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[Second Revised Edition—1971]

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Title 6—ECONOMIC STABLIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Windfall Profits; Renegotiation of Construction Contracts

The purpose of this amendment to § 300.58 of the regulations of the Price Commission is to broaden the applicability of the section to cover all construction contracts, all or part of which are performed by construction workers whose wages and salaries are subject to review by the Construction Industry Stabilization Committee (CISC).

Section 300.58, issued on June 15, 1972 (37 F.R. 11870), relating to construction industry payments in which wages and salaries of construction workers are affected by action of CISC, is currently applicable only to construction contracts entered into after March 29, 1971, the date on which CISC was established. The limiting provision is being deleted since it does not reflect the original intent of the Commission to require renegotiation of all construction contracts affected by CISC, whose jurisdiction is not limited to contracts entered into after March 29, 1971.

Because the purpose of this amendment is to provide immediate guidance and information as to price stabilization rules for construction contracts, it is hereby found that notice and procedure thereon is impracticable and that good cause exists for making it effective less than 30 days after publication.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558; 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92-210; Executive Order No. 11640, 37 F.R. 1213, January 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, October 16, 1971)

In consideration of the foregoing, § 300.58 of Part 300 of Title 6 of the Code of Federal Regulations is amended to read as follows, effective November 22, 1972:

§ 300.58 Windfall profits: Renegotiation of construction contracts by reason of actions taken by the Construction Industry Stabilization Committee (CISC).

In addition to any other provision of this part relating to profit margins or allowable cost, the final payments under any construction contract, all or part of which contract is performed by construction workers whose wages and salaries are subject to review by the Construction Industry Stabilization Committee (CISC) pursuant to Executive Order No. 11588 (3 CFR Comp., 36 F.R. 6339), shall be renegotiated if the wage and salary level of construction workers used in determining the final payment is reduced pursuant to a decision of the CISC. The renegotiation shall be conducted pursuant to the provisions of the contract concerned relating to renegotiation, or if there are no such provisions in the contract, pursuant to customary renegotiation procedures and practices of the construction industry. The amount by which the final payment with respect to any contract shall be reduced as a result of the renegotiation must fairly reflect the results of the CISC action, including any allowable cost increases resulting therefrom.

Issued in Washington, D.C., on November 21, 1972.

By direction of the Commission.

CARLETON S. JONES,
Deputy General Counsel,
Price Commission.

[FR Doc.72-20285 Filed 11-21-72;11:48 am]

PART 300—PRICE STABILIZATION

Average Annual Productivity Rates

The purpose of this amendment is to revise the list of average annual rates of productivity gain in Appendix III to Part 300 of the Price Commission's regulations to reflect refinements in certain of those rates based upon the most recent data available to the Price Commission.

Productivity is generally defined in terms of the relationship between physical or real output of goods and services and the corresponding physical or real quantities of one or all associated inputs. In the case of industry productivity, it is expressed as "output per man-hour."

The measure of productivity used in Appendix III is the ratio of total volume of physical output to the number of man-hours worked to produce these outputs. Although this measure relates output to employment and man-hours, it does not measure the specific contributions of labor, capital, or any other factor of production. Rather, it reflects the joint effect of a number of interrelated influences, such as changes in technology, capital investment per worker, changes in the level of output, utilization of capacity, material usage, managerial skill, and skills and effort of the work force.

Indexes of output per man-hour for each industry are derived by dividing an output index by an index of aggregate man-hours. Output indexes measure gross output. That is, they take into account purchased and intermediate materials as well as value added (which includes depreciation, labor costs, interest payments, indirect business taxes).[1]

The "output indexes" used in preparing Appendix III were based upon the physical output of the products of the industry, combined with fixed period weights, when available. When adequate physical production data were not available, other measures of production were used. The most common alternative measure used is an index of deflated value of production derived by dividing an industry's value of production by an appropriate price index. A Federal Reserve Board index of industrial production was used as a measure of output for crude petroleum and natural gas (SIC 13) and an index of net tons of coal production, based on Bureau of Mines data, was used for the coal industry (SIC 11, 12).

"Indexes of man-hours and employment" were derived from basic data compiled by the Bureau of Census or the Bureau of Labor Statistics. Annual man-hour estimates were derived from published employment data and estimates of average annual hours. When available, indexes of "all employee man-hours" were used as the measure of labor input for the industry measures of output per man-hour. When these indexes were not available, indexes of production worker man-hours, employment or man-days were used. The latter measure of labor input was used for the coal industry.

The productivity index for a given year and industry was calculated as the ratio of the appropriate output and labor input indexes. From these productivity figures for each industry, the productivity rates were calculated. The rates of productivity change listed in Appendix III represent the industries long-term trend rate of productivity change over the period 1958-69 and have been calculated using a standard log linear regression technique.

Since the publication of Appendix III earlier this year, a number of refinements have been made in the output per man-hour indexes used in the original calculations. In keeping with the Price Commission's policy to use the best available information for implementing the price stabilization program, changes are being made in 215 of the 441 average annual productivity rates listed in Appendix III. The majority (125) of the changes (215) are in the magnitude of

[1] For more detailed information on concepts, methods, data sources, etc., see U.S. Government, Bureau of Labor Statistics, "The Meaning and Measurement of Productivity," BLS Bulletin 1714, "Indexes of Output per Man-hour, Selected Industries 1972 edition," BLS Bulletin 1758.

0.1 percent and are about equally divided between increases (67) and decreases (58). Among the more significant of the 90 larger changes are:

Decreases	
Electronic computing equipment.	Down 3 to 5.7 percent.
Anthracite mining	Down 2.2 to 3.2 percent.
Manifold business forms.	Down 1.5 to 4.1 percent.
Lace goods	Down 1.2 to 3.4 percent.
Flour and other grain mill products.	Down 1.1 to 4.7 percent.
Bookbinding and related work.	Down 0.9 to 1.7 percent.
Medicinals and botanicals.	Down 0.8 to 10.0 percent.
Household appliances (N.e.c.).	Down 0.7 to 5.2 percent.
Bituminous coal and lignite mining.	Down 0.7 to 4.9 percent.
Nonmetallic minerals, except fuels.	Down 0.6 to 3.9 percent.
Robes and dressing gowns.	Down 0.6 to 4.5 percent.
Fresh or frozen packaged fish.	Down 0.5 to 2.9 percent.
Fiber cans, drums and related material.	Down 0.5 to 5.3 percent.
Abrasive products	Down 0.5 to 2.8 percent.
Hard surface floor coverings.	Down 0.5 to 6.2 percent.

Increases	
Wirebound boxes and crates.	Up 1 to 6.9 percent.
Nailed wooden boxes and shook.	Up 0.6 to 3.9 percent.
Die cut paper and board	Up 0.6 to 4.0 percent.
Plastics materials and resins.	Up 0.6 to 6.6 percent.
Miscellaneous plastics products.	Up 0.4 to 5.6 percent.
Copper rolling and drawing.	Up 0.4 to 3.6 percent.
Metal barrels, drums, and pails.	Up 0.4 to 0.8 percent.
Fabricated pipe and fittings.	Up 0.4 to 1.4 percent.
Measuring and dispensing pumps.	Up 0.4 to 0.4 percent.
Electronic components (not elsewhere classified).	Up 0.4 to 7.5 percent.
Musical instruments and parts.	Up 0.4 to 1.5 percent.

To facilitate the introduction of the revised rates into the price stabilization program, § 300.11a(d) is being revised to provide that with respect to Forms PC–1 now pending before the Price Commission and those received during the 10 days immediately after the effective date of this amendment, the Commission will correct productivity entries as necessary rather than return the forms to their originating firms for correction and resubmission.

Because the purpose of this amendment is to provide immediate guidance and information as to compliance with the provisions of the price stabilization regulations and to provide guidance for reports required thereunder, it is hereby found that notice and public procedure thereon is impracticable and that good cause exists for making it effective in less than 30 days after publication.

(Economic Stabilization Act of 1970, as amended, Public Law 91–379, 84 Stat. 799; Public Law 91–558; 84 Stat. 1468; Public Law 92–8, 85 Stat. 13; Public Law 92–15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92–210; Executive Order No. 11640, 37 F.R. 1213, Jan. 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, Oct. 16, 1971)

In consideration of the foregoing Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth below effective November 24, 1972.

Issued in Washington, D.C., on November 20, 1972.

By direction of the Commission.

JAMES B. MINOR,
General Counsel,
Price Commission.

1. Section 300.11a(d) is amended to reads as follows:

§ 300.11a Calculation of productivity gains by manufacturers and construction contractors.

* * * * *

(d) *Filings received before December 4, 1972.* In the case of a Form PC–1 received from a prenotification or reporting firm by the Price Commission before December 4, 1972, the Price Commission will revise entries calculated on the basis of the table in Appendix III to this part as required to conform the Form to this section. A Form PC–1 received after that date which does not comply with this section will be returned for correction to the person making the submission.

2. Appendix III is revised to read as follows:

APPENDIX III—AVERAGE ANNUAL RATE OF PRODUCTIVITY GAIN BY STANDARD INDUSTRIAL CLASSIFICATION (SIC)

	SIC Code (1967 [1])	Rate (percent) [2]
Iron ores	101	3.9
Copper ores	102	2.4
Lead and zinc ores	103	2.4
Gold and silver ores	104	2.4
Bauxite and other aluminum ores	105	2.4
Ferroalloy ores, except vanadium	106	2.4
Metal mining services	108	2.4
Miscellaneous metal ores	109	2.4
Anthracite mining	11	3.2
Bituminous coal and lignite mining	12	4.9
Oil and gas extraction	13	3.8
Nonmetallic minerals, except fuels	14	3.9
Contract construction:	15, 16, 17	
Residential structures (public and private)		2.0
Nonresidential (except highways and sewers)		1.5
Highways		1.0
Sewers		1.5
Ordnance and accessories (except 1925, 1931, 1941)	19	2.4
Complete guided missiles	1925	2.9
Tank and tank components	1931	4.2
Sighting and fire control equipment	1941	4.4
Meat packing plants	2011	4.7
Sausages and other prepared meats	2013	2.1
Poultry dressing plants	2015	2.1
Creamery butter	2021	5.6
Cheese, natural and processed	2022	2.4
Condensed and evaporated milk	2023	2.5
Ice cream and frozen desserts	2024	4.2
Fluid milk	2026	3.2
Canned and cured sea foods	2031	2.8
Canned specialties	2032	3.5
Canned fruits and vegetables	2033	3.6
Dehydrated food products	2034	1.8
Pickles, sauces, salad dressings	2035	3.0
Fresh or frozen packaged fish	2036	2.9
Frozen fruits and vegetables	2037	2.6

See footnotes at end of table.

APPENDIX III—AVERAGE ANNUAL RATE OF PRODUCTIVITY GAIN BY STANDARD INDUSTRIAL CLASSIFICATION (SIC)—Continued

	SIC Code (1967 [1])	Rate (percent) [2]
Flour and other grain mill products	2041	4.7
Prepared feeds for animals and fowls	2042	4.6
Cereal preparations	2043	2.8
Rice milling	2044	5.9
Blended and prepared flour	2045	1.1
Wet corn milling	2046	4.6
Bread, cake and related products	2051	3.2
Cookies and crackers	2052	3.2
Raw cane sugar	2061	4.4
Cane sugar refining	2062	5.2
Beet sugar	2063	2.9
Confectionery products	2071	3.4
Chocolate and cocoa products	2072	2.5
Chewing gum	2073	3.8
Malt liquors	2082	6.2
Malt	2083	2.0
Wines, brandy, and brandy spirits	2084	2.2
Distilled liquor, except brandy	2085	6.2
Bottled and canned soft drinks	2086	4.2
Flavoring extracts and sirups, n.e.c.	2087	4.4
Cottonseed oil mills	2091	4.3
Soybean oil mills	2092	5.9
Vegetable oil mills, n.e.c.	2093	0.0
Animal and marine fats and oils	2094	6.7
Roasted coffee	2095	1.6
Shortening and cooking oils	2096	1.5
Manufactured ice	2097	1.6
Macaroni and spaghetti	2098	0.7
Food preparations, n.e.c.	2099	1.6
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Cigars	2121	5.0
Chewing and smoking tobacco	2131	0.0
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Women's and misses' blouses and waists	2331	2.2
Women's and misses' dresses	2335	2.9
Women's and misses' suits and coats	2337	2.1
Women's and misses' outerwear, n.e.c.	2339	2.6
Women's and children's underwear	2341	2.0
Corsets and allied garments	2342	3.5
Millinery	2351	3.1
Hats and caps, except millinery	2352	2.3
Children's dresses and blouses	2361	1.6
Children's coats and suits	2363	2.2
Children's outerwear, n.e.c.	2369	2.1
Fur goods	2371	3.3
Fabric dress and work gloves	2381	2.2
Robes and dressing gowns	2384	4.5
Waterproof outer garments	2385	4.1
Leather and sheep lined clothing	2386	1.9
Apparel belts	2387	4.8
Apparel and accessories, n.e.c.	2389	3.7
Curtains and draperies	2391	3.3
Housefurnishings, n.e.c.	2392	1.0
Textile bags	2393	1.8
Canvas products	2394	2.0
Pleating and stitching	2395	4.4
Automotive and apparel trimmings	2396	4.4
Schiffli machine embroideries	2397	4.0
Fabricated textile products, n.e.c.	2399	3.0
Logging camps, and logging contractors	2411	3.5
Sawmills and planing mills, general	2421	3.7
Hardwood dimension and flooring	2426	0.5
Special product sawmills, n.e.c.	2429	3.2

APPENDIX III—AVERAGE ANNUAL RATE OF PRODUCTIVITY GAIN BY STANDARD INDUSTRIAL CLASSIFICATION (SIC)—Continued

	SIC Code (1967 [1])	Rate (percent) [2]
Millwork	2431	1.6
Veneer and plywood	2432	5.2
Prefabricated wood structures	2433	1.5
Nailed wooden boxes and shook	2441	3.9
Wirebound boxes and crates	2442	6.9
Veneer and plywood containers	2443	5.3
Cooperage	2445	2.7
Wood preserving	2491	3.0
Wood products, n.e.c.	2499	3.2
Wood household furniture	2511	2.0
Upholstered household furniture	2512	1.5
Metal household furniture	2514	2.5
Mattresses and bedsprings	2515	2.6
Household furniture, n.e.c.	2519	1.9
Wood office furniture	2521	3.2
Metal office furniture	2522	2.5
Public building furniture	2531	2.7
Wood partitions and fixtures	2541	2.9
Metal partitions and fixtures	2542	2.9
Venetian blinds and shades	2591	2.7
Furniture and fixtures, n.e.c.	2599	2.2
Pulp mills	2611	4.5
Paper mills, except building paper	2621	4.5
Paperboard mills	2631	4.5
Paper coating and glazing	2641	2.7
Envelopes	2642	3.1
Bags, except textile bags	2643	2.2
Wallpaper	2644	3.1
Die cut paper and board	2645	4.0
Pressed and molded pulp goods	2646	1.9
Sanitary paper products	2647	2.5
Converted paper products, n.e.c.	2649	2.5
Folding paper boxes	2651	3.4
Setup paperboard boxes	2652	1.5
Corrugated and solid fiber boxes	2653	3.2
Sanitary food containers	2654	3.3
Fiber cans, drums, and related material	2655	5.3
Building paper and board mills	2661	4.5
Newspapers	2711	2.0
Periodicals	2721	3.1
Book publishing	2731	2.9
Book printing	2732	1.8
Miscellaneous publishing	2741	0.0
Commercial printing, excluding lithographic	2751	2.6
Commercial printing, lithographic	2752	2.6
Engraving and plate printing	2753	4.4
Manifold business forms	2761	4.1
Greeting card publishing	2771	2.9
Blankbooks and looseleaf binders	2782	1.4
Bookbinding and related work	2789	1.7
Typesetting	2791	1.7
Photoengraving	2793	2.3
Electrotyping and stereotyping	2794	2.2
Alkalies and chlorine	2812	4.2
Industrial gases	2813	6.4
Cyclic intermediates and crudes	2815	6.9
Inorganic pigments	2816	1.9
Industrial organic chemicals, n.e.c.	2818	6.9
Industrial inorganic chemicals, n.e.c.	2819	4.5
Plastics materials and resins	2821	6.6
Synthetic rubber	2822	2.7
Cellulosic manmade fibers	2823	5.7
Organic fibers noncellulosic	2824	2.9
Biological products	2831	4.5
Medicinals and botanicals	2833	10.0
Pharmaceutical preparations	2834	5.8
Soap and other detergents	2841	4.8
Polishes and sanitation goods	2842	4.4
Surface active agents	2843	4.4
Toilet preparations	2844	4.9
Paints and allied products	2851	2.6
Gum and wood chemicals	2861	3.4
Fertilizers	2871	5.3
Fertilizers, mixing only	2872	5.3
Agricultural chemicals, n.e.c.	2879	6.4
Adhesives and gelatin	2891	5.8
Explosives	2892	0.3
Printing ink	2893	3.5
Carbon black	2895	6.6
Chemical preparations, n.e.c.	2899	0.9
Petroleum refining	2911	6.6
Paving mixtures and blocks	2951	4.4
Asphalt felts and coatings	2952	3.4
Lubricating oils and greases	2992	5.1
Petroleum and coal products, n.e.c.	2999	5.8
Tires and inner tubes	3011	4.8
Rubber footwear	3021	2.1
Reclaimed rubber	3031	3.9
Fabricated rubber products, n.e.c.	3069	3.2
Miscellaneous plastics products	3079	5.6
Leather tanning and finishing	3111	1.5
Industrial leather belting	3121	1.1
Footwear cut stock	3131	1.4
Shoes, except rubber	3141	0.5
Horse slippers	3142	0.5
Leather gloves and mittens	3151	2.3
Luggage	3161	3.0
Women's handbags and purses	3171	1.7
Personal leather goods	3172	4.2
Leather goods, n.e.c.	3199	2.7
Flat glass	3211	3.9
Glass containers	3221	2.9
Pressed and blown glass, n.e.c.	3229	2.9
Products of purchased glass	3231	2.6
Cement, hydraulic	3241	4.8
Brick and structural clay tile	3251	2.3
Ceramic wall and floor tile	3253	3.6
Clay refractories	3255	3.2
Structural clay products, n.e.c.	3259	3.7
Vitreous plumbing fixtures	3261	4.2
Vitreous china food utensils	3262	1.5
Fine earthenware food utensils	3263	0.2
Porcelain electrical supplies	3264	3.8
Pottery products, n.e.c.	3269	3.3
Concrete block and brick	3271	4.1
Concrete products, n.e.c.	3272	4.1
Ready-mixed concrete	3273	2.5
Lime	3274	2.7
Gypsum products	3275	1.9
Cut stone and stone products	3281	2.6
Abrasive products	3291	2.8
Asbestos products	3292	1.3
Gaskets and insulations	3293	3.0
Minerals, ground or treated	3295	1.4
Mineral wool	3296	4.4
Nonclay refractories	3297	4.0
Nonmetallic mineral products, n.e.c.	3299	2.5
Blast furnaces and steel mills	3312	2.7
Electrometallurgical products	3313	2.7
Steel wire and related products	3315	2.7
Cold finishing of steel shapes	3316	2.7
Steel pipe and tubes	3317	2.7
Gray iron foundries	3321	2.6
Malleable iron foundries	3322	3.3
Steel foundries	3323	2.3
Primary copper	3331	2.3
Primary lead	3332	2.3
Primary zinc	3333	2.3
Primary aluminum	3334	3.3
Primary nonferrous metals, n.e.c.	3339	0.0
Secondary nonferrous metals	3341	3.9
Copper rolling and drawing	3351	3.6
Aluminum rolling and drawing	3352	5.4
Nonferrous rolling and drawing, n.e.c.	3356	4.0
Nonferrous wire drawing and insulating	3357	3.2
Aluminum castings	3361	2.1
Brass bronze and copper castings	3362	2.1
Nonferrous castings, n.e.c.	3369	2.1
Iron and steel forgings	3391	4.0
Nonferrous forgings	3392	2.6
Primary metal products, n.e.c.	3399	2.9
Metal cans	3411	2.0
Cutlery	3421	4.5
Hand and edge tools, n.e.c.	3423	3.0
Hand saws and saw blades	3425	3.3
Hardware, n.e.c.	3429	3.5
Metal sanitary ware	3431	4.5
Plumbing fittings, brass goods	3432	1.3
Heating equipment except electric	3433	3.5
Fabricated structural steel	3441	2.2
Metal doors, sash and trim	3442	2.8
Fabricated plate work (boiler shops)	3443	3.3
Sheet metal work	3444	4.1
Architectural metal work	3446	4.5
Miscellaneous metal work	3449	4.5
Screw machine products	3451	0.3
Bolts, nuts, rivets and washers	3452	0.3
Metal stampings	3461	1.6
Plating and polishing	3471	1.0
Metal coating and allied services	3479	1.0
Miscellaneous fabricated wire products	3481	2.7
Metal barrels, drums and pails	3491	0.8
Safes and vaults	3492	2.6
Steel springs	3493	2.7
Valves and pipe fittings	3494	2.1
Collapsible tubes	3496	3.8
Metal foil and leaf	3497	3.2
Fabricated pipe and fittings	3498	1.4
Fabricated metal products, n.e.c.	3499	2.4
Steam engines and turbines	3511	4.5
Internal combustion engines, n.e.c.	3519	3.1
Farm machinery	3522	2.4
Construction machinery	3531	2.4
Mining machinery	3532	2.0
Oil field machinery	3533	1.7
Elevators and moving stairways	3534	0.0
Conveyors and conveying equipment	3535	2.4
Hoists, cranes and monorails	3536	2.8
Industrial trucks and tractors	3537	3.6
Metal-cutting machine tools	3541	3.0
Metal-forming machine tools	3542	2.0
Special dies, tools, jigs, and fixtures	3544	2.3
Machine tool accessories	3545	2.6
Metalworking machinery, n.e.c.	3548	1.4
Food products machinery	3551	2.3
Textile machinery	3552	3.6
Woodworking machinery	3553	2.7
Paper industries machinery	3554	2.7
Printing trades machinery	3555	2.8
Special industry machinery, n.e.c.	3559	2.7
Pumps and compressors	3561	2.6
Ball and roller bearings	3562	5.7
Blowers and fans	3564	3.6
Industrial patterns	3565	4.2
Power transmission equipment	3566	1.8
Industrial furnaces and ovens	3567	1.6
General industrial machinery, n.e.c.	3569	1.7
Typewriters	3572	7.5
Electronic computing equipment	3573	5.7
Claculating and accounting machines	3574	5.7
Scales and balances	3576	3.7
Office machines, n.e.c.	3579	2.2
Automatic merchandising machines	3581	2.2
Commercial laundry equipment	3582	3.7
Refrigeration machinery	3585	6.3
Measuring and dispensing pumps	3586	0.4
Service industry machines, n.e.c.	3589	4.8
Miscellaneous machinery, except electrical	3599	1.5
Electric measuring instruments	3611	2.0
Transformers	3612	5.4
Switchgear and switchboard apparatus	3613	2.7
Motors and generators	3621	4.4
Industrial controls	3622	2.3
Welding apparatus	3623	3.4
Carbon and graphite products	3624	3.5
Electrical industrial apparatus, n.e.c.	3629	3.9
Household cooking equipment	3631	5.9
Household refrigerators and freezers	3632	5.9
Household laundry equipment	3633	5.9
Electric housewares and fans	3634	4.4
Household vacuum cleaners	3635	5.9
Sewing machines	3636	6.3
Household appliances, n.e.c.	3639	5.2
Electric lamps	3641	2.8
Lighting fixtures	3642	3.5
Current-carrying wiring devices	3643	3.0
Noncurrent-carrying wiring devices	3644	2.6
Radio and TV receiving sets	3651	6.2
Phonograph records	3652	0.1
Telephone and telegraph apparatus	3661	3.7
Radio and TV communication equipment	3662	3.7
Electron tubes, receiving type	3671	2.7
Cathode ray picture tubes	3672	11.7
Electron tubes, transmitting	3673	7.3
Semiconductors	3674	7.5
Electronic components, n.e.c.	3679	7.5
Storage batteries	3691	2.7
Primary batteries, dry and wet	3692	4.6
X-ray apparatus and tubes	3693	3.8
Engine electrical equipment	3694	2.9
Electrical equipment, n.e.c.	3699	2.9
Motor vehicles	3711	4.2
Passenger car bodies	3712	4.2
Truck and bus bodies	3713	4.2
Motor vehicle parts and accessories	3714	4.2
Truck trailers	3715	4.2
Aircraft	3721	4.5
Aircraft engines and engine parts	3722	2.3
Aircraft propellers and parts	3723	2.8
Aircraft equipment, n.e.c.	3729	2.8
Ship building and repairing	3731	1.3
Boat building and repairing	3732	3.0
Locomotives and parts	3741	4.3
Railroad and street cars	3742	4.3
Motorcycles, bicycles, and parts	3751	5.1
Trailer coaches	3791	2.6
Transportation equipment, n.e.c.	3799	2.4
Engineering and scientific instruments	3811	2.8
Mechanical measuring devices	3821	2.2
Automatic temperature controls	3822	1.9
Optical instruments and lenses	3831	3.8
Surgical and medical instruments	3841	3.7
Surgical appliances and supplies	3842	1.9
Dental equipment and supplies	3843	3.7
Ophthalmic goods	3851	4.9
Photographic equipment and supplies	3861	6.4
Watches and clocks	3871	4.9
Watchcases	3872	3.8
Jewelry, precious metal	3911	4.5
Jewelers' findings and materials	3912	3.9
Lapidary work	3913	3.9
Silverware and plated ware	3914	0.7
Musical instruments and parts	3931	1.5
Games and toys	3941	4.7
Dolls	3942	2.3
Children's vehicles, except bicycles	3943	3.7

See footnotes at end of table.

APPENDIX III—AVERAGE ANNUAL RATE OF PRODUCTIVITY GAIN BY STANDARD INDUSTRIAL CLASSIFICATION (SIC)—Continued

	SIC Code (1967 [1])	Rate (percent) [2]
Sporting and athletic goods, n.e.c.	3949	0.3
Pens and mechanical pencils	3951	2.9
Lead pencils and art goods	3952	2.9
Marking devices	3953	4.5
Carbon paper and inked ribbons	3955	4.3
Costume jewelry	3961	4.6
Artificial flowers	3962	5.0
Buttons	3963	3.9
Needles, pins, and fasteners	3964	4.5
Brooms and brushes	3991	2.1
Signs and advertising displays	3993	3.4
Morticians' goods	3994	3.4
Hard surface floor coverings	3996	6.2
Manufactures, n.e.c.	3999	2.8
The following productivity rates are included herewith only as guidelines for use by regulatory agencies.		
Railroad transportation-revenue traffic	401	6.3
Trucking, except local	4213	2.3
Air transportation	451	8.5
Petroleum pipelines	461	10.0
Electric utilities	491	7.0
Gas utilities	492	5.4
Gas and electric utilities	493	6.4

[1] The standard industrial classification codes (SIC) shown in this appendix were taken from the Standard Industrial Classification Manual, 1967, which now is out of print. Copies of the 1972 manual are available from the U.S. Government Printing Office, Washington, D.C. 20402 (at a cost of $6.75 per copy). Appendix C of the 1972 manual contains the tables to convert 1972 SIC codes to 1967 SIC codes.

[2] Log-linear trend calculation of annual rate of productivity change over 12 years, 1958-69.

NOTE: N.e.c. means "not elsewhere classified."

[FR Doc.72-20205 Filed 11-20-72;12:35 pm]

Rulings—Internal Revenue Service, Department of the Treasury

[Cost of Living Council Ruling 1972-118]

EXEMPTION OF ORE BOUGHT FOR EXPORT

Cost of Living Council

Facts. X company certifies to its suppliers of ores, concentrates, and other nickel-containing materials that the sale of the nickel to be extracted from such materials is for export sale. The price paid to the supplier of the nickel-containing material is established only upon the export sale. X puts the extracted nickel into ingot form, rather than into finished products. The other metals extracted from the ore are not necessarily for export sale. The prices X pays for them are separately set from the price X pays for the nickel. Economic Stabilization Regulations, 6 CFR 101.34(d)(1) (1972) provides that exports, including products sold to a domestic purchaser who certifies that the product is for export, are exempt from the Economic Stabilization Program.

Issue. Does § 101.34(d)(1) of the Economic Stabilization Regulations apply so as to exempt from price controls the division between X company and its suppliers of the proceeds ultimately realized on the export sale of the nickel?

Ruling. Yes. Since the nickel contained in the ore purchased by X company has been separately priced from the other metals contained in the ore, and since X company has certified that it is to be exported, the price X company pays to its ore suppliers for the nickel component of the ore is exempt from the coverage of the Economic Stabilization Program. The fact that the nickel is removed from the ore and is cast into ingots through an extracting process, and the fact the price to be paid to the supplier of the ore is established only upon the export sale, do not alter the application of § 101.34(d)(1) which provides that exports, including products sold to a domestic purchaser who certifies that the product is for export, are exempt from the Economic Stabilization Program.

This ruling has been approved by the General Council of the Cost of Living Council.

Dated: November 16, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: November 16, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-20166 Filed 11-22-72;8:50 am]

[Price Commission Ruling 1972-280]

PROPER USE OF ALLOWABLE COSTS TO JUSTIFY PRICE INCREASES BY LOW PROFIT FIRMS

Price Commission Ruling

Facts. X manufacturing firm elected to raise the price of product Y under the low profit regulation, Economic Stabilization Regulations, 6 CFR 300.31 (1972), on July 1, 1972. The most recent price increase for product Y had been on June 1, 1972. During the period June 1, 1972, to September 1, 1972, X incurred an increase in allowable costs attributable to the manufacture of product Y. X wishes to increase its price for product Y in order to reflect the increase in allowable costs.

Issue. Can a firm which has increased the price for a product under § 300.31 subsequently increase the price for that item in order to reflect the allowable cost increases incurred since that price increase by applying the allowable cost increases to the price justified under § 300.31?

Ruling. No. However, if by using allowable cost increases incurred since the last price increase under Economic Stabilization Regulations, 6 CFR 300.12 (1972), the firm can cost justify the entire amount by which the product's new price is to exceed the base price or the price previously authorized under § 300.12 then the firm may charge the new price.

Section 300.31 provides that a low profit firm engaged in manufacturing may increase any of its prices by an amount reasonably calculated to result in a profit margin not exceeding that permitted by that section. However, "No manufacturer may in the course of any of its fiscal years increase the price of any of its products under this section by more than 8 percent of the base price or the price which was legally in effect on the day before the day on which the firm elected to be subject to this section, whichever is higher." Section 300.31(e), 37 F.R. 19378 (1972). Price Commission Ruling 1972-137, 37 F.R. 7998 (1972), states that § 300.31 is a relief provision and is intended to liberalize the regulations as to qualifying firms. Thus, X manufacturing firm is free to elect to use this provision. However, while this election is in effect, a cost justified increase cannot be added onto the increase allowed by the § 300.31 election. Such a cost justified increase will not be allowed unless all increases in the product's price above the base price or price previously authorized under § 300.12 are cost justified under the general rule set forth in § 300.12. The use of § 300.12 effectively revokes the prior election to use § 300.31 and the phrase, "allowable costs that it incurred since the last price increase," refers to the last price increase allowable under § 300.12.

If a firm is able to cost justify all increases in a product's price above its base price or the price previously authorized under § 300.12, the firm may reelect to apply § 300.31 to implement an increase in that product's price to the extent that the firm has not already instituted the 8 percent maximum price increase on the product during the particular fiscal year.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: November 17, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: November 17, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-20167 Filed 11-22-72;8:50 am]

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Power Transmission and Distribution; Use of Helicopters; Aerial Lifts; Sanitation Facilities for Mobile Crews

On January 20, 1972, the Construction Safety Advisory Committee submitted its recommendations to the Assistant Secretary for Occupational Safety and

Health concerning the promulgation of occupational safety and health regulations for power transmission and distribution lines and equipment, use of helicopters in construction, aerial lifts, and for sanitation facilities for mobile crews.

On May 10, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 9440) inviting interested persons to submit both orally and in writing, data, views, and arguments concerning the proposal.

Pursuant to the notice of rule making, a legislative-type hearing was held on June 27 and 28, 1972, for the purpose of receiving oral data, views, and arguments concerning the proposed regulations. On or about August 23, 1972, the presiding hearing examiner certified the record of the proceeding. In brief, the record includes transcripts of the meetings of the Advisory Committee, prehearing written comments, a transcript of the oral presentations made at the hearing, and numerous exhibits received during the course of the hearing or within the time period allowed after the close of the hearing for the submission of exhibits.

