist in the preparation of the environmental impact statement and the suggested composition.

(7) A recommendation regarding the desirability of a joint statement with the participation of other agencies in light of § 711.5(b), and, if so, the conditions under which such participation should proceed.

(c) If, after consultation with OGC, the AES concurs in the approach described pursuant to paragraph (b) of this section, he shall advise the appropriate ERDA official to commence preparation of the environmental impact statement and shall publish a notice of intent pursuant to § 711.49. If, after consultation with OGC, the AES does not concur he shall advise the appropriate ERDA official of the modifications which will be required to obtain AES concurrence.

§ 711.49 Notice of intent.

(a) After a determination has been made to prepare an EIS, the responsible Assistant Administrator, at the direction of the AES, shall cause to be submitted to the AES:

(1) A Notice of Intent to prepare an environmental impact statement which:

(i) Describes the proposed action and proposed scope of the document in sufficient detail to promote responsive comment.

(ii) Lists the alternatives to be analyzed.

(iii) Indicates the location(s) of known documentation to be utilized in the preparation of the statement.

(iv) Invites comments and suggestions for consideration in the preparation of the environmental impact statement.

(2) A list of individuals or organizations whom the appropriate ERDA official has identified as having interest in the environmental implications of the subject action.

(b) Whenever practicable, the AES shall cause to be published in the FEDERAL REGISTER the Notice of Intent to prepare the environmental impact statement and shall transmit a copy of that Notice of Intent to appropriate Federal, state, and local agencies and to persons or groups known to be interested in the environmental implications of the proposed action.

§ 711.51 Required lists.

(a) The AES shall be responsible for the preparation and maintenance of:

(1) Lists of actions for which environmental impact statements are being prepared.

(2) Lists of actions for which negative declarations have been prepared.

(3) Lists of persons or groups known to be interested in the environmental implications of specific ERDA actions (interest lists).

(b) The AES shall revise lists (1) and (2) in paragraph (a) of this section at least quarterly and shall transmit a copy of those unclassified lists and subsequent revisions to CEQ.

(c) The AES shall compile list (3) in paragraph (a) of this section from those individuals or groups who have either:

(1) Requested that copies, or notification of availability, of draft environmental impact statements be sent to them.

(2) Commented on a previous draft environmental impact statement.

(3) Participated in a public hearing held on an environmental impact statement.

(4) Been identified by the appropriate ERDA official as having an interest in the environmental implications of a proposed ERDA action.

(d) List (3) in paragraph (a) of this section shall be maintained in accordance with the provisions of the Privacy

Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a).

(e) Individuals or organizations desiring to be placed on specific interest lists or to request copies of environmental impact statements and notifications of intent to prepare such statements should address their requests to:

Director, Office of NEPA Coordination, Energy Research and Development Administration, Washington, D.C. 20545.

§ 711.53 Submission and review of draft environmental impact statements.

(a) Internal review and approval of draft environmental impact statements.

(1) The appropriate ERDA official shall submit the draft environmental impact statement (DEIS) through the responsible Assistant Administrator to the AES for review and approval.

(2) the AES shall be assisted in his review by OGC and an Interdisciplinary Review Committee (IRC), chaired by the Director of the Office of NEPA Coordination, or his representative, and composed of such representatives of ERDA Headquarters and field organizations as the AES deems appropriate.

(b) External review of draft environmental impact statement Upon the completion of ERDA's review, the AES shall make the draft environmental impact statement and Summary Sheet available to the CEQ, and solicit comments from appropriate Federal, state and local agencies and organizations and individuals. He shall publish a FEDERAL REGISTER notice of the public availability and the comment period for the draft environmental impact statement, and make copies available for comment upon request. Copies of the FEDERAL REGISTER notice will be made available to those on the appropriate interest list. Copies of the DEIS will be placed in appropriate places for public inspection.

(c) Commenting entities should endeavor to furnish comments on draft environmental statements which follow the format of the statement wherever practical and should be as specific, substantive and factual as possible without undue attention to matters of form in the statement. They should place emphasis on the environmental impacts of the proposed action and the acceptability of those impacts on the quality of the environment particularly as compared or contrasted with the impacts of reasonably available alternatives. Commenting entities may recommend modifications to the proposed action and/or new alternatives that they believe will enhance environmental quality and avoid or minimize adverse environmental impacts.

(d) Comments on the draft environmental impact statement shall be considered in the final environmental impact statement if received by the Director, Office of NEPA Coordination within the comment period announced in the CEQ and ERDA Notices of Availability of environmental statements in the FEDERAL REGISTER. A 45 calendar day comment period will be used unless a different period is specified in the ERDA's notice of availability of the draft statement covering the proposed action.

(e) The AES, upon request, may grant extensions of time for receipt of comments for such periods as he deems appropriate. In determining the appropriate period for comment or in acting upon an extension request, consideration will be given to the magnitude and complexity of the statement, and the extent of public interest in the proposed action. Where no time extension has been requested and granted and comments are not received within the designated comment period, it shall be conclusively presumed that no comment is to be made.

§ 711.55 Public hearings.

(a) The AES determines, in consultation with the responsible Assistant Administrator and OGC, whether a public hearing would be appropriate and in the public interest considering among other things:

(1) The magnitude of the proposed action in terms of economic costs, the geographic area involved, and the uniqueness or size of the commitment of the resources involved;

(2) The degree of interest in the proposed action, as evidenced by requests from the public and from Federal, state, and local authorities that a hearing be held;

(3) The complexity of the issues and the likelihood that additional information will be of assistance to the agency in fulfilling its responsibilities under NEPA; and

(4) The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives and/or written comments or suggestions on the proposed action.

(b) If it is determined as set forth in the above paragraph that a public hearing is to be held, the AES will issue a notice in the FEDERAL REGISTER at least 15 calendar days prior to the time of such hearing which will:

(1) Identify the subject matter of the hearing;

(2) Announce the date, time and place of such hearing and the procedures to be followed;

(3) Indicate the availability of the draft environmental impact statement, the comments, if any, received to date, and other data, as determined appropriate, for public inspection. The hearing will also be announced through local news media when practicable.

(c) Written notification of the scheduling of a public hearing, providing the information referred to in paragraph (b) of this section, shall be sent to all persons and organizations known to be interested in the action, including those who have commented on the draft environmental impact statement, and those who have requested copies of such statement.

(d) Public hearings will be legislative rather than adjudicatory in nature with no right to formal discovery, subpoena of witnesses, cross-examination of participants, testimony under oath, and other similar formalities more appropriate to an adjudicatory procedure. OGC shall prescribe the detailed procedures to be followed for specific hearings.

(e) Public hearings will be conducted by a Presiding Board appointed by the AES.

(f) After the close of the hearing, a hearing record will be prepared which consists of the transcript of the hearing and all documents, exhibits and other papers received into the record by the Presiding Board. The Presiding Board shall render a report based upon its review of the draft environmental impact statement, the comments received thereon, and the hearing record and shall forward its report, together with the record, to the AES. The report shall (1) identify unresolved issues raised at the hearing which the Presiding Board deems to be material to future decisions concerning the subject matter of the environmental impact statement, and (2) include recommendations concerning the treatment of these issues in the final environmental impact statement in a manner to promote informed decisionmaking. In discharging its functions, however, the Presiding Board shall not undertake to resolve issues or render judgment concerning the proposed action.

(g) The hearing record and the Board report shall be placed in appropriate places for public inspection and considered in the preparation of the final environmental impact statement. The text of the Board report shall be appended to the final statement.

§ 711.57 Preparation, review and distribution of final environmental impact statements.

(a) Preparation of final environmental impact statements. As soon as practicable after the expiration of the written comment period and the closing of the public hearing record, if any, the appropriate ERDA official shall initiate the preparation of the final environmental impact statement and summary sheet, taking into account all substantive written comments received, the hearing record, the Board report and new information developed during the review period. The final environmental impact statement shall include a meaningful, objective and informative treatment of all substantive issues raised, including a description of known responsible views on such issues. The text of all comments received, and the Board report, or summaries thereof, shall be appended to the statement.

(b) Internal review of final environmental impact statements

(1) The appropriate ERDA official shall submit final environmental impact statements (FEIS) through the responsible Assistant Administrator to the AES for review.

(2) The AES shall be assisted in his review by OGC and an Interdisciplinary Review Committee (IRC), chaired by the Director of the Office of NEPA Coordination or his designee.

(3) Upon completion of AES review and approval of the FEIS, the responsi-

ble Assistant Administrator shall transmit the FEIS through the AES to the Administrator for his review and approval for issuance.

(c) Distribution of final environmental impact statements.

(1) Upon receipt of Administrator approval, the AES shall:

(i) Sign the FEIS and distribute the statement and Summary Sheet to CEQ, EPA, and Federal, State and local agencies, and others who submitted timely comments, participated in the public hearing on the draft environmental impact statement, or requested a copy of the FEIS prior to its issuance. In the case of FEISs on legislative actions approved by the Administrator, the AES shall submit the statement to the Congress and the OMB in accordance with OMB Bulletin 72-6.

(ii) Publish a Notice of Availability of the FEIS in the FEDERAL REGISTER which notice shall include the location(s) at which the statement is available for public inspection and where copies can be obtained.

(iii) Transmit copies of the FEIS to appropriate ERDA public document room(s).

§ 711.65 Timing for proposed ERDA actions.

(a) Except in special cases when approval is given after consultation with CEQ, no proposed ERDA action for which an environmental impact statement is prepared shall be taken:

(1) Sooner than 90 calendar days after a draft environmental impact statement has been issued; or

(2) Sooner than 30 calendar days after the final environmental impact statement has been issued. (This period may run concurrently with that in paragraph (a)(1) of this document).

§ 711.67 Amendments or supplements to final environmental impact statements.

(a) Since the ERDA environmental review process is designed to subject ERDA actions to formal review at the earliest stages in their development, it is recognized that additional reviews may be necessary or desirable as the action evolves and matures. Accordingly, whenever substantial new information pertinent to an existing final environmental impact statement becomes available, or whenever substantial modifications of an action covered by such final statement occurs, the appropriate ERDA official shall consult with AES and OGC to determine whether to amend or supplement the existing final environmental impact statement.

(b) When a determination is made to prepare such a supplement or amendment, the resulting document shall be subject to the procedures governing draft environmental impact statements under this Part unless, after consultation with OGC and CEQ, it is determined by the AES that circulation for comment is unnecessary. In that event, the document shall be subject to the procedures governing final environmental impact statements under this part.

§ 711.69 Review of other agencies' environmental impact statements.

(a) The Office of NEPA Coordination shall maintain a list of environmental impact statements received from other agencies for comment and shall identify those environmental impact statements which involve matters of interest to ERDA due to jurisdiction by law, special expertise or otherwise.

(b) Environmental impact statements so identified shall be transmitted to the appropriate ERDA organizational units for review and comment. Review and comment shall be conducted according to the instructions of 40 CFR 1500.9(e). ERDA reviews should identify possible conflicts with known current or future programs, indicate areas of research which are underway or planned by ERDA which may suggest new alternatives, ways to mitigate effects, or gaps in the state of relevant knowledge and offer comments in ERDA areas of jurisdiction by law and special expertise.

(c) Such comments shall be transmitted to the Office of NEPA Coordination who shall coordinate the comments and forward them to the initiating agency and the CEQ.

Subpart D—General Guidance for Content of Environmental Impact Statements

§ 711.81 Cover.

The cover shall indicate the type of statement (draft or final), the official project title and location, the month that the statement is issued, the agency and, for final statements, the signature of the issuing official on the title page.

§ 711.83 Body of statement.

(a) Each environmental impact statement should be prepared in accordance with the precept in section 102(2)(C) of the National Environmental Policy Act of 1969, that all agencies of the Federal government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment." The statement should be a factual and objective evaluation of actions and their reasonable alternatives in light of environmental considerations. The presentation should be (1) concise, including or referencing relevant data, information, and analyses necessary to permit independent evaluation and appraisal of the environmental effects of the proposed ERDA action and its reasonable alternatives, and (2) structured in a manner that is most useful for planning and decisionmaking. Statements should not be drafted in a style which requires extensive scientific or technical expertise to comprehend and should focus on environmental issues relevant to the proposed action. Underlying studies, reports and other information obtained and considered in preparing the statement should be identified at appropriate points in the text. Highly technical and specialized analyses and data should be avoided in the text but should be attached as appendices or referenced with footnotes. Where there are references to documents not likely to be easily accessible, such as internal studies or reports, the statement should summarize wherever practicable and indicate how such information may be obtained. Many evaluations of environmental impact will involve measurements, analyses, calculations, and design drawings much too voluminous to be included in an environmental impact statement of workable length. In these cases, it will not be possible for the reader to make a completely independent evaluation of environmental impact from the statement itself. However, it should be possible for the reader to understand, from the text combined with the appendices and references, the types of impact which have been considered, the general methods of evaluation used and the types of data behind them, and the factual conclusions reached.

(b) Each statement shall disclose and evaluate the environmental trade-offs of proposed actions and of reasonably available alternatives in sufficient detail to permit an independent appraisal of the environmental aspects of the proposed action in relationship to alternatives.

(c) Each statement shall discuss or refer to responsible views regarding the environmental impacts of the proposed action. Substantive suggestions and comments made by other Federal, State, and local agencies and by private organizations and individuals prior to preparation of the environmental impact statement (draft or final) shall be identified and analyzed in the appropriate sections of the draft statement. Similarly, substantive comments received as a result of review of the draft statement shall be considered in the preparation of the final statement.

(d) Environmental impact statements ordinarily should contain the following information:

(1) *Summary*. The salient information and factual conclusions of the environmental statement should be concisely summarized at the beginning of the document. Emphasis should be on any unresolved environmental issues and on factual conclusions concerning the significance of the impacts associated with the proposed action and the relative merits of alternatives.

(2) *Description of proposed action*. The proposed action, its purpose and the policy objectives and tangible benefits both short- and long-term, sought to be realized by implementation of the proposed action should be briefly described. Among factors to be described are the location and duration of the proposed action; historical information necessary to place the proposed action in proper perspective; its relationship to other projects or programs of the Federal Government; and an overall physical description if appropriate, emphasizing features with environmental significance. The environmental controls and other mitigating measures, including plans for site restoration, that are designed into the proposed action should also be described.

(3) *A characterization of the existing environment likely to be affected by the proposed action.* A brief overview of the environmental features of the areas likely to be affected by the proposed action should be described in order to provide a baseline for analysis of environmental impacts. Wherever appropriate, an identification should be made of population and growth characteristics of the affected areas and of the current uses of such areas. Detailed descriptions of the existing environment should be either included in an appendix to the statement or referenced in the text, when necessary for a thorough understanding of the environmental implications of a proposed action. The amount of detail provided should be commensurate with the extent of the expected impact of the action, and the amount of information required at the particular level of environmental analysis.

(4) *Potential environmental impacts of the proposed action.* The probable environmental impacts of the proposed action (assuming implementation of proposed mitigating measures) should be analyzed in order to determine what, if any, environmental issues may be involved in the proposed action. In so doing, the analysis should describe those effects on the environment, beneficial as well as adverse, which could be caused by the proposed action, evaluate the magnitude and importance of each such effect, and identify the time frames in which these effects are anticipated. Any unknowns as to the probable environmental impacts should be clearly identified. The probable primary (direct) as well as secondary (indirect) environmental consequences should be assessed. In this context, "secondary" consequences refer to associated investments and changed patterns of social and economic activities likely to be induced by the proposed action. Such secondary effects, through their impacts on existing community facilities and activities and through changes in natural conditions, may be more substantial than the primary effects of the proposed action. The extent to which the proposal will conform or conflict with any applicable Federal, State, or local statutes, regulations, standards limitations, and policies respecting environmental quality (air and water quality, wastes, pesticides, etc.) should be discussed. The risks attributable to accidental or intentional environmental destruction as well as to normal operations should also be assessed. Risks should be expressed in terms of probability of occurrence and magnitude of consequences to the extent practicable.

(5) *Unavoidable adverse environmental effects.* Adverse environmental effects that cannot be avoided should the proposed action, with its environmental protection strategy, be implemented, and the magnitude and importance of each such effect, should be briefly summarized.

(6) *Irreversible and irretrievable commitment of resources.* The extent to which the proposed action would consume, destroy, or transform scarce or nonrenewable resources, thus curtailing the diversity and range of potential uses of the environment should be summarized. In this context, "resources" means labor and materials devoted to the proposed action as well as natural and cultural resources.

(7) *Relationship of land use plans, policies, and controls.* For project or site statements, there should be an evaluation of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State, and local land use plans, policies and controls, if any, for the affected area.

(8) *The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity.* The extent to which the proposed action would constrain the diversity and range of potential uses of the environment, including nonutilitarian preservation, should be briefly discussed. The cumulative and long-term environmental effects of the proposed action should be assessed from the perspective that each generation is trustee of the environment for succeeding generations. This involves consideration of the present condition and use of the site of the proposed action, its use if the proposed action is implemented, and the long-term prospects for other uses. A brief assessment should be made of the extent to which the proposed action involves trade-offs between short-term gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action and its alternatives foreclosed future options. In this context, short-term and long-term do not refer to any fixed periods but should be viewed in terms of the environmentally significant consequences of the proposed action.

(9) *Alternatives.* A rigorous exploration and factual evaluation of the environmental impacts of the full range of reasonable available alternatives to the proposed action should be presented. In particular, reasonable alternatives to the proposed action that might be specifically formulated to enhance environmental quality or to avoid, mitigate, or compensate for some of the adverse environmental effects should be discussed, e.g., environmental protection strategies beyond those designed in the proposal. The specific alternative of taking no action should always be evaluated. Examples of other alternatives include: the alternative of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts; alternatives related to different designs or details of the proposed action which would have different environmental impacts, and alternatives to provide for compensation of fish and wildlife loss, including the acquisition of land, waters, and interests therein. In each case, the analysis of alternatives should be sufficiently detailed to permit comparative evaluation of the environmental trade-offs of the proposed action and each reasonable alternative. Where an existing impact statement already contains an analysis of an alternative(s), its treatment of the alternative(s) may be summarized and incorporated by reference provided that such treatment is current and relevant to the precise objective of the proposed action. The range of alternatives should not be limited to measures which the agency has authority to adopt but should include a meaningful discussion of all reasonable alternatives to the proposed action. A more detailed analysis should be made of the environmental impact of alternatives that can be implemented within the same time frame as the proposed action than for those alternatives within different time frames.

(10) *Environmental trade-off analysis.* At the conclusion of the statement there should be a synthesis of the information contained in the body of the statement and analysis of the environmental trade-offs associated with the proposed action and reasonably available alternatives. This analysis should be sufficiently detailed to permit an independent evaluation of the effects associated with the proposed action and each reasonably available alternative so that an informed judgment can be made about the wisdom of undertaking the proposed action rather than one of the alternatives (including the alternative of no action).

[FR Doc.77-2542 Filed 1-25-77;8:45 am]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

[Ruling 1977-3]

CARGO SALES

Ruling

Facts. Firm A is a reseller of covered products, engaged principally in the resale of those products through several terminals, which receive covered products and from which sales are made and products distributed.

In addition to these sales, Firm A is engaged in buying and reselling cargo lots of covered products, a practice known in the industry as "trading". Typically, a transaction of this type involves an agreement between Firm A and Firm B for a specified quantity of product to be furnished to Firm B at a set price on a specific date. Firm A arranges to purchase the product from Firm C for delivery to Firm B. The product never physically enters into Firm A's terminal or distribution system. Firm B is not a regular purchaser from Firm A's terminal.

Firm A made sales of this type prior to May, 1973 and such sales have always been accounted for as separate transactions under Firm A's historical accounting system. Traditionally, these purchases and resales have had a lower margin than those made within Firm A's normal distribution system.

They are high volume sales and the cargoes involved are always identifiable with a specific purchaser. Prices charged in such resales have always been determined exclusively with respect to the cost of the cargo concerned and without regard to the cost or selling prices of product held in inventory by Firm A in its terminals. "Trading" transactions of the nature described above often occurred quite rapidly, with particular cargoes being purchased and resold on the same day, sometimes within less than an hour.

Issue. May Firm A, under the Mandatory Petroleum Price Regulations applicable to resellers of covered products (Subpart F of 10 CFR, Part 212) and prior to the adoption of the "separate inventory" rule effective May 1, 1976, calculate the increased costs of the cargo sold to Firm B separately from the increased costs of the same product purchased and held for resale through its normal terminal and distribution system?

Ruling. Firm A may, prior to the adoption of the "separate inventory" regulations, separately calculate the increased costs of the cargo lot of product purchased and resold to Firm B.

Maximum prices are determined by resellers pursuant to § 212.93(a) which has always provided that "[a] seller may not charge a price for an item . . . which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects, on dollar-for-dollar basis, the increased product costs concerned." Section 212.92 defines "increased product costs" as "the difference between the weighted average unit cost of a product in inventory and the weighted average unit cost of that product in inventory on May 15, 1973." Pursuant to an amendment adopted effective May 1, 1976 (41 FR 19110, May 10, 1976), "product in inventory" is defined in § 212.92 as:

> . . . at the option of the seller concerned, either: (1) the entire, undivided stock of a covered product, no matter where located, purchased and held for resale by the seller concerned; or (2) that portion of the total stock of a covered product purchased and held for resale by the seller concerned which constitutes a separate inventory under generally accepted accounting principles consistently and historically applied by the seller concerned . . . .

Under that definition, the cargo lot of product sold to Firm B would represent a "separate inventory," as to which a separate calculation of increased costs of product would be permitted.

Prior to the May 1, 1976 amendment, the price regulations applicable to resellers did not include a definition of "product in inventory." In adopting the May 1, 1976 "separate inventory" amendment, FEA stated:

> Prior to today's amendment, FEA interpreted "product in inventory" to mean the seller's entire undivided stock of a product held for resale.

Even under that interpretation, however, it is not appropriate to regard the cargo lot, in the circumstances described above, as constituting a part of Firm A's "entire undivided stock of a product held for resale." This is because cargo lot resales of the type in which Firm A was engaged have, by their particular nature, never been part of a seller's stock of a product held for resale through the seller's normal distribution system but, of practical necessity, have always been accounted for separately.

The cargo sales represent isolated transactions. Firm A's cost and pricing decisions with regard to the purchases and resales made in the normal distribution system have always been made without taking into account the cost or price of purchases and resales such as the one to Firm B. Indeed, because of the relative speed with which such "trading" transactions often took place, it would have been impracticable, if not impossible, for Firm A to derive a weighted average cost of its terminal inventories, together with the cargo lot in question, prior to the resale of the cargo lot. This is particularly true when such transactions involve several different cargo lots on the high seas which may or may not be in transit at the same time depending on shipment delays caused by weather or other factors.

Moreover, because such cargo lots were purchased and priced for resale without regard to the cost of Firm A's product held for resale in terminals, to have made such a weight-averaging could have seriously distorted Firm A's pricing with respect to its terminal sales. The historically lower margin on this type of sale, reflecting the lower costs associated with these resales, is further indication of the difference in treatment accorded these sales.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

JANUARY 20, 1977.