The proposed standards dealt primarily with: (1) The use of helicopters in construction; (2) the use of aerial lifts; (3) the construction of, or the alteration, conversion, or improvement of existing power transmission and distribution lines and equipment.

Each of these major proposals elicited numerous comments, all of which have been carefully examined and considered.

I. HELICOPTERS

A. *Applicability of FAA regulations.* The comments point out that there is some confusion with regard to the applicability of FAA regulations. The adopted standard has been modified to clearly state that it is expected that the applicable FAA regulations would be complied with, although there will be no duplication of FAA regulations here.

B. *Static charge.* The proposed § 1926.551(k) would require that any static charge on the load be dissipated with a grounding device before ground personnel are permitted to touch the suspended load.

Numerous objections and alternative proposals have been made, with regard to the required grounding of the rotorcraft load. In summary, it is recommended that ground personnel be permitted to use rubber gloves for insulation and protection from the static charge encountered in releasing loads from the helicopters. These recommendations point out that the use of rubber gloves is an alternative to grounding of the load.

No one questions the need to protect employees from the static charge associated with the hovering rotorcraft. Objections are made to the required grounding of the rotocraft for protection of employees from the static charge. Some of the objections state that in many rocky or arid areas it is difficult to obtain a satisfactory ground. Others point out that the grounding of the load, which requires an employee to connect the ground lead to the suspended load, will expose employees to additional hazards. One such hazard is that ground leads may be drawn up into the rotor. It is argued that the alternative, which would allow the ground personnel to wear rubber gloves as insulation from the static charge, would be less hazardous in situations where ground rods and long ground leads are necessary for grounding, and could prevent employees from tripping over the rods.

It is concluded that the alternative use of rubber gloves by ground personnel for protection from the static charge may be more adequate or less hazardous than the use of a grounding device under certain operating conditions. Therefore, since it is undisputed that protection of employees from the static charge associated with the hovering rotorcraft is necessary for the safety of employees and that rubber gloves may be used as insulation from the static charge, the proposal is modified accordingly to permit the use of rubber gloves by ground personnel in helicopter operations as an alternative to the use of a grounding device on the load.

II. AERIAL LIFTS

A. *Compliance with ANSI A92.2–1969.* Under the terms of the proposed § 1926.556(a) all aerial lift equipment acquired by an employer after the effective date of the standard would have to comply with the American National Standards Institute (ANSI) A92.2–1969 "Vehicle-Mounted Elevating and Rotating Work Platforms" standard, including the appendix thereof. Vehicles acquired before the effective date of the standard would be allowed to be retained in service, even though such vehicles may not meet the ANSI A92.2–1969 standard, until January 1, 1976.

The proposed delay in the effective date for the modification of equipment acquired before the effective date of this section that does not meet the ANSI A92.2–1969 standard is primarily based upon the recommendations of the Construction Safety Advisory Committee that such a period of time is necessary for the modification of equipment acquired before the effective date of this section.

Comments were received supporting the delay in effective date. However, at least one comment takes exception to the proposed delay and recommends that because of the safety factors involved, all equipment should be required to conform to the ANSI A92.2–1969 standard within 1 year of the effective date of this section. Further justification for the recommendations is said to be based upon the fact that the ANSI standard has been in existence since 1969.

In considering the comments opposing and supporting the proposal the Advisory Committee's recommendation is accepted as a reasonable estimate of the time required for the modifications.

However, the importance of upper and lower controls (dual controls are prescribed by ANSI A92.2–1969) for articulating and extensible boom platforms, designed primarily as personnel carriers, is deemed of sufficient magnitude to require their use on all such equipment upon the effective date of Subpart V. Therefore no extended delay in effective date is provided for these items. In addition all aerial lifts used for bare-hand live-line work covered by Subpart V of 29 CFR Part 1926 must have dual controls (upper and lower). This requirement also takes effect upon the effective date of Subpart V.

B. *Electrical tests.* Many persons point out that high voltage testing of insulated aerial lift devices may be conducted with a d.c. test as an equivalent to the proposed a.c. test. It is urged that both tests provide the safety protection sought with varying degrees of accuracy.

The recommendations have merit and the proposed standard has been modified accordingly.

C. *Bursting safety factor.* The proposed standard would have required a bursting safety factor of 4 to 1 for all hydraulic and pneumatic components of aerial lifts.

The comments make a counterproposal to exclude aerial lift components such as hose assemblies and metal tubing from the required bursting safety factor of 4 to 1. One comment points out that these necessary components are not critical to the safety of employees. The comment recommends that noncritical components be required to have a safety factor of only 2 to 1. Another comment objects to the proposed bursting safety factor on the ground that the noncritical components are not generally available with bursting pressures at the 4-to-1 level without the use of oversized designs.

The adopted standard takes the objections into consideration. It requires a bursting safety factor of 4 to 1 for all critical hydraulic and pneumatic components are required by the provisions of ANSI A92.2–1969. The standard defines the critical components of aerial lift devices in order that a precise delineation can be made between critical and noncritical components. The standard has been modified to permit noncritical components to have a minimum bursting safety factor of 2 to 1.

D. *Field modification.* Comments indicate that the proposed aerial lift requirements are too restrictive in that they make no provision for so-called "field modifications" of such equipment. It is argued that often modifications actually improve employee safety in performing specialized tasks for which there is no specially designed equipment. It is recommended that field modifications be authorized if the modifications are approved by a qualified engineer or the manufacturer.

Comments opposing the addition of a "field-modification" provision focus on the lack of specific criteria for determining who would be qualified to give the approval, and the fact that changes may make the equipment dangerous.

It is concluded that field modifications should be allowed subject to the condition that either the manufacturer of the

equipment or similarly qualified entities certify in writing that the modifications are in conformity with all applicable provisions of ANSI A92.2–1969 and are at least as safe as the equipment was before modification.

These conditions not only preserve the safety of the equipment, but in cases of old equipment, may even improve the safety of such equipment by requiring the modifications to adhere to applicable ANSI A92.2–1969 standards.

III. Power Transmission and Distribution Lines and Equipment

A. *Applicability.* The proposed occupational safety and health standards contained in Subpart V are applicable to the construction of electric transmission and distribution lines and equipment. Some comments were received which recommended that the standards be extended to maintenance work. The comments go beyond the subject matter of this proceeding which is addressed to the erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of existing transmission and distribution lines and equipment.

B. *Switches and disconnectors.* The proposed § 1926.950(d)(1)(ii) would require notification and assurance from the employee designated for this purpose that all switches and disconnectors through which electric energy may be supplied to the particular section of the line or equipment to be worked on have been rendered inoperable, deenergized, and plainly tagged indicating that men are at work.

Objections point out that certain types of disconnecting devices, such as single blade switches, are so designed that the switches cannot be rendered inoperable by any satisfactory method. One comment explains that certain switches cannot be rendered inoperable because the design of the switches prevents the removal of the switch blades, which are permanently attached to one end of the switch. The comments suggest requiring only the tagging of such switches in order to protect employees from the accidental closing of these switches. It is contended that proper tagging procedures without rendering the switches inoperable is a safe procedure that is accepted and verified by years of operating experience.

It is concluded that the proper tagging of switches and disconnectors, which, because of their design cannot be rendered inoperable, is a more appropriate safety procedure than possibly makeshift attempts to render such switches inoperable.

C. *Hydraulic fluids.* The proposed § 1926.950(i) would have required that all hydraulic fluids used in derrick trucks, aerial lifts, or hydraulic tools used on or around energized lines and equipment be of an insulating type.

Numerous comments assert that to require hydraulic fluids of an insulating type in powered hydraulic handtools would conflict with the provisions of 29 CFR 1926.302(d)(1) which requires fire-resistant fluids approved under Schedule 30 of the U.S. Bureau of Mines, Department of Interior (30 CFR Part 35) to be used in such tools. It is asserted that a hydraulic fluid containing both the necessary insulating characteristics and fire resistant characteristics is not generally available.

In order to avoid the apparent conflict it is determined that hydraulic handtools used on or near energized lines and equipment need not comply with the provisions of 29 CFR 1926.302(d)(1), but instead must be supplied with an insulating-type hydraulic fluid.

In addition, the standard is clarified to require such fluids only in insulated sections of the derrick trucks, aerial lifts, or hydraulic tools. Thus, the standard does not require that an aerial lift's hydraulic brake fluid be of an insulating type.

D. *Backup warning devices.* The proposed § 1926.952(a)(3) would have required audible backup warning devices on utility vehicles as provided in 29 CFR 1926.601(b)(4).

Several persons object to the proposal on the ground that it is more restrictive for utility trucks than the general requirements for construction trucks. It is contended that the same alternatives to backup warning devices provided for construction trucks would adequately protect the safety of employees using utility trucks.

The objections are based on a misunderstanding of the proposal. The adopted standard makes it clear that only utility trucks having an obstructed view to the rear need have either a reverse signal alarm audible above the surrounding noise level, or an observer to signal when it is safe to back up the vehicle.

E. *Material handling*—(1) *Storage.* The proposed § 1926.953(c) would prohibit the storage of materials and equipment under or near energized buses, energized lines or energized equipment, if it is practical to store such materials elsewhere. The proposal would have required that extreme caution be exercised when moving materials near energized buses, lines or equipment and that the clearances in Table V–1 of Subpart V be maintained during any such material handling.

Comments point out that hazards are often created by such storage; and it is recommended that all such storage be prohibited by the standard.

While the standard as proposed and adopted recognizes the hazards involved in storing materials under or near energized buses, lines and equipment, it also takes into account the fact that under certain conditions it may not be feasible to store materials elsewhere. This is especially true during work in congested urban areas. However, it is intended that storage of materials under or near energized buses, lines and equipment will be the exception and that every effort will be made to store materials away from such facilities. It should also be emphasized that the standard requires that whenever storage of materials fall within the exception, the clearances of Table V–1 must be complied with.

(2) *Attaching the load.* The proposal would have prohibited the wrapping of the hoist rope around the load.

It is argued that for purposes of setting or removing poles the practice of wrapping the hoist rope around the pole actually provides greater safety than the utilization of other methods.

An exception to the general prohibition against wrapping the hoist rope around the load is adopted. For purposes of setting and removing poles such a practice can be used without affecting the safety of the employees.

F. *Grounding for protection of employees—New Construction.* The proposed § 1926.954(b) would permit new construction to be treated and worked as deenergized provided adequate clearance was maintained and the lines and equipment were grounded.

Comments objecting to the proposal argue that new lines and equipment are constructed in remote areas where there is no possibility of to accidental contact with other energized lines and equipment beacuse there are none presently located in the area. It is recommended that new lines and equipment be treated and worked as deenergized where either the hazard of induced voltage is not present and adequate clearance is maintained or the lines and equipment are grounded.

The contentions have merit. It must be emphasized, however, that the provisions are intended to apply in those circumstances where the hazards of induced voltage and contact with energized lines and equipment are not present.

G. *Overhead lines*—(1) *Metal tower construction.* The proposed § 1926.955(b)(6)(iii) would have required that the tower section be adequately secured at each leg connection before the load line is detached from the tower.

Several written comments point out that a tower section is adequately secured when only three legs of a four-leg tower have been fitted and that the load line may be detached prior to securing the fourth leg. It is recommended that detaching of the load line after the tower section has been adequately secured be permitted. The contentions have merit and the adopted standard has been modified accordingly.

(2) *Pulling tension.* The proposed § 1926.955(c)(7)(ii) would have required a safety factor at least three times the maximum pulling tension for stringing lines, pulling lines, sock connections and all load-bearing hardware and accessories.

As adopted, the standard relies upon the load ratings of the manufacturer.

H. *Underground lines*—(1) *Guarding and ventilating street openings used for access to underground electric lines or equipment.* The proposed § 1926.956(a) would have required that when work was to be performed in street openings such as manholes or unvented vaults that the atmosphere be tested for harmful gases and fumes before entry.

Several comments point out the difficulties and practical problems in testing for all possible gases and fumes. In addition, the comments emphasize that if adequate forced ventilation were maintained in the manholes or unvented vaults there would be no danger from fumes or gases. Recommendations focus on changing the provisions to require

testing only when working in unventilated vaults or unvented manholes.

Comments supporting the proposal argue that testing be done even in openings with adequate ventilation because of possible failure in the effectiveness of the venting system.

It is concluded that it is not feasible to test for the presence of all harmful fumes or gases and that such tests are not necessary if adequate forced ventilation is maintained.

(2) *Work in manholes.* The proposed § 1926.956(b) would have required an additional employee in the immediate vicinity of the manhole opening, who is available to render assistance to the employee within the manhole if such assistance were required.

Some objections to the proposal point out that two-man crews are commonly used to perform work in manholes with one employee providing assistance from the surface who may occasionally enter the manhole to help with work such as bending cables or lifting conductors. It is recommended that the second man be permitted to enter the manhole to periodically assist in the work, provided there is constant communication with employees in other manholes or on the surface. It is argued that an employee, in addition to a crew, may be unnecessary since one of the crew members would be available for assistance on the surface, if necessary.

Some comments recommend that an additional employee remain on the surface and be in constant communication with the employee in the manhole. In support of this recommendation, one comment points out that if the additional employee is permitted to enter the manhole and an emergency arises in the manhole, he will not be available to render assistance from the surface. Others object to the requirement of an additional employee because it is misleading, and recommend that an employee should be stationed on the surface in the immediate vicinity to render assistance when necessary.

It is not disputed that an employee should be available in the immediate vicinity to render assistance when necessary. The dispute centers around the requirement that an additional employee be provided. The requirement that an additional employee be provided has been deleted. It is concluded that the safety of employees is protected provided an employee is available in the immediate vicinity to render emergency assistance, whether or not he is a member of the work crew or is used for rescue purposes only. Consideration has been given to the requirement that this employee always remain on the surface in the immediate vicinity of the manhole. However, the necessity for this employee to occasionally and briefly enter the manhole for work purposes is also recognized.

The issues discussed above are believed to be the significant issues raised in this rule making proceeding. There were other issues presented, the disposition of which and the reasons therefor should be apparent from the adopted standard.

Accordingly, after consideration of all materials presented and pursuant to sections 6(b) and 8(g) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1600; 29 U.S.C. 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96; 40 U.S.C. 333), 29 CFR Part 1911, and Secretary of Labor's Order No. 12–71 (36 F.R. 8754), Parts 1910 and 1926 of Title 29 of the Code of Federal Regulations are amended as set forth below.

Effective date. Except as provided in the new §1926.556(a) and in the new § 1926.959(a), these amendments shall become effective 60 days following publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 17th day of November 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

A. Amendments to Part 1910 of Title 29, Code of Federal Regulations:

1. Section 1910.12 is amended by adding thereto a new paragraph (d) reading as follows:

§ 1910.12 Construction work.

* * * * *

(d) For the purposes of this part, to the extent that it may not already be included in paragraph (b) of this section, "construction work" includes the erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of the existing transmission and distribution lines and equipment.

B. Amendments to Part 1926 of Title 29, Code of Federal Regulations:

1. Section 1926.51 is amended by adding thereto a new paragraph (c)(4) reading as follows:

§ 1926.51 Sanitation.

* * * * *

(c) * * *

(4) The requirements of this paragraph (c) for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

* * * * *

2. In § 1926.400, paragraph (a) is revised to read as follows:

§ 1926.400 General requirements.

(a) All electrical work, installation, and wire capacities shall be in accordance with the pertinent provisions of the National Electrical Code, NFPA 70–1971; ANSI C1–1971 (Rev. of 1968), unless otherwise provided by regulations of this part.

* * * * *

3. In § 1926.451, paragraph (f) is revised to read as follows:

§ 1926.451 Scaffolding.

* * * * *

(f) *Elevating and rotating work platforms.* Applicable requirements of American National Standards Institute A92.2–1969, Vehicle Mounted Elevating and Rotating Work Platforms, shall be complied with for such equipment, as required by the provisions of § 1926.556.

* * * * *

4. Section 1926.551 is revised to read as follows:

§ 1926.551 Helicopters.

(a) *Helicopter regulations.* Helicopter cranes shall be expected to comply with any applicable regulations of the Federal Aviation Administration.

(b) *Briefing.* Prior to each day's operation a briefing shall be conducted. This briefing shall set forth the plan of operation for the pilot and ground personnel.

(c) *Slings and tag lines.* Load shall be properly slung. Tag lines shall be of a length that will not permit their being drawn up into rotors. Pressed sleeve, swedged eyes, or equivalent means shall be used for all freely suspended loads to prevent hand splices from spinning open or cable clamps from loosening.

(d) *Cargo hooks.* All electrically operated cargo hooks shall have the electrical activating device so designed and installed as to prevent inadvertent operation. In addition, these cargo hooks shall be equipped with an emergency mechanical control for releasing the load. The hooks shall be tested prior to each day's operation to determine that the release functions properly, both electrically and mechanically.

(e) *Personal protective equipment.* (1) Personal protective equipment for employees receiving the load shall consist of complete eye protection and hard hats secured by chinstraps.

(2) Loose-fitting clothing likely to flap in the downwash and thus be snagged on hoist line, shall not be worn.

(f) *Loose gear and objects.* Every practical precaution shall be taken to provide for the protection of the employees from flying objects in the rotor downwash. All loose gear within 100 feet of the place of lifting the load, depositing the load, and all other areas susceptible to rotor downwash shall be secured or removed.

(g) *Housekeeping.* Good housekeeping shall be maintained in all helicopter loading and unloading areas.

(h) *Operator responsibility.* The helicopter operator shall be responsible for size, weight, and manner in which loads are connected to the helicopter. If, for any reason, the helicopter operator believes the lift cannot be made safely, the lift shall not be made.

(i) *Hooking and unhooking loads.* When employees are required to perform work under hovering craft a safe means of access shall be provided for employees to reach the hoist line hook and engage or disengage cargo slings. Employees shall not perform work under hovering craft except when necessary to hook or unhook loads.

(j) *Static charge.* Static charge on the suspended load shall be dissipated with a grounding device before ground personnel touch the suspended load, or protective rubber gloves shall be worn by all ground personnel touching the suspended load.

(k) *Weight limitation.* The weight of an external load shall not exceed the manufacturer's rating.

(l) *Ground lines.* Hoist wires or other gear, except for pulling lines or conductors that are allowed to "pay out" from a container or roll off a reel shall not be attached to any fixed ground structure, or allowed to foul on any fixed structure.

(m) *Visibility.* When visibility is reduced by dust or other conditions, ground personnel shall exercise special caution to keep clear of main and stabilizing rotors. Precautions shall also be taken by the employer to eliminate as far as practical reduced visibility.

(n) *Signal systems.* Signal systems between aircrew and ground personnel shall be understood and checked in advance of hoisting the load. This applies to either radio or hand signal systems. Hand signals shall be as shown in Figure N–1.

(o) *Approach distance.* No unauthorized person shall be allowed to approach within 50 feet of the helicopter when the rotor blades are turning.

(p) *Approaching helicopter.* Whenever approaching or leaving a helicopter with blades rotating, all employees shall remain in full view of the pilot and keep in a crouched position. Employees shall avoid the area from the cockpit or cabin rearward unless authorized by the helicopter operator to work there.

(q) *Personnel.* Sufficient ground personnel shall be provided when required for safe helicopter loading and unloading operations.

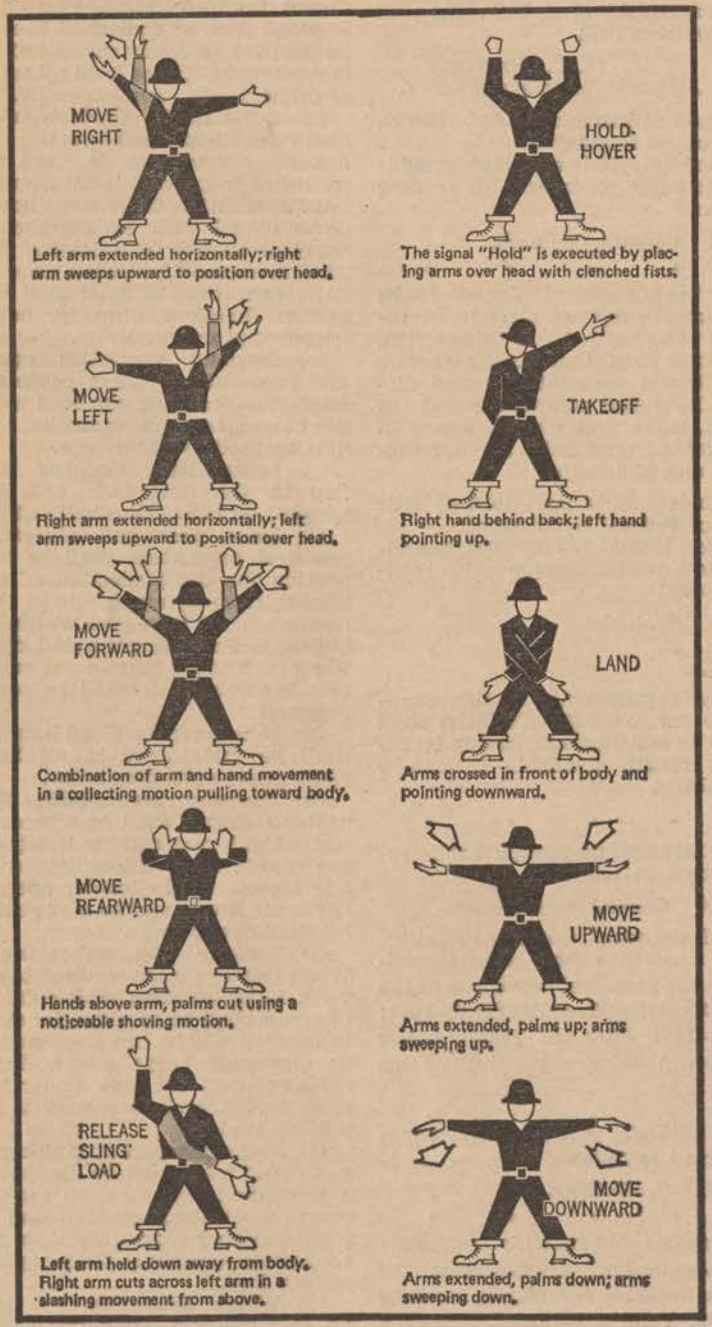

FIGURE N-1 HELICOPTER HAND SIGNAL

(r) *Communications.* There shall be constant reliable communication between the pilot, and a designated employee of the ground crew who acts as a signalman during the period of loading and unloading. This signalman shall be distinctly recognizable from other ground personnel.

(s) *Fires.* Open fires shall not be permitted in an area that could result in such fires being spread by the rotor downwash.

5. Part 1926 is amended by adding thereto a new § 1926.556 reading as follows:

§ 1926.556 Aerial lifts.

(a) *General requirements.* (1) Unless otherwise provided in this section aerial lifts acquired for use on or after the effective date of this section shall be designed and constructed in conformance with the applicable requirements of the American National Standard for "Vehicle Mounted Elevating and Rotating Work Platforms," (ANSI) ANSI A92.2–1969, including appendix. Aerial lifts acquired before the effective date of this section, which do not meet the requirements of ANSI A92.2–1969, may not be used after January 1, 1976, unless they shall have been modified so as to conform with the applicable design and construction requirements of ANSI A92.2–1969. Aerial lifts include the following types of vehicle-mounted aerial devices used to elevate personnel to jobsites above ground: (i) Extensible boom platforms, (ii) aerial ladders, (iii) articulating boom platforms, (iv) vertical towers, and (v) a combination of any of the above. Aerial equipment may be made of metal, wood, fiberglass reinforced plastic (FRP), or other material, may be powered or manually operated; and are deemed to be aerial lifts whether or not they are capable of rotating about a substantially vertical axis.

(2) Aerial lifts may be "field modified" for uses other than those intended by the manufacturer provided the modification has been certified in writing by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory, to be in conformity with all applicable provisions of ANSI A92.2–1969 and this section and to be at least as safe as the equipment was before modification.

(b) *Specific requirements*—(1) *Ladder trucks and tower trucks.* Aerial ladders shall be secured in the lower traveling position by the locking device on top of the truck cab, and the manually operated device at the base of the ladder before the truck is moved for highway travel.

(2) *Extensible and articulating boom platforms.* (i) Lift controls shall be tested each day prior to use to determine that such controls are in safe working condition.

(ii) Only authorized persons shall operate an aerial lift.

(iii) Belting off to an adjacent pole, structure, or equipment while working from an aerial lift shall not be permitted.

(iv) Employees shall always stand firmly on the floor of the basket, and

shall not sit or climb on the edge of the basket or use planks, ladders, or other devices for a work position.

(v) A body belt shall be worn and a lanyard attached to the boom or basket when working from an aerial lift.

(vi) Boom and basket load limits specified by the manufacturer shall not be exceeded.

(vii) The brakes shall be set and when outriggers are used, they shall be positioned on pads or a solid surface. Wheel chocks shall be installed before using an aerial lift on an incline, provided they can be safely installed.

(viii) An aerial lift truck shall not be moved when the boom is elevated in a working position with men in the basket, except for equipment which is specifically designed for this type of operation in accordance with the provisions of subparagraphs (1) and (2) of paragraph (a) of this section.

(ix) Articulating boom and extensible boom platforms, primarily designed as personnel carriers, shall have both platform (upper) and lower controls. Upper controls shall be in or beside the platform within easy reach of the operator. Lower controls shall provide for overriding the upper controls. Controls shall be plainly marked as to their function. Lower level controls shall not be operated unless permission has been obtained from the employee in the lift, except in case of emergency.

(x) Climbers shall not be worn while performing work from an aerial lift.

(xi) The insulated portion of an aerial lift shall not be altered in any manner that might reduce its insulating value.

(xii) Before moving an aerial lift for travel, the boom(s) shall be inspected to see that it is properly cradled and outriggers are in stowed position except as provided in subdivision (viii) of this subparagraph.

(3) *Electrical tests.* All electrical tests shall conform to the requirements of ANSI A92.2–1969 section 5. However equivalent d.c. voltage tests may be used in lieu of the a.c. voltage specified in A92.2–1969; d.c. voltage tests which are approved by the equipment manufacturer or equivalent entity shall be considered an equivalent test for the purpose of this subparagraph (3).

(4) *Bursting safety factor.* The provisions of the American National Standards Institute standard ANSI A92.2–1969, section 4.9 Bursting Safety Factor shall apply to all critical hydraulic and pneumatic components. Critical components are those in which a failure would result in a free fall or free rotation of the boom. All noncritical components shall have a bursting safety factor of at least 2 to 1.

(5) *Welding standards.* All welding shall conform to the following standards as applicable:

(i) Standard Qualification Procedure, AWS B3.0–41.

(ii) Recommended Practices for Automotive Welding Design, AWS D8.4–61.

(iii) Standard Qualification of Welding Procedures and Welders for Piping and Tubing, AWS D10.9–69.

(iv) Specifications for Welding Highway and Railway Bridges, AWS D2.0–69.

6. Part 1926 is hereby amended by adding thereto a new Subpart V reading as follows:

Subpart V—Power Transmission and Distribution

Sec.

1926.950 General requirements.
1926.951 Tools and protective equipment.
1926.952 Mechanical equipment.
1926.953 Material handling.
1926.954 Grounding for protection of employees.
1926.955 Overhead lines.
1926.956 Underground lines.
1926.957 Construction in energized substations.
1926.958 External load helicopters.
1926.959 Lineman's body belts, safety straps, and lanyards.
1926.960 Definitions for Subpart V.

AUTHORITY: The provisions of this Subpart V issued under section 6(b) and 8(g), 84 Stat. 1593, 1600; 29 U.S.C. 655, 657; sec. 107, 83 Stat. 96; 40 U.S.C. 333.

Subpart V—Power Transmission and Distribution

§ 1926.950 General requirements.

(a) *Application.* The occupational safety and health standards contained in this Subpart V shall apply to the construction of electric transmission and distribution lines and equipment.

(1) As used in this Subpart V the term "construction" includes the erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of existing electric transmission and distribution lines and equipment.

(2) Existing electric transmission and distribution lines and electrical equipment need not be modified to conform to the requirements of applicable standards in this Subpart V, until such work as described in subparagraph (1) of this paragraph is to be performed on such lines or equipment.

(3) The standards set forth in this Subpart V provide minimum requirements for safety and health. Employers may require adherence to additional standards which are not in conflict with the standards contained in this Subpart V.

(b) *Initial inspections, tests, or determinations.* (1) Existing conditions shall be determined before starting work, by an inspection or a test. Such conditions shall include, but not be limited to, energized lines and equipment, conditions of poles, and the location of circuits and equipment, including power and communication lines, CATV and fire alarm circuits.

(2) Electric equipment and lines shall be considered energized until determined to be deenergized by tests or other appropriate methods or means.

(3) Operating voltage of equipment and lines shall be determined before working on or near energized parts.

(c) *Clearances.* The provisions of subparagraph (1) or (2) of this paragraph shall be observed.

(1) No employee shall be permitted to approach or take any conductive object, without an approved insulating handle, closer to exposed energized parts than shown in Table V–1, unless:

(i) The employee is insulated or guarded from the energized part (gloves or gloves with sleeves rated for the voltage involved shall be considered insulation of the employee from the energized part), or

(ii) The energized part is insulated or guarded from him and any other conductive object at a different potential, or

(iii) The employee is isolated, insulated, or guarded from any other conductive object(s), as during live-line bare-hand work.

(2) (i) The minimum working distance and minimum clear hot stick distances stated in Table V–1 shall not be violated. The minimum clear hot stick distance is that for the use of live-line tools held by linemen when performing live-line work.

(ii) Conductor support tools, such as link sticks, strain carriers, and insulator cradles, may be used: *Provided,* That the clear insulation is at least as long as the insulator string or the minimum distance specified in Table V–1 for the operating voltage.

TABLE V–1

ALTERNATING CURRENT—MINIMUM DISTANCES

Voltage range (phase to phase) kilovolt	*Minimum working and clear hot stick distance*
2.1 to 15	2 ft. 0 in.
15.1 to 35	2 ft. 4 in.
35.1 to 46	2 ft. 6 in.
46.1 to 72.5	3 ft. 0 in.
72.6 to 121	3 ft. 4 in.
138 to 145	3 ft. 6 in.
161 to 169	3 ft. 8 in.
230 to 242	5 ft. 0 in.
345 to 362	[1] 7 ft. 0 in.
500 to 552	[1] 11 ft. 0 in.
700 to 765	[1] 15 ft. 0 in.

[1] NOTE: For 345–362 kv., 500–552 kv., and 700–765 kv., the minimum working distance and the minimum clear hot stick distance may be reduced provided that such distances are not less than the shortest distance between the energized part and a grounded surface.

(d) *Deenergizing lines and equipment.* (1) When deenergizing lines and equipment operated in excess of 600 volts, and the means of disconnecting from electric energy is not visibly open or visibly locked out, the provisions of subdivisions (i) through (vii) of this subparagraph shall be complied with:

(i) The particular section of line or equipment to be deenergized shall be clearly identified, and it shall be isolated from all sources of voltage.

(ii) Notification and assurance from the designated employee shall be obtained that:

(*a*) All switches and disconnectors through which electric energy may be supplied to the particular section of line or equipment to be worked have been deenergized;

(*b*) All switches and disconnectors are plainly tagged indicating that men are at work;

(*c*) And that where design of such switches and disconnectors permits, they have been rendered inoperable.

(iii) After all designated switches and disconnectors have been opened, rendered inoperable, and tagged, visual inspection or tests shall be conducted to insure that equipment or lines have been deenergized.

(iv) Protective grounds shall be applied on the disconnected lines or equipment to be worked on.

(v) Guards or barriers shall be erected as necessary to adjacent energized lines.

(vi) When more than one independent crew requires the same line or equipment to be deenergized, a prominent tag for each such independent crew shall be placed on the line or equipment by the designated employee in charge.

(vii) Upon completion of work on deenergized lines or equipment, each designated employee in charge shall determine that all employees in his crew are clear, that protective grounds installed by his crew have been removed, and he shall report to the designated authority that all tags protecting his crew may be removed.

(2) When a crew working on a line or equipment can clearly see that the means of disconnecting from electric energy are visibly open or visibly locked-out, the provisions of subdivisions (i), and (ii) of this subparagraph shall apply:

(i) Guards or barriers shall be erected as necessary to adjacent energized lines.

(ii) Upon completion of work on deenergized lines or equipment, each designated employee in charge shall determine that all employees in his crew are clear, that protective grounds installed by his crew have been removed, and he shall report to the designated authority that all tags protecting his crew may be removed.

(e) *Emergency procedures and first aid.* (1) The employer shall provide training or require that his employees are knowledgeable and proficient in:

(i) Procedures involving emergency situations, and

(ii) First-aid fundamentals including resuscitation.

(2) In lieu of subparagraph (1) of this paragraph the employer may comply with the provisions of § 1926.50(c) regarding first-aid requirements.

(f) *Night work.* When working at night, spotlights or portable lights for emergency lighting shall be provided as needed to perform the work safely.

(g) *Work near and over water.* When crews are engaged in work over or near water and when danger of drowning exists, suitable protection shall be provided as stated in § 1926.104, or § 1926.105, or § 1926.106.

(h) *Sanitation facilities.* The requirements of § 1926.51 of Subpart D of this part shall be complied with for sanitation facilities.

(i) *Hydraulic fluids.* All hydraulic fluids used for the insulated sections of derrick trucks, aerial lifts, and hydraulic tools which are used on or around energized lines and equipment shall be of the insulating type. The requirements for fire resistant fluids of § 1926.302(d)(1) do not apply to hydraulic tools covered by this paragraph.

§ 1926.951 Tools and protective equipment.

(a) *Protective equipment.* (1) (i) Rubber protective equipment shall be in accordance with the provisions of the American National Standards Institute (ANSI), ANSI J6 series, as follows:

Item	*Standard*
Rubber insulating gloves	J6.6–1971.
Rubber matting for use around electric apparatus	J6.7–1935 (R1971).
Rubber insulating blankets	J6.4–1971.
Rubber insulating hoods	J6.2–1950 (R1971).
Rubber insulating line hose	J6.1–1950 (R1971).
Rubber insulating sleeves	J6.5–1971.

(ii) Rubber protective equipment shall be visually inspected prior to use.

(iii) In addition, an "air" test shall be performed for rubber gloves prior to use.

(iv) Protective equipment of material other than rubber shall provide equal or better electrical and mechanical protection.

(2) Protective hats shall be in accordance with the provisions of ANSI Z89.2–1971 Industrial Protective Helmets for Electrical Workers, Class B, and shall be worn at the jobsite by employees who are exposed to the hazards of falling objects, electric shock, or burns.

(b) *Personal climbing equipment.* (1) Body belts with straps or lanyards shall be worn to protect employees working at elevated locations on poles, towers, or other structures except where such use creates a greater hazard to the safety of the employees, in which case other safeguards shall be employed.

(2) Body belts and safety straps shall meet the requirements of § 1926.959. In addition to being used as an employee safeguarding item, body belts with approved tool loops may be used for the purpose of holding tools. Body belts shall be free from additional metal hooks and tool loops other than those permitted in § 1926.959.

(3) Body belts and straps shall be inspected before use each day to determine that they are in safe working condition.

(4) (i) Life lines and lanyards shall comply with the provisions of § 1926.104.

(ii) Safety lines are not intended to be subjected to shock loading and are used for emergency rescue such as lowering a man to the ground. Such safety lines shall be a minimum of one-half-inch diameter and three or four strand first-grade manila or its equivalent in strength (2,650 lb.) and durability.

(5) Defective ropes shall be replaced.

(c) *Ladders.* (1) Portable metal or conductive ladders shall not be used near energized lines or equipment except as may be necessary in specialized work such as in high voltage substations where nonconductive ladders might present a greater hazard than conductive ladders. Conductive or metal ladders shall be prominently marked as conductive and all necessary precautions shall be taken when used in specialized work.

(2) Hook or other type ladders used in structures shall be positively secured to prevent the ladder from being accidentally displaced.

(d) *Live-line tools.* (1) Only live-line tool poles having a manufacturer's certification to withstand the following minimum tests shall be used:

(i) 100,000 volts per foot of length for 5 minutes when the tool is made of fiberglass; or

(ii) 75,000 volts per foot of length for 3 minutes when the tool is made of wood; or

(iii) Other tests equivalent to subdivision (i) or (ii) of this subparagraph as appropriate.

(2) All live-line tools shall be visually inspected before use each day. Tools to be used shall be wiped clean and if any hazardous defects are indicated such tools shall be removed from service.

(e) *Measuring tapes or measuring ropes.* Measuring tapes or measuring ropes which are metal or contain conductive strands shall not be used when working on or near energized parts.

(f) *Handtools.* (1) Switches for all powered hand tools shall comply with § 1926.300(d).

(2) All portable electric handtools shall:

(i) Be equipped with three-wire cord having the ground wire permanently connected to the tool frame and means for grounding the other end; or

(ii) Be of the double insulated type and permanently labeled as "Double Insulated"; or

(iii) Be connected to the power supply by means of an isolating transformer, or other isolated power supply.

(3) All hydraulic tools which are used on or around energized lines or equipment shall use nonconducting hoses having adequate strength for the normal operating pressures. It should be noted that the provisions of § 1926.302(d)(2) shall also apply.

(4) All pneumatic tools which are used on or around energized lines or equipment shall:

(i) Have nonconducting hoses having adequate strength for the normal operating pressures, and

(ii) Have an accumulator on the compressor to collect moisture.

§ 1926.952 Mechanical equipment.

(a) *General.* (1) Visual inspections shall be made of the equipment to determine that it is in good condition each day the equipment is to be used.

(2) Tests shall be made at the beginning of each shift during which the equipment is to be used to determine that the brakes and operating systems are in proper working condition.

(3) No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:

(i) The vehicle has a reverse signal alarm audible above the surrounding noise level or:

(ii) The vehicle is backed up only when an observer signals that it is safe to do so.

(b) *Aerial lifts.* (1) The provisions of § 1926.556, Subpart N of this part, shall apply to the utilization of aerial lifts.

(2) When working near energized lines or equipment, aerial lift trucks shall be grounded or barricaded and considered

as energized equipment, or the aerial lift truck shall be insulated for the work being performed.

(3) Equipment or material shall not be passed between a pole or structure and an aerial lift while an employee working from the basket is within reaching distance of energized conductors or equipment that are not covered with insulating protective equipment.

(c) *Derrick trucks, cranes and other lifting equipment.* (1) All derrick trucks, cranes and other lifting equipment shall comply with Subpart N and O of this part except:

(i) As stated in § 1926.550(a)(15) (i) and (ii) relating to clearance (for clearances in this subpart see Table V–1) and

(ii) Derrick truck (electric line trucks) shall not be required to comply with § 1926.550 (a)(7)(vi), (a)(17), (b)(2), and (e).

(2) With the exception of equipment certified for work on the proper voltage, mechanical equipment shall not be operated closer to any energized line or equipment than the clearances set forth in § 1926.950(c) unless:

(i) An insulated barrier is installed between the energized part and the mechanical equipment, or

(ii) The mechanical equipment is grounded, or

(iii) The mechanical equipment is insulated, or

(iv) The mechanical equipment is considered as energized.

§ 1926.953 Material handling.

(a) *Unloading.* Prior to unloading steel, poles, cross arms and similar material, the load shall be thoroughly examined to ascertain if the load has shifted, binders or stakes have broken or the load is otherwise hazardous to employees.

(b) *Pole hauling.* (1) During pole hauling operations, all loads shall be secured to prevent displacement and a red flag shall be displayed at the trailing end of the longest pole.

(2) Precautions shall be exercised to prevent blocking of roadways or endangering other traffic.

(3) When hauling poles during the hours of darkness, illuminated warning devices shall be attached to the trailing end of the longest pole.

(c) *Storage.* (1) No materials or equipment shall be stored under energized bus, energized lines, or near energized equipment, if it is practical to store them elsewhere.

(2) When materials or equipment are stored under energized lines or near energized equipment, applicable clearances shall be maintained as stated in Table V–1; and extraordinary caution shall be exercised when moving materials near such energized equipment.

(d) *Tag line.* Where hazards to employees exist tag lines or other suitable devices shall be used to control loads being handled by hoisting equipment.

(e) *Oil filled equipment.* During construction or repair of oil filled equipment the oil may be stored in temporary containers other than these required in § 1926.152, such as pillow tanks.

(f) *Framing.* During framing operations, employees shall not work under a pole or a structure suspended by a crane, A-frame or similar equipment unless the pole or structure is adequately supported.

(g) *Attaching the load.* The hoist rope shall not be wrapped around the load. This provision shall not apply to electric construction crews when setting or removing poles.

§ 1926.954 Grounding for protection of employees.

(a) *General.* All conductors and equipment shall be treated as energized until tested or otherwise determined to be deenergized or until grounded.

(b) *New construction.* New lines or equipment may be considered deenergized and worked as such where:

(1) The lines or equipment are grounded, or

(2) The hazard of induced voltages is not present, and adequate clearances or other means are implemented to prevent contact with energized lines or equipment and the new lines or equipment.

(c) *Communication conductors.* Bare wire communication conductors on power poles or structures shall be treated as energized lines unless protected by insulating materials.

(d) *Voltage testing.* Deenergized conductors and equipment which are to be grounded shall be tested for voltage. Results of this voltage test shall determine the subsequent procedures as required in § 1926.950(d).

(e) *Attaching grounds.* (1) When attaching grounds, the ground end shall be attached first, and the other end shall be attached and removed by means of insulated tools or other suitable devices.

(2) When removing grounds, the grounding device shall first be removed from the line or equipment using insulating tools or other suitable devices.

(f) Grounds shall be placed between work location and all sources of energy and as close as practicable to the work location, or grounds shall be placed at the work location. If work is to be performed at more than one location in a line section, the line section must be grounded and short circuited at one location in the line section and the conductor to be worked on shall be grounded at each work location. The minimum distance shown in Table V–1 shall be maintained from ungrounded conductors at the work location. Where the making of a ground is impracticable, or the conditions resulting therefrom would be more hazardous than working on the lines or equipment without grounding, the grounds may be omitted and the line or equipment worked as energized.

(g) *Testing without grounds.* Grounds may be temporarily removed only when necessary for test purposes and extreme caution shall be exercised during the test procedures.

(h) *Grounding electrode.* When grounding electrodes are utilized, such electrodes shall have a resistance to ground low enough to remove the danger of harm to personnel or permit prompt operation of protective devices.

(i) *Grounding to tower.* Grounding to tower shall be made with a tower clamp capable of conducting the anticipated fault current.

(j) *Ground lead.* A ground lead, to be attached to either a tower ground or driven ground, shall be capable of conducting the anticipated fault current and shall have a minimum conductance of No. 2 AWG copper.

§ 1926.955 Overhead lines.

(a) *Overhead lines.* (1) When working on or with overhead lines the provisions of subparagraphs (2) through (8) of this paragraph shall be complied with in addition to other applicable provisions of this subpart.

(2) Prior to climbing poles, ladders, scaffolds, or other elevated structures, an inspection shall be made to determine that the structures are capable of sustaining the additional or unbalanced stresses to which they will be subjected.

(3) Where poles or structures may be unsafe for climbing, they shall not be climbed until made safe by guying, bracing, or other adequate means.

(4) Before installing or removing wire or cable, strains to which poles and structures will be subjected shall be considered and necessary action taken to prevent failure of supporting structures.

(5) (i) When setting, moving, or removing poles using cranes, derricks, gin poles, A-frames, or other mechanized equipment near energized lines or equipment, precautions shall be taken to avoid contact with energized lines or equipment, except in bare-hand live-line work, or where barriers or protective devices are used.

(ii) Equipment and machinery operating adjacent to energized lines or equipment shall comply with § 1926.952(c)(2).

(6) (i) Unless using suitable protective equipment for the voltage involved, employees standing on the ground shall avoid contacting equipment or machinery working adjacent to energized lines or equipment.

(ii) Lifting equipment shall be bonded to an effective ground or it shall be considered energized and barricaded when utilized near energized equipment or lines.

(7) Pole holes shall not be left unattended or unguarded in areas where employees are currently working.

(8) Tag lines shall be of a nonconductive type when used near energized lines.

(b) *Metal tower construction.* (1) When working in unstable material the excavation for pad- or pile-type footings in excess of 5 feet deep shall be either sloped to the angle of repose as required in § 1926.652 or shored if entry is required. Ladders shall be provided for access to pad- or pile-type footing excavations in excess of 4 feet.

(2) When working in unstable material provision shall be made for cleaning out auger-type footings without requiring an employee to enter the footing unless shoring is used to protect the employee.

(3) (i) A designated employee shall be used in directing mobile equipment adjacent to footing excavations.

(ii) No one shall be permitted to remain in the footing while equipment is being spotted for placement.

(iii) Where necessary to assure the stability of mobile equipment the location of use for such equipment shall be graded and leveled.

(4) (i) Tower assembly shall be carried out with a minimum exposure of employees to falling objects when working at two or more levels on a tower.

(ii) Guy lines shall be used as necessary to maintain sections or parts of sections in position and to reduce the possibility of tipping.

(iii) Members and sections being assembled shall be adequately supported.

(5) When assembling and erecting towers the provisions of subdivisions (i), (ii), and (iii) of this subparagraph shall be complied with:

(i) The construction of transmission towers and the erecting of poles, hoisting machinery, site preparation machinery, and other types of construction machinery shall conform to the applicable requirements of this part.

(ii) No one shall be permitted under a tower which is in the process of erection or assembly, except as may be required to guide and secure the section being set.

(iii) When erecting towers using hoisting equipment adjacent to energized transmission lines, the lines shall be deenergized when practical. If the lines are not deenergized, extraordinary caution shall be exercised to maintain the minimum clearance distances required by § 1926.950(c), including Table V–1.

(6) (i) Erection cranes shall be set on firm level foundations and when the cranes are so equipped outriggers shall be used.

(ii) Tag lines shall be utilized to maintain control of tower sections being raised and positioned, except where the use of such lines would create a greater hazard.

(iii) The loadline shall not be detached from a tower section until the section is adequately secured.

(iv) Except during emergency restoration procedures erection shall be discontinued in the event of high wind or other adverse weather conditions which would make the work hazardous.

(v) Equipment and rigging shall be regularly inspected and maintained in safe operating condition.

(7) Adequate traffic control shall be maintained when crossing highways and railways with equipment as required by the provisions of § 1926.200(g) (1) and (2).

(8) A designated employee shall be utilized to determine that required clearance is maintained in moving equipment under or near energized lines.

(c) *Stringing or removing deenergized conductors.* (1) When stringing or removing deenergized conductors, the provisions of subparagarph (2) through (12) of this paragraph shall be complied with.

(2) Prior to stringing operations a briefing shall be held setting forth the plan of operation and specifying the type of equipment to be used, grounding devices and procedures to be followed, crossover methods to be employed, and the clearance authorization required.

(3) Where there is a possibility of the conductor accidentally contacting an energized circuit or receiving a dangerous induced voltage buildup, to further protect the employee from the hazards of the conductor, the conductor being installed or removed shall be grounded or provisions made to insulate or isolate the employee.

(4) (i) If the existing line is deenergized, proper clearance authorization shall be secured and the line grounded on both sides of the crossover or, the line being strung or removed shall be considered and worked as energized.

(ii) When crossing over energized conductors in excess of 600 volts, rope nets or guard structures shall be installed unless provision is made to isolate or insulate the workman or the energized conductor. Where practical the automatic reclosing feature of the circuit interrupting device shall be made inoperative. In addition, the line being strung shall be grounded on either side of the crossover or considered and worked as energized.

(5) Conductors being strung in or removed shall be kept under positive control by the use of adequate tension reels, guard structures, tielines, or other means to prevent accidental contact with energized circuits.

(6) Guard structure members shall be sound and of adequate dimension and strength, and adequately supported.

(7) (i) Catch-off anchors, rigging, and hoists shall be of ample capacity to prevent loss of the lines.

(ii) The manufacturer's load rating shall not be exceeded for stringing lines, pulling lines, sock connections, and all load-bearing hardware and accessories.

(iii) Pulling lines and accessories shall be inspected regularly and replaced or repaired when damaged or when dependability is doubtful. The provisions of § 1926.251(c) (4) (ii) (concerning splices) shall not apply.

(8) Conductor grips shall not be used on wire rope unless designed for this application.

(9) While the conductor or pulling line is being pulled (in motion) employees shall not be permitted directly under overhead operations, nor shall any employee be permitted on the crossarm.

(10) A transmission clipping crew shall have a minimum of two structures clipped in between the crew and the conductor being sagged. When working on bare conductors, clipping and tying crews shall work between grounds at all times. The grounds shall remain intact until the conductors are clipped in, except on dead end structures.

(11) (i) Except during emergency restoration procedures, work from structures shall be discontinued when adverse weather (such as high wind or ice on structures) makes the work hazardous.

(ii) Stringing and clipping operations shall be discontinued during the progress of an electrical storm in the immediate vicinity.

(12) (i) Reel handling equipment, including pulling and braking machines, shall have ample capacity, operate smoothly, and be leveled and aligned in accordance with the manufacturer's operating instructions.

(ii) Reliable communications between the reel tender and pulling rig operator shall be provided.

(iii) Each pull shall be snubbed or dead ended at both ends before subsequent pulls.

(d) *Stringing adjacent to energized lines.* (1) Prior to stringing parallel to an existing energized transmission line a competent determination shall be made to ascertain whether dangerous induced voltage buildups will occur, particularly during switching and ground fault conditions. When there is a possibility that such dangerous induced voltage may exist the employer shall comply with the provisions of subparagraphs (2) through (9) of this paragraph in addition to the provisions of paragraph (c) of this § 1926.955, unless the line is worked as energized.

(2) When stringing adjacent to energized lines the tension stringing method or other methods which preclude unintentional contact between the lines being pulled and any employee shall be used.

(3) All pulling and tensioning equipment shall be isolated, insulated, or effectively grounded.

(4) A ground shall be installed between the tensioning reel setup and the first structure in order to ground each bare conductor, subconductor, and overhead ground conductor during stringing operations.

(5) During stringing operations, each bare conductor, subconductor, and overhead ground conductor shall be grounded at the first tower adjacent to both the tensioning and pulling setup and in increments so that no point is more than 2 miles from a ground.

(i) The grounds shall be left in place until conductor installation is completed.

(ii) Such grounds shall be removed as the last phase of aerial cleanup.

(iii) Except for moving type grounds, the grounds shall be placed and removed with a hot stick.

(6) Conductors, subconductors, and overhead ground conductors shall be grounded at all dead-end or catch-off points.

(7) A ground shall be located at each side and within 10 feet of working areas where conductors, subconductors, or overhead ground conductors are being spliced at ground level. The two ends to be spliced shall be bonded to each other. It is recommended that splicing be carried out on either an insulated platform or on a conductive metallic grounding mat bonded to both grounds. When a grounding mat is used, it is recommended that the grounding mat be roped off and an insulated walkway provided for access to the mat.

(8) (i) All conductors, subconductors, and overhead ground conductors shall be bonded to the tower at any isolated tower where it may be necessary to complete work on the transmission line.

(ii) Work on dead-end towers shall require grounding on all deenergized lines.

(iii) Grounds may be removed as soon as the work is completed: *Provided*, That the line is not left open circuited at the isolated tower at which work is being completed.

(9) When performing work from the structures, clipping crews and all others working on conductors, subconductors, or overhead ground conductors shall be protected by individual grounds installed at every work location.

(e) *Live-line bare-hand work.* In addition to any other applicable standards contained elsewhere in this subpart all live-line bare-hand work shall be performed in accordance with the following requirements.

(1) Employees shall be instructed and trained in the live-line bare-hand technique and the safety requirements pertinent thereto before being permitted to use the technique on energized circuits.

(2) Before using the live-line bare-hand technique on energized high-voltage conductors or parts, a check shall be made of:

(i) The voltage rating of the circuit on which the work is to be performed;

(ii) The clearances to ground of lines and other energized parts on which work is to be performed; and

(iii) The voltage limitations of the aerial-lift equipment intended to be used.

(3) Only equipment designed, tested, and intended for live-line bare-hand work shall be used.

(4) All work shall be personally supervised by a person trained and qualified to perform live-line bare-hand work.

(5) The automatic reclosing feature of circuit interrupting devices shall be made inoperative where practical before working on any energized line or equipment.

(6) Work shall not be performed during the progress of an electrical storm in the immediate vicinity.

(7) A conductive bucket liner or other suitable conductive device shall be provided for bonding the insulated aerial device to the energized line or equipment.

(i) The employee shall be connected to the bucket liner by use of conductive shoes, leg clips, or other suitable means.

(ii) Where necessary, adequate electrostatic shielding for the voltage being worked or conductive clothing shall be provided.

(8) Only tools and equipment intended for live-line bare-hand work shall be used, and such tools and equipment shall be kept clean and dry.

(9) Before the boom is elevated, the outriggers on the aerial truck shall be extended and adjusted to stabilize the truck and the body of the truck shall be bonded to an effective ground, or barricaded and considered as energized equipment.

(10) Before moving the aerial lift into the work position, all controls (ground level and bucket) shall be checked and tested to determine that they are in proper working condition.

(11) Arm current tests shall be made before starting work each day, each time during the day when higher voltage is going to be worked and when changed conditions indicate a need for additional tests. Aerial buckets used for bare-hand live-line work shall be subjected to an arm current test. This test shall consist of placing the bucket in contact with an energized source equal to the voltage to be worked upon for a minimum time of three (3) minutes. The leakage current shall not exceed 1 microampere per kilovolt of nominal line-to-line voltage. Work operations shall be suspended immediately upon any indication of a malfunction in the equipment.

(12) All aerial lifts to be used for live-line bare-hand work shall have dual controls (lower and upper) as required by subdivisions (i) and (ii) of this subparagraph.

(i) The upper controls shall be within easy reach of the employee in the basket. If a two basket type lift is used access to the controls shall be within easy reach from either basket.

(ii) The lower set of controls shall be located near base of the boom that will permit over-ride operation of equipment at any time.

(13) Ground level lift control shall not be operated unless permission has been obtained from the employee in lift, except in case of emergency.

(14) Before the employee contacts the energized part to be worked on, the conductive bucket liner shall be bonded to the energized conductor by means of a positive connection which shall remain attached to the energized conductor until the work on the energized circuit is completed.

(15) The minimum clearance distances for live-line bare-hand work shall be as specified in Table V–2. These minimum clearance distances shall be maintained from all grounded objects and from lines and equipment at a different potential than that to which the insulated aerial device is bonded unless such grounded objects or other lines and equipment are covered by insulated guards. These distances shall be maintained when approaching, leaving, and when bonded to the energized circuit.

TABLE V–2

MINIMUM CLEARANCE DISTANCES FOR LIVE-LINE BARE-HAND WORK (ALTERNATING CURRENT)

Voltage range (phase-to-phase) kilovolts	Distance in feet and inches for maximum voltage	
	Phase to ground	Phase to phase
2.1–15	2′0″	2′0″
15.1–35	2′4″	2′4″
35.1–46	2′6″	2′6″
46.1–72.5	3′0″	3′0″
72.6–121	3′4″	4′6″
138–145	3′6″	5′0″
161–169	3′8″	5′6″
230–242	5′0″	8′4″
345–362	[1] 7′0″	[1] 13′4″
500–552	[1] 11′0″	[1] 20′0″
700–765	[1] 15′0″	[1] 31′0″

[1] NOTE: For 345–362kv., 500–552kv., and 700–765kv., the minimum clearance distance may be reduced provided the distances are not made less than the shortest distance between the energized part and a grounded surface.

(16) When approaching, leaving, or bonding to an energized circuit the minimum distances in Table V–2 shall be maintained between all parts of the insulated boom assembly and any grounded parts (including the lower arm or portions of the truck).

(17) When positioning the bucket alongside an energized bushing or insulator string, the minimum line-to-ground clearances of Table V–2 must be maintained between all parts of the bucket and the grounded end of the bushing or insulator string.

(18) (i) The use of handlines between buckets, booms, and the ground is prohibited.

(ii) No conductive materials over 36 inches long shall be placed in the bucket, except for appropriate length jumpers, armor rods, and tools.

(iii) Nonconductive-type handlines may be used from line to ground when not supported from the bucket.

(19) The bucket and upper insulated boom shall not be overstressed by attempting to lift or support weights in excess of the manufacturer's rating.

(20) (i) A minimum clearance table (as shown in table V–2) shall be printed on a plate of durable nonconductive material, and mounted in the buckets or its vicinity so as to be visible to the operator of the boom.

(ii) It is recommended that insulated measuring sticks be used to verify clearance distances.

§ 1926.956 Underground lines.

(a) *Guarding and ventilating street opening used for access to underground lines or equipment.* (1) Appropriate warning signs shall be promptly placed when covers of manholes, handholes, or vaults are removed. What is an appropriate warning sign is dependent upon the nature and location of the hazards involved.

(2) Before an employee enters a street opening, such as a manhole or an unvented vault, it shall be promptly protected with a barrier, temporary cover, or other suitable guard.

(3) When work is to be performed in a manhole or unvented vault:

(i) No entry shall be permitted unless forced ventilation is provided or the atmosphere is found to be safe by testing for oxygen deficiency and the presence of explosive gases or fumes;

(ii) Where unsafe conditions are detected, by testing or other means, the work area shall be ventilated and otherwise made safe before entry;

(iii) Provisions shall be made for an adequate continuous supply of air.

(b) *Work in manholes.* (1) While work is being performed in manholes, an employee shall be available in the immediate vicinity to render emergency assistance as may be required. This shall not preclude the employee in the immediate vicinity from occasionally entering a manhole to provide assistance, other than emergency. This requirement does not preclude a qualified employee, working alone, from entering for brief periods of time, a manhole where energized cables or equipment are in service, for the purpose of inspection, housekeeping, taking

readings, or similar work if such work can be performed safely.

(2) When open flames must be used or smoking is permitted in manholes, extra precautions shall be taken to provide adequate ventilation.

(3) Before using open flames in a manhole or excavation in an area where combustible gases or liquids may be present, such as near a gasoline service station, the atmosphere of the manhole or excavation shall be tested and found safe or cleared of the combustible gases or liquids.

(c) *Trenching and excavating.* (1) During excavation or trenching in order to prevent the exposure of employees to the hazards created by damage to dangerous underground facilities efforts shall be made to determine the location of such facilities and work conducted in a manner designed to avoid damage.

(2) Trenching and excavation operations shall comply with §§ 1926.651 and 1926.652.

(3) When underground facilities are exposed (electric, gas, water, telephone, etc.) they shall be protected as necessary to avoid damage.

(4) Where multiple cables exist in an excavation, cables other than the one being worked on shall be protected as necessary.

(5) When multiple cables exist in an excavation, the cable to be worked on shall be identified by electrical means unless its identity is obvious by reason of distinctive appearance.

(6) Before cutting into a cable or opening a splice, the cable shall be identified and verified to be the proper cable.

(7) When working on buried cable or on cable in manholes, metallic sheath continuity shall be maintained by bonding across the opening or by equivalent means.

§ 1926.957 Construction in energized substations.

(a) *Work near energized equipment facilities.* (1) When construction work is performed in an energized substation, authorization shall be obtained from the designated, authorized person before work is started.

(2) When work is to be done in an energized substation, the following shall be determined:

(i) What facilities are energized, and

(ii) What protective equipment and precautions are necessary for the safety of personnel.

(3) Extraordinary caution shall be exercised in the handling of busbars, tower steel, materials, and equipment in the vicinity of energized facilities. The requirements set forth in § 1926.950(c), shall be complied with.

(b) *Deenergized equipment or lines.* When it is necessary to deenergize equipment or lines for protection of employees, the requirements of § 1926.950(d) shall be complied with.

(c) *Barricades and barriers.* (1) Barricades or barriers shall be installed to prevent accidental contact with energized lines or equipment.

(2) Where appropriate, signs indicating the hazard shall be posted near the barricade or barrier. These signs shall comply with § 1926.200.

(d) *Control panels.* (1) Work on or adjacent to energized control panels shall be performed by designated employees.

(2) Precaution shall be taken to prevent accidental operation of relays or other protective devices due to jarring, vibration, or improper wiring.

(e) *Mechanized equipment.* (1) Use of vehicles, gin poles, cranes, and other equipment in restricted or hazardous areas shall at all times be controlled by designated employees.

(2) All mobile cranes and derricks shall be effectively grounded when being moved or operated in close proximity to energized lines or equipment, or the equipment shall be considered energized.

(3) Fenders shall not be required for lowboys used for transporting large electrical equipment, transformers, or breakers.

(f) *Storage.* The storage requirements of § 1926.953(c) shall be complied with.

(g) *Substation fences.* (1) When a substation fence must be expanded or removed for construction purposes, a temporary fence affording similar protection, when the site is unattended, shall be provided. Adequate interconnection with ground shall be maintained between temporary fence and permanent fence.

(2) All gates to all unattended substations shall be locked, except when work is in progress.

(h) *Footing excavation.* (1) Excavation for auger, pad and piling type footings for structures and towers shall require the same precautions as for metal tower construction (see § 1926.955(b)(1)).

(2) No employee shall be permitted to enter an unsupported auger-type excavation in unstable material for any purpose. Necessary clean-out in such cases shall be accomplished without entry.

§ 1926.958 External load helicopters.

In all operations performed using a rotorcraft for moving or placing external loads, the provisions of § 1926.551 of Subpart N of this part shall be complied with.

§ 1926.959 Lineman's body belts, safety straps, and lanyards.

(a) *General requirements.* The requirements of paragraphs (a) and (b) of this section shall be complied with for all lineman's body belts, safety straps and lanyards acquired for use after the effective date of this subpart.

(1) Hardware for lineman's body belts, safety straps, and lanyards shall be drop forged or pressed steel and have a corrosive resistive finish tested to American Society for Testing and Materials B117-64 (50-hour test). Surfaces shall be smooth and free of sharp edges.

* * * * *

(2) All buckles shall withstand a 2,000-pound tensile test with a maximum permanent deformation no greater than one sixty-fourth inch.

(3) D rings shall withstand a 5,000-pound tensile test without failure. Failure of a D ring shall be considered cracking or breaking.

(4) Snaphooks shall withstand a 5,000-pound tensile test without failure. Failure of a snaphook shall be distortion sufficient to release the keeper.

(b) *Specific requirements.* (1) (i) All fabric used for safety straps shall withstand an A.C. dielectric test of not less than 25,000 volts per foot "dry" for 3 minutes, without visible deterioration.

(ii) All fabric and leather used shall be tested for leakage current and shall not exceed 1 milliampere when a potention of 3,000 volts is applied to the electrodes positioned 12 inches apart.

(iii) Direct current tests may be permitted in lieu of alternating current tests.

(2) The cushion part of the body belt shall:

(i) Contain no exposed rivets on the inside;

(ii) Be at least three (3) inches in width;

(iii) Be at least five thirty-seconds ($\frac{5}{32}$) inch thick, if made of leather; and

(iv) Have pocket tabs that extended at least 1½ inches down and three (3) inches back of the inside of circle of each D ring for riveting on plier or tool pockets. On shifting D belts, this measurement for pocket tabs shall be taken when the D ring section is centered.

(3) A maximum of four (4) tool loops shall be so situated on the body belt that four (4) inches of the body belt in the center of the back, measuring from D ring to D ring, shall be free of tool loops, and any other attachments.

(4) Suitable copper, steel, or equivalent liners shall be used around bar of D rings to prevent wear between these members and the leather or fabric enclosing them.

(5) All stitching shall be of a minimum 42-pound weight nylon or equivalent thread and shall be lock stitched. Stitching parallel to an edge shall not be less than three-sixteenths ($\frac{3}{16}$) inch from edge of narrowest member caught by the thread. The use of cross stitching on leather is prohibited.

(6) The keeper of snaphooks shall have a spring tension that will not allow the keeper to begin to open with a weight of 2½ pounds or less, but the keeper of snaphooks shall begin to open with a weight of four (4) pounds, when the weight is supported on the keeper against the end of the nose.

(7) Testing of lineman's safety straps, body belts and lanyards shall be in accordance with the following procedure:

(i) Attach one end of the safety strap or lanyard to a rigid support, the other end shall be attached to a 250-pound canvas bag of sand:

(ii) Allow the 250-pound canvas bag of sand to free fall 4 feet for (safety strap test) and 6 feet for (lanyard test); in each case stopping the fall of the 250-pound bag:

(iii) Failure of the strap or lanyard shall be indicated by any breakage, or

slippage sufficient to permit the bag to fall free of the strap or lanyard. The entire "body belt assembly" shall be tested using one D ring. A safety strap or lanyard shall be used that is capable of passing the "impact loading test" and attached as required in subdivision (i) of this subparagraph. The body belt shall be secured to the 250-pound bag of sand at a point to simulate the waist of a man and allowed to drop as stated in subdivision (ii) of this subparagraph. Failure of the body belt shall be indicated by any breakage, or slippage sufficient to permit the bag to fall free of the body belt.

§ 1926.960 Definitions for Subpart V.

(a) *Alive or live (energized).* The term means electrically connected to a source of potential difference, or electrically charged so as to have a potential significantly different from that of the earth in the vicinity. The term "live" is sometimes used in place of the term "current-carrying," where the intent is clear, to avoid repetition of the longer term.