[FR Doc.77-2430 Filed 1-24-77;11:47 am]

Title 16—Commercial Practices

CHAPTER 1—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Requests for Disclosure of Records

The Federal Trade Commission's current regulations concerning requests for disclosure of records are set forth in § 4.11 of its procedures and rules of practice (16 CFR 4.11).

At present § 4.11(a)(2)(i)(A) allows a requester 30 days to appeal the Secretary's initial determination of an access request. Where access is granted in part and denied in part, a requester is frequently forced to appeal before he has the opportunity to review all the records to which he has been granted access.

As amended § 4.11(a)(2)(i)(A) would allow for an appeal anytime from the Secretary's initial determination up to 30 days after the last record has been made available.

In light of the foregoing, the Federal Trade Commission announces the following amendment, which is effective on January 26, 1977.

§ 4.11 Requests for disclosure of records.

(a) * * *

(2) *Appeals to the Commission from initial denials.*—(i) *Form and contents; time of receipt.* (A) If the Secretary denies an initial request for records in its entirety, the requester may, within 30 days of the date of the Secretary's determination, appeal such denial to the Commission. If the Secretary denies an initial request in part, the time for appeal shall not expire until 30 days after the date of the letter notifying the requester that all records to which access has been granted have been made available. The appeal shall be in writing and should include a copy of the initial request and a copy of the Secretary's response, if any. The appeal shall be addressed as follows:

> Freedom of Information Act Appeal, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(15 U.S.C. 46(g), 5 U.S.C. 552.)

By direction of the Commission dated January 19, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2484 Filed 1-25-77;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. CP77-116]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Interpretive Order

JANUARY 14, 1977.

By telegrams of December 23, 1976, Houston Pipe Line Company (Houston) proposed to sell and deliver up to 150,000 Mcf per day of natural gas commencing January 6, 1977, to United Gas Pipe Line Company (United) at or near the tailgates of the Katy Gas Plant, Waller County, Texas, the Karon Gas Plant, Live Oak County, Texas, and the TCB Gas Plant, Jim Wells County, Texas, pursuant to a contract dated December 21, 1976, and to sell and deliver up to 85,000 Mcf per day of natural gas commencing January 6, 1977, to Transcontinental Gas Pipe Line Corporation (Transco), acting as agent for certain of its distribution customers, at or near the tailgate of the Pledger Gas Plant, Brazoria County, Texas, pursuant to a contract dated December 2, 1976. At the time of the telegrams Houston had been selling and delivering approximately 150,000 Mcf per day of natural gas to Transco at the points at which it proposed to sell and deliver gas to United and had been delivering approxmiately 85,000 Mcf per day of natural gas at the point it proposed to sell and deliver gas to United. Said sales and deliveries were made pursuant to § 2.68 of the Commission's general policy and interpretations (18 CFR 2.68). Houston seeks Commission assurance that upon commencement of the deliveries under the December 21, 1976, and December 2, 1976, contracts, Houston, an intrastate natural gas pipeline company, would not lose its otherwise exempt status under section 1(b) of the Natural Gas Act.

By order issued January 5, 1977, the Commission provided for the development of an administrative hearing record on questions related to the Houston proposal. That order also provided that the otherwise non-jurisdictional status of Houston and any producers supplying Houston under the Natural Gas Act would not be affected by continued deliveries of natural gas by Houston to United or Transco, during the period the Commission would consider the instant matter on its merits and until 24 hours after the issuance of a Commission opinion on the matter. The Commission's hearing in this matter was conducted on January 13 and 14, 1977.

The record amply demonstrates the existence of emergency conditions on the Transco and United systems and the necessity of these pipelines being able to avail themselves of § 2.68(a) procedures. We do have before the Commission an administrative record which indicates that numerous other natural gas pipelines are now facing, or shortly will face, natural gas supply shortfalls to meet high priority loads. Clearly, emergency conditions may vary from system to system depending upon operating factors. In order to mitigate the severity of the current supply situation of these systems, including the need for delivery, storage injection and replenishment,[1] we recognize that a number of pipelines will apply § 2.68 (a) or (b) self-help procedures with increasing frequency for the remainder of the winter heating season of 1977, i.e., for the period ending March 31, 1977, and beyond.

In the context of the Houston, Transco and United proposal, the Commission finds the § 2.68(a) procedures appropriate for this and similar circumstances. In doing so, we also recognize that, in some cases, pipelines and their non-jurisdictional suppliers may not have new or separate source contracts, but rather may have continuing sales arrangements. For the latter type transactions, § 2.68(b) procedures would be appropriate. In that respect, it should be noted that prior interpretations of § 2.68(b) permit certain roll-over operations.[2] Section 2.68 (a) and (b) procedures are alternative, and one does not limit the other. Being self-help measures, the affected systems may utilize one or both.

As a part of this proceeding, the Commission was advised by numerous members of the Congress,[3] that the Congress would undertake a reassessment of the Natural Gas Act in light of current regulatory jurisdiction of this Commission and state regulatory agencies. The Commission will report to Congress and make available copies of the administrative hearing record to the standing Committees with legislative responsibilities over this Commission, the Senate Committee on Commerce and the House Committee on Interstate and Foreign Commerce.

The Commission finds. (1) There is an existing natural gas supply emergency on the systems of United Gas Pipe Line Company and Transcontinental Gas Pipe Line Corporation, contributed to and exacerbated by severe weather conditions, as demonstrated by the record evidence developed at the public hearings held before this Commission on January 13 and 14, 1977.

(2) The sales and deliveries under the contract of December 21, 1976, between Houston and United and the contract of December 2, 1976, between Houston and Transco are emergency sales and deliveries to be initiated within the contemplation of § 2.68(a) of the Commission's general policy and interpretations.

(3) Emergencies exist on the systems of United and Transco such that supplies of natural gas are required from Houston, within the contemplation of § 2.68 (a) of the Commission's general policy and interpretations, for periods of 60-days.

The Commission orders. The status of Houston, of otherwise being exempt from the provisions of the Natural gas Act pursuant to section 1(b) thereof, will not be jeopardized by the initiation of sales and deliveries of natural gas to United and Transco, pursuant to contracts of December 21, 1976, and December 2, 1976, respectively, within the contemplation of § 2.68(a) of the Commission's general policy and interpretations.

By the Commission.[4]

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2429 Filed 1-25-77;8:45 am]

---

[1] See Nueces Industrial Gas Company, 46 F.P.C. 878, 877 (1971); and General Counsel letter to Richard A. Rosan, Esq., Columbia Gas System Service Corporation, dated November 19, 1976.

[2] Since February 7, 1975, the Commission has permitted at least 9 roll-over operations pursuant to § 2.68(b) including: Llanco, Inc., issued February 7, 1975. Panhandle Eastern Pipeline, issued January 9, 1975. City of Columbia, Kentucky, issued July 17, 1975. City of Norris, Illinois, issued July 14, 1975.

[3] The following members of Congress testified before the Commission: Senator Strom Thurmond, South Carolina; Senator Ernest F. Hollings, South Carolina; Senator Jesse Helms, North Carolina; Senator Robert Morgan, North Carolina; Congressman L. H. Fountain, North Carolina; Congressman Robert E. Bauman, Maryland; Congressman James G. Martin, North Carolina. These members of Congress urged the Commission to approve the proposed transaction due to the potential impact of the shortfall of supplies in the southeastern part of the United States. Recognizing the critical national emergency, they expressed their concern on the issues of pricing, supply shortfall, unemployment, and conservation and their expectation of Congressional action.

[4] Filed as part of the original document.

Smith, Commissioner, would make an explicit condition of this interpretation the Commission's intent to examine the § 2.68 transactions made pursuant to this order on or before the end of the winter heating season and, therefore, concurs in its issuance.

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 655—TRAFFIC OPERATIONS

Highway Safety Improvement Program; Correction

In FR Doc. 76-35716 appearing at page 53003 in the issue for Friday, December 3, 1976, the amendment to § 655.507 should read:

The third sentence in § 655.507 is amended by striking the period at the end thereof and adding the following: "and 203 of the Highway Safety Act of 1973, as amended."

Issued on: January 14, 1977.

D. H. ANDERS,
Acting Chief Counsel.

[FR Doc.77-2527 Filed 1-25-77;8:45 am]

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 9—MINING AND MINING CLAIMS

Comprehensive Regulations

On November 11, 1976, the Department of the Interior published in the FEDERAL REGISTER (41 FR 49862) Interim Regulations and Proposed Comprehensive Regulations. The Proposed Comprehensive Regulations were made available for public review and comment for a period of thirty (30) days following publication in the FEDERAL REGISTER and ending December 13, 1976.

A total of 14 written replies with recommendations or comments were received during the comment period, with about one-half being received from mining companies, which as a group stated that the Proposed Comprehensive Regulations went beyond the intent of Congress in the enactment of the Act of September 28, 1976 (Pub. L. 94-429, 90 Stat. 1342, 16 U.S.C. 1901 et seq.) and jeopardized the economic viability of mining operations within the National Park System. On the other hand, two conservation groups stated that these regulations were not, in their present form, strong enough to protect the resources and environments of the units of the National Park System affected by this statute. The additional comments suggested editorial, grammatical, or in some instances, substantive changes in the meaning of specific sections and paragraphs of the proposed regulations.

An attempt was made to utilize as many of the comments and recommendations as was appropriate in carrying out the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., in conjunction with the other statutory National Park Service responsibilities. A number of comments pertained to the preamble of the proposal. Since this has no particular standing with respect to the regulations themselves, no attempt was made to address those issues, with the one exception found in the following paragraph. The preamble serves only to discuss and/or explain the regulations.

It was noted that a misstatement of section 4 of the Act appeared in the preamble of the proposed regulations. The proper interpretation of this section is that, where there has been no significant disturbance to the surface of one of the enumerated units for purposes of mineral extraction, an operation may expand an existing excavation only if the Secretary finds that such expansion is necessary to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of that operation for the calendar years 1973, 1974, and 1975.

Likewise, a number of comments pertained to the Interim Regulations. Because these regulations were not open for comment and review and will be superseded upon publication of the Final Comprehensive Regulations, it was determined unnecessary to respond. The purpose of the Interim Regulations was to maintain essentially the status quo while more comprehensive regulations could be prepared following passage of the Act of September 28, 1976 (16 U.S.C. 1901 et seq.).

One major area of concern in the comments which were received was that the standards for approval of a plan of operations and for reclamation lacked clarity, particularly with regard to the concepts of "nuisance", and "injury." Those sections have been altered in response to these comments. However, since these doctrines all have foundation in jurisprudence, it has been determined that they are appropriate terms and concepts.

Comments were also received concerning compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) (NEPA). The National Park Service has prepared an environmental assessment of the proposed regulations. Based on this assessment, it has been determined that the proposed action is not a major Federal action that would have a significant impact on the human environment, and therefore, that an environmental impact statement is not required prior to promulgation of the final regulations. Furthermore, an analysis of the environmental impacts associated with execution of each plan of operations submitted by an operator for approval will be made, and in the event that approval of the plan would constitute a major Federal action resulting in a significant impact on the human environment then an environmental impact statement as required by section 102(2)(C) would be prepared prior to approving or denying the plan of operations.

In addition to complying with the general provisions of NEPA, we have increased the potential for public participation by eliminating requirements for submission of certain proprietary documents, and by making available for public review copies of all plans of operations submitted by operators proposing mining activities in units of the National Park System.

A majority of comments related to the surface disturbance moratorium. It has been determined by the National Park Service that the terms and conditions concerning surface disturbance were set by Congress with the passage of the Act of September 28, 1976, (16 U.S.C. 1901 et seq.) and little or no discretion is vested with the Secretary to allow additional surface disturbance, except as expressly authorized by the Act.