(b) *Automatic circuit recloser.* The term means a self-controlled device for automatically interrupting and reclosing an alternating current circuit with a predetermined sequence of opening and reclosing followed by resetting, hold closed, or lockout operation.

(c) *Barrier.* The term means a physical obstruction which is intended to prevent contact with energized lines or equipment.

(d) *Barricade.* The term means a physical obstruction such as tapes, screens, or cones intended to warn and limit access to a hazardous area.

(e) *Bond.* The term means an electrical connection from one conductive element to another for the purpose of minimizing potential differences or providing suitable conductivity for fault current or for mitigation of leakage current and electrolytic action.

(f) *Bushing.* The term means an insulating structure including a through conductor, or providing a passageway for such a conductor, with provision for mounting on a barrier, conducting or otherwise, for the purpose of insulating the conductor from the barrier and conducting current from one side of the barrier to the other.

(g) *Cable.* The term means a conductor with insulation, or a stranded conductor with or without insulation and other coverings (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

(h) *Cable sheath.* The term means a protective covering applied to cables.

NOTE: A cable sheath may consist of multiple layers of which one or more is conductive.

(i) *Circuit.* The term means a conductor or system of conductors through which an electric current is intended to flow.

(j) *Communication lines.* The term means the conductors and their supporting or containing structures which are used for public or private signal or communication service, and which operate at potentials not exceeding 400 volts to ground or 750 volts between any two points of the circuit, and the transmitted power of which does not exceed 150 watts. When operating at less than 150 volts no limit is placed on the capacity of the system.

NOTE: Telephone, telegraph, railroad signal, data, clock, fire, police-alarm, community television antenna, and other systems conforming with the above are included. Lines used for signaling purposes, but not included under the above definition, are considered as supply lines of the same voltage and are to be so run.

(k) *Conductor.* The term means a material, usually in the form of a wire, cable, or bus bar suitable for carrying an electric current.

(l) *Conductor shielding.* The term means an envelope which encloses the conductor of a cable and provides an equipotential surface in contact with the cable insulation.

(m) *Current-carrying part.* The term means a conducting part intended to be connected in an electric circuit to a source of voltage. Non-current-carrying parts are those not intended to be so connected.

(n) *Dead (deenergized).* The term means free from any electrical connection to a source of potential difference and from electrical charges: Not having a potential difference from that of earth.

NOTE: The term is used only with reference to current-carrying parts which are sometimes alive (energized).

(o) *Designated employee.* The term means a qualified person delegated to perform specific duties under the conditions existing.

(p) *Effectively grounded.* The term means intentionally connected to earth through a ground connection or connections of sufficiently low impedance and having sufficient current-carrying capacity to prevent the buildup of voltages which may result in undue hazard to connected equipment or to persons.

(q) *Electric line trucks.* The term means a truck used to transport men, tools, and material, and to serve as a traveling workshop for electric power line construction and maintenance work. It is sometimes equipped with a boom and auxiliary equipment for setting poles, digging holes, and elevating material or men.

(r) *Enclosed.* The term means surrounded by a case, cage, or fence, which will protect the contained equipment and prevent accidental contact of a person with live parts.

(s) *Equipment.* This is a general term which includes fittings, devices, appliances, fixtures, apparatus, and the like, used as part of, or in connection with, an electrical power transmission and distribution system, or communication systems.

(t) *Exposed.* The term means not isolated or guarded.

(u) *Electric supply lines.* The term means those conductors used to transmit electric energy and their necessary supporting or containing structures. Signal lines of more than 400 volts to ground are always supply lines within the meaning of the rules, and those of less than 400 volts to ground may be considered as supply lines, if so run and operated throughout.

(v) *Guarded.* The term means protected by personnel, covered, fenced, or enclosed by means of suitable casings, barrier rails, screens mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects.

NOTE: Wires, which are insulated but not otherwise protected, are not considered as guarded.

(w) *Ground. (Reference).* The term means that conductive body, usually earth, to which an electric potential is referenced.

(x) *Ground (as a noun).* The term means a conductive connection whether intentional or accidental, by which an electric circuit or equipment is connected to reference ground.

(y) *Ground (as a verb).* The term means the connecting or establishment of a connection, whether by intention or accident of an electric circuit or equipment to reference ground.

(z) *Grounding electrode (ground electrode).* The term grounding electrode means a conductor embedded in the earth, used for maintaining ground potential on conductors connected to it, and for dissipating into the earth current conducted to it.

(aa) *Grounding electrode resistance.* The term means the resistance of the grounding electrode to earth.

(bb) *Grounding electrode conductor (grounding conductor).* The term means a conductor used to connect equipment or the grounded circuit of a wiring system to a grounding electrode.

(cc) *Grounded conductor.* The term means a system or circuit conductor which is intentionally grounded.

(dd) *Grounded system.* The term means a system of conductors in which at least one conductor or point (usually the middle wire, or neutral point of transformer or generator windings) is intentionally grounded, either solidly or through a current-limiting device (not a current-interrupting device).

(ee) *Hotline tools and ropes.* The term means those tools and ropes which are especially designed for work on energized high voltage lines and equipment. Insulated aerial equipment especially designed for work on energized high voltage lines and equipment shall be considered hot line.

(ff) *Insulated.* The term means separated from other conducting surfaces by a dielectric substance (including air space) offering a high resistance to the passage of current.

NOTE: When any object is said to be insulated, it is understood to be insulated in suitable manner for the conditions to which it is subjected. Otherwise, it is within the purpose of this subpart, uninsulated. Insulating covering of conductors is one means of making the conductor insulated.

(gg) *Insulation (as applied to cable).* The term means that which is relied upon to insulate the conductor from other conductors or conducting parts or from ground.

(hh) *Insulation shielding.* The term means an envelope which encloses the insulation of a cable and provides an equipotential surface in contact with cable insulation.

(ii) *Isolated.* The term means an object that is not readily accessible to persons unless special means of access are used.

(jj) *Manhole.* The term means a subsurface enclosure which personnel may enter and which is used for the purpose of installing, operating, and maintaining equipment and/or cable.

(kk) *Pulling tension.* The term means the longitudinal force exerted on a cable during installation.

(ll) *Qualified person.* The term means a person who by reason of experience or training is familiar with the operation to be performed and the hazards involved.

(mm) *Switch.* The term means a device for opening and closing or changing the connection of a circuit. In these rules, a switch is understood to be manually operable, unless otherwise stated.

(nn) *Tag.* The term means a system or method of identifying circuits, systems or equipment for the purpose of alerting persons that the circuit, system or equipment is being worked on.

(oo) *Unstable material.* The term means earth material, other than running, that because of its nature or the influence of related conditions, cannot be depended upon to remain in place without extra support, such as would be furnished by a system of shoring.

(pp) *Vault.* The term means an enclosure above or below ground which personnel may enter and is used for the purpose of installing, operating, and/or maintaining equipment and/or cable.

(qq) *Voltage.* The term means the effective (rms) potential difference between any two conductors or between a conductor and ground. Voltages are expressed in nominal values. The nominal voltage of a system or circuit is the value assigned to a system or circuit of a given voltage class for the purpose of convenient designation. The operating voltage of the system may vary above or below this value.

(rr) *Voltage of an effectively grounded circuit.* The term means the voltage between any conductor and ground unless otherwise indicated.

(ss) *Voltage of a circuit not effectively grounded.* The term means the voltage between any two conductors. If one circuit is directly connected to and supplied from another circuit of higher voltage (as in the case of an autotransformer), both are considered as of the higher voltage, unless the circuit of lower voltage is effectively grounded, in which case its voltage is not determined by the circuit of higher voltage. Direct connection implies electric connection as distinguished from connection merely through electromagnetic or electrostatic induction.

(Secs. 6(b) and 8(g), 84 Stat. 1593, 1600; 29 U.S.C. 655, 657; sec. 107, 83 Stat. 96; 40 U.S.C. 333)

[FR Doc.72-20118 Filed 11-22-72;8:45 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS; EXTRAORDINARY EMERGENCY REGULATION OF INTRASTATE ACTIVITIES

[Docket No. 72-584]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Release of Area Quarantined

Pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111-113, 114g, 115, 117, 120, 121, 123-126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, in paragraph (e)(7) relating to the State of Ohio, subdivision (i) relating to Clark County is deleted.

(Secs. 4-7, 23 Stat. 22, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111-113, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 29 F.R. 16210, as amended, 36 F.R. 20707, 21529, 21530, 37 F.R. 6327, 6505)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment excludes a portion of Clark County in Ohio from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas contained in 9 CFR Part 76, as amended, do not apply to the excluded area, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 apply to the excluded area.

The amendment relieves restrictions presently imposed but no longer deemed necessary to prevent the spread of hog cholera and must be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to this Department.

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

Done at Washington, D.C., this 17th day of November 1972.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-20226 Filed 11-22-72;8:51 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 72-SO-116]

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

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Valdosta, Ga. (Moody AFB), control zone.

The Valdosta (Moody AFB) control zone is described in § 71.171 (37 F.R. 2056 and 14691). In the description, an extension predicated on Moody VOR 007° radial has a width of 3 miles and a length of 5.5 miles. Because of the alteration of VOR Runway 18L instrument approach procedure, it is necessary to alter the control zone to increase this extension 3 miles in width and 3 miles in length. Since this amendment is minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (37 F.R. 2056), the Valdosta, Ga. (Moody AFB), control zone (37 F.R. 14691) is amended as follows:

* * * within 1.5 miles each side of Moody VOR 007° radial extending from the 5-mile-radius zone to 5.5 * * * is deleted and * * * within 3 miles each side of Moody VOR 007° radial, extending from the 5-mile-radius zone to 8.5 * * * is substituted therefor.

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

Issued in East Point, Ga., on November 14, 1972.

DUANE W. FREER,
Acting Director, Southern Region.

[FR Doc.72-20162 Filed 11-22-72;8:45 am]

[Airspace Docket No. 72-SO-117]

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

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Raleigh, N.C., transition area.

The Raleigh transition area is described in § 71.181 (37 F.R. 2143 and 14223). In the description, a 5-mile radius of Raleigh Muncipal Airport exists, which was designated to provide controlled airspace protection for IFR operations. The Raleigh Muncipal Airport is permanently closed and the instrument approach procedure to this airport, utilizing the Raleigh VORTAC, has been canceled. The controlled airspace protection is no longer required. It is necessary to alter the description to reflect this change. Since this amendment lessens the burden on the public, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.181 (37 F.R. 2143), the Raleigh, N.C., transition area (37 F.R. 14223) is amended as follows:

* * * within a 5-mile radius of Raleigh Municipal Airport (lat. 35°44'05'' N., long. 78°39'23'' W.) * * * is deleted.

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

Issued in East Point, Ga., on November 14, 1972.

DUANE W. FREER,
Acting Director, Southern Region.

[FR Doc.72-20161 Filed 11-22-72;8:45 am]

[Airspace Docket No. 72-WA-28]

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

Alteration of Terminal; Control Area at New York, N.Y.

On May 20, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 10388) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the New York, N.Y., terminal control area (TCA) by:

1. Reducing the size of the Flushing cutout.

2. Lowering the TCA floor to 1,200 feet over the Flushing Airport.

3. Lowering the TCA floor to 3,000 feet in the vicinity of the Grumman-Bethpage Airport.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. Four comments were received in response to this proposal. Air Transport Association noted an editorial error in the description of Area B boundary. Action is taken herein to correct this error. The one objection received suggested the use of prominent landmarks to define the boundaries of Area J (Flushing cutout) instead of radio aids, as were used in the notice of proposed rule making. This comment has merit and, where possible, prominent landmarks have been used in the boundary description of Area J. The commenter also objected to lowering the floor of Area J to 1,200 feet over the Flushing Airport, because of the expected impact on VFR aircraft operating to and from Flushing. While it was not possible to entirely eliminate the 1,200-foot lowering, adjustment was made by moving proposed boundary westerly to the Throggs Neck Bridge and the Clearview Expressway thus providing a better visual reference and allowing the retention of 1,500 feet in the vicinity of Little Neck Bay for use by Flushing Airport arrivals and departures.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 4, 1973, as hereinafter set forth.

In § 71.401(a) (37 F.R. 2327 and 8440) the New York, N.Y., Terminal Control Area is amended to read as follows:

1. *Area A.* That airspace extending upward from the surface to and including 7,000 feet MSL within an 8-mile radius circle of Kennedy (JFK) VORTAC; within a 4-mile radius circle centered at Lat. 40°41'30'' N., Long. 74°10'00'' W.; and within a 6-mile radius circle of La Guardia (LGA) VOR; excluding the airspace within and below Areas B, D and J hereinafter described and excluding that airspace east of Flushing Airport bounded by a line beginning at the point of intersection of the LGA VOR 071° radial and the 6-mile arc of the LGA VOR, thence clockwise along the LGA VOR 6-mile arc to and counterclockwise along the 8-mile arc of the JFK VORTAC to and north along the Clearview Expressway to the north stanchion of the Throggs Neck Bridge, thence to the point of beginning.

2. *Area B.* That airspace extending upward from above 500 feet MSL to and including 7,000 feet MSL within an 8-mile radius circle of JFK VORTAC south of a line beginning at the intersection of the JFK VORTAC 237° radial and the Atlantic Ocean shoreline, thence easterly along the shoreline to its intersection with the JFK VORTAC 125° radial 5-mile DME fix, thence northerly along the 5-mile DME arc to and easterly along the JFK VORTAC 094° radial to the 8-mile radius circle of JFK VORTAC; that airspace within a 6-mile radius circle of LGA VOR bounded by a line beginning at the intersection of the 6-mile radius circle and the LGA VOR 039° radial, thence southwesterly along the LGA VOR 039° radial to and southerly along the Bronx shoreline to the north stanchion of the Throggs Neck Bridge, thence direct to the intersection of the LGA VOR 071° radial and the 6-mile radius circle of LGA VOR, thence counterclockwise along the 6-mile radius circle to the point of beginning; and that airspace between the 4-mile and the 6.5-mile radii of a circle centered at Lat. 40°41'30'' N., Long. 74°10'00'' W.; excluding the airspace within and below Areas C, D and J hereinafter described.

3. *Area C.* That airspace extending upward from above 800 feet MSL to and including 7,000 feet MSL within a 6.5-mile radius circle centered at Lat. 40°41'30'' N., Long. 74°10'00'' W., and bounded by a line beginning at the point where the 6.5-mile radius circle intersects U.S. Highway No. 1, thence northeast along U.S. Highway No. 1 to its point of intersection with a 4-mile radius circle centered at Lat. 40°41'30'' N., Long. 74°10'00'' W., at the Esso Research Center, thence direct to the public service powerplant, thence direct to the Staten Island Expressway at its point of intersection with the 4-mile radius circle, thence east via the Staten Island Expressway to Richmond Avenue, thence south along Richmond Avenue to the 6.5-mile radius circle, thence clockwise along the 6.5-mile radius circle to the point of beginning.

4. *Area D.* That airspace extending upward from above 1,100 feet MSL to and including 7,000 feet MSL within the 6-mile radius circle of LGA VOR west of the east bank of the Hudson River; that airspace between the east and west banks of the East River southwest of the north end of Welfare Island; and that airspace within the 6.5-mile radius circle centered at Lat. 40°41'30'' N., Long. 74°10'00'' W., east of the Colts Neck VORTAC 012° radial.

5. *Area E.* That airspace extending upward from 1,500 feet MSL to and including 7,000 feet MSL within the area bounded by a line beginning at the intersection of the 20-mile radius circle of JFK VORTAC and the JFK VORTAC 208° radial, thence counterclockwise along the 20-mile arc to its intersection with the Long Island shoreline, thence southwest along the Long Island shoreline to and counterclockwise along the 13-mile radius circle of JFK VORTAC to and counterclockwise along the 11-mile radius circle of LGA VOR to the LGA VOR 351° radial, thence direct to the LGA VOR 283° radial at the LGA VOR 17-mile DME fix, thence counterclockwise along a 10-mile radius circle centered at Lat. 40°41'30'' N., Long. 74°10'00'' W., to its intersection with the Colts Neck VORTAC 005° radial, thence direct to the intersection of the Colts Neck VORTAC 034° radial and the New Jersey shoreline at Sandy Hook, thence south along the New Jersey shoreline to the point of beginning; and that airspace within 2 miles each side of the Newark ILS Runway 4L localizer course, extending from the Chelsea outer marker to 6 miles southwest of the outer marker. Excluding that airspace within and below Areas A, B, C, and D previously described; and excluding the airspace within and below Areas F and J hereinafter described.

6. *Area F.* That airspace extending upward from 1,800 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning at the intersection of the LGA VOR 337° radial and the Erie Lackawanna Railroad tracks, thence south along the railroad tracks to the east branch of the Hackensack River, thence south and west along the river to the LGA VOR 299° radial, thence direct to the intersection of the six-mile radius circle of LGA VOR and the LGA VOR 264° radial, thence south along the west bank of the Hudson River to its intersection with, then counterclockwise along the 6.5-mile radius circle centered at Lat. 40°41'30''

N., Long. 74°10'00" W., to and southwest along the New Jersey Highway Route No. 22 to and clockwise along a 10-mile radius circle centered at Lat. 40°41'30" N., Long. 74°10'00" W., to LGA VOR 283° radial, thence direct to the point of beginning.

7. *Area G.* That airspace extending upward from 3,000 feet MSL to and including 7,000 feet MSL within a 20-mile radius circle centered at Lat. 40°41'30" N., Long. 74°10'00" W., within a 20-mile radius circle of JFK VORTAC; and within a 20-mile radius circle of LGA VOR, excluding the airspace within and below Areas A, B, C, D, E, and F previously described and excluding the airspace within and below Areas H and J hereinafter described.

8. *Area H.* That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL between the 13- and 20-mile radii circles of JFK VORTAC bounded on the north by the JFK VORTAC 050° radial and on the south by the Long Island shoreline, excluding that airspace north of Hempstead Turnpike and west of the Seaford-Oyster Bay Expressway.

9. *Area J.* That airspace extending upward from above 1,200 feet MSL to and including 7,000 feet MSL within a 6.5-mile radius circle centered at Lat. 40°41'30" N., Long. 74°10'00" W., and bounded by a line beginning at the intersection of the 6.5-mile radius circle and the tracks of the Central Railroad of New Jersey, thence eastward along the railroad tracks to their point of intersection with the 4-mile radius circle centered at Lat. 40°41'30" N., Long. 74°10'00" W., thence counterclockwise along the 4-mile radius circle to U.S. Highway No. 1 thence southwest along U.S. Highway No. 1 to the 6.5-mile radius circle, thence clockwise along the 6.5-mile radius circle to the point of beginning; and that airspace beginning at the north stanchion of the Throggs Neck Bridge, thence westerly to the Kennedy VORTAC 341° radial 10-mile DME fix, thence southerly to the Kennedy VORTAC 340° radial 9-mile DME fix, thence easterly to the intersection of the 8-mile arc of the Kennedy VORTAC and the Clearview Expressway, thence northerly along the expressway and the Throggs Neck Bridge to the point of beginning.

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

Issued in Washington, D.C., on November 17, 1972.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-20163 Filed 11-22-72;8:45 am]

[Airspace Docket No. 71-WA-3B]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Designation of Area High Routes

On November 2, 1972, F.R. Doc. No. 72-18668 was published in the FEDERAL REGISTER (37 F.R. 23330) which amends Part 75 of the Federal Aviation Regulations, effective 0901 G.m.t., January 4, 1973, by adding area high routes J913R and J920R with six other routes.

Malad City, Utah, was erroneously listed as the reference facility for the last two waypoints in J913R. This reference facility is Malad City, Idaho. The reference facility for the first waypoint in J920R is Lewistown, Mont., rather than Lewiston, Mont., as listed in the rule.

Since this amendment is editorial in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary and good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, effective upon publication in the FEDERAL REGISTER (11-23-72), F.R. Doc. 72-18668 (37 F.R. 23330) is amended as hereinafter set forth.

1. In J913R "Lake Shore, Utah, 41°25'55"/113°05'27" Malad City, Utah" is deleted and "Lake Shore, Utah, 41°25'55"/113°05'27" Malad City, Idaho" is substituted therefor.

2. In J920R "Millegan, Mont., 47°02'01"/111°24'11" Lewiston, Mont." is deleted and "Millegan, Mont., 40°02'01"/111°24'11" Lewistown, Mont." is substituted therefor.

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

Issued in Washington, D.C., on November 16, 1972.

CLAUDE FEATHERSTONE,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-20164 Filed 11-22-72;8:45 am]

[Docket No. 12380, Amdt. 839]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAP's) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAP's for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 F.R. 5609).

SIAP's are available for examination at the rules docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Copies of SIAP's adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAP's may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20591, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30 each.

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

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAP's, effective January 4, 1973.

Coatesville, Pa.—Chester County/G. O. Carlson Airport; VOR Runway 29, Original; Established.
Dubuque, Iowa—Dubuque Municipal Airport; VOR Runway 13, Amdt. 3; Revised.
Dubuque, Iowa—Dubuque Municipal Airport; VOR Runway 31, Amdt. 4; Revised.
Farmingdale, N.Y.—Republic Airport; VOR-A, Amdt. 4; Revised.
Helena, Mont.—Helena Airport; VOR-A, Amdt. 7; Revised.
Oklahoma City, Okla.—Wiley Post Airport; VOR-A, Amdt. 10; Revised.
Oklahoma City, Okla.—Wiley Post Airport; VOR Runway 17L, Amdt. 2; Revised.
Oklahoma City, Okla.—Wiley Post Airport VOR Runway 35R, Amdt. 2; Revised.
Pago Pago, Tutuila Island, American Samoa—Pago Pago International Airport; VOR Runway 5, Amdt. 7; Canceled.
Pago Pago, Tutuila Island, American Samoa—Pago Pago International Airport; VOR-A, Original; Established.
Pago Pago, Tutuila Island, American Samoa—Pago Pago International Airport; VORTAC-A, Original; Established.
Pago Pago, Tutuila Island, American Samoa—Pago Pago International Airport; VORTAC-B, Original; Established.
Pocahontas, Ark.—Pocahontas Municipal Airport; VOR Runway 36, Amdt. 2; Revised.
Trenton, N.J.—Mercer County Airport; VOR Runway 24, Original; Established.
West Memphis, Ark.—West Memphis Municipal Airport; VOR/DME-A, Amdt. 2; Revised.
West Memphis, Ark.—West Memphis Municipal Airport; VOR/DME-B, Amdt. 2; Revised.

2. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAP's effective December 21, 1972.

Bunkie, La.—Bunkie Municipal Airport; VOR/DME-A, Original; Established.

3. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAP's, effective December 7, 1972.

Miami, Okla.—Miami Municipal Airport; VOR/DME-A, Original; Established.

4. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAP's, effective November 30, 1972.

Eau Claire, Wis.—Eau Claire Municipal Airport; VOR/DME Runway 4, Amdt. 1; Canceled.

5. Section 97.25 is amended by establishing, revising, or canceling the following SDF–LOC–LDA SIAP's, effective January 4, 1973.

Islip, N.Y.—Islip MacArthur Airport; LOC (BC) Runway 24, Amdt. 3; Revised.

6. Section 97.25 is amended by establishing, revising, or canceling the following SDF–LOC–LDA SIAP's, effective November 15, 1972.

Benton Harbor, Mich.—Ross Field; LOC Runway 27, Amdt. 3; Revised.

7. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAP's, effective January 4, 1973.

Blackstone, Va.—Blackstone AAF; NDB–A, Amdt. 5; Revised.
Crossville, Tenn.—Crossville Memorial Airport; NDB Runway 25, Amdt. 3; Revised.
Dubuque, Iowa—Dubuque Municipal Airport; NDB Runway 31, Amdt. 1; Revised.
Farmingdale, N.Y.—Republic Airport; NDB Runway 1, Amdt. 9; Revised.
Islip, N.Y.—Islip MacArthur Airport; NDB Runway 6, Amdt. 12; Revised.
Pago Pago, Tutuila Island, American Samoa—Pago Pago International Airport; NDB(ADF) Runway 5, Amdt. 1; Canceled.
Pago Pago, Tutuila Island, American Samoa—Pago Pago International Airport; NDB–A, Original; Established.
Perryton, Tex.—Perryton Municipal Airport; NDB–A, Amdt. 2; Revised.
Salem, Oreg.—McNary Field; NDB Runway 31, Amdt. 9; Revised.
West Memphis, Ark.—West Memphis Municipal Airport; NDB Runway 17, Amdt. 4; Revised.
West Memphis, Ark.—West Memphis Municipal Airport; NDB Runway 35, Amdt. 3; Revised.

8. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAP's, effective December 7, 1972.

Lawrence, Kans.—Municipal Airport; NDB–A, Original; Established.
Miami, Okla.—Miami Municipal Airport; NDB Runway 17, Original; Established.

9. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAP's, effective November 30, 1972.

Gainesville, Fla.—Gainesville Municipal Airport; NDB Runway 28, Amdt. 2; Revised.

10. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAP's, effective November 10, 1972.

Cadillac, Mich.—Wexford County Airport; NDB Runway 7, Amdt. 3; Revised.

11. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAP's, effective January 4, 1973.

Dubuque, Iowa—Dubuque Municipal Airport; ILS Runway 31; Amdt. 2; Revised.
Everett, Wash.—Snohomish County (Paine Field); ILS Runway 16; Amdt. 12; Revised.
Islip, N.Y.—Islip MacArthur Airport; ILS Runway 6; Amdt. 13; Revised.
Salem, Oreg.—McNary Field; ILS Runway 31; Amdt. 14; Revised.

12. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAP's effective November 30, 1972.

Gainesville, Fla.—Gainesville Municipal Airport; ILS Runway 28; Original; Established.

13. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAP's, effective November 14, 1972.

Parkersburg, W. Va.—Wood County Airport/Gill Robb Wilson Field; ILS Runway 3; Amdt. 1; Revised.

14. Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAP's, effective January 4, 1973.

Savannah, Ga.—Savannah Municipal Airport; Radar A; Amdt. 5; Revised.

15. Section 97.33 is amended by establishing, revising, or canceling the following RNAV SIAP's, effective January 4, 1973.

Baxley, Ga.—Baxley Municipal Airport; RNAV Runway 7; Original; Established.
Erie, Pa.—Erie International Airport; RNAV Runway 24; Amdt. 2; Revised.
Truckee, Calif.—Truckee-Tahoe Airport; RNAV–A; Original; Established.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on November 16, 1971.

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

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 F.R. 5610), approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.72-20160 Filed 11-22-72;8:45 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release Nos. IA-347, IC-7484]

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Definition of "Specified Period" Over Which Asset Value of Company or Fund Under Management is Averaged

On July 13, 1972, the Securities and Exchange Commission published notice (Investment Advisers Act Release No. 323 (37 F.R. 15007)) that it had under consideration the adoption of Rule 205–2 (17 CFR 275. 250–2) under the Investment Advisers Act of 1940 (Act) (15 U.S.C. 80b–1, et seq.), as amended by the Investment Company Amendments Act of 1940 (P. 4 91–547, 84 Stat. 1432–1433). All interested persons were invited to comment on the proposal. The Commission has considered all of the comments and suggestions received and has determined to adopt Rule 205–2 in the form set forth below. The rule is adopted pursuant to the authority granted the Commission in sections 205, 206A and 211 of the Act (15 U.S.C. 80b–5, 80b–6a, 80b–11).

Under section 205 of the Act, as amended, performance fees are prohibited unless compensation based on the asset value of the company or fund under management is averaged over a specified period and increases and decreases proportionately with investment performance of the company over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation or order may specify. The point from which increases and decreases in compensation are measured must be the fee which is paid or earned when the investment performance of the company is equivalent to that of the index.

Section 211 of the Act gives the Commission authority to issue such rules and regulations as are necessary or appropriate to the exercise of the functions and powers conferred upon it under the Act.

Section 206A of the Act authorizes the Commission by rules and regulations to conditionally or unconditionally exempt any transaction from any provision of the Act or of any rule or regulation thereunder if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

The rule requires that, under a contract containing an incentive fee arrangement, assets should be averaged over the same period performance is computed. An exemption from contracts providing for a "rolling period" is contained in paragraph (c) of the rule. It permits the specified period over which the asset value of the company or fund is averaged for computing the "fulcrum fee" to differ from the period over which asset value is averaged for computing the performance related portion of the fee. Under this exemption the fulcrum fee may be computed on the basis of asset values averaged over the most recent subperiod of the rolling period. For example, this exemption would permit a fee structure under which the performance related portion of the fee could be based upon a 12 quarter "rolling period" and the "fulcrum fee" could be computed on the basis of the most recent quarter of such rolling period. It would also permit a rolling period of 365 days and daily computation of the performance related portion of the fee and of the fulcrum fee. Of course, as stated in Investment Company Act Release No. 7113 [37 F.R. 7690], interim payments greater than the minimum fee are not permitted under any incentive arrangements.

Although the rule would permit the fulcrum fee to relate more closely to current assets than the interpretation contained in Investment Company Act Release No. 7113, the rule, like the interpretation, requires that the performance portion of the fee be based upon the assets upon which such performance was achieved and that the amount of compensation paid for performance not be influenced unduly by the amount of sales (or redemptions).

Commission action. Part 275 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding a new § 275.205–2 reading as follows:

§ 275.205–2 Definition of "specified period" over which the asset value of the company or fund under management is averaged.

(a) For purposes of this rule:

(1) "Fulcrum fee" shall mean the fee which is paid or earned when the investment company's performance is equivalent to that of the index or other measure of performance.

(2) "Rolling period" shall mean a period consisting of a specified number of subperiods of definite length in which the most recent subperiod is substituted for the earliest subperiod as time passes.

(b) The specified period over which the asset value of the company or fund under management is averaged shall mean the period over which the investment performance of the company or fund and the investment record of an appropriate index of securities prices or such other measure of investment performance are computed.

(c) Nothwithstanding paragraph (b) of this section, the specified period over which the asset value of the company or fund is averaged for the purpose of computing the fulcrum fee may differ from the period over which the asset value is averaged for computing the performance related portion of the fee, only if

(1) The performance related portion of the fee is computed over a rolling period and the total fee is payable at the end of each subperiod of the rolling period; and

(2) The fulcrum fee is computed on the basis of the asset value averaged over the most recent subperiod or subperiods of the rolling period.

(Secs. 205, 206A, 211; 54 Stat. 852, 855; 84 Stat. 1433, 15 U.S.C. 80b–5, 80b–6a, 80b–11)

In order not to disrupt existing contractual relationships and to permit an orderly change in existing incentive fee arrangements consonant with this rule and with Rule 205–1 under the Act (17 CFR 275.205–1), the rule will become effective on December 1, 1973, or, with respect to any particular investment company, within 60 days after its next regular meeting of shareholders held after December 1, 1972, whichever is sooner.

By the Commission, November 10, 1972.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-20190 Filed 11-22-72;8:47 am]

Title 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

Interpretations and Exemptions

NOVEMBER 17, 1972.

Advice has been requested by persons subject to these regulations concerning the conclusions of the Treasury Department on the application of the law and the regulations, and requests have been received for exemptions from various requirements of the regulations which were published on April 5, 1970, 37 F.R. 6912 (1972), pursuant to the authority contained in § 103.45 of the regulations. Interpretations made and exemptions granted up to this time are set forth below. Additional interpretations and exmptions will appear from time to time as the occasion warrants. Identifying details and confidential information have been deletd to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from members of the public.

Section 103.11 *Exemption from.* 1. The definition of a bank as appears in § 103.11 (a)(7) was not intended to include a company which is wholly engaged in financing inventories and retail installment sales of automobile dealers. Such a company requested and was granted an exemption from the recordkeeping and reporting requirements of Part 103, Title 31, Code of Federal Regulations. However, if said company is a "financial institution" within the meaning of § 103.11 (other than as a "bank") it would, of course, have to comply with those provisions of this part relating to financial institutions other than banks.

Section 103.23 *Interpretations.* 1. Unless a transaction in foreign currency for clients who are nonresidents of the United States and performed through brokers outside the United States involves the physical transportation, mailing, or shipment of currency, bearer investment securities or negotiable instruments in bearer form into or out of the United States in amounts exceeding $5,000 on any one occasion, there is no duty to report the transfer. A transfer of funds by means of bank check, bank draft, or wire transfer need not be reported.

2. A bank is not required to prepare Form 4790 if the bank receives such items over the counter from a person who may have transported them into the United States or if the bank delivers such items over the counter to a person who may transport them out of the United States. However, if a bank knows that such items have been transported into the country, it must file a report on Form 4790 if a complete and truthful report has not been filed by the customer.

3. Section 103.23(c) provides that a bank is not required to report currency or other monetary instruments mailed or shipped through the postal service or by common carrier. When a trust company is acting as a corporate executor or corporate trustee, no report need be filed with respect to currency or bearer monetary instruments mailed or shipped through the postal service.

4. In the case where a trust company acts as custodian for individual executors and trustees who maintain custody accounts for those estates and trusts where they are named fiduciary, it will be necessary to file a Form 4790, Report of International Transportation of Currency or Monetary Instruments, under the circumstances described in § 103.23(a).

5. A private courier service does not qualify as a "common carrier" under the regulations.

Section 103.23 *Exemptions from.* 1. A bank whose employees physically transport currency across the Canadian border on a weekly basis for deposit with a Canadian bank which is only a few hundred yards away requested an exemption from the requirements of § 103.23. Due to the special circumstances, the Department granted the request provided that an accurate record of such transfers is maintained by the bank.

2. A bank in Maine, which for a period of more than 20 years, has used its personnel to physically transport sums of currency and checks in excess of $5,000 to and from a bank in a contiguous Canadian town several times a month, requested and was granted an exemption from the reporting requirements of § 103.23 due to the special circumstances involved. The Department, however, does require the bank to maintain an accurate account of such transfers.

3. An exemption is granted to any merchant shipping company from the requirement to report the transportation into or out of the United States of currency or bearer instruments in amounts in excess of $5,000 with respect to currency or bearer instruments placed on board ship by the owner or operator in order to provide for reasonable shipping needs. Records of such moneys placed on board are to be maintained by the shipping companies.

4. A company that transports sealed packages containing money and valuables under written bilateral contracts for banks, brokerage houses, and security dealers requested an exemption from the requirements of this section. Under the provisions of § 103.23(c)(7), such companies are exempt from reporting the transportation of currency or monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign banks. The company in question is further granted an exemption from reporting overland shipments between domestic banks, brokers, or security dealers and foreign persons. However, all firms engaged in international carriage of valuables by air must continue to file with the Bureau of Customs reports of international air shipments.

Section 103.33(a) *Interpretation.* 1. This regulation requires the keeping of records, the majority of which are already kept by financial institutions. The typical loan application form asks the applicant to state the purpose of the loan, so it would seem normal in the case of each extension of credit in an amount in excess of $5,000 for the record to contain a reference to the nature or the purpose of the loan. However, if it is a passbook loan, for example, the entry "passbook loan" would suffice.

Section 103.34(a) *Interpretations.* 1. Any citizen residing or doing business in the United States and any citizen of the United States who opens an account with a financial institution after June 30, 1972, must provide that institution with his taxpayer identification number at the time the account is opened. For individuals, the taxpayer identification number is his social security number; for corporations, partnerships, and other entities, it is the IRS employer identification number.

Banks, savings and loan associations, building and loan associations, savings banks, credit unions, and brokers and dealers in securities are included in this re-

quirement. If an account is opened in more than one individual's name, the financial institution is required to secure and maintain the social security number of at least one individual having a financial interest in that account.

If the customer does not have a taxpayer identification number or has lost his card and is unaware of his number, the account may be opened provided the customer (or if under 18 years of age, his guardian) authorizes the Social Security Administration to furnish his social security number to both the customer and the financial institution, or the customer, regardless of age, authorizes the Internal Revenue Service to furnish his employer identification number to both the customer and the financial institution.

With respect to accounts opened for trusts, charitable organizations, clubs, and similar entities the financial institution should secure the employer identification number of the entity. An employer identification number must be obtained for this purpose even though an organization might not otherwise require one. See instructions published July 6, 1972 (37 F.R. 13279).

2. This requirement of a taxpayer identification number does not apply to aliens who are ambassadors, ministers, career diplomatic or consular officers, or to naval, military and other attachés of foreign embassies and legations, and the members of their immediate families, nor to aliens who are accredited representatives to international organizations entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families.

3. In regard to determining the proper identifying number to be furnished by accounts opened in more than one name, the bank should follow the regulations and rulings issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code. These rules are outlined on the back of IRS Form 3435. However, the bank should not use Form 3435 to apply for a taxpayer identification number for a new account, but should instead use Form SS–4 or SS–5.

4. The bankruptcy estate of an individual or partnership is considered as a separate entity from the individual or partnership. However, the Treasury Department does not regard the estate of a corporation in bankruptcy as an entity separate from the corporation. Accordingly, the trustee of a corporation in bankruptcy should use the identification number of the corporation. Upon completion of the IRS Form SS–4 with an appropriate authorization to furnish the employer identification number to the institution, a trustee will be permitted to make deposits. He need not wait until the employer identification number is obtained.

5. All accounts that are primarily savings or checking accounts, with the exception of mortgage escrow accounts, are deposit accounts and are subject to the requirements of this section.

6. Where a person purchases a money order directly from the bank or through an agent of the bank and the bank maintains only a consolidated account with no separate record by customer, no deposit account has been opened by the customer and only those recordkeeping requirements normally applicable to cashiers' checks would apply.

7. Where a person reopens a checking account after June 30, 1972, the bank is required to secure the social security number just as with a new account, and the same would apply to the automatic extension of a certificate of deposit.

8. A certificate of deposit sold in bearer form is an interest-bearing form of commercial paper, which need not be purchased from the bank, but is available in the money market. It is not a deposit account as that term is used in the regulations and no identification number need be obtained. In the case of registered certificates of deposit, the taxpayer identification number must be secured.

9. A credit card program operated by a bank does not involve a deposit account and is not, therefore, subject to the requirements of this section.

10. Section 103.34(a) exempts nonresident aliens not doing business in the United States from the requirement to furnish the bank with a taxpayer identification number. If an alien asserts that he is neither residing nor doing business in the United States a bank therefore may open the account without obtaining a taxpayer identification number, provided that it secures a statement from the person to that effect and provided the bank is unaware of any facts inconsistent with that statement. Normal banking practices for ascertaining identity and location of customers should be followed. All nonresident aliens in the United States should have one of the following U.S. Immigration and Naturalization Service forms:

1. Form I–151 (Alien Registration Receipt Card).

2. Form I–185 (Nonresident Alien Canadian Border Crossing Card).

3. Form I–186 (Nonresident Alien Mexican Border Crossing Card).

4. Form I–94 (Arrival-Departure Record).

5. Form I–95A (Alien Crewman's Landing Permit).

6. Form I–184 (Alien Crewman's Landing Permit and Identification Card).

The bank should maintain a record of the applicant's country of citizenship and the number assigned him on his INS form or other official document issued by the applicant's government.

11. In regard to a business firm opening an account in the name of employees who are foreign nationals not residing in the United States, the bank may open the account for them without securing a taxpayer identification number pursuant to this section provided that the bank is satisfied that the persons are nonresident aliens not doing business in the United States. The bank should verify the identity and whereabouts of such persons and require the business firm to supply for each such account a statement to the effect that the employee is a nonresident alien not doing business in the United States.

12. It is acknowledged that the "Old Order Amish" people do not accept social security benefits or pay self-employment tax. In 1965, the Internal Revenue Code was amended to provide an exemption from self-employment tax if a person can show that he is a member of a recognized religious sect which follows the practice of making reasonable provisions for its dependent members. While the Amish people are opposed to and exempted from the social security program, they do pay their Federal taxes. A bank should explain to its Amish customers that the number required to open any account is merely a taxpayer identification number and in no way obligates such person to the social security system. However, if a depositor still objects on religious grounds to applying for a social security number, Form SS–4, Application for an Employer Identification Number, can be used instead.

13. If a new business has applied for an employer identification number, but has not yet received it when it seeks to open a bank account, the bank may open the account if it secures a completed Form SS–4 in accordance with the instructions issued by Treasury. The completed Form should not be sent to IRS but simply retained as evidence that an application for a number is pending. Since in the above instance the bank will not automatically receive the number, it must follow up with the customer to insure that the number is furnished within a reasonable time. Generally speaking, the Internal Revenue Service furnishes an employer identification number to an applicant within 45 days.

Section 103.34(a) *Exemptions from.* 1. An exemption from the requirements of this subsection is granted with respect to all accounts opened as part of a school savings program for school savers up to 18 years of age, provided that the amount of interest earned on such accounts is $10 or less. Children over 18 years of age may apply for a social security number without parental authorization and payments of interest aggregating $10 or more are required by section 6049, Internal Revenue Code of 1954, to be reported on Form 1099, together with the depositor's social security number. Banks having a school savings program should set up appropriate procedures to obtain numbers for account held by persons aged 18 years or older and for all accounts earning interest of $10 or more annually. 2. An exemption from the requirements of this subsection is granted with respect to Christmas Club accounts, provided the annual interest is not anticipated to exceed $10.

Section 103.34(b) *Interpretations.* 1. If there is no check or draft corresponding to a preauthorized paper entry, it will be sufficient to maintain the customer's authorization to charge his account and the memorandum list of entries for a period of 5 years.

2. Insurance companies commonly issue drafts in settlement of claims or for other purposes which are payable through a particular bank, but which are drawn on the company itself and not on a deposit account. However, drafts which are issued by insurance companies are treated as checks throughout the financial system, despite the fact that they are not drawn on a deposit account, and are, therefore, subject to the requirements of § 103.34(b)(3). If these drafts meet the volume and purpose requirements of this section, no copy need be retained. If they do not meet these standards, it will be necessary for the bank to retain a copy of the draft as required by this section and to retain the records required by § 103.34(b)(10) for a period of 2 years.

3. Clean drafts, including "cash item drafts", are drawn "payable through" or "payable at" a particular bank. The bank receives them and presents them to its customer who reviews them and pays for those it accepts. The majority of such items should be eligible for exemption under § 103.34(b)(3), those which are not eligible should be microfilmed or copied before they are released to the customer.

4. Section 103.34(b)(10) does not require a receiving bank to copy or be able to produce an item drawn on another bank. Furthermore, a bank need not be able to supply a description of a deposited check if it can trace a check through its domestic processing system.

Section 103.36 *Interpretation.* 1. A bank must retain for a period of 5 years checks drawn on itself. However, the proof and entry run tapes, which allow a bank to reconstruct an account, need only be retained for a period of 2 years.

Section 103.37 *Interpretation.* 1. The term "temporarily" used in this section should be

interpreted as a vacation or business assignment expected to last less than 6 months.

Section 103.42 *Interpretation.* 1. This section provides that nothing contained herein shall require or authorize the microfilming or other reproduction of currency or obligation or security of the United States as defined in 18 U.S.C. 8 or any obligation or security of any foreign government. However, government checks may be microfilmed, but not copied, for the purpose of tracing or identifying a transaction.

Section 103.45 *Exemptions.* 1. A bank, whose employees physically transport currency across the Canadian border on a weekly basis for deposit with a Canadian bank which is only a few hundred yards away, requested an exemption from the requirements of § 103.23. Due to the special circumstances, the Department granted the request provided that an accurate record of such transfers is maintained by the bank.

2. A bank in Maine, which for a period of more than 20 years has used its personnel to physically transport sums of currency and checks in excess of $5,000 to and from a bank in a contiguous Canadian town several times a month, requested and was granted an exemption from the reporting requirements of § 103.23 due to the special circumstances involved. The Department, however, does require the bank to maintain an accurate record of such transfers.

3. An exemption is granted to any merchant shipping company from the requirement to report the transportation into or out of the United States of currency or bearer instruments in amounts in excess of $5,000 with respect to currency or bearer instruments placed on board ship by the owner or operator in order to provide for reasonable shipping needs. Records of such monies placed on board are to be maintained by the shipping companies.

4. A company wholly engaged in financing inventories and retail installment sales of automobile dealers which came within the definition of a "bank" in § 103.11(a)(7) requested and was granted an exemption from the recordkeeping and reporting requirements of Part 103, Title 31, Code of Federal Regulations. However, if said company is a "financial institution" within the meaning of § 103.11 (other than as a "bank") it would, of course, have to comply with those provisions of this part relating to financial institutions other than banks.

5. An exemption from the requirements of § 103.34(a) is granted with respect to all accounts opened as part of a school savings program for school savers up to 18 years of age, provided that the amount of interest earned on such accounts is $10 or less. Children over 18 years of age may apply for a social security number without parental authorization and payments of interest aggregating $10 or more are required by section 6049, Internal Revenue Code of 1954, to be reported on Form 1099, together with the depositor's social security number. Banks having a school savings program should set up appropriate procedures to obtain numbers for accounts held by persons aged 18 years or older and for all accounts earning interest of $10 or more annually.

6. An exemption from the provisions of Part 103, Title 31, Code of Federal Regulations, is granted to those persons who are registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies. However, if a person so registered at any time offers and sells other types of securities in addition to variable annuity contracts, this exemption does not apply to any part of his business. This exemption will in no way affect recordkeeping regulations or other requirements promulgated under the Securities and Exchange Act of 1934, as amended.

7. An exemption from the requirements of § 103.34(a) is granted with respect to Christmas Club accounts, provided the annual interest is not anticipated to exceed $10.

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary for Enforcement, Tariff and Trade Affairs and Operations.

[FR Doc.72-20208 Filed 11-22-72;8:52 am]

Title 32—NATIONAL DEFENSE

Chapter XVI—Selective Service System

PART 1660—ALTERNATE SERVICE

Miscellaneous Amendments

Whereas, on October 13, 1972, the Director of Selective Service published a notice of proposed amendments of Selective Service Regulations (37 F.R. 21653) of October 13, 1972; and

Whereas more than 30 days have elapsed subsequent to such publication during which period comments from the public have been received and considered.

Now therefore by virtue of the authority vested in me by section 6(j) of the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.), the Selective Service Regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, effective 11:59 p.m. e.s.t. on November 30, 1972, as follows:

Section 1660.2 *Examination of registrants* is amended to read as follows:

§ 1660.2 Examination of registrants.

A registrant classified in Class 1–O shall be ordered to report for Armed Forces examination in accord with the provisions of Part 1628 of this chapter. If he fails to report for or submit to this examination, or if he is found to be qualified for military service, he will be selected for alternate service in accord with § 1660.4.

Section 1660.3 *Volunteer for alternate service* is amended to read as follows:

§ 1660.3 Volunteer for alternate service.

Only registrants classified in Class 1–O may volunteer for alternate service in lieu of induction. Any registrant in Class 1–O may submit Application of Volunteer for Alternate Service (SSS Form 151) to his local board. If the volunteer wishes to propose jobs which he feels would be approved for his alternate service he will submit each job on an Employer's Statement of Availability of a Job as Alternate Service (SSS Form 156) simultaneously with his completed Application of Volunteer for Alternate Service (SSS Form 151). The State Director will approve or disapprove the proposed jobs. If the registrant fails to locate a suitable job or if the jobs submitted on the Employer's Statement of Availability of a Job as Alternate Service (SSS Form 156) are not approved, the State Director will not request the issuance of the Order to Report for Alternate Service (SSS Form 153) until the registrant would have been issued an Order to Report for Alternate Service (SSS Form 153) in accordance with § 1660.4 had he not volunteered.

Section 1660.4 *Selection of nonvolunteer for alternate service,* is amended to read as follows:

§ 1660.4 Selection of nonvolunteer for alternate service.

(a) A registrant classified in Class 1–O will be issued an Order to Report for Alternate Service (SSS Form 153) by the Executive Secretary or clerk, if so authorized, or a member of the registrant's local board together with Conscientious Objectors Skills Questionnaire (SSS Form 152) and three copies of Employer's Statement of Availability of a Job as Alternate Service (SSS Form 156) at the same time that he would be issued an Order to Report for Induction (SSS Form 252) were he classified in Class 1–A or 1–A–O. Such Order to Report for Alternate Service (SSS Form 153) shall specify the place and a date on which the registrant is to report for alternate service in accord with the instructions of the State Director. The date specified shall be not earlier than 70 days after such order is mailed.

(b) If a registrant to whom an Order to Report for Alternate Service (SSS Form 153) has been issued submits within 60 days after the issuance of such order a proposed job that is approved by the State Director, a suitable Amendment to Order to Report for Alternate Service (SSS Form 153A) will be issued by the registrant's local board in accord with instructions of the State Director.

(c) When a registrant in the medical, dental, or allied specialist category is classified in Class 1–O, he will be ordered to alternate service in lieu of induction at the time that he would have been called for induction if he were in Class 1–A or 1–A–O.

Section 1660.7 *Assigning alternate service,* is amended to read as follows:

§ 1660.7 Assigning alternate service.

(a) A registrant who has been classified in Class 1–O will be furnished Conscientious Objectors Skills Questionnaire (SSS Form 152) within 15 days after such classification.

(b) A registrant classified in Class 1–O may submit Employer's Statement of Availability of a Job as Alternate Service (SSS Form 156) or a letter from an employer to the State director at any time within 60 days following the issuance to him of an Order to Report for Alternate Service (SSS Form 153). The State director will determine whether the proposed job is acceptable. When a job is approved, the registrant's local board will issue an appropriate Amendment to Order to Report for Alternate Service

(SSS Form 153A) in accord with instructions of the State director.

(c) Any time the State director disapproves a job proposed by the registrant in accord with paragraph (b) of this section, he will inform the registrant of his decision within 15 days after the State director receives such form. The registrant may request that the State director's decision(s) be reviewed by the Director. The registrant's case will be considered by the Director on only one occasion in accordance with this paragraph, but the registrant may request a review of as many as three adverse decisions on jobs in this one review. If the Director approves a job proposed by the registrant he shall direct the registrant's local board to issue an appropriate Amendment to Order to Report for Alternate Service (SSS Form 153A).

(d) A registrant classified in Class 1–O may take a job anticipating that it might later be approved as alternate service. If such a job is approved, the registrant will be credited with having performed acceptable service, when in fact he has performed such service, from the date he started the job, or the date he was classified in Class 1–O, whichever is later.

(e) An order to report for alternate service will be deemed an order to report for induction within the meaning of § 1632.2 of this chapter.

Paragraphs (c) and (d) of § 1660.9 *Administration of alternate service*, are amended and a new paragraph (f) is added to read as follows:

§ 1660.9 Administration of alternate service.

* * * * *

(c) If, after completing the investigation in accord with paragraph (b) of this section, the State director finds no failure of the registrant to perform satisfactorily he will request the registrant's local board to order the registrant to another job as quickly as possible by issuing an appropriate Amendment to Order to Report for Alternate Service (SSS Form 153A). If the registrant complies with the order to report to the new job, the intervening time between jobs will not constitute a break in the required period of alternate service.

(d) The State director may reassign a working registrant at any time that he determines the job to which the registrant is assigned ceases to be acceptable as alternate service as defined in § 1660.6 or upon the request of the registrant by requesting the registrant's local board to issue an appropriate Amendment to Order to Report for Alternate Service (SSS Form 153A). Prior to the issuance of an Amendment to Order to Report for Alternate Service (SSS Form 153A) in accord with this paragraph, the registrant is required to continue in the alternate service to which he had been ordered most recently.

* * * * *

(f) No action shall be required of a registrant by an Amendment to Order to Report for Alternate Service (SSS Form 153A) within 10 days after the issuance of such form without his consent.

BYRON V. PEPITONE,
Acting Director.

NOVEMBER 20, 1972.

[FR Doc.72-20222 Filed 11-22-72;8:51 am]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 50—NATIONAL CAPITAL PARKS REGULATIONS

Public Gatherings

The Department of the Interior has received a letter dated November 14, 1972, from the U.S. Attorney for the District of Columbia in the litigation styled "A Quaker Action Group, et al. v. Rogers C. B. Morton, et al.", U.S. District Court for the District of Columbia Civil Action No. 688–69, which sets forth the following:

This is in regard to the conduct by organizations of simultaneous demonstration activities on the White House sidewalk and in Lafayette Park under 36 CFR 50.19, insofar as that regulation is operative under the Court of Appeals pendente lite mandate in this case. (See 460 F. 2d at 863–864.)

The Department of the Interior, through National Capital Parks (NCP), with the concurrence of the U.S. Secret Service and the Department of Justice, has been since about March 1971 administering the court-imposed pendente lite 15-day-advance-notice-system (substituted in place of the NCP permit system) under 36 CFR 50.19 in the following manner:

NCP has been encouraging voluntary cooperation, and has been interposing no court objection to organizations conducting demonstration activities on the White House sidewalk, in Lafayette Park and on the Ellipse at the same time, where the organization agrees to limit the number of participants to 100 persons on the White House sidewalk, and 500 persons in Lafayette Park, subject to the self-discipline condition the Court of Appeals prescribed in its order entered March 19, 1971, on Appeal No. 1210–71, relative to the "14–21 Coordinating Committee" and certain other connected organizations. * * *

To obviate all further controversy on this point, we informed the Court and opposing counsel at the pretrial conference held November 10, 1972, that the Secretary of the Interior would now issue an amendment to 36 CFR 50.19(g)(4)—to take effect immediately—which will incorporate this current simultaneous use practice, subject to the self-discipline safeguard the Court of Appeals prescribed in the Government's interest on March 19, 1971.

We annex hereto a suggested revision to 36 CFR 50.19(g)(4). It incorporates the self-discipline safeguard prescribed by the Court of Appeals. This amendment is of course ameliorative in nature. Accordingly, we perceive no sound reason why this amendment should not be made effective immediately.

By its order entered March 19, 1971, on Appeal No. 1210–71, the U.S. Court of Appeals for the District of Columbia Circuit, in modifying the District Court order, provided as follows:

(A) The organizations, in carrying on demonstration activities "in front of, or in the vicinity of the White House, including any sidewalk which borders the White House grounds, the Executive Office Building, or on any street or passageway adjacent thereto or in Lafayette Park, or on the sidewalks bounding Lafayette Park," were enjoined not to exceed the following limitations:

"(1) No more than 100 persons shall be permitted to conduct a public gathering on the White House sidewalk at any one time.

(2) No more than 500 persons shall be permitted to conduct a public gathering on the White House sidewalk and in Lafayette Park at any one time."

However, the organizations were authorized to carry on their peaceable demonstration activities "without limitation as to numbers, in the park area known as the Ellipse (bounded on the North by E Street NW.; on the South by Constitution Avenue NW.; on the East by 15th Street NW.; and on the West by 17th Street NW.), subject to such reasonable detailed arrangements for use of the Ellipse as they shall work out in advance with the appropriate representatives of the National Park Service, U.S. Department of the Interior."

(B) The organizations were "directed to take all action which may be necessary to insure that * * * [the indicated numerical limitations were observed] * * * including appropriate notice to the membership and all persons associated with each organization of the terms of * * * [the] * * * Order, and the provisions of sufficient marshals to insure the self-dis[c]ipline of the public gathering."

The Secret Service Director has informally expressed his judgment that this modification to 36 CFR 50.19(g)(4) occasions no additional significant adverse effect upon the vital security interest operative in the White House area. The Department of the Interior has determined that this modification does not occasion any increased detriment to the park considerations also operative in that area.

In light of the U.S. Attorney's request, the National Capital Parks' administrative practice in this regard, which has been in effect since about March 1971, and the fact that this amendment is less restrictive on the public, it is the Secretary's determination that good cause exists in the public interest to have the following amendment to 36 CFR 50.-19(g)(4) take effect immediately upon its publication in the FEDERAL REGISTER (11–23–72), subject, of course, to the present suspensive operation of the "Quaker Action" modified preliminary injunction order, pending further court order in that regard.

(5 U.S.C. 553; 39 Stat. 535; 16 U.S.C. 1, et seq.; and see the other authorities as to park policies set forth at 35 F.R. 11489, July 17, 1970)

Dated: November 20, 1972.

ROGERS C. B. MORTON,
Secretary of the Interior.

Section 50.19(g)(4), 36 CFR, is amended to read as follows:

§ 50.19 Public gatherings.

* * * * *

(g) * * *

(4) No permit shall be issued to an organization, group, or other sponsor to conduct public gathering activities on the White House sidewalk and in Lafayette Park at the same time, except under the following conditions:

(i) Any overage above subparagraphs (2) and (3) of this paragraph shall proceed to the Ellipse via 15th Street and/or 17th Street (or shall proceed to some other agreed-upon designated park site) and shall there conduct public gathering activities; and

(ii) The organization, group, or other sponsor of such public gathering activities shall undertake in good faith all reasonable action—including the provision of sufficient marshals—to insure good order and self-discipline in carrying on such public gathering activities, including any necessary movements of persons, so that the numerical limitations prescribed under subparagraphs (2) and (3) of this paragraph shall be observed at all times on the White House sidewalk and in Lafayette Park.

* * * * *

[FR Doc.72-20291 Filed 11-22-72;8:52 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER E—PESTICIDES PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

S-[2-(Ethylsulfinyl)Ethyl] O,O-Dimethyl Phosphorothioate

A petition (PP 9F0806) was filed by Chemagro Corp., Post Office Box 4913, Kansas City, MO 64120, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of tolerances for residues of the insecticide *S*-[2-(ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate in or on the raw agricultural commodities corn fodder and forage and sugar beet tops at 5 parts per million; leaf lettuce and strawberries at 1.75 parts per million; apples and turnip tops at 1.5 parts per million; blackberries, cabbage, cucumbers, eggplants, grapefruit, head lettuce, lemons, oranges, plums (prunes), raspberries, and summer squash at 1 part per million; peppers at 0.75 part per million; corn (kernels plus cob with husk removed) at 0.5 part per million; melons, pears, pumpkins, sugar beets, turnip roots, walnuts, and winter squash at 0.3 part per million; and cottonseed and potatoes at 0.1 part per million.

Subsequently, the petitioner amended the petition by:

a. Withdrawing the requested tolerances for apples and leaf lettuce.

b. Reducing the requested tolerances for corn fodder and forage from 5 parts per million to 3 parts per million; sugar beet tops from 5 parts per million to 0.5 part per million; strawberries from 1.75 parts per million to 1 part per million; and turnip tops from 1.5 parts per million to 1 part per million.

c. Requesting tolerances for alfalfa (hay and chaff when grown for seed) and clover (hay and chaff when grown for seed) at 11 parts per million; alfalfa (green) and clover (green) at 5 parts per million; broccoli, brussels sprouts, and cauliflower at 1 part per million; and watermelons at 0.3 part per million.

Prior to December 2, 1970, the Secretary of Agriculture certified that this pesticide chemical is useful for the purpose for which the tolerances are being established, and the Fish and Wildlife Service, U.S. Department of the Interior, stated that it had no objections to the proposed tolerances.

Interim tolerances for residues of the pesticide were established (37 F.R. 17554; August 30, 1972) on all of the commodities for which tolerances are being established, except alfalfa (green, hay, and chaff) and clover (green, hay, and chaff), pending establishment of regular tolerances.

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

2. The tolerances established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), Part 180 is amended as follows:

1. In § 180.3(e)(5), by alphabetically inserting in the list of cholinesterase-inhibiting pesticides a new item as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(e) * * *

(5) * * *

S-[2-(Ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate and its cholinesterase-inhibiting metabolites, (primarily *S*-[2-(ethylsulfonyl)ethyl] *O,O*-dimethyl phosphorothioate).

* * * * * * *

2. In Subpart C, by adding a new section as follows:

§ 180.330 *S*-[2-(Ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate; tolerances for residues.

Tolerances are established for residues of the insecticide *S*-[2-(ethylsulfinyl) ethyl] *O,O*-dimethyl phosphorothioate and its cholinesterase-inhibiting metabolites as follows:

11 parts per million in or on alfalfa (hay and chaff when grown for seed) and clover (hay and chaff when grown for seed).

5 parts per million in or on alfalfa (green) and clover (green).

3 parts per million in or on corn fodder and forage.

1 part per million in or on blackberries, broccoli, brussels sprouts, cabbage, cauliflower, cucumbers, eggplant, grapefruit, head lettuce, lemons, oranges, plums (fresh prunes), raspberries, strawberries, summer squash, and turnip tops.

0.75 part per million in or on peppers.

0.5 part per million in or on corn grain, fresh corn including sweet corn (kernels plus cob with husk removed), and sugar beet tops.

0.3 part per million in or on melons, pears, pumpkins, sugar beets, turnips, walnuts, and winter squash.

0.1 part per million in or on cottonseed and potatoes.

§ 180.319 [Amended]

3. In § 180.319 *Interim tolerances*, by deleting from the table the item "*S*-[2-(Ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate".

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, Fourth and M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (11-23-72).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: November 16, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-20174 Filed 11-22-72;8:46 am]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

2-Ethylthio-4,6-bis(isopropylamino)-s-triazine

A petition (PP 2F1284) was filed by Ciba-Geigy Corp., Ardsley, N.Y. 10502, in

accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of a tolerance for negligible residues of the herbicide 2-ethylthio-4,6-bis(isopropylamino)-*s*-triazine in or on the raw agricultural commodity cottonseed at 0.1 part per million.

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The herbicide is useful for the purpose for which the tolerance is being established.

2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

3. The tolerance established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), Part 180 is amended by adding the following new section to Subpart C:

§ 180.329 2-Ethylthio-4,6-bis(isopropylamino)-*s*-triazine; tolerances for residues.

A tolerance of 0.1 part per million is established for negligible residues of the herbicide 2-ethylthio-4,6-bis(isopropylamino)-*s*-triazine in or on the raw agricultural commodity cottonseed.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, Fourth and M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (11–23–72).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: November 16, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72–20173 Filed 11–22–72;8:46 am]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

4-Amino-6-*tert*-butyl-3-(methylthio)-*as*-triazin-5-(4*H*)-one

A petition (PP 2F1274) was filed by Chemagro Corp., Post Office Box 4913, Kansas City, MO 64120, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of a tolerance for combined residues of the herbicide 4-amino-6-*tert*-butyl-3-(methylthio)-*as*-triazin-5-(4*H*)-one and its deaminated diketo metabolite in or on soybeans at 0.1 part per million.

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The herbicide is useful for the purpose for which the tolerance is being established.

2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

3. The tolerance established by this order will protect the public health.

4. The 0.1 part per million tolerance is a negligible residue.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (36 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), Part 180 is amended by adding the following new section to Subpart C:

§ 180.332 4-Amino-6-*tert*-butyl-3-(methylthio)-*as*-triazin-5-(4*H*)-one; tolerances for residues.

A tolerance of 0.1 part per million is established for the combined negligible residues of the herbicide 4-amino-6-*tert*-butyl-3-(methylthio)-*as*-triazin-5-(4*H*)-one and its deaminated diketo metabolite in or on soybeans.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, Fourth and M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (11–23–72).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: November 16, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72–20172 Filed 11–22–72;8:46 am]

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1, Amdt. 1–65]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Redelegation of Authority With Respect to Safety of Liquid Pipelines

The purpose of this amendment is to publish in Appendix A to Part 1 of the Regulations of the Office of the Secretary of Transportation an amended redelegation of authority to the Director of the Office of Pipeline Safety which includes authority to regulate safety of liquid pipelines.

Since this amendment relates to departmental management, procedures, and practices, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, Appendix A to Part 1 of Title 49, Code of Federal Regulations is amended, effective immediately, by revising section 1 as set forth below.

(Sec. 9, Department of Transportation Act, 49 U.S.C. 1657; § 1.52(b)(1) Regulations of the Office of the Secretary of Transportation, 49 CFR 1.52(b)(1))

Issued in Washington, D.C., on November 7, 1972.

BENJAMIN O. DAVIS,
Assistant Secretary of Transportation for Safety and Consumer Affairs.

APPENDIX A—DELEGATIONS AND REDELEGATIONS BY SECRETARIAL OFFICERS

1. *Director, Office of Pipeline Safety.*

OFFICE OF THE SECRETARY

DIRECTOR, OFFICE OF PIPELINE SAFETY

Redelegation of Pipeline Safety Authority

Pursuant to the authority delegated to me by § 1.58(d) of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), the authority to carry out the functions vested in the Secretary by the following statutes is hereby redelegated to the Director, Office of Pipeline Safety:

(1) The Natural Gas Pipeline Safety Act of 1968 (82 Stat. 720, 49 U.S.C. 1671).
(2) Title 18, U.S.C. sections 831–835 so far as they pertain to pipelines.

[FR Doc.72-20159 Filed 11-22-72;8:45 am]

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC-40; Notice 72-22]

PART 391—QUALIFICATIONS OF DRIVERS

Disqualification for Loss of Driving Privileges

The Director of the Bureau of Motor Carrier Safety is issuing a revision of § 391.15 of the Motor Carrier Safety Regulations, pertaining to disqualification of persons to serve as drivers of commercial motor vehicles operated in interstate or foreign commerce.

A proposal to revise § 391.15, together with certain provisions of the rules relating to physical qualifications of drivers, was issued on July 25, 1972 (37 F.R. 15708). A large number of comments was received in response to that proposal. The comments indicated that the two aspects of the proposal raised quite distinct and separable issues and that each should be dealt with separately. The Director has, therefore, decided to proceed with further action in the area of driver disqualification at this time and to act on the medical-waiver features of the proposal at a later date.