The section on the use of water in support of mining operations has been clarified to reflect that the Department's concern is for uses of water from sources within the units of the National Park System. The modification in this provision was made to reflect more accurately the limited extent of the Secretary's authority to dispose of water reserved to the United States.

Certain changes in § 9.5 of these regulations were made in response to comments concerning recorded proofs of labor and other recording requirements. The alterations made should also be considered as amendments to the requirements of the Notice of October 20, 1976, 41 FR 46357.

The regulations also make clear that the filing of notice with the National Park Service satisfies the requirement for the initial filing of notice of a mining claim under section 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701, for mining claims within the National Park System. Thus, only one initial notice must be filed for unpatented claims in units of the National Park System and that is the notice prescribed by these regulations, which is a restatement of the October 20, 1976 Notice requirements with the amendments noted above. However, the subsequent annual notice requirements of section 314 are applicable and claimants must file the annual notice prescribed by section 314 and the implementing regulations.

The regulations also provide that the surface use provisions of 43 CFR, Subpart 3826 and 36 CFR 7.26 and paragraphs (a) and (b) of § 7.44 are superseded by the regulations of this Part. However, the regulations in 43 CFR 3826.2-5 and 3826.2-6, 3826.4-1(g) and 3826.4-1(h), and 3826.5-3 and 3826.5-4 will remain applicable to those claimants who wish to take their claim to patent. A technical amendment will also be made to delete the provisions of 36 CFR 7.26 and 7.44 (a) and (b) which have only interim application to existing permits for 120 days after publication of the final regulations unless extended by the Superintendent. The amendments will be made by separate publication.

Modification was made to § 9.11 *Reclamation Requirements* to more adequately reflect the tenet that a holder of a claim patented prior to the establishment of the areas as a unit of the National Park System shall not undertake activities on those lands so as to constitute a nuisance to the federally owned lands or adversely affect those lands. Claims not taken to patent are subject to a stricter reclamation standard.

Two new definitions have been added. *Designated Roads*, § 9.2(n), was added to clarify the meaning of existing and open public roads that might be used with respect to mining operations only outside a unit. Only those roads so designated shall be used for this purpose. In § 9.4(c) *lands contiguous to the existing excavation* is defined to further amplify the public's understanding of the surface disturbance moratorium.

Concerning a prohibition on future surface mining activities within units of the National Park System not covered by the moratorium, it has been determined that with respect to unpatented claims or claims patented with surface use restrictions, surface mining will be permitted in the future only where such activity will not jeopardize the pristine beauty of the unit, or adversely affect the ecological or cultural resources thereof. As a caveat, it should be clearly noted that section 4 of the Act places a moratorium on surface mining activities in Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park, notwithstanding when the location was made. All units of the National Park System upon establishment are closed to further mineral entry and location unless Congress expressly provides otherwise. With respect to the six units of the System which were open to mineral entry and location (now closed under section 3 of Pub. L. 94-429), entry and location was subject to such surface use regulations and restrictions as the Department of the Interior might adopt. Those laws read together with Pub. L. 94-429 now provide a basis for restricting new surface mining operations in units of the National Park System. This restriction will not preclude underground or subsurface mining operations, even if a portal or entry tunnel is required to be developed within the unit.

Additional clarification was made to § 9.10 *Plan of Operations Approval* in order to develop standards for approval of three classes of claims based on the status of the claims and whether extraction operations had begun. As such, no plan of operations shall be approved: (1) For existing or new operations that would constitute a nuisance or injure Federal land if the claim was patented without surface use restrictions; or (2) where the surface of the claim, either unpatented or patented with surface use restrictions, was not significantly disturbed and the operations would preclude management or injure the resources of a unit; or (3) where the surface of the claim, either unpatented or patented subject to surface use restrictions, had been significantly disturbed and the operations would constitute a nuisance or injure Federal lands. In the latter class of claims the provisions of § 9.4 of this Part will apply to other units of the System besides Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park.

These regulations shall take effect on January 26, 1977, because it has been determined that the immediate application of these regulations is necessary to preserve units of the National Park System in their pristine character to fulfill the Congressional mandate that such units be managed to preserve and protect them for present as well as future generations. Furthermore, the continued application of the Interim Regulations would not be in the public interest, because those regulations are only designed to maintain the status quo, rather than comprehensively implement the policy and provisions of Pub. L. 94-429 (16 U.S.C. 1901 et seq.). Therefore the regulations contained in this Part shall be effective on January 26, 1977.

The purpose of these regulations is to provide control over mining activities within areas of the National Park System to the extent authorized by section 2 of Pub. L. 94-429, but not to constitute a "taking" of any compensable property interest of a mining claimant.

The National Park Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Title 36 of the Code of Federal Regulations is hereby amended by the addition of a new Part 9 as follows:

AUTHORITY: Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 et seq.); Act of August 25, 1916 (39 Stat. 535, as amended (16 U.S.C. 1 et seq.); Act of September 28, 1976; 90 Stat. 1342 (16 U.S.C. 1901 et seq.))

§ 9.1 Purpose and scope.

These regulations will control all activities resulting from the exercise of valid existing mineral rights on claims within any unit of the National Park System in order to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units are preserved for the benefit of present and future generations. These procedures apply to all operations conducted on claims in any unit of the National Park System.

§ 9.2 Definitions.

The terms used in this Part shall have the following meanings:

(a) *Secretary*. The Secretary of the Interior.

(b) *Operations*. All functions, work and activities in connection with mining on claims, including: prospecting, exploration, surveying, development and extraction; dumping mine wastes and stockpiling ore; transport or processing of mineral commodities; reclamation of the surface disturbed by such activities; and all activities and uses reasonably incident thereto, including construction or use of roads or other means of access on National Park System lands, regardless of whether such activities and uses take place on Federal, State, or private lands.

(c) *Operator*. A person conducting or proposing to conduct operations.

(d) *Person*. Any individual, partnership, corporation, association, or other entity.

(e) *Superintendent*. The Superintendent, or his designee, of the unit of the National Park System containing claims subject to these regulations.

(f) *Surface mining*. Mining in surface excavations, including placer mining, mining in open glory-holes or mining pits, mining and removing ore from open cuts, and the removal of capping or overburden to uncover ore.

(g) *The Act*. The Act of September 28, 1976, 90 Stat. 1342, 16 U.S.C. 1901 et seq.

(h) *Commercial Vehicle*. Any motorized equipment used for transporting the product being mined or excavated, or for transporting heavy equipment used in mining operations.

(i) *Unit*. Any National Park System area containing a claim or claims subject to these regulations.

(j) *Claimant*. The owner, or his legal representative, of any claim lying within the boundaries of a unit.

(k) *Claim*. Any valid, patented or unpatented mining claim, mill site, or tunnel site.

(l) *Regional Director*. Regional Director for the National Park Service region in which the given unit is located.

(m) *Significantly disturbed for purposes of mineral extraction*. Land will be considered significantly disturbed for purposes of mineral extraction when there has been surface extraction of commercial amounts of a mineral, or significant amounts of overburden or spoil have been displaced due to the extraction of commercial amounts of a mineral. Extraction of commercial amounts is defined as the removal of ore from a claim in the normal course of business of extraction for processing or marketing. It does not encompass the removal of ore for purposes of testing, experimentation, examination or preproduction activities.

(n) *Designated roads*. Those existing roads determined by the Superintendent in accordance with 36 CFR 2.6(b) to be open for the use of the public or an operator.

(o) *Production*. Number of tons of a marketable mineral extracted from a given operation.

§ 9.3 Access permits.

(a) All special use or other permits dealing with access to and from claims within any unit are automatically revoked 120 days after January 26, 1977. All operators seeking new or continued access to and from a claim after that date must file for new access permits in accordance with these regulations, unless access to a mining claim is by pack animal or foot. (See § 9.7 for restrictions on assessment work and § 9.9(d) and § 9.10 (g) for extensions of permits.)

(b) Prior to the issuance of a permit for access to any claim or claims, the operator must file with the Superintendent a plan of operations pursuant to § 9.9. No permit shall be issued until the plan of operations has been approved in accordance with § 9.10.

(c) No access to claims outside a unit will be permitted across unit lands unless such access is by foot, pack animal, or designated road. Persons using such roads for access to such claims must comply with the terms of § 9.15 where applicable.

§ 9.4 Surface disturbance moratorium.

(a) For a period of four years after September 28, 1976, no operator of a claim located within the boundaries of Death Valley National Monument, Mount McKinley National Park, or Organ Pipe Cactus National Monument (see also claims subject to § 9.10(a)(3)) shall disturb for purposes of mineral exploration or development the surface of any lands which had not been significantly disturbed for purposes of mineral extraction prior to February 29, 1976, except as provided in this section. However, where a claim is subject, for a period of four years after September 28, 1976, to this section solely by virtue of § 9.10(a)(3), the date before which there must have been significant disturbance for purposes of mineral extraction is January 26, 1977.

(b) An operator of a claim in one of these units seeking to enlarge an existing excavation or otherwise disturb the surface for purposes of mineral exploration or development shall file with the Superintendent an application stating his need to disturb additional surface in order to maintain production at an annual rate not to exceed an average annual production level of said operations for the three calendar years 1973, 1974, and 1975. Accompanying the application shall be a plan of operations which complies with § 9.9 and verified copies of production records for the years 1973, 1974, and 1975.

(c) If the Regional Director finds that the submitted plan of operations complies with § 9.9, that enlargement of the existing excavation of an individual mining operation is necessary in order to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of said operation for the three calendar years 1973, 1974, and 1975, and that the plan of operations meets the applicable standard of approval of § 9.10 (a)(1), he shall issue a permit allowing the disturbance of the surface of the lands contiguous to the existing excavation to the minimum extent necessary to effect such enlargement. For the purpose of this section "lands contiguous to the existing excavation" shall include land which actually adjoins the existing excavation or which could logically become an extension of the excavation; for example, drilling to determine the extent and direction to which the existing excavation should be extended may be permitted at a site which does not actually adjoin the excavating.

(d) The appropriate reclamation standard to be applied will be determined by the nature of the claim. (See § 9.11(a)(1) and § 9.11(a)(2).)

(e) Operations conducted under a permit pursuant to this section shall be subject to all the limitations imposed by this Part.

(f) For the purposes of this section, each separate mining excavation shall be treated as an individual mining operation.

§ 9.5 Recordation.

(a) Any claimant of an unpatented mining claim in a unit shall, within 12 months after September 28, 1976, record the claim in the Office of the Superintendent of the unit. Actual receipt by the appropriate Superintendent on or before September 28, 1977, is required. Patented claims do not have to be recorded pursuant to this section.

(b) This recordation shall include, but is not limited to, the following instruments and information:

(1) A certified copy of each location notice should provide: Name of claim; locator(s); type (placer, lode, mill site, or tunnel site); mineral(s) for which claim was located; date of location, date of amendments or relocations, if any; recording date, book, page, county and State, where recorded; and a legal description of the lands included in the mining claim(s). If the location notice does not provide all of the foregoing information, it shall, to the extent possible, be attached in a supplement to the location notice. If the lands are surveyed or unsurveyed, the legal description shall be by:

(i) A recitation of the appropriate location of all or any part of the claim or site within a 160 acre quadrant (quarter section) of a section or sections, if more than one is involved. In addition, there must be furnished the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.

(ii) A map with a scale of not less than ½ inch to a mile (1:125,000) showing the survey or protraction grids on which there will be depicted the location of the claim or site. Contiguous claims or sites and groups of claims or sites in the same general area may be depicted on this single map so long as the individual claims or sites are clearly identified.

(2) Current claimant's(s) name(s) and address(es).

(3) Statement that annual labor was performed since September 1, 1970.

(c) Pursuant to section 8 of the Act, any unpatented claim not so recorded pursuant to this section shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any unpatented claim which was not valid on September 28, 1976, the effective date of the Act, or which becomes invalid thereafter.

(d) A claimant who initially records under this section or under the notice of October 20, 1976 (41 FR 46357) is in full compliance with all applicable provisions of law, including the recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701. Thus, a claimant does not have to file this initial notice with the Bureau of Land Management. Copies of all material received pursuant to this section or the notice of October 20, 1976, will be provided by the Regional Director to the Bureau of Land Management. However, subsequent annual filings of notice must be made under section 314 and implementing regulations with the Superintendent who will provide copies to the Bureau of Land Management. These subsequent filings with the Superintendent will satisfy the requirements of section 314 for mining claims in the National Park System.

§ 9.6 Transfers of interest.

(a) Whenever a claimant who has recorded his unpatented claim(s) with the Superintendent pursuant to the requirements of § 9.5 sells, assigns, bequeaths, or otherwise conveys all or any part of his interest in his claim(s), the Superintendent shall be notified within 60 days after completion of the transfer of: The name of the claim(s) involved; the name and legal address of the person to whom an interest has been sold, assigned, bequeathed, or otherwise transferred; and a description of the interest conveyed or received. Copies of the transfer documents will be provided by the Superintendent to the Bureau of Land Management. Failure to so notify the Superintendent shall render any existing access permit void.

(b) If the transfer occurs within the period of 12 months from the effective date of the Act and the prior owner has not recorded the unpatented claim with the Superintendent in accordance with these regulations, the holder by transfer shall have the remainder of the 12-month period to record the unpatented claim. Failure to record shall be governed by the provisions of § 9.5(c).

§ 9.7 Assessment work.

(a) An access permit and approved plan of operations must be obtained by a claimant prior to the performance of any assessment work required by Revised Statute 2324 (30 U.S.C. 28) on a claim in a unit.

(b) Permits will be issued in accordance with the following:

(1) In units subject to the surface disturbance moratorium of section 4 of the Act and § 9.4, no access permits will be granted for the purpose of performing assessment work.

(2) It has been determined that in all other units the Secretary will not challenge the validity of any unpatented claim within a unit for the failure to do assessment work during or after the assessment year commencing September 1, 1976. The Secretary expressly reserves, however, the existing right to contest claims for failure to do such work in the past. No access permits will be granted solely for the purpose of performing assessment work in these units except where claimant establishes the legal necessity for such permit in order to perform work necessary to take the claim to patent, and has filed and had approved a plan of operations as provided by these regulations. (For exploratory or development type work, see § 9.9.)

§ 9.8 Use of water.

(a) No operator may use for operations any water from a point of diversion which is within the boundaries of any unit unless authorized in writing by the Regional Director. The Regional Director shall not approve a plan of operations requiring the use of water from such source unless the right to the water has been perfected under applicable State law, has a priority date prior to the establishment of the unit and there has been a continued beneficial use of that water right.

(b) If an operator whose operations will require the use of water from a point of diversion within the boundaries of the unit can show that he has a perfected State water right junior to the reserved water right of the United States and can demonstrate that the exercise of that State water right will not diminish the Federal right, which is that amount of water necessary for the purposes for which the unit was established, he will be authorized to use water from that source for operations, if he has complied with all other provisions of these regulations.

§ 9.9 Plan of operations.

(a) No operations shall be conducted within any unit until a plan of operations has been submitted by the operator to the Superintendent and approved by the Regional Director. All operations within any unit shall be conducted in accordance with an approved plan of operations.

(b) The proposed plan of operations shall relate, as appropriate, to the proposed operations (e.g. exploratory, developmental or extraction work) and shall include but is not limited to:

(1) The names and legal addresses of the following persons: The operator, the claimant if he is not the operator, and any lessee, assignee, or designee thereof;

(2) A map or maps showing the proposed area of operations; existing roads or proposed routes to and from the area of operations; areas of proposed mining; location and description of surface facilities, including dumps;

(3) A description of the mode of transport and major equipment to be used in the operations;

(4) An estimated timetable for each phase of operations and the completion of operations;

(5) The nature and extent of the known deposit to be mined and a description of the proposed operations;

(6) A mining reclamation plan demonstrating compliance with the requirements of § 9.11;

(7) All steps taken to comply with any applicable Federal, State, and local laws

or regulations, including the applicable regulations in 36 CFR, Chapter I;

(8) In units subject to the surface disturbance moratorium of section 4 of the Act and § 9.4, proof satisfactory to the Regional Director that the surface of the area on which the operation is to occur was significantly disturbed for purposes of mineral extraction prior to February 29, 1976, or if the area was not so disturbed, proof, including production records for the years 1973, 1974, and 1975, that new disturbance is necessary to maintain an average annual rate of production not to exceed that of the years 1973, 1974, and 1975;

(9) An environmental report analyzing the following:

(i) The environment to be affected by the operations,

(ii) The impacts of the operations on the unit's environment,

(iii) Steps to be taken to insure minimum surface disturbance,

(iv) Methods for disposal of all rubbish and other solid and liquid wastes,

(v) Alternative methods of extraction and the environmental effects of each,

(vi) The impacts of the steps to be taken to comply with the reclamation plan; and

(10) Any additional information that is required to enable the Regional Director to effectively analyze the effects that the operations will have on the preservation, management and public use of the unit, and to make a decision regarding approval or disapproval of the plan of operations and issuance or denial of the access permit.

(c) In all cases the plan must consider and discuss the unit's Statement for Management and other planning documents, and activities to control, minimize or prevent damage to the recreational, biological, scientific, cultural, and scenic resources of the unit.

(d) Any person conducting operations on January 26, 1977, shall be required to submit a plan of operations to the Superintendent. If otherwise authorized, operations in progress on January 26, 1977, may continue for 120 days from that date without having an approved plan. After 120 days from January 26, 1977, no such operations shall be conducted without a plan approved by the Regional Director, unless access is extended under the existing permit by the Regional Director. (See § 9.10(g).)

§ 9.10 Plan of operations approval.

(a) The Regional Director shall not approve a plan of operations:

(1) For existing or new operations if the claim was patented without surface use restriction, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands; or

(2) For operations which had not significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been patented, or if the patent is subject to surface use restrictions, where the operations would preclude management for the purpose of preserving the pristine beauty of the unit for present and future generations, or would adversely affect or significantly injure the ecological or cultural resources of the unit. No new surface mining will be permitted under this paragraph except under this standard; or

(3) For operations which had significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been taken to patent, or the patent is subject to surface use restrictions, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands. Provided, however, operations under this paragraph shall be limited by the provisions of § 9.4, notwithstanding the limitation of that section's applicability to the three enumerated units;

(4) Where the claim, regardless of when it was located, has not been patented and the operations would result in the destruction of surface resources, such as trees, vegetation, soil, water resources, or loss of wildlife habitat, not required for development of the claim; or

(5) Where the operations would constitute a violation of the surface disturbance moratorium of section 4 of the Act; or

(6) Where the plan does not satisfy each of the requirements of § 9.9.

(b) Within 60 days of the receipt of a proposed plan of operations, the Regional Director shall make an environmental analysis of such plan, and

(1) Notify the operator that he has approved or rejected the plan of operations; or

(2) Notify the operator of any changes in, or additions to the plan of operations which are necessary before such plan will be approved; or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional 30 days, is necessary to complete such review, and setting forth the reasons why additional time is required. Provided, however, that days during which the area of operations is inaccessible for such reasons as inclement weather, natural catastrophy, etc., for inspection shall not be included when computing either this time period, or that in subsection (b) above, or

(4) Notify the operator that the plan cannot be considered for approval until forty-five (45) days after a final environmental impact statement, if required, has been prepared and filed with the Council on Environmental Quality.

(c) Failure of the Regional Director to act on a proposed plan of operations and related permits within the time period specified shall constitute an approval of the plan and related permits for a period of three (3) years.

(d) The Regional Director's analysis may include:

(1) An examination of the environmental report filed by the operator;

(2) An evaluation of measures and timing required to comply with reclamation requirements;

(3) An evaluation of necessary conditions and amount of the bond or security deposit to cover estimated reclamation costs;

(4) An evaluation of the need for any additional requirements in access permit; and

(5) A determination regarding the impact of this operation and the cumulative impacts of all operations on the management of the unit.

(e) Prior to approval of a plan of operations, the Regional Director shall determine whether any properties included in, or eligible for inclusion in, the National Register of Historic Places or National Registry of Natural Landmarks may be affected by the proposed activity. This determination will require the acquisition of adequate information, such as that resulting from field surveys, in order to properly determine the presence of and significance of cultural resources within the area to be affected by mining operations. Whenever National Register properties or properties eligible for inclusion in the National Register would be affected by mining operations, the Regional Director shall comply with section 106 of the National Historic Preservation Act of 1966 as implemented by 36 CFR, Part 800.

(1) The operator shall not injure, alter, destroy, or collect any site, structure, object, or other value of historical, archeological, or other cultural scientific importance. Failure to comply with this requirement shall constitute a violation of the Antiquities Act (16 U.S.C. 431-433) (see 43 CFR, Part 3).

(2) The operator shall immediately bring to the attention of the Superintendent any cultural and/or scientific resource that might be altered or destroyed by his operation and shall leave such discovery intact until told to proceed by the Superintendent. The Superintendent will evaluate the discoveries brought to his attention, and will determine within ten (10) working days what action will be taken with respect to such discoveries.

(3) The responsibility for, and cost of investigations and salvage of such values that are discovered during operations will be that of the operator, where the claim is unpatented.

(f) The operator shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration, or damage from mining operations, and shall be responsible for the reestablishment, restoration, or referencing of any monuments, corners and bearing trees which are destroyed, obliterated, or damaged by such mining operations.

(g) Pending approval of the plan of operations, the Regional Director may approve, on a temporary basis, the continuation of existing operations if necessary to enable timely compliance with these regulations and with Federal, State, or local laws, or if a halt to existing operations would result in an unreasonable economic burden or injury to the operator. Such work must be conducted in accordance with all applicable laws, and in a manner prescribed by the

Regional Director and designed to minimize or prevent significant environmental effects.

(h) Approval of each plan of operations is expressly conditioned upon the Superintendent having such reasonable access to the claim as is necessary to properly monitor and insure compliance with the plan of operations.

§ 9.11 Reclamation requirements.

(a) As contemporaneously as possible with the operations, but in no case later than six (6) months after completion of operations and within the time specified in an approved mining reclamation plan, unless a longer period is authorized in writing by the Regional Director, each operator shall initiate reclamation as follows:

(1) Where the claim was patented without surface use restriction, the operator shall at a minimum:

(i) Remove all above ground structures, equipment, and other manmade debris used for operations; and

(ii) Rehabilitate the area of operations to a condition which would not constitute a nuisance; or would not adversely affect, injure or damage, federally owned lands.

(2) On any claim which was patented with surface use restrictions or is unpatented, each operator must take steps to restore natural conditions and processes, which steps shall include, but are not limited to:

(i) Removing all above ground structures, equipment and other manmade debris;

(ii) Providing for the prevention of surface subsidence;

(iii) Replacing overburden and spoil, wherever economically and technologically practicable;

(iv) Grading to reasonably conform the contour of the area of operations to a contour similar to that which existed prior to the initiation of operations, where such grading will not jeopardize reclamation; and

(v) Replacing the natural topsoil necessary for vegetative restoration; and

(vi) Reestablishing native vegetative communities.

(b) Reclamation under paragraph (a) (2), of this section is unacceptable unless it provides for the safe movement of native wildlife, the reestablishment of native vegetative communities, the normal flow of surface and reasonable flow of subsurface waters, the return of the area to a condition which does not jeopardize visitor safety or public use of the unit, and return of the area to a condition equivalent to its pristine beauty.