The bulk of the comments criticized two features of the proposal. First, both labor organizations and members of the trucking industry attacked the notion that conviction of certain criminal offenses committed while a person is operating his private automobile should thereafter disqualify that person from serving as the driver of a commercial motor vehicle. Second, many persons who filed comments argued against adopting a procedure under which a driver who is otherwise disqualified for an extended period of time could obtain administrative review of his disqualfication and could continue to drive while his appeal is pending. In both cases, the Director has decided not to adopt the concept put forward in the proposal, although not necessarily for the reasons cited in the comments.

The principal area of controversy involves the driver who has been convicted of driving his private automobile while intoxicated. Disqualification of such drivers to operate commercial motor vehicles in interstate or foreign commerce has been attacked as unconstitutional and arbitrary, on the one hand, and has been defended as a salutary step towards ridding the industry of undesirable, accident-prone, and irresponsible individuals, on the other. In 1969 and 1970, when the Administrator considered the disqualification rule, there was considerable evidence that intoxicated drivers posed a critical safety problem. In light of the hazards that those drivers represented, the Administrator determined that a person who is convicted of driving while intoxicated should thereafter be precluded from driving commercial motor vehicles, even though the offense was committed in a personal motor vehicle. Commission of the offense the Administrator said, "indicates that the perpetrator is unfit to drive a commercial vehicle irrespective of whether the offense was committed while on duty." (35 F.R. 6459.)

Since that time, additional work in the area has produced a trend towards rehabilitating, rather than punishing, drinking drivers. The Department's National Highway Traffic Safety Administration is emphasizing the establishment of special treatment programs for identifying and treating drivers who suffer from alcoholism or have serious drinking problems.

Study of the available materials has convinced the Director that automatic disqualification of drivers who are convicted of driving while intoxicated is out of phase with the current approach toward identification and treating these drivers, at least insofar as drivers who are convicted of driving personal vehicles while intoxicated are concerned. Experience in administering the driver disqualification rule has indicated that it tends to inhibit ready identification of drivers who should be in rehabilitation programs. Reports from all over the Nation have indicated that local judges and others involved in criminal law have been reluctant to enter guilty verdicts against professional drivers charged with disqualifying offenses, even where the evidence clearly justifies that result, because conviction would result in disqualification of the defendant and subsequent loss of employment. Convictions have been set aside for the same reason. This trend is counterproductive in the context of a nationwide, Federal program which aims at identification and rehabilitation of drivers who suffer from drinking problems.

Another persuasive, though not dispositive, factor is the absence of data which would either prove or disprove a statistical correlation between conviction of driving while intoxicated in a noncommercial vehicle and bad driving performance in a commercial motor vehicle. The Bureau's records contain many case histories showing that drivers who were involved in serious chargeable accidents had poor prior driving records, both on and off duty. However, the data are insufficient to indicate that, as a class, persons convicted of driving while intoxicated in their personal vehicles have a greater tendency to involvement in serious commercial vehicle accidents than drivers in general.

In the case of a driver who is convicted of this offense, and other serious offenses, arising out of his operation of a commercial motor vehicle there is, of course, a direct connection with undesirable behavior behind the wheel of a commercial vehicle. The conviction establishes, ipso facto, violation of §§ 392.4 or 392.5 of the regulations. The Director has therefore, decided to retain the disqualification for specified criminal offenses committed while the driver is operating a commercial motor vehicle. It should be noted, moreover, that an offense committed while the driver is driving a commercial motor vehicle will be disqualifying, whether or not the vehicle was operating in interstate or foreign commerce. There is no valid basis for distinguishing between a driver who is intoxicated while operating a commercial vehicle on an intrastate trip and one who is intoxicated while conducting an interstate operation.

The Director has also decided to incorporate in the rule a concept advanced in the notice of proposed rule making: Variable penalties dependent upon the frequency with which a driver is convicted. Persons who filed comments generally expressed approval of this idea. The 3-year disqualification will apply only to subsequent offenders. Drivers who are convicted of a disqualifying offense for the first time will be disqualified for a period of 1 year. The notion of variable penalties is endemic in contemporary views of how to treat persons who display evidence of alcohol-related problems. Since rehabilitation is the objective, it is felt that persons who are first-time offenders should incur a penalty sufficient to indicate that they can be treated and subsequently returned to service.

The notice of proposed rule making also suggested that drivers otherwise disqualified under the rule might be given an opportunity for an administrative hearing at which they could adduce evidence indicating that the penalty imposed by the regulations should be mitigated or reduced. Further analysis, however, has shown that it is not administratively feasible to establish such a program at the present time. The number of potential cases is so large in comparison to the resources available that it would not be practicable to establish a nationwide system of providing hearings for drivers who are disqualified.

Furthermore, the 1-year period of disqualification for first offenders which the Director is now introducing closely parallels the mandatory period for loss of driving privileges upon conviction of driving while intoxicated or a similar offense imposed by many States. Hence, the Director finds that reduction in the severity of the penalty has tended to reduce the need for administrative proceedings to mitigate or reduce the consequences imposed by the general rule.

In consideration of the foregoing, § 391.15 of the Motor Carrier Safety Regulations (Subchapter B in Chapter III of Title 49 CFR) is revised to read as set forth below.

This revision is effective on December 25, 1972. However, this revision applies to all drivers who have been disqualified under § 391.15 prior to this issuance.

This amendment to the Motor Carrier Safety Regulations is issued under the authority of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority from the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 389.4 respectively.

Issued on November 20, 1972.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

§ 391.15 Disqualification of drivers.

(a) *General.* A driver who is disqualified shall not drive a commercial motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a commercial motor vehicle.

(b) *Disqualification for loss of driving privileges.* A driver is disqualified for the duration of his loss of his privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(c) *Disqualification for criminal misconduct*—(1) *General rule.* A driver who is convicted of, or forfeits bond or collateral upon a charge of, a disqualifying offense specified in subparagraph (2) of this paragraph is disqualified for the period of time specified in subparagraph (3) of this paragraph if—

(i) The offense was committed after December 31, 1970; and

(ii) The offense was committed while the driver was driving a motor vehicle in the employ of a motor carrier or in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce.

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Operating a motor vehicle while under the influence of alcohol, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug.

(ii) A crime involving the knowing transportation, knowing possession, or unlawful use of amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs.

(iii) Leaving the scene of an accident which resulted in personal injury or death.

(iv) A felony involving the use of a motor vehicle.

(3) *Duration of disqualification for criminal misconduct*—(i) *First offenders.* A driver is disqualified for 1 year after the date of his conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he was not convicted of, and did not forfeit bond or collateral upon a charge of, an offense that would disqualify him under the rules of this section.

(ii) *Subsequent offenders.* A driver is disqualified for 3 years after the date of his conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him under the rules in this section.

[FR Doc.72-20292 Filed 11-22-72;8:52 am]

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

[Docket No. 69-7; Notice 25]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Chest and Femur Injury Criteria

The purpose of this notice is to amend the injury criteria specified for the chest and femur under sections S6.3 and S6.4 of Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, 49 CFR 571.208. The amendments adopted hereby are those proposed in a notice of proposed rule making published on October 28, 1972 (Notice 24; 37 F.R. 23115).

The injury criterion for the chest is amended with respect to all vehicles manufactured before August 15, 1975, by substituting a severity index value of 1,000 as the measure of injury potential in place of the criterion of 60g's for 3 milliseconds. The substitution had previously been made for vehicles equipped with seatbelt systems manufactured before August 15, 1975. The amendment made hereby is based on a finding that the severity index is an acceptable interim measure for restraint systems other than belt systems.

Several comments noted an oversight in Notice 24 concerning the application of the modified chest criterion to multipurpose passenger vehicles and trucks having GVWR's of 10,000 pounds or less. As a result of a previous notice (Notice 23; 37 F.R. 22871, October 26, 1972), these vehicles had been permitted to meet the modified criterion until August 15, 1977. Notice 24 failed to reflect this change. The omission has been corrected in the amended version of S6.3, and a parallel extension has been made for vehicles other than passenger cars that have restraint systems other than belts.

The injury criterion for the upper legs is amended to specify a maximum force of 1,700 pounds on each femur rather than the previously specified force of 1,400 pounds. The new requirement is considered to provide a good level of protection in crashes in the 30 m.p.h. range and allows manufacturers greater latitude in designing systems for protection at higher speeds.

None of the comments disagreed with the proposal for an increase in force level, although the Ford Motor Co. suggested a further amendment that would permit higher forces for a cumulative interval of not more than 3 milliseconds, thereby disregarding extremely short period acceleration peaks which Ford considers to be artificial products of the dummy's metallic structure. A similar request has been made by General Motors in a recent petition for rule making. The agency has not yet completed its evaluation of this issue. If favorable action is decided upon, a notice of proposed rule making will be issued to permit additional comment.

In consideration of the foregoing, Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, 49 CFR 571.208, is amended as set forth below. Because this amendment relieves a restriction and imposes no additional burden, an immediate effective date is found to be in the public interest.

1. S6.3 is amended to read as follows:

S6.3 The resultant acceleration at the center of gravity of the upper thorax shall not exceed 60g's, except for intervals whose cumulative duration is not more than 3 milliseconds. However, in the case of a passenger car manufactured before August 15, 1975, or a truck or multipurpose passenger vehicle with a GVWR of 10,000 pounds or less manufactured before August 15, 1977, the resultant acceleration at the center of gravity of the upper thorax shall be such that the severity index calculated by the method described in SAE Information Report J885a, October 1966, shall not exceed 1,000.

2. S6.4 is amended to read as follows:

S6.4 The force transmitted axially through each upper leg shall not exceed 1,700 pounds.

Effective date: November 23, 1972.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407; delegation of authority, 49 CFR 1.51)

Issued on November 20, 1972.

CHARLES H. HARTMAN,
Acting Administrator.

[FR Doc.72-20247 Filed 11-21-72;9:51 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Iroquois National Wildlife Refuge, N.Y.

The following special regulation is issued and is effective on the date of publication in the FEDERAL REGISTER (11-23-72).

§ 28.28 Special regulations: recreation; for the individual wildlife refuge areas.

NEW YORK

IROQUOIS NATIONAL WILDLIFE REFUGE

Travel on foot or by motor vehicle is permitted on designated travel routes, for the purpose of nature study, photography, hiking, and sightseeing during daylight hours. Pets are permitted if on

a leash not over 10 feet in length. Fishing and hunting may be permitted under special regulations.

The refuge area, comprising 10,818 acres, is delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office and Courthouse, Boston, Mass. 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1973.

WILLARD M. SPAULDING, JR.,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

NOVEMBER 15, 1972.

[FR Doc.72-20212 Filed 11-22-72;8:50 am]

PART 33—SPORT FISHING

Crab Orchard National Wildlife Refuge, Ill.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (11-23-72).

§ 33.5 Special regulations; sport fishing; for individual wildlife refuges.

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Sport fishing on the Crab Orchard National Wildlife Refuge, Ill., is permitted only on the areas designated by signs as open to fishing. These open areas comprising 8,800 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from January 1, 1973, through December 31, 1973, in areas designated on map as I and III; and from March 15, 1973, through September 30, 1973, daylight hours only, in area designated on map as II; except bank fishing is permitted from the Wolf Creek Road and State Highway 148 causeways, during daylight hours, from January 1, 1973, through December 31, 1973.

(2) The use of boats and motors is permitted, except that use of a boat with a motor larger than ten (10) horsepower is prohibited on Devil's Kitchen Lake and on Little Grassy Lake.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through December 31, 1973.

L. A. MEHRHOFF, JR.,
Project Manager, Crab Orchard National Wildlife Refuge, Carterville, Illinois.

NOVEMBER 16, 1972.

[FR Doc.72-20181 Filed 11-22-72;8:47 am]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Reg. 276]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.576 Navel Orange Regulation 276.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 21, 1972.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period November 24, through November 30, 1972, are hereby fixed as follows:

(i) District 1: 773,000 Cartons;
(ii) District 2: 54,000 Cartons;
(iii) District 3: 77,000 Cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: November 22, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-20353 Filed 11-22-72;11:44 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 915]

AVOCADOS GROWN IN SOUTH FLORIDA

Proposed Limitations of Handling

Notice is hereby given that the Department is giving consideration to the following proposal submitted by the Avocado Administrative Committee, established under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposal reflects the committee's current appraisal of present and prospective marketing conditions for avocados. Seasonal shipments of avocados in heavy volume are now in progress. The Avocado Administrative Committee on November 8, 1972, held a meeting to consider the current crop and marketing conditions for avocados. It was brought to the committee's attention that avocados being handled for commercial processing into products, pursuant to marketing order § 915.55 *Avocados not subject to regulations*, exempt from assessments, regulations, inspection, and certification are being packed and handled in containers prescribed in § 915.305 (Avocado Order 5; 7 CFR 915.305; Subpart-Container Regulation). It was concluded that shipments of such uninspected avocados in the prescribed containers make it difficult for the committee to assure that avocados handled for processing are not entering the fresh market. In addition, such handling makes it more difficult for the committee to assure that avocados handled in the containers for the fresh market are in compliance with assessment, regulation, inspection, and certification provisions of the order. Therefore, the committee unanimously recommended that the container regulation, currently in effect, be amended to prevent the handling of exempt avocados in containers, prescribed therein, as follows:

It is proposed that the provisions of paragraph (a) (1) of § 915.305 (Avocado Order 5; 7 CFR 915.305; 37 F.R. 11314; 37 F.R. 16930) be amended to read as follows:

§ 915.305 **Avocado Order 5.**

(a) *Order.* (1) On and after December 16, 1972, no handler shall handle between the production area and any point outside thereof any variety of avocados in containers having a capacity of more than 4 pounds of avocados, unless such avocados are handled in containers meeting the following specifications and conform to all other applicable requirements of this section: *Provided,* That avocados handled pursuant to § 915.55 (c) of this part, for commercial processing into products, shall not be handled in any of the containers specified in this § 915.305 Avocado Order 5, as amended:

* * * * *

All persons who desire to submit written data, views, or arguments for consideration in connection with the aforesaid proposal may do so, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the close of business on the 15th day after publication thereof in FEDERAL REGISTER. All such communications will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: November 17, 1972.

ARTHUR E. BROWNE,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-20186 Filed 11-22-72;8:47 am]

[7 CFR Part 1121]

[Docket No. AO-364-A6]

MILK IN SOUTH TEXAS MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Notice is hereby given of a public hearing to be held at the Host Airport Hotel-Houston, Houston Intercontinental Airport, 18700 Kennedy Boulevard, Houston, Tex., beginning at 9:30 a.m., December 19, 1972 with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the South Texas marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY ASSOCIATED MILK PRODUCERS, INC.

PROPOSAL NO. 1

A. In § 1121.61, revise paragraph (b) (5) to read as follows:

§ 1121.61 **Obligation of handler operating a partially regulated distributing plant.**

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (not to be less than the Class II price) subtract its value at the uniform price applicable at such location plus 5 cents (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3), of this paragraph, its value computed at the Class I price applicable at the location of the nonpool plant (not to be less than the Class II price) less the value of such skim milk at the Class II price.

B. Revise § 1121.63 to read as follows:

§ 1121.63 **Producer-handler.**

Sections 1121.40 through 1121.46, 1121.50 through 1121.55, 1121.70 through 1121.72, 1121.80 through 1121.89, and 1121.110 through 1121.122 shall not apply to a producer-handler.

C. In § 1121.72, add a new paragraph (c–1) as follows:

§ 1121.72 **Computation of the uniform price.**

* * * * *

(c–1) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

* * * * *

D. In § 1121.84, revise paragraph (b) (2) to read as follows:

§ 1121.84 **Payments to the producer-settlement fund.**

* * * * *

(b) * * *

(2) The value at the uniform price(s) applicable at the location of the plant(s) from which received plus 5 cents (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1121.70(e).

E. Immediately following § 1121.88, add a new centerhead and new §§ 1121.110 through 1121.122 are added as follows:

ADVERTISING AND PROMOTION PROGRAM

§ 1121.110 Agency.

"Agency" means an agency organized by producers and producers cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1121.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1121.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1121.113(b), is authorized one Agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1121.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one Agency representative. For the purpose of the Agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1121.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the Agency representatives.

§ 1121.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1121.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of the section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative, who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1121.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order and annually thereafter the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1121.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1121.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1121.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1121.110 and 1121.117.

§ 1121.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business,

(b) programs and projects pursuant to §§ 1121.110 and 1121.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties:

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1121.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1121.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1121.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or

for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1121.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of wilful misconduct, gross negligence, or those which are criminal in nature.

§ 1121.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1121.121 Duties of the market administrator.

Except as specified in § 1121.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1121.113(c).

(b) Set aside the amounts subtracted under § 1121.71(c–1) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraphs (2) and (3) of this paragraph, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1121.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1121.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1121.71(c–1) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1121.110 through 1121.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1121.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1121.83.

PROPOSED BY THE DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE

PROPOSAL NO. 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Post Office Box 10738, Houston, TX 77018, or from the Hearing Clerk, Room 112–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on November 20, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc. 72–20278 Filed 11–22–72;8:52 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[24 CFR Part 1270]

[Docket No. R–72–218]

LOW-RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

Turnkey III Program Description; Correction

In the FEDERAL REGISTER for Saturday, November 4, 1972, the following changes should be made:

1. On page 23554, § 1270.101, paragraph (b)(2)(ii), 6 lines from end of paragraph, the word "schedule" should be added after the words "each purchase price".

2. On page 23559, § 1270.113, paragraph (a)—the fifth line now reads: "1270.107(d)" and should read "1270.107 (l)" (letter (l) rather than (d)).

R. C. VAN DUSEN,
Under Secretary of Housing
and Urban Development.

[FR Doc.72–20182 Filed 11–22–72;8:47 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72–SO–115]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Rome, Ga., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented

during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, Ga.

The Rome transition area described in § 71.181 (37 F.R. 2143) would be amended as follows:

"* * * 12-mile radius area to the VOR * * *" would be deleted and "* * * 12-mile radius to the VOR; within a 9.5-mile radius of Tom B. David Field, Calhoun, Ga. (Lat. 34°27'18" N., Long. 84°56'24" W.); excluding the portion within the Dalton, Ga., transition area * * *" would be substituted therefor.

The proposed alteration is required to provide controlled airspace protection for IFR operations at Tom B. David Field, Calhoun, Ga. A prescribed instrument approach procedure to this airport, utilizing the McDaniels (private) VOR, is proposed in conjunction with the alteration of this transition area.

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

Issued in East Point, Ga., on November 13, 1972.

DUANE W. FREER,
Acting Director, Southern Region.

[FR Doc.72-20165 Filed 11-22-72;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 72-26; Notice 1]

MOTOR VEHICLE SAFETY STANDARDS

Advance Notice of Requirements for Foam-Filled Tires

This is an advance notice of proposed rule making, to advise the interested public that the NHTSA is considering amending Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires" (49 CFR 571.109) and proposed Standard No. 119, "Tires for Vehicles other than Passenger Cars" (37 F.R. 13481, July 8, 1972) to specify labeling requirements for tires filled with cellular foam. A more specific notice of proposed rule making will be issued, with opportunity for comment, before the final rule is promulgated.

This agency has determined that although foam-filled tires contain material in addition to "the gas or fluid that sustains the load" as specified in S3 of Standard No. 109, they should be considered "pneumatic tires" for the purposes of the application of Federal standards. The reasons for this decision are the fact that their foam filling contains a substantial proportion of gas under pressure, and their general similarity to conventional tires in regard to appearance, use, and load-deflection characteristics. The NHTSA has also concluded that these tires have desirable performance capabilities and should be available to the public, subject to conditions to insure their safe use, for the special purposes for which they are designed.

Requirements for specific labeling are under consideration, to be molded into or onto a tire that has been filled with cellular synthetic rubber or similar foam-type material. This proposed labeling appears to be necessary, because the heat-generating properties of the cellular material require speed restrictions on the tire based on the intended usage. Comments are requested, therefore, regarding the content and methods of labeling of foam-filled tires. Comments are also requested on the types of materials that should be allowed in tire casings to support the load instead of "gas or fluid," and the recommended time and speed limitations, based on tire construction, simulated inflation pressure and load range, for continuous, intermittent, or emergency operations. Information from manufacturers of such tires regarding tire repair, including degree of difficulty and methods, are also requested.

Comments should refer to the docket number and be submitted to the Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted, not later than the close of business on February 21, 1973. The Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

This advance notice of proposed rule making is issued under the authority of sections 103, 112, 119, and 201 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1401, 1407, 1421), and the delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.

Issued on November 16, 1972.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.72-20206 Filed 11-20-72;11:54 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

CAPTAN

Proposed Tolerance for Pesticide Chemicals in or on Raw Agricultural Commodities

Dr. C. C. Compton, Interregional Research Project No. 4, State Agricultural Experiment Station, Rutgers University, New Brunswick, N.J. 08903, on behalf of the Agricultural Experiment Station of Hawaii submitted a petition (PP 2E1215) proposing establishment of a tolerance for residues of the fungicide captan (*N*-trichloromethylthio-4-cyclohexene-1, 2-dicarboximide) in or on the raw agricultural commodity taro at 0.25 part per million.

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The fungicide is useful for the purpose for which the tolerance is proposed.
2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.
3. The proposed tolerance will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), it is proposed that § 180.103 be amended by revising the introductory paragraph and by inserting a new paragraph after the paragraph "2 parts per million in or on beets * * *", as follows:

§ 180.103 Captan; tolerances for residues.

Tolerances for residues of the fungicide captan (*N*-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) in or on the raw agricultural commodities from preharvest and postharvest uses or combinations of such uses are established as follows:

* * * * *

0.25 part per million in or on taro (corm).

* * * * *

Any person who has registered or submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing any of the ingredients listed herein may request, within 30 days after publication hereof in the FEDERAL REGISTER, that this proposal be referred to an advisory committee in accordance with section 408(e) of the act.

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, Fourth and M Streets SW., Waterside Mall, Washington, D.C. 20460, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. All written submissions made pursuant to this proposal will be made available for public inspection at the office of the Hearing Clerk.

Dated: November 16, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-20175 Filed 11-22-72;8:46 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 547]

[Docket No. 72-54]

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Implementation Procedures; Comments

Good cause appearing, the notice of proposed rule making in this proceeding is hereby amended to require Hearing Counsel to reply to comments and allow commentors to answer Hearing Counsel's reply, by adding after the final paragraph the following:

The Federal Maritime Commission, Bureau of Hearing Counsel, shall participate in the proceeding and shall file reply to comments on or before December 11, 1972, serving an original and 15 copies on the Federal Maritime Commission and one copy on each party who filed written comments. Answers to Hearing Counsel's replies shall be submitted to the Federal Maritime Commission on or before December 20, 1972.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-20215 Filed 11-22-72;8:50 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M 070204]

MONTANA

Notice of Termination of Proposed Withdrawal and Reservation of Lands

NOVEMBER 16, 1972.

Notice of a Bureau of Reclamation, Department of the Interior, application M 070204, for withdrawal and reservation of lands for military purposes, was published as FEDERAL REGISTER Document No. 65-5813, on page 7401 of the issue for June 4, 1965. The applicant agency has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Group 2300, such lands will be, at 10 a.m., December 26, 1972, relieved of the segregative effect of the above-mentioned application.

PRINCIPAL MERIDIAN, MONTANA

PUBLIC DOMAIN LANDS

T. 6 S., R. 9 W.,
Sec. 7, NE¼;
Sec. 8, SW¼NE¼, SW¼, and NW¼SE¼;
Sec. 17, NW¼NW¼; and
Sec. 18, N½NE¼.

BEAVERHEAD NATIONAL FOREST LANDS

T. 4 S., R. 10 W.,
Sec. 18, SW¼SE¼;
Sec. 19, W½NE¼, N½SE¼, and SE¼SE¼;
Sec. 20, SW¼SW¼;
Sec. 29, NW¼NW¼, N½SW¼, and SE¼SW¼;
Sec. 30, NE¼, E½NW¼, NE¼SW¼, N½SE¼; and
Sec. 32, W½E½ and E½W½.
T. 5 S., R. 10 W.,
Sec. 5, lots 1 and 2, and SW¼NE¼.

The areas described aggregate 1,762.14 acres.

LEIGH W. FREEMAN,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.72-20223 Filed 11-22-72;8:51 am]

Bureau of Reclamation

ENVIRONMENTAL STATEMENT

Instructions for Preparation

On January 25, 1972, the Bureau of Reclamation published procedures (37 F.R. 1126) to implement the policy and directives of section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852, January 1, 1970); section 2(f) of Executive Order 11514; the guidelines issued by the Council on Environmental Quality (36 F.R. 7724, April 23, 1971); Office of Management and Budget Bulletin No. 72-6; and Departmental Manual Chapter 516.2.

These procedures have been revised to describe the use of negative determination statements, to require public hearings on environmental statements, to cover changes in project plans or design after the final environmental statement has been filed, and to include several modifications of internal procedures.

The revised procedures are published in Reclamation Instructions Chapter 376.5 entitled "Statement of Environmental Impact." The numbering system used is that of Reclamation Instructions.[1]

Dated: November 16, 1972.

W. H. KEATING,
Acting Commissioner.

[Series 350 General Instructions]

RECLAMATION INSTRUCTIONS—PART 376 ENVIRONMENTAL QUALITY—PRESERVATION AND ENHANCEMENT

CHAPTER 5—STATEMENT OF ENVIRONMENTAL IMPACT

.1 *Requirement.* This chapter sets forth requirements and procedures for preparing and processing statements of the environmental impact of Bureau activities. These instructions implement applicable provisions of section 102(2)(C) of the National Environmental Act of 1969 (Public Law 91-190, 83 Stat. 852, January 1, 1970), hereafter referred to as the Act; section 2(f) of Executive Order No. 11514 (March 5, 1970); and guidelines issued by the Council on Environmental Quality (36 F.R. 7724, April 23, 1971), Office of Management and Budget Bulletin No. 72-6, and Departmental Manual Part 516.

The Act requires that environmental statements be prepared and submitted with every recommendation or report on proposals for legislation and for other major Federal actions significantly affecting the quality of the environment. Environmental statements are required for proposed actions with major environmental impacts or which are or may be highly controversial.

Each Reclamation activity that authorizes or otherwise provides for modification of the environment, including the legal and administrative protection afforded to it, must be carefully analyzed and assessed in regard to its environmental impact. Environmental statements will be submitted to the Council on Environmental Quality (CEQ) on all legislation or other proposed major actions which may result in significant changes in the quality of the environment. The study and analysis supporting each environmental statement will utilize a systematic interdisciplinary approach that draws heavily on the natural and social sciences, the environmental design arts, and current evaluation procedures.

.2 *Applicability*—A. *Actions initiated after January 1, 1970.* All Bureau activities after the effective date of the Act (January 1, 1970) which significantly affect the environment, either by modifying it or by changing its legal or administrative protection, are subject to the provisions of this chapter. If a feasibility report enviromental statement has not been prepared, an environmental statement shall be prepared for the definite plan report. Where the feasibility report environmental statement has been prepared, individual feature statements will be required only when it is not adequately covered in the overall environmental statement, or is materially changed from the planning report.

B. *Actions initiated before January 1, 1970.* The provisions of this chapter apply to continuing major Bureau actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of the Act.

Where it is not practicable to reassess the basic course of action, continuing major actions must be shaped to minimize adverse environmental consequences. It is also important in continuing actions that account be taken of environmental consequences not fully evaluated at the outset of the project or program. Ongoing programs or uncompleted features of projects which were authorized prior to January 1, 1970, must be reconsidered to determine whether they constitute major Federal actions significantly affecting the environment. If the ongoing program or uncompleted feature of a project has significant environmental impact, alternatives must be considered and an environmental statement must be prepared.

It is essential that the Act be applied as effectively as possible. The application may require alterations in features of the project to which resources have not yet been unalterably committed. The ongoing program or uncompleted feature of a project need not be stopped or delayed pending preparation of the statement. However, if an ongoing project entails individual major features or separable operating entities not yet authorized or not yet funded for start of construction, an environmental statement is necessary if it is determined that any of the incremental features have a significant environmental impact.

In deciding between an overall project environmental statement or an individual feature environmental statement, the rule to apply is that the overall project environmental statement is preferred.

C. *Major Federal actions having minimal environmental impact.* If the environmental impact of a major Federal action is expected to be insignificant, a negative determination statement may be prepared. The purpose of the negative determination statement is to include in the written record evidence that the proposed action was evaluated and a determination made as to the significance of the environmental impact. The determination should be based on the information developed during the preconstruction or preoperation studies and coordinated with local, State, or Federal agencies, as appropriate.

D. *Changes after filing a final statement.* When, following the filing of a final environmental statement with CEQ, additional information comes to light or changes occur in project plans or design, action as follows is required according to the nature of the resulting environmental impact:

[1] Included in the Reclamation Instructions Chapter, but not published in this notice, are various format and tabular illustrations.

Nature of impact	Action required
(1) Environmental impact of change is insignificant.	Prepare a negative determination statement (see .12E).
(2) Environmental impact is significant; net effect on project's environmental impact is essentially unchanged.	Process a supplement to final environmental statement (see .4F).
(3) Environmental impact is significant; changes the magnitude of impact of a segment of the project.	Prepare new draft environmental statement for affected segment of the project.
(4) Environmental impact is significant; changes the magnitude of impact of the overall project.	Prepare new draft environmental statement for the project.

.3 *Purpose of statement. The environmental* impact statement provides a means for giving environmental impact careful and appropriate review in the decisionmaking process. Environmental statements summarize the salient features of a proposed project or action program. They describe the environmental setting and provide concise, factual information concerning "Alternatives to the Proposed Action" where unresolved environmental issues are raised. The environmental statement must have sufficient detail to allow responsible officials to understand the effects of a proposed action and to make accurate decisions regarding protection and enhancement of environmental values. The statement should reflect the measures taken to create and maintain conditions under which man and nature can exist in productive harmony.

.4 *Definitions*—A. *"Major Federal actions significantly affecting the quality of the human environment"* (quoted from the Act) is to be construed with a view to the overall "cumulative impact" of the action proposed, and of further actions contemplated. Such actions may be "localized in their impact," but, if the components of the environment or its uniqueness may be significantly affected, the statement is to be prepared.

Significant effects include those that degrade or enhance the quality of the environment; curtail or extend the range of beneonment; curtail or extend the range of beneficial uses of the environment; or serve short-term, to the disadvantage of long-term, environmental goals. Significant effects can also include actions which may be both beneficial and detrimental. Significant effects on the quality of the human environment include impacts that directly and indirectly affect human beings.

B. *Draft environmental statement.* This document, to be as complete as possible, is circulated to Federal, State, and local agencies and to any public or private entity having an expressed interest, for their review and comment as to its accuracy and completeness. It should accompany a proposed action document through the Bureau's review process. It may be circulated concurrently with the review process as long as final decisions are not made prior to Departmental clearance or the Final Environmental Statement (see .4C below).

C. *Final environmental statement.* This should be complete in all elements and must incorporate review comments, including discussions of unresolved issues. A copy of the review comments of each agency and interested party is included with the Final Environmental Statement (see Appendix A–7). The final environmental statement should accompany a proposed action document through the Department's final decisionmaking process.

D. *Lead Agency.* "Lead Agency" is the Federal agency having primary authority for committing the Federal Government to a course of action. An "agency" is usually thought to mean the Departmental level. The definition of "lead bureau" within an "agency" would be identical to that of "lead agency." Where the authority of agencies or bureaus is more or less equal, the consequences are major for each, a determination will be sought by the Office of the Commissioner through the Assistant Secretary—Program Policy.

E. *Negative determination.* This is a written document (see .14) which:

(1) May be prepared following an environmental assessment of an anticipated major Federal action, where it has been determined that the action would not significantly affect the human environment; or

(2) Supports a major deviation from an action already covered in a final environmental statement, which does not result in a significant impact.

.5 *Responsibility.* Responsibility with regard to environmental statements follows the delineation of functional responsibilities in DM 155 (included in the Bureau's Executive Manual as D155) and the following:

A. *Regions and E&R Center.* (1) Regional Directors, the Chief Division of Atmospheric Water Resources Management, the Chief, Division of General Research, and the Chief, Western U.S. Water Plan, each within his area of principal functional responsibility, determine the need for and prepare an environmental statement, supplements to a final environmental statement, or a negative determination.

(2) The E&R Center divisions, under the coordination of Code 800, review draft environmental statements directed to them and assist the regions, when requested, by providing information for environmental statements.

B. *Office of the Commissioner.* (1) The division of functional concern in the Office of the Commissioner is responsible for review and processing of environmental statements.