(c) Reclamation required by this section shall apply to operations authorized under this Part, except that all terms relating to reclamation of previously issued special use permits revoked by this part for operations to be continued under an approved plan of operations shall be incorporated into the operator's reclamation plans.

§ 9.12 Supplementation or revision of plan of operations.

(a) An approved plan of operations may require reasonable revision or supplementation to adjust the plan to changed conditions or to correct oversights.

(1) The Regional Director may initiate an alteration by notifying the operator in writing of the proposed alteration and the justification therefor. The operator shall have thirty (30) days to comment on the proposal.

(2) The operator may initiate an alteration by submitting to the Superintendent a written statement of the proposal, and the justification therefor.

(b) Any proposal initiated under paragraph (a) of this section by either party shall be reviewed and decided by the Regional Director in accordance with § 9.10. Where the operator believes he has been aggrieved by a decision under this paragraph, he may appeal the decision pursuant to § 9.14.

§ 9.13 Performance bond.

(a) Upon approval of a plan of operations the operator shall be required to file a suitable performance bond with satisfactory surety, payable to the Secretary or his designee. The bond shall be conditioned upon faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the plan of operations as approved, revised or supplemented.

(b) In lieu of a performance bond, an operator may elect to deposit with the Secretary, or his designee, cash or negotiable bonds of the U.S. Government. The cash deposit or the market value of such securities shall be at least equal to the required sum of the bond.

(c) The bond or security deposit shall be in an amount equal to the estimated cost of completion of reclamation requirements either in their entirety or in a phased schedule for their completion as set forth in the approved, supplemented or revised plan of operations.

(d) In the event that an approved plan of operations is revised or supplemented in accordance with § 9.12, the Superintendent may adjust the amount of the bond or security deposit to conform to the plan of operations as modified.

(e) The operator's and his surety's responsibility and liability under the bond or security deposit shall continue until such time as the Superintendent determines that successful reclamation of the area of operations has occurred.

(f) When all required reclamation requirements of an approved plan of operations are completed, the Superintendent shall notify the operator that performance under the bond or security deposit has been completed and that it is released.

§ 9.14 Appeals.

(a) Any operator aggrieved by a decision of the Regional Director in connection with the regulations in this Part may file with the Regional Director a written statement setting forth in detail the respects in which the decision is contrary to, or in conflict with, the facts, the law, these regulations, or is otherwise in error. No such appeal will be considered unless it is filed with the Regional Director within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of such written statement from the aggrieved operator, the Regional Director shall promptly review the action or decision and either reverse his original decision or prepare his own statement, explaining that decision and the reasons therefor, and forward the statement and record on appeal to the Director, National Park Service, for review and decision. Copies of the Regional Director's statement shall be furnished to the aggrieved operator, who shall have 20 days within which to file exceptions to the Regional Director's decision. The Department has the discretion to initiate a hearing before the Office of Hearing and Appeals in a particular case. (See 43 CFR 4.700.)

(b) The official files of the National Park Service on the proposed plan of operations and any testimony and documents submitted by the parties on which the decision of the Regional Director was based shall constitute the record on appeal. The Regional Director shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to the Director of the National Park Service. The National Park Service shall make the record available to the operator upon request.

(c) If the Director considers the record inadequate to support the decision on appeal, he may provide for the production of such additional evidence or information as may be appropriate, or may remand the case to the Regional Director, with appropriate instructions for further action.

(d) On or before the expiration of forty-five (45) days after his receipt of the exceptions to the Regional Director's decision, the Director shall make his decision in writing: Provided, however, that if more than forty-five (45) days are required for a decision after the exceptions are received, the Director shall notify the parties to the appeal and specify the reason(s) for delay. The decision of the Director shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based. The decision of the Director shall be the final administrative action of the agency on a proposed plan of operations.

(e) A decision of the Regional Director from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the Director. The Director shall promptly rule on requests for stays. A decision of the Director on request for a stay shall constitute a final administrative decision.

§ 9.15 Use of roads by commercial vehicles.

(a) After January 26, 1977, no commercial vehicle shall use roads administered by the National Park Service without first being registered with the Superintendent.

(1) A fee shall be charged for such registration based upon a posted fee schedule, computed on a ton-mile basis.

The fee schedule posted shall be subject to change upon 60 days notice.

(2) An adjustment of the fee may be made at the discretion of the Superintendent where a cooperative maintenance agreement is entered into with the operator.

(b) No commercial vehicle which exceeds roadway load limits specified by the Superintendent shall be used on roads administered by the National Park Service unless authorized by written permit from the Superintendent.

(c) Should a commercial vehicle used in operations cause damage to roads or other facilities of the National Park Service, the operator shall be liable for all damages so caused.

§ 9.16 Penalties.

Undertaking any operation within the boundaries of any unit in violation of this Part shall be deemed a trespass against the United States, and the penalty provisions of 36 CFR Part 1 are inapplicable to this Part.

§ 9.17 Public inspection of documents.

(a) Upon receipt of the plan of operations the Superintendent shall publish a notice in the FEDERAL REGISTER advising the availability of the plan for public review.

(b) Any document required to be submitted pursuant to the regulations in this Part shall be made available for public inspection at the Office of Superintendent during normal business hours. The availability of such records for inspection shall be governed by the rules and regulations found at 43 CFR Part 2.

§ 9.18 Surface use and patent restrictions.

(a) The regulations in 43 CFR 3826.2-5 and 3826.2-6, 3826.4-1(g) and 3826.4-1 (h), and 3826.5-3 and 3826.5-4 will apply to any claimant who wishes to take his claim to patent in Olympic National Park, Glacier Bay National Monument or Organ Pipe Cactus National Monument.

(b) The additional provisions of 43 CFR, Subpart 3826 and 36 CFR 7.26 and 7.44(a) and (b) will continue to apply to existing permits until 120 days after January 26, 1977, unless extended by the Regional Director. (See § 9.10(g).)

Dated: January 19, 1977.

NATHANIEL P. REED,
Assistant Secretary of the Interior.

[FR Doc.77-2393 Filed 1-25-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[AIDPR Notice 77-4]

PROCUREMENT REGULATIONS

Miscellaneous Amendments

This notice amends various sections of the AID Procurement Regulations (41 CFR Part 7). The substantive changes are:

(1) Section 7-3.200-50 is revised to clarify that negotiated AID contracts are negotiated under the authority of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223 (30 FR 6635). The circumstance permitting negotiations is FPR 1-3.215.

(2) The definition of "immediate family" in § 7-7.5002-3(i) is revised to reflect the current definition in the Uniform State/AID/USIA Regulations.

(3) AID has adopted FPR 1-1.323 as its rules for use of U.S. flag air carriers. Consequently, contract clauses dealing with requirements for use of U.S. flag air carriers for transportation of persons and things have been changed to incorporate the provisions of FPR 1-1.323.

(4) The "Termination for Convenience of the Government" clause has been moved from Section 7-7.5403-2 to Section 7-7.5401-35 thereby making it a required clause for fixed price contracts.

(5) New AIDPR Appendix G, "Contract Closeout Procedures", has been added.

This notice also contains a number of editorial and administrative changes to delete obsolete sections, update cross references, and make clarifications.

PART 7-1 GENERAL

Part 7-1 is amended as follows:

Subpart 7-1.3—General Policies

§§ 7-1.305-2, 7-1.305-3, 7-1.306-1 [Removed]

1. Sections 7-1.305-2, 7-1.305-3, and 7-1.306-1 are deleted.

2. Section 7-1.318 is redesignated as § 7-1.318-1 and revised as follows:

§ 7-1.318-1 Contracting Officer's decision under a disputes clause.

Before a decision is issued, the disputes clause in the contract must be examined, and the decision must be issued by the official designated in the clause, or his legal successor. Decisions shall be issued only after legal review. The text in FPR 1-1.318-1 may be modified as appropriate with the title "Administrator" inserted, unless the right of appeal is to an officer other than the Administrator. The AID contract appeal procedure is set forth in AIDPR 7-60.

§§ 7-1.323, 7-1.323-2 [Removed]

3. Sections 7-323 and 7-323-2 are deleted.

Subpart 7-1.6—Debarred, Suspended, and Ineligible Bidders

4. Sections 7-1.604-1(a)-1, through 7-1.604-1(b)-6 are consolidated and redesignated as § 7-1.604-1 and revised as follows:

§ 7-1.604-1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* Notice of proposed debarment shall be deemed to have been received by an affected person if the notice was properly mailed to the last known address of such person.

(b) *Hearings.*—(1) Debarment without a hearing. AID may debar a firm, individual, or an affiliate thereof without a hearing if:

(i) No hearing is requested within the period indicated in the notice described in FPR 1-1.604-1(a); or

(ii) There are no disputed questions of fact relevant to the debarment issue; or

(iii) The Administrator determines that the security interests of the supplier States override the interests of the supplier in an adversary hearing.

(2) Date of the hearing. Unless the Administrator determines that for good cause shown additional time should be granted, a hearing shall be instituted within 20 days after receipt of a request from an affected person for a hearing in response to the notice described in FPR 1-1.604-1(a).

(3) Hearing examiner. (i) The hearing shall be conducted before an impartial hearing examiner designated by the Administrator.

(ii) The Administrator shall not be limited in the choice of a hearing examiner to persons employed by AID or by any other agency of the U.S. Government.

(4) Report to the Administrator. The hearing examiner shall submit to the Administrator written findings of fact based upon the record established during the hearing and recommendations concerning the proposed debarment based upon these findings.

(5) Findings. (i) Findings of fact adequate to establish a cause for debarment shall be based upon substantial evidence. Standards of proof necessary for criminal conviction shall not apply.

(ii) Evidence of criminal intent shall not be necessary to establish a cause for debarment.

(iii) Findings shall not be circumscribed by technical rules of evidence.

(6) Recommendations. The Administrator may approve or disapprove the recommendations of the hearing examiner in whole or in part.

PART 7-3 PROCUREMENT BY NEGOTIATION

Subpart 7-3.2—Circumstances Permitting Negotiation

5. Section 7-3.200-50 is revised as follows:

§ 7-3.200-50 Negotiation authority.

All negotiated AID contracts are negotiated under the authority of Section 633 of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223, May 12, 1965, 30 FR 6635. The files of negotiated AID contracts shall cite, as the circumstance permitting negotiation, FPR 1-3.215 ("Otherwise authorized by law"). No other circumstances as set forth in FPR 1-3.2. need be cited.

§§ 7-3.204, 7-3.205, 7-3.211 [Removed]

6. Sections 7-3.204, 7-3.205, and 7-3.-211 are deleted.

Subpart 7-3.3—Determinations, Findings, and Authorities

§ 7-3.305 [Removed]

7. Section 7-3.305 is deleted.

PART 7-4 SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 7-4.51—Mission Procurements Under Master Contracts [Removed]

Subpart 7-4.52—Procurement of Technical Assistance from U.S. Carriers [Removed]

Subpart 7-4.54—Procurement by Barter—Commodity Credit Corporation [Removed]

8. Subparts 7-4.51, 7-4.52, and 7-4.54 are deleted in their entirety.

Subpart 7-4.56—General Selection Procedure

§ 7-4.5603 [Removed]

9. Section 7-4.5603 is deleted.

Subpart 7-4.57—Educational Institution and International Research Center Selection Procedure

§ 7-4.5703 [Removed]

10. Section 7-4.5703 is deleted.

Subpart 7-4.58—Collaborative Assistance Selection Procedure

§ 7-4.5803 [Removed]

11. Section 7-4.5803 is deleted.

PART 7-6 FOREIGN PURCHASES

Subpart 7-6.2—Buy American Act—Construction Contracts

12. Subpart 7-6.2 is deleted in its entirety.

Subpart 7-6.52—U.S. Source Restrictions—Commodities

§ 7-6.5203 [Amended]

13. Section 7-6.5203 is amended to substitute "AID Handbook 15, Commodities" for "M.O. 1414.1.1" at the end of the section.