(2) The Office of Assistant to the Commissioner—Ecology provides coordination and advice on environmental statements, and responds to requests from other agencies and individuals for copies of Reclamation environmental statements.

.6 *Bureau actions requiring environmental statements.* Bureau plans and actions of the following types may require environmental impact statements. This list is, in itself, neither mandatory nor all inclusive, and the responsible official must base his judgment on the criteria in .7 below.

A. Recommendations or favorable reports to the Congress relating to legislation that changes the legal or administrative status afforded to the environment and legislation relating to appropriations for programs or projects that result in significant impact on the environment.

B. Projects, programs, and continuing activities including research:

(1) Directly undertaken by the Bureau of Reclamation.

(2) Supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of financial assistance.

(3) Involving a Federal lease, permit, license, certificate, or other entitlement for use.

C. Recommendation or adoption of policies, principles, standards, procedures, regulations, and plans which affect the environment through changes in management, operation or maintenance of facilities or which modify the legal or administrative protection afforded environmental resources.

D. Actions relating to natural or cultural resources:

(1) Acquisition or disposal of the resources.

(2) Regulation, permission, prohibition, or other institutional control of their use.

(3) Their operational or physical management.

(4) Construction or operation of various structures to manage them.

(5) Recommendations of comprehensive, program, or project plans for their management for which immediate authorization is anticipated based on recommendations made.

E. Activities that will significantly affect the following will require an environmental statement:

(1) Rare or endangered species—plant, animal, or fish.

(2) Formally classified areas such as Wilderness Areas, Primitive Areas, Wild and Scenic Rivers, National Recreation Areas, Scenic Areas, Historical Areas, Archeological Areas, Geological Areas, National Trails, National Wildlife Refuges, State Wildlife Refuges or Management Areas, parks or similar locally designated areas, and areas being studied for classification for such purposes.

(3) Municipal watersheds.

(4) Reservoir operation (major changes).

(5) Large roadless areas.

(6) Scenic attractions.

(7) Wetlands and estuaries.

(8) Free-flowing streams or major changes in regulated streams.

(9) Air quality.

(10) Water quality.

(11) Key wildlife or fish habitat.

F. Planning Federal water and related land resources projects and programs. Examples: irrigation, municipal and/or industrial water, hydroelectric projects, and atmospheric water resources management programs.

G. Research or investigations where the on-the-ground tests involve treatment or modification of natural resources.

H. Construction activities on Federal water and related land resources projects and programs. Examples: Irrigation, municipal and/or industrial water; hydroelectric projects which have not been covered by a prior environmental statement, or where there has been a major change in design from that presented in the authorization report and environmental statement accompanying that report; and major new transmission lines or transmission line relocations.

I. Other activities such as:

(1) Changes in river operation or reservoir operation procedures.

(2) Major dam modification programs.

(3) Major canal modification programs.

(4) Vegetative management programs.

(5) Major acquisition leases, exchanges, or disposals of lands.

(6) Major public service developments, such as recreation facilities developed after the initial construction period.

(7) Major powerplant modification programs.

.7 *General criteria.* The following criteria as they pertain to effects on the environment should be applied in determining whether a statement is required:

(1) Degree of disturbance on the components of the ecosystem. Both onsite and offsite effects should be recognized.

(2) Irreversible effects on basic resources; short-term versus long-term commitments.

(3) Cumulative effects of many small actions.

(4) Chain reactions or secondary effects of interrelated activities.

(5) Whether the action is of national, regional, or local importance.

(6) A demonstrated or proven uniqueness or rareness of the resource affected.

(7) Precedent-setting cases.

(8) Scope of anticipated public involvement and controversy anticipated.

8. *Interagency and intergovernmental coordination.* In addition to the procedures set forth herein, existing mechanisms for obtaining the views of departmental bureaus and offices and of other Federal, State, and local agencies will be utilized to the maximum extent practicable in the preparation and subsequent review of draft environmental statements. When seeking assistance and comments on such statements, the Bureau should request that the views expressed should be guided by the National Policy as expressed in Public Law 91–190 "* * * to use all practical means and measures, including financial, and technical assistance in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans."

A. *Departmental bureaus and offices.* A number of offices and bureaus within Interior may have inputs into the preparation of the draft environmental statement. Accordingly, working-level consultations will be initiated early in the development of the proposal and during the preparation of the draft environmental statement.

The draft environmental statement will be circulated for review and comments, to all Interior entities which have delegated jurisdiction or special environmental expertise. Comments received from these bureaus and offices will be attached to the final environmental statement.

The Advisory Council on Historic Preservation and the National Park Service have taken steps to implement the National Historical Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470) and they should be consulted to determine if a National Registry property is involved in the undertaking.

B. *Other Federal agencies.* (1) Those Federal agencies having "jurisdiction by law or special expertise with respect to any environmental impact involved" or "which are authorized to develop and enforce environmental standards" must be consulted in the preparation of environmental statements. The CEQ Guidelines, section 7, set forth the agencies to be consulted and from whom formal comments will, where appropriate, be solicited in the review of the draft statement. The offices to which drafts are to be sent for official agency review and comment are listed in the CEQ Guidelines, Appendix III; except for Small Reclamation Projects Act loans which are circulated only at the regional level.

(2) The Environmental Protection Agency will be invited to review each draft statement on matters related to air or water quality standards, noise control, solid waste disposal, pesticide regulation, radiation criteria and standards, or other matters within its authority.

(3) A period of not less than 45 days will normally be established for reply, after which it may be presumed, unless an extension is requested, that the agency consulted has no comment. Whenever feasible, extensions of time of up to 15 days should be granted. In exceptional cases, where time is critical, a review time limit of 30 days may be established. A period of 45 days shall be allowed for EPA review. The review period will officially start on the date of notice of availability is published in the FEDERAL REGISTER.

C. *State and local agencies.* (1) Where no public hearing was held to invite State and local review, and where review of the proposed action by State and local agencies authorized to develop and enforce environmental standards is relevant, State and local review shall be provided as follows:

(a) For Federal water and related land resources plans, projects, and programs, review by State and local governments will be through procedures set forth by the Water Resources Council (section IIIE of Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources, approved by the President on May 15, 1962, and printed as Senate Document 97, 87th Congress; Handbook for Coordination of Planning Studies and Reports, June 1969).

(b) For direct Federal development projects, including water and related land resource projects, and for projects assisted under programs listed in Attachment D of Office of Management and Budget Circular A–95, review by State and local governments will be through State and Regional or Metropolitan Clearinghouses in accordance with Circular A–95 and implementing Bureau instructions.

(c) For actions affecting the cultural or historic components of the environment, review by State and local agencies will be through procedures set forth by the Advisory Council on Historic Preservation (36 F.R. 3310), and draft environmental statements will reflect consultations with the State Liaison Officer for Historic Preservation and with the State Archeologist.

(d) For actions having an impact on Indian lands or communities, review by State and local agencies will also include review by local Indian tribal governing bodies.

(2) Where the procedures in C(1) above are not appropriate, review and comment by State and local agencies authorized to develop and enforce environmental standards may be obtained by distributing the draft environmental statement to the appropriate State or Regional or Metropolitan Clearinghouses, unless the Governor of the State has designated some other point for obtaining this review.

(3) Clearinghouse procedures allow State and local agencies 30 days for initial comment, with an extension of 30 days upon request. The review period will officially start on the date the Notice of Availability is published in the FEDERAL REGISTER.

D. *Special situations.* When a proposed grant, leasing, or similar program does not entail approval by other agencies, the views of Federal, State, and local agencies in the legislative, and possibly the appropriation, process may have to suffice. The principle to be applied is to obtain views of other agencies at the earliest feasible time in the development of program and project proposals.

.9 *Public participation and availability of statements.* The public must be provided timely information and material sufficient for an understanding of plans and programs with their environmental impact in order to obtain the views of interested parties. The public must also be provided information on alternative courses of action.

A. *Public hearings.*—(1) *Requirement.* Public hearings shall be held in connection with proposed major Federal action significantly affecting the environment, except when:

(a) The draft environmental statement covers a legislative action; or

(b) The Commissioner determines that a public hearing is not warranted because of emergency circumstances, overriding considerations of expense to the Government, or impaired program effectiveness.

(2) *Timing.* The public hearing will be held either: (a) To gather information for the preparation of a draft environmental statement or (b) in conjunction with the release of a draft environmental statement for official use. If (b), the statement shall be made available to the public at least 30 days before the hearing date.

(3) *Hearing procedures.* Hearings shall be planned and conducted in accordance with 455 DM 1 (see Appendix D–1).

(4) *Public notices.* Notice of hearings will include publication in the FEDERAL REGISTER no less than 30 days before the hearing date and such other notice as the Regional Director or responsible E&R Center official deems appropriate. An original and 5 copies of the FEDERAL REGISTER Notice of Public Hearing (see Appendix D–2 for sample Notice) will accompany the 100 copies of the draft environmental statement (Step 4, Appendix C).

The Notice of Public Hearing will be sent to the FEDERAL REGISTER by the Commissioner following notification that the draft environmental statement has been sent to CEQ by the Department. If the Bureau has requested assistance with the hearing from the Office of Hearings and Appeals:

(a) The Office of the Commissioner will submit the Notice to the Office of Hearings and Appeals for approval before publication; and

(b) The Regional Director, or other appropriate official, will send 30 copies of the printed Notice to the representative of the Office of Hearings and Appeals for his use prior to the hearing.

(5) *Records.* The final environmental statement will be revised and expanded to accommodate the comments received at the public hearing. The transcript and written comments generated by the public hearing will be available for public inspection at the locations in .9B below, but will not be attached to the final environmental statement. A summary of the main points raised in the public hearing, together with a discussion of how the comments were handled, will appear in the Consultation and Coordination part of the final environmental statement.

B. *Public inspection.* A complete record of a public hearing, negative determination, draft, and final environmental statement, including required attachments (see Appendix A–7), will be available for public inspection at the following locations:

(1) The Department's Office of Communications (for statements considered especially newsworthy by the Director of Communications; otherwise that office will assist the public in locating and inspecting such statements).

(2) Office of Assistant to the Commissioner—Ecology. (This office also maintains review comments and a complete record of hearings.)

(3) Division of Engineering Support, Technical Services Branch, E&R Center. (This office also maintains review comments and a complete record of hearings.)

(4) Any involved regional office. (The involved regional office also maintains review comments and a complete record of hearings.)

(5) Involved field offices as appropriate. (Those offices with primary involvement maintain review comments and a complete record of hearings.)

(6) State and Regional or Metropolitan Clearinghouses, where appropriate.

(7) A local public meeting place, such as a county courthouse or public library, in the

immediate vicinity of the proposed action, where appropriate.

C. *Charges for copies.* Whenever possible, copies of draft and final environmental statements, including required attachments, will be made available to the public at no cost. In those cases where the cost of reproduction of such statements is prohibitive, or when an unreasonably large number are requested by a single entity, the public may be charged a fee no greater than the incremental cost of reproduction (43 CFR 2.3).

D. *Notifying the public.*—(1) *Federal Register publication.* Notices of availability of draft and final environmental statements will be made in the FEDERAL REGISTER at the time of transmittal of the statement to CEQ. Format is shown in Appendix B.

(2) *Local mailing list.* Regional Directors and the Division of Engineering Support, Technical Services Branch, E&R Center, will develop and maintain a mailing list of local environmental, conservation, and other groups who have expressed an interest in reviewing draft environmental statements during the concurrent review process.

(3) *News releases.* News releases at the Commissioner, regional, and/or E&R Center levels will be made when appropriate with respect to the draft and final environmental statement.

.10 *General Procedures*—A. *Administrative Action (see .13 Appendix C).* (1) Administrative actions are defined as any proposed action subject to section 102(2)(C) of the Act other than proposals for legislation to the Congress or reports on legislation. (Examples: Planning report process on projects that will make a significant impact on the environment; award of contracts on actions that make a significant impact on the environment.)

(2) To the maximum extent practicable, no action is to be taken before the expiration of 90 days after a draft environmental statement has been furnished to CEQ, circulated for comment, and publicly announced in the FEDERAL REGISTER, whichever is later.

(3) To the maximum extent practicable, no action is to be taken sooner than 30 days after a final environmental statement has been made available to CEQ and to the public, and a Notice of Availability has been published in the FEDERAL REGISTER. If the final statement is filed within the 90-day period in (2) above, the two periods may run concurrently to the extent that they overlap.

(4) Where, in the opinion of the Commissioner, emergency circumstances which override considerations of expense to the Government or impaired program effectiveness make it necessary to take an action having significant environmental impact without observing the time limitations in (2) and (3) above, the Commissioner will consult with the Assistant Secretary—Program Policy, who will in turn consult with CEQ, concerning alternative arrangements.

B. *Legislative proposals and favorable reports on legislation.* (Also see Appendix C.) (1) The Bureau is responsible for preparing environmental statements for its legislative proposals which have significant impact upon the environment, and for any necessary consultations with appropriate Federal, State, and local agencies in the course of preparing and reviewing such statements. State and local agency consultations are not required unless there is a specific impact in the jurisdiction of a State or local agency.

(a) Information copies of approved draft or final environmental statements will accompany all such legislative proposals when submitted by the Bureau to the Legislative Counsel for circulation within the Department, and will be circulated with such proposals.

(b) Information copies of approved draft or final environmental statements will accompany the Legislative Counsel's submittals of such legislative proposals to OMB for clearance.

(2) In referring introduced legislation to the Bureau of Reclamation for comment, the Legislative Counsel, in consultation with the Assistant Secretary—Program Policy, will indicate whether an environmental statement will be required in the event of a proposed favorable report; and, if required, will designate the bureau or office responsible for its preparation.

(a) If Reclamation is designated to prepare the environmental statement, the Bureau will submit the proposed draft environmental statement to the Legislative Counsel along with comments on the introduced legislation. This proposed draft environmental statement will accompany the proposed favorable report on its "2-day wait" period within the Department.

(b) The approved draft environmental statement will be circulated by Reclamation for official review and comment at the same time that the Legislative Counsel submits the Department's proposed favorable report, accompanied by information copies of the statement, to OMB for clearance. The Assistant Secretary—Program Policy will clear the statement, assign a control number, date it, and transmit 10 copies to CEQ prior to Reclamation sending it out for review and comment. No FEDERAL REGISTER notice is required.

(3) Final environmental statements for legislative proposals and for favorable reports on legislation, and draft environmental statements, where appropriate under Section 10(c) of the CEQ Guidelines, will be sent to the Congress by the Legislative Counsel. Reclamation will transmit 15 copies through the Assistant Secretary—Water and Power Resources, to the Assistant Secretary—Program Policy, who will endorse the statement, number and date it, and transmit copies to CEQ and the Director of Communications. A FEDERAL REGISTER notice is required.

(4) The Legislative Counsel may permit deviation from the above procedures if undue delay in the presentation of Departmental views to the Congress would result.

C. *Annual budget estimates.* (1) Environmental statements and summary lists for annual budget estimates shall be handled in accordance with OMB Bulletin 72-6 and Appendix C of this chapter, as modified below.

(2) Draft environmental statements for projects and programs included in annual budget estimates will be prepared and circulated for review and comment by August 1 of the fiscal year preceding the year under consideration. The draft statements to be circulated should therefore be based on the proposed program used in the spring review and the environmental statement information would be available for the Annual Program Conference. When the Presidential allowances are known, the Office of the Commissioner will notify the Regional Director or the Division Chief in the E&R Center of the final environmental statements which will be needed for transmittal to the Congress and CEQ prior to Congressional hearings.

(3) Final environmental statements for projects and programs included in the budget will be transmitted to the Congress by the Assistant Secretary—Management and Budget and to CEQ by the Assistant Secretary—Program Policy following the President's budget transmittal to the Congress and before congressional hearings.

(4) Regional Directors or the responsible E&R Center Division Chief shall furnish the following budget material in response to the annual budget call letter:

(a) A tabulation in format of Exhibit 1 to OMB Bulletin 72-6.

(b) A narrative, by appropriation, for the Bureau's Summary Statement. In the case of programs for which it is not possible to make an assessment of the potential impact on the environment, or to identify environmental statements that will be required, the narrative may include a statement about general environmental impact and the expected timing of decisions regarding the need for environmental statements.

(5) For major Federal actions which do not have a significant environmental impact, witness statements and materials furnished in response to (4) above will be supported by the documentation provided in the negative determination.

.11 *Preparation of statements.* Unless otherwise determined by the Office of the Commissioner, statements shall be prepared by an entity responsible to officials designated in .5A, who shall form a multiple-disciplinary team as may be needed for a properly balanced statement. Information helpful to the preparation of the statement may be obtained from all appropriate sources, including contractors, study reports submitted by applicants for grants, contracts, loans, leases, licenses, or permits, and study reports of bureaus or offices within the Department, other Federal agencies or States. However, the environmental statement is a Bureau of Reclamation product, and the official designated in .5A is fully responsible for its content.

Each statement shall contain the following:

(1) Cover sheet—see Appendix A-1 for draft statement; Appendix A-2 for final statement.

(2) Summary sheet—see Appendix A-3 for draft statement; Appendix A-4 for final statement.

(3) Body of the statement, containing eight sections in the order shown in Appendix A-5.

(4) Consultation and coordination with others—see Appendix A-6.

(5) Attachments—see Appendix A-7.

For cover sheet of negative determination statements, see Appendix E; for format and content of supplements to final environmental statements, see Appendixes F-1 through F-4.

Draft statements shall be double spaced and final statements shall be single spaced.

.12 *Processing environmental statements.*—A. *General.* The Regional Director or the E&R Center division chief with principal functional interest in the action should identify the stage or stages of a series of actions at which the provisions of this chapter will be applied. Environmental statements may be necessary both in the development of a national program and in the review of proposed projects within the national program. Care should be taken not to duplicate the review process, but when actions being considered differ significantly from those that have already been reviewed pursuant to this chapter, an environmental statement shall be provided.

B. *Specific procedures.* The several steps for the review, clearance, and approval of draft and final environmental statements are set forth in tabular form in Appendix C.

C. *Advance copies of statements.* Since a substantial number of copies of both the draft and the final statements is to be transmitted to Washington, it is requested that advance copies of each statement be sent to the Commissioner for final review and approval before the statement is reproduced in numbers. If during the review process, and after consultation with the Regional Director, the Commissioner determines that the environmental impact does not appear significant enough to warrant further

processing of the environmental statement, he will notify the responsible office to modify the heading, include a section on the basis for the negative determination, and process it as a negative determination.

Advance copies should also be sent to the E&R Center, Code 800, for review and comment, and to the respective Regional Solicitor's office for information.

D. *Federal agencies having jurisdiction by law or special expertise.* The Federal agencies to which statements are to be referred in accordance with Appendix C, Steps 8 and 28, include the following:

Department of Agriculture—Office of the Secretary.
Department of Commerce—Deputy Assistant Secretary for Environmental Affairs.
Department of Defense—Assistant Secretary for Defense.
Department of Health, Education and Welfare—Assistant Secretary for Health and Science Affairs.
Department of Housing and Urban Development (HUD has delegated review authority to its regional offices).
Department of State—Special Assistant to the Secretary for Environmental Affairs.
Department of Transportation—Assistant Secretary for Environmental and Urban Systems.
Atomic Energy Commission—Director, Office of Environmental Affairs.
Federal Power Commission—Commission's Adviser on Environmental Quality.
Environmental Protection Agency (EPA has delegated review authority to its regional offices).
Office of Economic Opportunity—Director.
Department of the Army—Executive Director of Civil Works, Office of the Chief of Engineers.

E. *Supplement to final environmental statement.* The supplement will be processed the same as a final environmental statement, with copies distributed to recipients of the final statement. Implementation of the proposal must be withheld for 30 days following the filing of the supplement on the affected portion of the proposed work. (See Appendixes F–1 through F–4 for format and content of supplement.)

.13 *Special requirements of reclamation programs*—A. *Planning reports*—(1) *Feasibility reports.* (a) The Regional Director's proposed and final feasibility reports shall contain a chapter on environmental aspects associated with the proposal. The chapter should contain environmental information not available elsewhere in the report and should include the following four basic areas:

Environmental impacts.
Adverse environmental effects.
Short- and long-term environmental uses.
Irreversible and irretrievable commitments of resources.

Mitigation measures or alternatives and their environmental impacts should be discussed if not covered elsewhere in the report; also, alternatives beyond the normal scope of the Bureau, such as desalting and plans by other agencies. This chapter should be more detailed than the environmental statement and at least equal in scope to other sections of the report.

(b) A proposed draft environmental statement shall accompany the Regional Director's proposed feasibility report when it is transmitted for field level review. The proposed draft does not have to be cleared through the Department before it is sent for field level review. The Commissioner will send an information copy of the proposed report and draft environmental statement to the Assistant Secretary—Program Policy and CEQ.

(c) The Regional Director's feasibility report when transmitted to the Commissioner shall be accompanied by a draft environmental statement. This draft statement will accompany the Secretary's proposed planning report when the Bureau sends it, on behalf of the Secretary of the Interior, for review by the States and Federal agencies. The draft statement also will be sent to local agencies, conservation/environmental groups, and the public. At that time it will also be sent to other bureaus and offices within Interior. Concurrently, copies of the draft environmental statement will be sent to the Council on Environmental Quality by the Assistant Secretary—Program Policy, and a notice of availability will be published in the FEDERAL REGISTER.

The final environmental statement will accompany the Secretary's final planning report when it is sent to the President for advice as to the relationship of the proposal to his program. At that time, the final environmental statement will be sent by the Assistant Secretary—Program Policy to the Council on Environmental Quality and a notice published in the FEDERAL REGISTER.

(2) *Reconnaissance and definite plan reports.* Environmental statements shall accompany significant favorable reconnaissance reports as determined by the Regional Director in consultation with the Office of the Commissioner. Environmental statements should not accompany definite plan reports if an adequate environmental statement was prepared for a feasibility report and the plan has not changed significantly since the feasibility report. Both reconnaissance and definite plan reports will have an environmental impact chapter at least equal in scope to other sections of the report (see (1) above for coverage).

B. *Small reclamation projects loan applications.* Processing of environmental statements for Small Reclamation Projects Loan Program will generally follow the procedures in Appendix C, with the following modifications. Loan applicants will prepare an environmental impact study report in consultation with appropriate Federal, State, and local agencies. The draft environmental statement will be prepared by the Regional Director using the study report as appropriate, and advance copies will be furnished the E&R Center and the Commissioner for review and approval before reproduction.

In Appendix C, Step 4, only 50 copies of environmental statements for loan applications should be sent to the Commissioner, attention 700. After clearance by the Assistant Secretary—Program Policy, the control number and date will be furnished the Regional Director for concurrent distribution of the draft statement.

The distribution and review called for in Appendix C, Steps 8 to 10, should be modified as necessary to follow procedures applicable to the loan program. Comments on the draft environmental statement will be requested by the Regional Director from the Washington-level bureaus within the Department of the Interior and other Washington-level Federal agencies. The regional office should contact the State Liaison Officer in the affected State to determine if properties are being considered for nomination to the National Register of Historic Places.

The procedures with respect to comments and the final environmental statement are the same as in Appendix C, except Step 28 which will be done by the Regional Director.

.14 *Negative Determination Statements*—A. *Content.* Appendix E illustrates the format and content of a negative determination statement.

B. *Processing.* The initiating office (see .5A(1) above) will send an original and four copies of the negative determination statement to the Commissioner, with a copy to Washington, Code 150, and two copies to E&R Center, Code 800.

Before initiating a major Federal action, as covered in the negative determination, the Commissioner's signature shall be obtained on the original statement.

The Washington divisions will process determinations for the Commissioner. The Assistant to the Commissioner-Ecology will number negative determinations and will maintain a record of those concurred in by the Commissioner.

C. *Availability.* Negative determination statements will be available for public inspection (see .9B above) but will not be circulated for review and comment nor processed through the Department to CEQ. Environmental studies or assessments leading to a negative determination may be circulated for review and comment.

D. *Rescission.* The initiating office, in consultation with the Office of the Commissioner, may rescind a negative determination and prepare and process an environmental statement if in its judgment significant impacts have been identified which were not previously considered.

[FR Doc.72-20180 Filed 11-22-72;8:46 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

FRESH PEACHES GROWN IN GEORGIA

Order Directing That Referendum Be Conducted; Designation of Referendum Agent To Conduct Such Referendum; and Determination of Representative Period

Pursuant to the applicable provisions of Marketing Agreement No. 99, as amended, and Order No. 918, as amended (7 CFR Part 918), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674), it is hereby directed that a referendum be conducted among the growers who, during the period January 1, 1972 through October 31, 1972 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in Georgia, in the production of peaches for market to determine whether such growers favor the termination of the said amended marketing agreement and order. M. F. Miller of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Post Office Box 9, Lakeland, FL 33802, is designated as the referendum agent to conduct said referendum.

The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 et seq.).

Copies of the text of the aforesaid marketing order may be examined in the office of the referendum agent or of the

Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Ballots to be cast in the referendum may be obtained from the referendum agent and any appointee hereunder.

Dated: November 17, 1972.

RICHARD E. LYNG,
Acting Secretary.

[FR Doc.72-20187 Filed 11-22-72;8:47 am]

Agricultural Stabilization and Conservation Service

[Docket No. SH-312]

SUGAR BEET PRODUCING AREA

Notice of Hearings on Wages and Prices, and Designation of Presiding Officers

Pursuant to the authority contained in sections 301(c)(1) and 301(c)(2) of the Sugar Act of 1948, as amended (61 Stat. 929; 7 U.S.C. 1131), and in accordance with the rules of practice and procedure applicable to wage and price proceedings (7 CFR 802.1 et. seq.), notice is hereby given that public hearings will be held as follows:

At Ann Arbor, Mich., on December 4, 1972, at the Howard Johnson Motor Lodge, 2380 Carpenter Road, beginning at 9:30 a.m.;

At Fargo, N. Dak., on December 6, 1972, in the Center Ball Room of the Holiday Inn, I-29 and 13th Avenue South, beginning at 2 p.m.;

At Billings, Mont., on December 8, 1972, in the Carter Room of the Northern Hotel, beginning at 9:30 a.m.;

At San Francisco, Calif., on December 11, 1972, in Room 7343, Federal Building, 450 Golden Gate Avenue, beginning at 9:30 a.m.;

At Mercedes, Tex., on December 13, 1972, in the auditorium of the Magic Valley Electric Co-op, Mile 1¾ West and Highway 83, beginning at 9:30 a.m.

The purpose of these hearings is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining, (1) pursuant to the provisions of section 301(c)(1) of the act, whether the wage rates established for sugar beet fieldworkers in the wage determination which became effective April 24, 1972 (37 F.R. 7578), continue to be fair and reasonable under existing circumstances, or whether such determination should be amended; and (2) pursuant to the provisions of section 301(c)(2) of the act, fair and reasonable prices for the 1973 crop of sugar beets to be paid, under either purchase or toll agreements, by producers who process sugar beets grown by other producers and who apply for payments under the act on their own sugar beet production.

In the interest of obtaining the best possible information, all interested persons are requested to appear at one of the hearings to express their views and present appropriate data in regard to wages and prices. While testimony on all pertinent points is desired, it is especially requested that witnesses be prepared to offer information and recommendations on the following matters regarding fair wages for sugar beet fieldworkers:

I. *Hand labor operations.* Several recommendations have been made in recent years by representatives of both producers and workers. The following operations are proposed for consideration:

A. Thinning: Removing excess beets.

B. Thinning and weeding: Removing excess beets and weeds.

C. Weeding: Removing weeds, as (1) a first operation in fields that have been completely machine thinned and on which chemical herbicides have been applied, or (2) as a subsequent operation following A, B, or C(1) above.

II. *Payment of wages.* Because of difficulties which may be encountered by workers due to long intervals between wage payments, the Department is considering a proposal that the worker be paid upon completion of work on a farm or every 2 weeks, whichever occurs first.

III. *Cash advances.* In some instances, producers loan money to workers prior to their departure from their home base. These cash advances amount to as much as one-sixth of the seasonal earnings from sugar beet work. The Department is considering a proposal that any cash advances be prorated on the basis of the number of weeks during which employment is expected, and that a pro rata portion of the advance be deducted from the worker's earnings each pay period or upon completion of work on an individual farm, if sooner, until the indebtedness is satisfied. The producer and worker would be required to agree in writing on the method of prorating the deduction of advances over the employment period.

All written submissions made pursuant to this notice will be available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27 (b)).

The hearings, after being called to order at the times and places mentioned herein, may be continued from day to day within the discretion of the presiding officers and may be adjourned to a later day or to a different place without notice other than the announcement thereof at the hearings by the presiding officers.

LeoL. Sommerville, Robert R. Stansberry, Jr., James E. Agnew, Jr., Harry A. Sullivan, and William H. Ragsdale are hereby designated as presiding officers to conduct either jointly or severally the foregoing hearings.

Signed at Washington, D.C., on November 21, 1972.

KENNETH E. FRICK,
Administrator, Agriculture Stabilization and Conservation Service.

[FR Doc.72-20322 Filed 11-22-72;9:22 am]

Commodity Credit Corporation

UNRESTRICTED USE GRAIN AND SOYBEANS SALES POLICY

Proposed Determinations for the 1973-74 Marketing Year

Notice is hereby given of proposed determinations with respect to the Commodity Credit Corporation's (CCC) unrestricted use sales price policy for the 1973-74 marketing year for grain (wheat, corn, grain sorghum, barley, oats, and rye) and soybeans under the provisions of section 407 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1427 prior determinations of this kind appear in 37 F.R. 13352. Section 407 provides that CCC shall not sell for unrestricted use any of its stocks of grain at less than 115 percent of the current national average loan rate, adjusted for such current market differentials reflecting grade, quality, location and other value factors as the Secretary of Agriculture determines appropriate, plus reasonable carrying charges. Section 407 provides further that sales of soybeans for unrestricted use shall not be made at less than 5 percent above its current price, plus reasonable carrying charges. Section 407 also provides for certain exemptions from these minimum pricing requirements.

Before determining the prices at which these commodities will be sold for unrestricted use, consideration will be given to any data, views, and recommendations which are submitted in writing to the Director, Grain Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to permit farmers the benefit of the knowledge of CCC's pricing sales policies with respect to these commodities at the time of planning crop plantings, it is determined impracticable and contrary to the public interest to permit the normal 30-day period for submission of views. Consequently, to assure consideration, all submissions must be received not later than 15 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday in Room 5741, South Building, 14th and Independence Avenue SW., Washington, D.C.

Signed at Washington, D.C., on November 17, 1972.

KENNETH E. FRICK,
Executive Vice President, Commodity Credit Corporation.

[FR Doc.72-20188 Filed 11-22-72;8:47 am]

Farmers Home Administration

STATE ADVISORY COMMITTEES

Functions

The following change in item 2 under "Functions" of the State Advisory Committees, published at 37 F.R. 8124,

amends that part pertaining to problems of agricultural credit and other needs of operators of family-type farms by further identification of the types of rural residents involved.

As amended, item 2 reads as follows:

Composition. * * *
Functions. * * *

* * * * *

2. To consider the problems and advise the State Director concerning agricultural credit and other needs of operators of family-type farms, the needs of rural residents (including minority and low-income people), and of rural communities in the State; and to suggest ways for the FHA to meet these needs more effectively.

Effective date. This amendment shall be effective upon publication in the FEDERAL REGISTER (11-23-72).

Dated: November 17, 1972.

DARREL A. DUNN,
Acting Administrator,
Farmers Home Administration.

[FR Doc.72-20227 Filed 11-22-72;8:52 am]

Rural Electrification Administration

BLUE RIDGE ELECTRIC MEMBERSHIP CORP.

Availability of Final Environmental Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Final Environmental Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a loan application from Blue Ridge Electric Membership Corp., Post Office Box 112, Lenoir, N.C. This loan application, together with funds from other sources, includes financing for 22 miles of 230 kv. transmission line and conversion of 26.5 miles of 46 kv. line to 100 kv.

Additional information may be secured on request, submitted to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. The Final Environmental Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, DC., Room 4310 or at the borrower address indicated above.

Final REA action with respect to this matter (including any release of funds) may be taken after thirty (30) days, but only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 16th day of November 1972.

E. C. WEITZELL,
Acting Administrator, Rural Electrification Administration.

[FR Doc.72-20189 Filed 11-22-72;8:47 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. S-592]

JESS E. RICHMOND AND MARGARET H. RICHMOND

Notice of Loan Application

NOVEMBER 17, 1972.

Jess E. Richmond and Margaret H. Richmond, Route 2, Box 1908, Port Angeles, Wash. 98362, have applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new wood vessel, about 50-foot in length, to engage in the fishery for salmon, tuna, bottomfish, Dungeness crab, and shrimp off the coasts of Washington, Oregon, and California.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

ROBERT N. SCHONING,
Acting Director.