PART 7-7 CONTRACT CLAUSES

Subpart 7-7.50—Clauses for Cost Reimbursement Type Contracts

14. New § 7-7.5001-44 is added as follows:

§ 7-7.5001-44 Clean air and water.

Insert the clause set forth in FPR 1-1.2302-2 under the conditions set forth therein.

§ 7-7.5002-3 [Amended]

15. Section 7-7.5002-3 is amended to change the date in the title of the clause from "(September 1975)" to "December 1976)".

16. Section 7-7.5002-3(i)(1)(ii) is amended to read as follows:

§ 7-7.5002-3 Travel expenses.

* * * * *

(i) *Emergency and irregular travel and transportation.*

(1)

(ii) Death or serious illness or injury of a member of the immediate family of the employee or spouse. "Serious illness or injury" and "immediate family" are defined in accordance with Section 699.5 of the Uniform State/AID/USIA Regulations, as in effect on the date of such travel.

§ 7-7.5002-3 [Amended]

17. Paragraph (l) of § 7-7.5002-3 is deleted.

18. Section 7-7.5002-15 is amended to change the date in the undesignated center head from "(September 1974)" to "(December 1976)" and paragraph (d) is revised to read as follows:

§ 7-7.5002-15 Transportation and Storage Expenses.

* * * * *

(d) *International ocean transportation.*—(1) All international ocean transportation of persons and things which is to be reimbursed in U.S. dollars under this contract shall be by U.S. flag vessels to the extent they are available.

(i) Transportation of things. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Transportation Support Division, Office of Commodity Management, Agency for International Development, Washington, D.C. 20523, or the Mission Director, as appropriate, giving the basis for the request.

(ii) Transportation of persons. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Contracting Officer or the Mission Director, as appropriate.

(2) Transportation of foreign-made vehicles. Reimbursement of the costs of transporting a foreign (non-U.S.) made motor vehicle will be made in accordance with the provisions of the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended.

(3) Reduced rates on U.S. flag carriers. Reduced rates on United States flag carriers are in effect for shipments of household goods and personal effects of AID contract personnel. These reduced rates are available provided the shipper states on the bill of lading that the cargo is "Personal property—not for resale—payment of freight charges is at U.S. Government (AID) expense and any special or diplomatic discounts accorded this type cargo are applicable." The Contractor will not be reimbursed for shipments of household goods or personal effects in amount in excess of the reduced rates available in accordance with the foregoing.

19. New § 7-7.5002-16 is added as follows:

§ 7-7.5002-16 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1-1.323-2.

20. New § 7-7.5003-5 is added as follows:

§ 7-7.5003-5 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

Subpart 7-7.52—Basic Ordering Agreement for Participant Training

21. Section 7-7.5201-1(h) is revised to read as follows:

§ 7-7.5201-1 Definitions.

* * * * *

(h) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his representative acting within the limits of his authority.

22. New § 7-7.5202-3 is added as follows:

§ 7-7.5202-3 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

Subpart 7-7.53—Contracts for Participant Training

23. Section 7-7.5301-(g) is revised as follows:

§ 7-7.5301-1 Definitions.

* * * * *

(g) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his authorized representative acting within the limits of his authority.

24. New § 7-7.5302-3 is added as follows:

§ 7-7.5302-3 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

Subpart 7-7.54—Clauses for Fixed Price Type Contract for Technical Services

25. Section 7-7.5401-35 is added as follows:

§ 7-7.5401-35 Termination for convenience of the Government.

Insert the appropriate clause in accordance with FPR 1-8.700-2(a) (1), (2), or (4).

26. New § 7-7.5401-36 is added as follows:

§ 7-7.5401-36 Clean air and water.

Insert the clause set forth in FPR 1-1.2302-2 under the conditions set forth therein.

27. Section 7-7.5402-8 is revised as follows:

§ 7-7.5402-8 International ocean transportation.

INTERNATIONAL OCEAN TRANSPORTATION (DECEMBER 1976)

All international ocean travel and transportation of persons and things (including commodities and equipment procured specifically for the performance of this contract as well as employee's vehicles, personal effects and household goods, if any) shall be made on United States flag carriers. Where United States flag carriers are not available, or their use would result in significant delays, the Contractor may request a waiver from this requirement. Waivers for shipments of things shall be obtained from the Transportation Support Division, Office of Commodity Management AID, Washington, D.C. 20523; waivers for transportation of persons from the Contracting Officer or Mission Director, as appropriate. If such a waiver is granted it shall be considered a change within the meaning of the "Changes" clause of this contract.

28. New § 7-7.5402-10 is added as follows:

§ 7-7.5402-10 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1-1.323-2.

§ 7-7.5403-2 [Removed]

29. Section 7-7.5403-2 is deleted.

30. New § 7-7.5403-6 is added as follows:

§ 7-7.5403-6 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

Subpart 7-7.55—Clauses for Cost Reimbursement Contracts with Educational Institutions

31. New § 7-7.5501-40 is added as follows:

§ 7-7.5501-40 Clean air and water.

Insert the clause set forth in FPR 1-1.2302-2 under the conditions set forth therein.

32. New § 7-7.5502-19 is added as follows:

§ 7-7.5502-19 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1-1.323-2.

33. New § 7-7.5503-11 is added as follows:

§ 7-7.5503-11 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

PART 7-8 TERMINATION OF CONTRACTS

Subpart 7-8.1—Definition of Terms [Removed]

34. Subpart 7-8.1 is deleted in its entirety.

Subpart 7-8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed Price Type and Cost Reimbursement Type Contracts

§ 7-8.213 [Removed]

35. Section 7-8.213 is deleted.

PART 7-10 BONDS AND INSURANCE

Subpart 7-10.3—Insurance—General

§ 7-10.351 [Redesignated]

36. Section 7-10.351 is redesignated as § 7-10.502-3.

PART 7-12 LABOR

Subpart 7-12.8—Equal Opportunity in Employment

§ 7-12.802-51 [Removed]

37. Section 7-12.802-51 is deleted.

Subpart 7-12.52—Foreign Nationals [Removed]

Subpart 7-12.53—Workmen's Compensation (Defense Base Act) and War Hazards Compensation for Overseas Employees [Removed]

38. Subparts 7-12.52 and 7-12.53 are deleted in their entirety.

PART 7-15 CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 7-15.1—Applicability

§ 7-15.102-50 [Removed]

39. Section 7-15.102-50 is deleted.

§ 7-15.151 [Removed]

40. Section 7-15.151 is deleted.

Subpart 7-15.2—Contracts With Commercial Organizations

§ 7-15.200 [Removed]

41. Section 7-15.200 is deleted.

Subpart 7-15.3—Grants and Contracts With Educational Institutions

§ 7-15.301 [Amended]

42. Section 7-15.301 is amended to substitute "contract clause set forth in AID PR 7-7.55" for "form which is set out in AIDPR subpart 7-16" at the end of the section.

PART 7-30 CONTRACT FINANCING

Subpart 7-30.4—Advance Payments

§ 7-30.403 [Removed]

43. Section 7-30.403 is deleted.

§ 7-30.413 [Removed]

44. Section 7-30.413 is deleted.

APPENDIX F—DIRECT AID CONTRACTS WITH U.S. CITIZENS FOR PERSONAL SERVICES ABROAD

45. A new paragraph d. is added to Clause 9 of Attachment B (General Provisions, Contract with a U.S. Citizen for Personal Services Abroad) to Appendix F as follows:

9. *Insurance.*

* * * * *

d. Claims for private personal property losses.

The Contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, "Overseas Support", Chapter 10.

46. Paragraph (b)(9) of Clause 10 of Attachment B to Appendix F is revised as follows:

(9) *Limitation on Travel.*

(a) Public Law 93-623 requires that all Federal agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditures from appropriated funds for international air transportation on other than U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.

(b) The contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carrier is available, in accordance with the following criteria:

(i) Passenger or freight srevice by a U.S. flag air carrier is considered "available" even though:

(A) Comparable or a different kind of service by a non-U.S. flag air carrier costs less, or

(B) Service by a non-U.S. flag air carrier can be paid for in excess foreign currency, or

(C) Service by a non-U.S. flag air carrier is preferred by the agency or traveler needing air transportation, or

(D) Service by a non-U.S. flag air carrier is more convenient for the agency or traveler needing air transportation.

(ii) Passenger service by a U.S. flag air carrier will be considered to be "unavailable":

(A) When the traveler, while en route, has to wait 6 hours or more to transfer to a U.S. flag air carrier to proceed to the intended destination, or

(B) When any flight by a U.S. flag air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a U.S. flag air carrier is available during the 6 hour period, or

(C) When by itself or in combination with other U.S. flag or non-U.S. flag air carriers (if U.S. flag air carriers are "unavailable") it takes 12 or more hours longer from the original airport to the destination airport to accomplish the agency's mission than would service by a non-U.S. flag air carrier or carriers.

(D) When the elapsed traveltime on a scheduled flight from origin to destination airports by non-U.S. flag air carrier(s) is 3 hours or less, and service by U.S. flag air carrier(s) would involve twice such scheduled traveltime.

(c) In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, he will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by U.S. flag air carrier was unavailable for the following reasons:

\-

(state reasons)

(d) The terms used in this clause have the following meanings:

(1) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.

(2) "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

(3) The term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase hereunder, which may involve international air transportation.

47. New Appendix G is added as follows:

APPENDIX G—CONTRACT CLOSEOUT PROCEDURES

1. *Purpose.* This Appendix G establishes procedures for the orderly and expeditious closeout of completed AID/W and Mission direct contracts.

2. *Closeout Procedures.* (a) For the purpose of this Appendix, the "closeout phase" is defined as the period of time extending from the date the work has been completed by the contractor (including submission of all reports required under the contract) until all remaining administrative actions have been satisfactorily accomplished and the contract file is retired. The closeout procedures

are administered by the Support Services Branch, Office of Contract Management (CM/SD/SUP).

(b) AID organizational elements accomplish their respective responsibilities during the closeout phase as follows:

(1) *Fixed-Price Type Contracts.* Within 4 months after the contractor has completed the work.

(2) *Cost-Reimbursement Type Contracts.* Within 21 months after the contractor has completed the work.

(c) Contract records are not officially retired by the contracting office until the closeout phase is completed.

3. *Responsibility.* (a) *Contracting Office.* The Contracting Officer is responsible for:

(1) Identifying outstanding closeout actions.

(2) Contacting other offices within AID having responsibilities during the closeout phase for status information.

(3) Assuring that all closeout actions have been accomplished, as evidenced by the information provided by responsible offices on the checklist form.

(4) Initiation of follow-up measures, as necessary, on administrative actions which have not been completed within a reasonable time.

(5) Submitting any contract file to the Office of the General Counsel for review when he feels that (i) litigation may be involved, or (ii), there is a legal problem which GC should comment on before the contract is closed out.

(b) *Other AID Offices.* Other AID offices (e.g., the Technical Office, Auditor General, AID/W or Mission Security, AID/W Paying Office or Mission Controller, and the Mission) are responsible for:

(1) Accomplishing administrative actions on a work-completed contract as expeditiously as possible.

(2) Providing completed checklist forms or other status information as requested by the Contracting Officer in accordance with the procedures in this appendix.

(4) *Procedures.* (a) As soon as feasible, but not more than 90 days after completion of the work under a contract (including receipt of all reports required thereunder), the Contracting Officer, or his designated representatracting Officer, or his designated representathe outstanding closeout actions which must be accomplished prior to retiring the contract.

(b) The Contracting Officer or his designated representative (CM/SD/SUP for AID/W) prepares form AID 1420-15, Contract Closeout Checklist (see Attachment), for transmittal to each of the indicated AID action offices as follows:

Part I—AID/W Technical Office. Two copies.

Part II—AID Security or Mission Security Office. Two copies.

Part III—AID/W AG Audit. Two copies.

Part IV—AID/W Paying Office or Mission Controller. Two copies.

Part V—Mission. Two copies.

(c) The above checklists are sent concurrently to the action offices indicated. Each action office returns one copy of the completed part of the checklist to the Contracting Officer by the date indicated on the form. Additional remarks or comments by the action office may be attached to their reply. In closing out a mission contract, it may be necessary to obtain certain information from AID/W offices before completing the checklist. If an office indicates on the checklist that one or more items are still pending, they forward the second and final signed copy of the checklist when all of their outstanding actions have been completed.

(d) The Contracting Officer, or his designated representative, follows up periodically on outstanding administrative actions that have not been accomplished within a reasonable period of time.

(e) The Contracting Officer shall certify to the Security Office when the contractor has given notification that all classified information in the contractor's possession has been properly disposed of or retained (see Part VI, item 8 of Attachment).

(f) When the Contracting Officer has received the completed, certified checklists from the other action offices, he completes Part VI, the Contracting Officer checklist (form AID 1420-15F), assembles all checklist parts in order, signs the certification in paragraph B of Part VI, and places the document in the contract file. The signed checklist and supporting data then constitute the necessary authority to officially retire the contract file.

CONTRACT CLOSE-OUT PART I – TECHNICAL OFFICE CHECKLIST	INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.	1. DATE 2. REPLY DUE DATE
3. TO	4. FROM *(Contracting Officer)*	
5. CONTRACT NUMBER	6. CONTRACTOR	7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Have all contract work and services, including reports, been accomplished and accepted by the Government? If No, expected completion date ________.			
2. Has the contractor accounted for all U.S. Government titled property and equipment (under your office's surveillance) for which the contractor has custodial responsibility under the contract?			
3. Has proper disposition been made of such property and equipment? If No, expected date of disposition ________.			
4. Is the contractor free of liability for the loss, destruction or damage to any such U.S. Government titled property or equipment?			
If No, have the Contractor and the Contracting Officer been notified of the extent of such liability?			
5. Has Form AID 1420-43, Contractor Performance Evaluation Report (Final) been submitted? If No, expected date of submission ________.			
6. Have all other known contract requirements been met? If No, state nature of requirements and expected date of completion below.			

7. REMARKS

B. CERTIFICATION

All actions for which the Technical Office is responsible have been completed. ☐ YES ☐ NO

SIGNATURE	OFFICE SYMBOL	DATE

AID 1420-15A [illegible]

CONTRACT CLOSE-OUT PART II – AID/W OR MISSION SECURITY OFFICE CHECKLIST	INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.	1. DATE 2. REPLY DUE DATE

3. TO	4. FROM (Contracting Officer)

5. CONTRACT NUMBER	6. CONTRACTOR	7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has the Contracting Officer certified that he has been notified by the Contractor that all classified and Limited Official Use information in the Contractor's possession has been disposed of or retained (if related or continuing contracts are involved) in accordance with existing AID Security Regulations?			

2. Remarks:

B. CERTIFICATION

All actions for which the Security Office is responsible have been completed. ☐ YES ☐ NO

SIGNATURE	OFFICE SYMBOL	DATE

AID 1420-18B (4-76)

CONTRACT CLOSE-OUT PART III - AUDIT CHECKLIST	INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.	1. DATE 2. REPLY DUE DATE

3. TO	4. FROM (Contracting Officer)

5. CONTRACT NUMBER	6. CONTRACTOR	7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has final audit been accomplished by the Cognizant Auditor? If No, expected date of final audit ______.			

2. Remarks:

B. CERTIFICATION

All actions for which the Office of Audit is responsible have been completed. ☐ YES ☐ NO

SIGNATURE	OFFICE SYMBOL	DATE

AID 1420-18C (4-76)

CONTRACT CLOSE-OUT

PART IV – AID/W PAYING OFFICE OR MISSION CONTROLLER CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE
2. REPLY DUE DATE
3. TO
4. FROM (Contracting Officer)
5. CONTRACT NUMBER
6. CONTRACTOR
7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Have all suspended or disallowed costs been cleared and settled? If No, expected clearance date ______.			
2. Have all advanced payments or Federal Reserve Letters of Credit been liquidated? If No, expected liquidation date ______.			
3. Have any refunds, rebates, or credits (including any interest thereon) received by the Contractor or Assignee, which arose out of contract performance and are due the Government, been paid to the Government? If No, expected payment date ______.			
4. Have all subcontractors' and vendors' claims chargeable to the contract been settled and paid? If No, expected date of settlement and payment ______.			
5. Has final overhead claim been approved and a voucher submitted in settlement therefor? If No, expected approval date ______.			
6. Has the total fee been paid to the Contractor? If No, expected payment date ______.			
7. Has the Contractor submitted a final release of any further claims to the Government?			
8. Has the Contractor submitted a final voucher (Form SF 1034) with the required supporting documents?			
9. Has the Contractor's final voucher been paid? If No, expected payment date ______.			
10. Have all GAO inquiries or formal exceptions to vouchers been cleared? If No, expected clearance date ______.			

11. Remarks:

B. CERTIFICATION

All action for which the AID/W Paying Office or Mission Controller is responsible have been completed. ☐ YES ☐ NO

SIGNATURE	OFFICE SYMBOL	DATE

AID 1420-18D (4-76)

CONTRACT CLOSE-OUT

PART V – MISSION CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE
2. REPLY DUE DATE
3. TO
4. FROM (Contracting Officer)
5. CONTRACT NUMBER
6. CONTRACTOR
7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has the contractor accounted for all U.S. or Cooperating Government titled property and equipment (located in the Cooperating Country) for which the contractor has custodial responsibility under the contract?			
2. Has proper disposition been made of such property and equipment? If No, expected disposition date ______.			
3. Is the Contractor free of liability for the loss, destruction or damage to any U.S. or Cooperating Government titled property or equipment?			
If No, has the Contractor and the Contracting Officer been notified of the extent of such liability?			
4. Have all contract work and services (performed in the Cooperating Country), including reports, been accomplished?			
5. Has an overseas audit of the Contractor's activities been accomplished by the USAID/Controller? If in process, expected completion date ______.			
6. Has Form AID 1420-42, Contractor Performance Evaluation Report, been submitted? If No, expected submission date ______.			
7. Have all other known contract requirements been met, e.g., security, local currency, etc.? If No, state nature of the requirements and expected completion date below.			

8. Remarks:

B. CERTIFICATION

All actions for which the Mission is responsible have been completed. ☐ YES ☐ NO

SIGNATURE	OFFICE SYMBOL	DATE

AID 1420-18E (4-76)

CONTRACT CLOSE-OUT

PART VI - CONTRACTING OFFICE CHECKLIST

1. DATE

2. CONTRACT NUMBER | 3. CONTRACTOR | 4. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has the Contractor complied with all special contract terms and conditions? If No, state nature of special terms and conditions and expected date of compliance.			
2. Have all contractural changes initiated during performance of the contract been reduced to and embodied in formal contractual instruments? If No, expected date of contractual instrument issuance ______.			
3. Have any claims or suits against the Government arising out of the contract been settled? If No, state nature of claim or suit and expected settlement date.			
4. Has action been taken to deobligate any balance of unexpended and excess funds? If No, funds will be deobligated on ______.			
5. Have all reductions in costs, price or fee, to which the Government is entitled, been effected by amendment to the Contract? If No, expected amendment date ______.			
6. Have the following certifications been sent to the AID Paying Office or Mission Controller by the Contracting Officer? (a) All work or services have been satisfactorily completed. If No, certification will be sent on ______			
(b) Contractor has rendered a satisfactory account of property for which he has custodial responsibility.			
(c) Contractor's assignment to the Government of refunds, rebates, credits and other amounts allocable to reimbursable costs under this contract.			
(d) Contractor's release discharging the Government from all liabilities, obligations, and claims arising out of the contract.			
7. Have all disputes been resolved? If No, state nature of dispute and present status.			
8. Has the Contractor notified the Contracting Officer that all classified and Limited Official Use information in his possession has been disposed of or retained (if related or continuing contracts are involved) in accordance with AID Security Regulations?			
9. Does the contract file contain all required documentation sufficient to constitute a full history of the procurement?			
10. Has a determination been made in connection with Contractor liability for the loss, destruction or damage of any property for which the Contractor has custodial responsibility?			

B. FINAL CERTIFICATION

All administrative actions have been completed under the above contract and the contract files may be officially retired.

SIGNATURE (Contracting Officer)	OFFICE SYMBOL	DATE

AID 1420-19P (4-76)

Authority. This AIDPR Notice 77-4 is an interim procurement instruction and is issued pursuant to 41 CFR 7-1.104-4.

Effective date. This notice is effective January 31, 1977.

Dated: January 5, 1977.

JOHN F. OWENS,
Deputy Assistant Administrator for Program and Management Services.

[FR Doc.77-2314 Filed 1-25-77;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER I—MEDICAL CARE QUALITY AND COST CONTAINMENT

PART 100—COST CONTAINMENT AND QUALITY CONTROL

Policy on Lack of Timely Notice

Notice is hereby given of the adoption of a policy under section 1122 of the Social Security Act (42 U.S.C. 1320a-1) pursuant to which the Regional Health Administrators, under the authority of section 1122(d)(1) (previously delegated to them by the Secretary), will limit the period of withholding of reimbursement for a capital expenditure when it has been determined under section 1122(d)(1)(A) that timely notice of a proposed capital expenditure subject to review under section 1122 has not been provided as required.

This policy has been developed in response to reports of an increasing number of cases in which capital expenditures subject to review under section 1122 have not been submitted for review to the designated planning agency in the timely manner required by the statute and regulations. The circumstances surrounding the history of these cases are varied, and, while some cases apparently merit the withholding of all reimbursement, others do not.

The law and regulations provide two procedures for limiting the requirement to withhold all reimbursement related to the capital expenditure in cases where timely notice was not provided. One is to use the mechanism provided by section 1122(d)(2) whereby the Regional Health Administrators (to whom that authority is presently delegated) could decide not to withhold reimbursement on the grounds cited in the law and regulations, after submitting the matter to the appropriate national advisory council. This mechanism, however, offers serious disadvantages (among them, complexity, lack of flexibility, and lack of timeliness), and therefore has been rejected as the general procedures to be used in these cases. This mechanism remains available, however, for those cases where the designated planning agency has found a proposed capital expenditure not to conform to applicable plans, criteria, or standards, but where the Regional Health Administrator may wish not to withhold reimbursement on the ground that to do so would discourage the operations or expansion of the health care facility or health maintenance organization or of any facility of such organization which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of title V, XVIII or XIX of the Social Security Act.

The second alternative is that provided by the language of section 1122(d)(1):

> * * * if the Secretary determines that—
>
> (A) neither the planning agency designated in the agreement described in subsection (b) nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; * * * then *for such period as he finds necessary in any case to effectuate the purpose of this section*, he shall, in determining the Federal payments to be made under titles V, XVIII, and XIX with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure (italics added).

This language requires the Regional Health Administrator to determine the appropriate period of withholding in each case. In order to promote national uniformity in the application of this policy, and thus assure equitable treatment for