[FR Doc.72-20170 Filed 11-22-72;8:45 am]

[Docket No. S-593]

VERNON D. & DONNA L. PAPENFUS

Notice of Loan Application

NOVEMBER 17, 1972.

Vernon D. Papenfus and Donna L. Papenfus, 455 Ford Street SE, Salem, OR 97301, have applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new steel vessel, about 54-foot in length, to engage in the fishery for salmon, Dungeness crab, albacore, shrimp, and bottomfish off the coasts of California, Oregon, and Washington.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

ROBERT W. SCHONING,
Acting Director.

[FR Doc.72-20171 Filed 11-22-72;8:46 am]

[Docket No. B-549]

WALTER F. LEEMAN

Notice of Loan Application

NOVEMBER 17, 1972.

Walter F. Leeman, Box 51, Bailey Island, Maine 04003, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new fiber glass vessel, about 42 feet in length, to engage in the fishery for lobsters, groundfish (cod, cusk, haddock, hake, ocean perch, and pollock), scallops, and herring.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as maybe available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

ROBERT W. SCHONING,
Acting Director.

[FR Doc.72-20169 Filed 11-22-72;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Services and Mental Health Administration

CLINICAL LABORATORIES

Notice of Determination Concerning Stringency of New York State Standards—Letters of Exemption

On April 14, 1972, the Director, Center for Disease Control, Health Services and

Mental Health Administration, Department of Health, Education, and Welfare, determined that the standards provided for under the laws of the State of New York are equal to or more stringent than the provisions of the Clinical Laboratories Improvement Act of 1967, section 353 of the Public Health Service Act, 42 U.S.C. 263a, or than the rules and regulations issued thereunder (42 CFR Part 74), and so notified the Commissioner, Department of Health, State of New York. Following such notice, comments were received by the Center for Disease Control concerning the determination. The Director, Center for Disease Control, proposes to afford interested parties generally an opportunity to comment on such determination on a continuing basis. Accordingly, interested persons may, at any time, submit written comments, suggestions or objections in triplicate to the Director, Center for Disease Control, 1600 Clifton Road NE., Atlanta, GA 30333. Any comments received will be considered in the Director's review of the State standards. All comments received will be available for public inspection in Building E, Room 110, Center for Disease Control, 1600 Clifton Road NE., Atlanta, GA 30333.

Under the Clinical Laboratories Improvement Act of 1967, section 353 of the Public Health Service Act, 42 U.S.C. 263a, and the implementing regulations, 42 CFR Part 74, no person may accept human specimens, in interstate commerce for laboratory examination or other procedures, unless there is in effect a license for such laboratory issued under § 353 (or a letter of exemption for accredited laboratories, as provided in § 74.46 of Part 74, or for laboratories accepting no more than 100 specimens, in a particular category, per calendar year, as provided in § 74.2(b)(1) of Part 74). The Act provides criminal penalties for violations. Section 353(1) of the Public Health Service Act, 42 U.S.C. 263a(1), provides that where a State has enacted or hereafter enacts laws relating to matters covered by § 353, "which provide for standards equal to or more stringent than the provisions of this section or than the rules and regulations issued under this section, the Secretary may exempt clinical laboratories in that State from compliance with this section." Under § 74.2(b)(4) of Part 74, licensing and other requirements, do not, except as otherwise provided, apply to clinical laboratories exempted pursuant to section 353(1).

The determination of April 14, 1972, was based upon a review of standards described in letters from the Pathologist-Director, Clinical Laboratory Center, State of New York, dated April 29, 1971, September 8, 1971, December 22, 1971, January 13 and March 14, 1972, and from the Director, Division of Laboratories and Research, State of New York, dated March 31, 1972, and supporting documents dated and captioned as follows:

1. Title V of Article 5 of the Public Health Law of the State of New York entitled "Laboratory Services."

2. Title II of Article 2 of the Public Health Law of the State of New York entitled "The Public Health Council," sections 220 and 225, as amended by Chapter 626, Section 1 of the laws of New York dated June 22, 1971.

3. Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Chapter I, Part 11, "Qualifications of Public Health Personnel." Chapter II, Part 58, "Clinical Laboratories."

4. Quality Control Standards.

5. Proficiency Testing Program 1972–73, New York State Department of Health, Division of Laboratories and Research, Clinical Laboratory Center, Albany, N.Y., transmitted by letter of March 14, 1972, from the Pathologist-Director, Clinical Laboratory Center.

All such letters and other documents are available for public inspection in Building E, Room 110, Center for Disease Control.

1. Under such determination, the requirement for a license, issued under Section 353 or for a letter of exemption issued pursuant to § 74.46 of Part 74 (for accredited laboratories) or pursuant to § 74.2(b)(1) of Part 74 (for laboratories accepting no more than 100 specimens per calendar year) does not apply to any clinical laboratory, located within the State of New York, which holds a currently effective laboratory permit issued by the State of New York and a currently effective letter of exemption issued pursuant to the provisions of § 353(1) of the Public Health Service Act and § 74.2(b)(4) of Part 74, by the Director, Center for Disease Control.

2. The determination is subject to the following terms and conditions:

(a) All provisions, requirements, standards, and conditions contained in, or imposed under, the laws, regulations, programs, and policies of the State of New York, cited above, shall be applied to laboratories throughout the State (including laboratories located within New York City). State permits shall not be issued or continued in effect except upon inspections made and except upon a determination by the State that applicant laboratories will be operated in accordance with such provisions, requirements, standards, and conditions. Testing for proficiency shall be conducted by the State of New York: *Provided*, That tests for proficiency testing in the subcategory of virology shall be conducted by the Center for Disease Control.

(b) The State of New York shall furnish to the Director, Center for Disease Control, such reports and notices as may be necessary to carry out the purposes of § 353(1) of the Public Health Service Act, including—

(1) Written notice of each laboratory permit issued pursuant to the provisions of Title V of Article 5, New York Public Health Law (unless the laboratory is a laboratory to which the regulations contained in 42 CFR Part 74, are not applicable under the provisions of § 74.2(b)(2) and (3) of Part 74), containing the name and address of such laboratory, the date of issuance and the date of expiration of the permit, and the procedures to which such permit is applicable, within 10 days after publication of this notice in the FEDERAL REGISTER or after issuance of the permit, whichever is later.

(2) Immediate telegraphic notice of each adverse action on permits, indicating the name and address of the laboratory involved and the nature of the action (revocation, suspension or limitation (or equivalent action)), and a copy of the written decision within 5 days after the final decision is rendered. Such adverse actions against laboratories, including laboratories located in New York City, shall be conducted by the State of New York.

(3) With respect to proficiency testing, written notice of (i) the name and address of each laboratory which participates in proficiency testing; (ii) the procedures and the results within 60 days after the submission of laboratory reports of results on proficiency testing samples; (iii) the name and address of each laboratory which fails to submit results to the State by the due date or fails otherwise to participate in proficiency testing in accordance with procedures and standards prescribed by the State of New York for laboratories located within the State; and (iv) the name and address of each laboratory serving as a reference laboratory in proficiency testing.

3. The Director, Center for Disease Control, may issue a letter of exemption to a laboratory upon application by the owner, operator, or authorized representative of such laboratory which shall include an agreement to permit inspection by the Director, to make its records available for inspection, and to submit reports and such other relevant information as may be required by the Director.

4. Notwithstanding the issuance of letters of exemption, under paragraph 3, above, laboratories located within the State of New York, shall be subject to such provisions of the regulations in Part 74 as the Director may prescribe, other than the provisions relating to licensing.

5. A separate application for a letter of exemption must be filed for each laboratory location. In case of a change in the location of a laboratory, specimens may not be accepted for examination at such new location unless a letter of exemption, applicable to such new location, has first been obtained.

6. Letters of exemption shall be issued to be applicable to one or more of the following procedures or categories of procedures except upon application for a limited letter of exemption:

(1) Microbiology:
(i) Bacteriology.
(ii) Mycology.
(iii) Parasitology.
(iv) Virology.
(v) Serology (syphilis).
(vi) Serology (nonsyphilis).
(2) Clinical chemistry:

(i) Blood and cerebrospinal fluid chemistry.
(ii) Endocrinology.
(iii) Toxicology.
(iv) Urinalysis.
(3) Immuno-hematology.
(4) Hematology.
(5) Pathology:
(i) Exfoliative cytology.
(ii) Histopathology.
(iii) Oral pathology.
(6) Radiobioassay.

7. An application for the renewal of a letter of exemption shall be submitted not less than 30 days nor more than 60 days prior to the expiration of the period for which the letter of exemption was issued.

8. A letter of exemption issued pursuant to § 353(1) may be revoked, suspended, or limited, whenever the Director after reasonable notice and opportunity for hearing (except as provided below for immediate applicability of licensure requirements) finds that the owner, operator, or any employee—

(a) Has been guilty of misrepresentation in obtaining the letter of exemption.

(b) Has engaged or attempted to engage in the performance of or represented himself or the laboratory as entitled to perform any laboratory procedures not authorized in the letter of exemption.

(c) Has failed to comply with the standards prescribed by the State.

(d) Has failed to comply with any of the terms or conditions prescribed herein or which may be prescribed pursuant to the Act or regulations.

(e) Has violated or aided and abetted in the violation of any provision of the applicable law and regulations of the State of New York, section 353 of the Public Health Service Act, the rules and regulations issued thereunder, or the terms and conditions prescribed herein or which may be prescribed pursuant to the Act or regulations.

9. A letter of exemption issued pursuant to section 353(1) shall be deemed revoked, suspended, or limited, as may be appropriate, and the licensure requirements of section 353 of the Public Health Service Act and Part 74 of Title 42, or the requirements for a letter of exemption under § 74.2(b)(1) of Part 74, as may be appropriate, immediately applicable, without notice and without further action on the part of the Director, upon the effective date of revocation, suspension, or limitation (or equivalent action, however denominated) of a permit issued by the State.

The Director, Center for Disease Control, proposes to conduct an initial examination of each clinical laboratory in the State of New York which applies for a letter of exemption as prescribed herein, to conduct annual examinations thereafter of such laboratories as may be deemed necessary to carry out the purposes of section 353 of the Public Health Service Act, and to conduct an annual review thereafter of the standards, requirements, practices, and procedures of the State of New York in issuing permits for clinical laboratories and for assuring continued compliance.

The determination of April 14, 1972, is effective for the period July 1, 1972–June 30, 1973, except that if the Director, Center for Disease Control, determines, on the basis of a review of the standards applied in the issuance of permits to clinical laboratories within the State, evidence of violations of such standards, inspections, or other relevant factors, that the standards applied by the State are not equal to or more stringent than the provisions of section 353 or the rules and regulations issued thereunder, or that the provision of the State for requirements, practices, and procedures for assuring that such standards continue to be met by laboratories is inadequate, he shall give notice thereof to the Commissioner of Health of the State of New York and shall provide a reasonable period for revision of standards, requirements, practices, and procedures and for submittal to the Director of satisfactory evidence (1) that the State has adopted and effectively applied equivalent or more stringent standards to laboratories in determining whether to issue permits to such laboratories and (2) that there is adequate provision for assuring that such standards continue to be met by laboratories. Upon expiration of such period and notice to the Commissioner of Health of the determination that he has not submitted satisfactory evidence, which notice shall contain a specification of the basis for the determination, the provisions of section 353 of the Act requiring licensing shall apply effective 30 days after the date of receipt of such notice by the Commissioner.

As indicated above, acceptance of specimens for laboratory examination, in interstate commerce, is prohibited and subject to criminal penalties unless there is in effect for such laboratory a license or a letter of exemption. Application forms and information may be obtained from the Office of the Chief, Laboratory Licensure Section, Building E, Room 110, Center for Disease Control, 1600 Clifton Road NE., Atlanta, GA 30333.

Dated: November 10, 1972.

DAVID J. SENCER,
Director, Center for Disease Control, Health Services and Mental Health Administration.

[FR Doc.72-20210 Filed 11-22-72;8:50 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23333; Order 72-11-38]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority November 10, 1972.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act), and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA). The agreement, which was adopted by the 32d meeting of the TC1 Specific Commodity Rates Board held in Miami on September 14, 1972, has been assigned CAB agreement No. 23337.

The agreement proposes revisions to the specific commodity rate structure applicable within the Western Hemisphere. These revisions, insofar as they would affect air transportation, encompass numerous additional rates under existing commodity descriptions, the cancellation of 18 commodity rates and numerous increases and reductions of existing commodity rates (as set forth in Attachment 1) as well as several new rates under new commodity descriptions (as reflected in Attachment 2).[1]

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the condition hereinafter ordered.

Accordingly, it is ordered, That:

Agreement CAB 23337 be and hereby is approved, provided that approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication: *Provided further,* That tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-20225 Filed 11-22-72;8:51 am]

[Docket No. 24488; Order 72-11-68]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Passenger Fares

Issued under delegated authority November 16, 1972.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations between various air carriers,

[1] Filed as part of the original document.

foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, which has been assigned CAB Agreement No. 23367, was adopted for expedited effectiveness at the Worldwide Passenger Conference held in Torremolinos, Spain, September-October 1972, for a limited period December 1, 1972, through March 31, 1973.

The agreement would add proportional fares to points in Africa for combination with South Atlantic normal fares. We are approving the agreement to the extent that it involves normal first-class and economy fares, which are combinable with fares to/from U.S. points and thus have indirect application in air transportation as defined by the Act.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14:

1. It is not found that the following resolutions, which are incorporated in Agreement CAB 23367 as indicated and which do not directly affect air transportation within the meaning of the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
23367:			
R-1	054c	South Atlantic Normal First Class Fares	1; 2.
R-2	064c	South Atlantic Economy Class Fares	1; 2.

Accordingly, it is ordered, That:

Agreement CAB 23367, R-1 and R-2, be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc. 72-20224 Filed 11-22-72;8:51 am]

FEDERAL MARITIME COMMISSION

BAHAMA ISLANDS RATE AGREEMENT

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Stephen Doolos, Secretary, Bahama Islands Rate Agreement, 1 World Trade Center, New York, NY 10048.

Agreement No. 9558-2, between Atlantic Lines, Ltd., and Royal Netherlands Steamship Co., amends paragraph 1 of the Preamble of the Bahama Islands Rate Agreement so that it will read as follows:

PREAMBLE: SCOPE OF AGREEMENT

Whereas, the parties signatory hereto are common carriers operating in the trade between ports in the Bahama Islands as named in the tariff and U.S. Ports north of Cape Hatteras (hereinafter referred to as "the trade"). And,

Paragraph 1 of the Preamble presently provides that the agreement covers the trade between ports in the Bahama Islands and Atlantic and gulf ports of the United States.

Dated: November 20, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-20213 Filed 11-22-72;8:49 am]

UNITED KINGDOM/UNITED STATES OF AMERICA GULF WESTBOUND RATE AGREEMENT

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

J. Sewell, Secretary, United Kingdom/United States of America Gulf Westbound Rate Agreement, 3d Floor, Cunard Building, Liverpool L3 1DS, England.

Agreement No. 8770-4 modifies the geographic scope of the above-named agreement to cover the transportation of cargo from inland points or ports in the United Kingdom and selected base ports other than the ocean vessels' port of loading whether or not the cargo is carried on a single carrier liability through bill of lading to ports, places, and points on inland waterways tributary to the U.S. gulf coast.

Dated: November 20, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-20214 Filed 11-22-72;8:50 am]

FEDERAL POWER COMMISSION

NATURAL GAS SURVEY SUPPLY-TECHNICAL ADVISORY FORCE-NATURAL GAS TECHNOLOGY

Notice of Meeting and Its Agenda

Agenda, meeting, Supply-Technical Advisory Task Force-Natural Gas Technology to be held in Conference Room 2043 of the Federal Power Commission, 441 G Street NW., Washington, DC, December 7 and 8, 1972—9 a.m. Presiding: Dr. Paul J. Root, TF FPC Survey Coordinating Representative and Secretary.

1. Call to order and introductory remarks—Dr. Root.
2. Review of developments since the last meeting—Mr. Lloyd E. Elkins, Director—Supply-Technical Advisory Task Force-Natural Gas Technology.
3. Review of individual assignments for drafting sections of the final report—Mr. Elkins.
4. Discussion of coverage of environmental aspects of task force work programs—Mr. Elkins.
5. Status of assigned work programs and estimated date for completion—Mr. Elkins.
6. Other business.
7. Adjournment—Dr. Root.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20230 Filed 11-22-72;8:51 am]

[Project No. 642-Florida]

TALLAHASSEE MERIDIAN, FLA.

Order Denying Request for Partial Vacation of Land Withdrawal

NOVEMBER 17, 1972.

Application has been filed by Charles Wilford McCormick and Sandra Fay McCormick with the Bureau of Land Management for the release of the reservation under section 24 of the Federal Power Act contained in Patent No. 1157275, pertaining to the following described land:

TALLAHASSEE MERIDIAN, FLORIDA

T. 1 S., R. 21 E., sec. 36 fractional.

This land comprises approximately 35.98 acres. The reservation was placed in the patent in accordance with DA-6-Florida, issued by the Commission on October 13, 1947.

The land lies along the north prong of the St. Marys River, aboue 5 miles north of the town of Macclenny, Baker County, Fla., and is reserved pursuant to the filing on August 27, 1925, by Ernest L. Hill and C. Lyman Spencer of an application for preliminary permit for Project No. 642. The proceedings for this project ended without the filing of an application for license.

The land would be flooded by the development of the proposed Macclenny damsite located about three-fourths of a mile downstream from the confluence of the north and south prongs of the St. Marys River. The Macclenny site has been studied as a conventional development, as a pumped storage project, and as a project utilizing the diversion of flow from the Suwannee River.

The Commission considered the Macclenny site in its review of the 1965 Corps of Engineers report on the Satilla, St. Marys, and Suwannee Rivers. It was found that the most feasible project was a conventional development which would have a capacity of approximately 18,000 kw. and a reservoir with a normal pool elevation of 110 feet above mean sea level. This project and an alternate pumped storage project which would have approximately 87,000 kw. of reversible capacity have marginal economic feasibility under present conditions.

While there are no known plans for development of the Macclenny site at this time the Commission has advised the U.S. Corps of Engineers that this project should be considered as a possible future source of power and should be restudied in any future investigations of the basin.

The Commission finds:

The subject land has power value and the request for partial vacation of the land withdrawal for Project No. 642 is hereby denied.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20229 Filed 11-22-72;8:51 am]

[Dockets Nos. CP73-45, CP73-49, CP73-14]

MICHIGAN WISCONSIN PIPE LINE CO. ET AL.

Order Consolidating Proceedings, Granting Interventions, Ordering Filing of Evidence, Setting Prehearing Conference and Hearing Dates, and Denying Application To Continue Deliveries

NOVEMBER 16, 1972.

On August 14, 1972, Michigan Wisconsin Pipe Line Co. (Mich-Wis) filed in Docket No. CP73-45, and Southern Natural Gas Co. (Southern) filed in Docket No. CP73-49, applications for certificates of public convenience and necessity authorizing a deferred exchange of natural gas, pursuant to section 7 of the Natural Gas Act. By an agreement dated July 1, 1972, they have agreed to exchange approximately 3,600,000 Mcf of gas over a 3-year period. Deliveries from Southern to Mich-Wis commenced on July 28, 1972, under the emergency provisions of § 157.22 of the regulations and are scheduled to be completed by December 1, 1972. Redelivery of the gas from Mich-Wis to Southern would be made during the periods of December 1, 1973 through March 31, 1974, and December 1, 1974 through March 31, 1975, with one-fourth of the volume exchanged to be returned during the first period, and the remainder during the second period.

The applicants allege that this exchange is required by the public convenience and necessity for the following reasons: (1) Deliveries by Southern will enable Mich-Wis to replace throughput of gas while some of its facilities are out of service during construction; (2) Redeliveries by Mich-Wis to Southern would be made at times of peak requirements on Southern's system, and would help Southern meet these requirements, and would avoid the costs involved in injection, storage, and withdrawal of the quantities of gas redelivered.

Notice of these applications issued on August 30, 1972, and September 25, 1972, was set as the final date on which protests, petitions to intervene, and notices of intervention could be filed in this matter. Timely petitions to intervene were filed on September 8, 1972, by the Carolina Pipeline Co. (Carolina) and on September 19, 1972, by the Water, Light, and Sinking Fund Commission of the city of Dalton, Ga. (Dalton). A timely protest and petition to intervene was filed on September 25, 1972, by the Atlanta Gas Light Co. (Atlanta) and a timely protest and notice of intervention was filed on September 21, 1972, by the Georgia Public Service Commission (GPSC).

Dalton and Atlanta, customers of Southern, object to the exchange agreement because it would result in Southern's delivering gas to Mich-Wis at a time when Southern is curtailing deliveries to its own customers. Atlanta, as well as the GPSC, object further because while Southern is in curtailment, it would be delivering gas to Mich-Wis which is in a position to expand its market. Atlanta and the GPSC also express the fear that gas delivered to Mich-Wis by Southern will be put to an end use inferior to Southern's planned use of the gas were an exchange not to occur. Carolina objects because it fears that gas redelivered to Southern by Mich-Wis will be allocated to Southern's interruptible sales customers by a method less advantageous to them than the one in effect at the time of Southern's deliveries to Mich-Wis. Thus, these customers believe they may receive less gas if the exchange occurs than they would if it did not take place.

On July 17, 1972, Florida Gas Transmission Co. (Florida) and Southern, pursuant to section 7 of the Natural Gas Act, filed a joint application in Docket No. CP73-14 for a certificate of public convenience and necessity for an exchange of natural gas. They seek approval of an agreement entered into by them on June 28, 1972, for the exchange from time to time over a 3-year period, of quantities of natural gas, not to exceed 50,000 Mcf during any one 24-hour period, at an existing point of connection between their two systems in Washington Parish, La. They allege that differences in their respective operating requirements enable each to make gas available to the other to meet temporary shortages during certain periods of the year without impairing their ability to meet their present service obligations to others. Deliveries from Southern to Florida will be limited generally but not exclusively to the 7-month, April through October, period of the year and deliveries from Florida to Southern will be limited generally but not exclusively to the 5 month, November through March period of the year, with deliveries to be made at the sole discretion of the delivering party. Southern and Florida commenced the actual exchange of gas on August 1, 1972, under the emergency delivery provisions of § 157.22 of the regulations.

Notice of this application was issued on August 3, 1972, and August 28, 1972, was set as the final date on which protests and petitions to intervene could be filed in this matter. Timely petitions to intervene were filed by Alabama Gas

Corp. (Alabama) on August 23, 1972, and by Carolina Pipeline Co. (Carolina) on August 28, 1972. An untimely protest and petition to intervene was filed on August 29, 1972, by the Atlanta Gas Light Co. No opposition to the untimely petition has been raised and it does not appear that any delay in the proceedings will result from granting that petition. Thus, in the light of the significant interest of Atlanta in this matter, it appears that good cause exists for permitting its intervention.

Alabama, Southern's second largest customer, states that because Southern is presently curtailing service to many of its customers including Alabama, the exchange agreement might be detrimental to the gas supply situation on the Southern system. Carolina objects on the same grounds that it raised in objecting to the exchange between Southern and Mich-Wis, above. Atlanta objects to the exchange because it would result in Southern's delivering gas to Florida at a time when it is curtailing deliveries to Atlanta. Atlanta also fails to see any benefits in the exchange for Southern, and feels that the end use of the gas delivered to Florida by Southern should be determined, since it might be inferior to the use to which the gas would be put if the exchange never took place.

Because the issues raised by the intervenors in these dockets revolve around the impact of these exchanges on Southern's customer allocations during its existing curtailments, the applications of Southern and Mich-Wis in Dockets Nos. CP73–49 and CP73–45, respectively, and the joint application of Southern and Florida in Docket No. CP73–14 are interdependent and should be consolidated and heard together.

The following issues must be considered on the record before a decision can be made on these applications: (1) What present and future benefits and liabilities will these exchange agreements incur for Southern, Mich-Wis, and Florida; (2) What effect will these agreements have on present and future deliveries of gas to the customers of each company; (3) What will be the end use of the gas exchanged under these agreements? Is this use inferior to the use to which the gas would have been put if the exchange had not been made?

One final matter is before us at this time in this proceeding. On September 29, 1972, Southern and Florida jointly filed an application to continue delivering gas pursuant to their exchange agreement, beyond the 60-day time limitation imposed by § 157.22 of the regulations. In support of this motion they refer to the justifications cited in their certificate application, and add only that the delivery of gas needed by Florida because of temporary shortage on its system has not been completed. On October 16, 1972, the Atlanta Gas Light Co. filed an answer opposing this motion. Atlanta argues that Southern and Florida never demonstrated an emergency justifying the implementation of § 157.22 in the first place, and a fortiori have not justified the waiver of the time limitation imposed by that section.

On October 19, 1972, we denied a similar request by Southern relating to their exchange with Mich-Wis in Dockets Nos. CP73–45 and CP73–49 because an emergency sufficient to justify waiver of the time limitation had not been shown. We find that with respect to the present waiver application Southern and Florida have also failed to demonstrate an emergency sufficient to justify waiver, and, accordingly, we deny their application.

The Commission finds:

(1) The applications in Dockets Nos. CP73–14, CP73–45, and CP73–49 are interdependent and should therefore be consolidated.

(2) It is desirable and in the public interest to allow all of the above named petitioners to intervene in order that they may establish the facts and the law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

(3) The expeditious disposition of these proceedings will be furthered by the filing of evidence on the relevant issues by the applicants on or before December 7, 1972, and by convening a prehearing conference in these proceedings on December 20, 1972, and by the commencement of a hearing on this matter on January 16, 1973.

(4) A review of the filings before us fails to disclose an emergency sufficient to justify the waiver requested by Florida and Southern in Docket No. CP73–14 of the time limitation imposed by § 157.22 of the regulations. Thus, the application to continue deliveries beyond the sixth day limit should be denied.

The Commission orders:

(A) The applications of Michigan Wisconsin Pipe Line Co. and Southern Natural Gas Co., filed in Dockets Nos. CP73–45 and CP73–49, respectively, and the joint application of Southern Natural Gas Co. and Florida Gas Transmission Co. filed in Docket No. CP73–14 are hereby consolidated.

(B) The above named petitioners are hereby permitted to intervene in these proceedings subject to the rules and regulations of the Commission: *provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petition for leave to intervene: And *provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) Michigan Wisconsin Pipe Line Co., Southern Natural Gas Co., and Florida Gas Transmission Co. shall file testimony and exhibits comprising their cases-in-chief on or before December 7, 1972.

(D) Pursuant to § 2.62(c) of the Commission rules of practice and procedure, the Applicants shall serve copies of their filings upon all intervenors promptly unless such service has already been effected pursuant to Part 157 of the regulations of the Natural Gas Act.

(E) Pursuant to the provisions of § 1.18 of the Commission's rules of practice and procedure, a prehearing conference before a duly designated Administrative Law Judge shall commence at 10 a.m e.s.t. on December 20, 1972, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426, for the purpose of effectuating the expeditious disposition of this consolidated proceeding.

The purpose of such conference shall be to consider all matters at issue in the above dockets and to consider any and all matters which might contribute to an expeditious disposition of this proceeding. The Applicants, the Commission Staff, and all parties who have been permitted to intervene by the Commission shall be entitled to participate in that conference.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426, on January 16, 1973, concerning the matters involved in and the issues presented by these consolidated applications.

(G) The application of Southern Natural Gas Co. and Florida Gas Transmission Co. filed in Docket No. CP73–14 to continue deliveries of gas commenced under § 157.22 of the regulations of the Natural Gas Act, beyond the 60-day limit imposed by that section is hereby denied.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.72–20231 Filed 11–22–72;8:51 am]

[Docket Nos. CP72–100, CP72–101]

TECON GASIFICATION CO. AND TEXAS EASTERN TRANSMISSION CORP.

Notice of Amendments to Applications

NOVEMBER 17, 1972.

Take notice that on November 2, 1972, Tecon Gasification Co.[1] (Tecon), Southern Natural Bank Building, Houston, Tex. 77001, filed in Docket No. CP72–100 and Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, TX 77001, filed in Docket No. CP72–101 amendments to their applications in said dockets pursuant to sections 7(b) and 7(c) of the Natural Gas Act by authorizing in Docket No. CP72–100 the construction and operation of certain natural gas pipeline, compression and gasification facilities different from those originally proposed, and in Docket No. CP72–101 the construction of certain natural gas facilities different than those

originally proposed and the deletion from the application of certain facilities originally proposed to be abandoned, all designed for the sale of 500,000 Mcf of natural gas per day to Texas Eastern by Tecon at a proposed liquid hydrocarbon plant in Ascension Parish, La., as more fully set forth in the applications and in the amendments to the applications which are on file with the Commission and open to public inspection.

Tecon in Docket No. CP72–100 originally requested authorization to construct and operate a liquid hydrocarbon gasification plant in South Plainfield, N.J., to gasify liquid hydrocarbons and to sell its 500,000 Mcf of natural gas per day estimated plant output to Texas Eastern and Consolidated Gas Supply Corp. (Consolidated). Tecon states that it has been necessary to move its proposed plant site from South Plainfield to Ascension Parish due to long delays which would result from the opposition to the project of environment groups, local authorities, and residents of South Plainfield and adjoining communities. Additionally, Tecon states that it was unable to obtain various permits and authorizations from local authorities to install its plant facilities at the location originally planned.

Tecon herein proposed to build its liquid hydrocarbon plant in Ascension Parish, in the vicinity of the Mississippi River, along with terminal facilities consisting of a two-ship dock, unloading line, header system, and liquid hydrocarbon storage tanks and other related facilities. Tecon states that the docking facilities will be accessible to regular ocean-going tankers and no change is contemplated with respect to the manner of delivering liquid hydrocarbons to the terminal. Tecon indicates that it will be able to take advantage of a larger tract of land at the Ascension Parish site than the South Plainfield site. Tecon also proposes to sell its planned output of 500,000 Mcf of natural gas per day to Texas Eastern, in lieu of the originally 200,000 Mcf per day to Consolidated Gas Supply Corp. (Consolidated) and the 300,000 Mcf per day to Texas Eastern. Tecon asserts that Texas Eastern needs the entire 500,000 Mcf per day in order to assure maintenance of adequate service to its customers particularly because United Gas Pipe Line Co. has been curtailing its deliveries to Texas Eastern and it is reasonable to assume such curtailments will continue.

Tecon estimates the total cost of the Ascension Parish project at $141,233,000, which it plans to finance initially under a revolving credit agreement and later by issuance of bonds and capital stock.

Texas Eastern in Docket No. CP72–101 originally requested authorization to abandon certain pipeline facilities in New York and New Jersey and to enlarge its Hanover loop line. These proposals are withdrawn because of Tecon's change of plantsites. Texas Eastern now proposes to construct and operate approximately 6 miles of 30-inch pipeline from Tecon's plantsite in Ascension Parish, to Texas Eastern's 36-inch Venice pipeline at the White Castle Compressor Station in Iberville Parish, La.; approximately 37.25 miles of 36-inch loop pipeline in Mississippi and Louisiana on its southern portion of its pipeline; and other related facilities in lieu of the originally proposed facilities. Texas Eastern also proposes to purchase the entire Tecon plant output of 500,000 Mcf of natural gas per day and withdraws its request for authorization to deliver quantities of gas to Consolidated in exchange for the quantities of gas previously proposed to be purchased by Consolidated from Tecon and delivered into Texas Eastern's pipeline for Consolidated's account.[2]

Texas Eastern estimates the cost of its proposed revised facilities at $15,630,000, which it plans to finance initially under a revolving credit agreement.

Any person desiring to be heard or to make any protest with reference to said applications, as amended, should on or before December 11, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Persons who have heretofore filed petitions to intervene or protests need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72–20232 Filed 11–22–78;8:51 am]

[1] 100 percent of the outstanding voting securities of Tecon will be owned by Fammin Square Corp., a wholly owned subsidiary of Texas Eastern Transmission Corp.

[2] By letter agreement dated Oct. 18, 1972, and accepted and agreed to on Oct. 27, 1972, Consolidated and Tecon canceled the letter agreement between them dated Sept. 28, 1971, providing for the sale of gas produced from Tecon's proposed South Plainfield plant to Consolidated.

RAILROAD RETIREMENT BOARD

RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

Announcement of Deficit

Pursuant to section 8(a) of the Railroad Unemployment Insurance Act, as amended, the Railroad Retirement Board had determined, and hereby proclaims, that as of the close of business on September 30, 1972, there was a deficit of $31,212,062.61 in the railroad unemployment insurance account. The underlying figures relating to the computation of this deficit follow:

Unexpended amount in the railroad unemployment insurance account	$910,982.07
Deduct:	
Amounts borrowed from the Railroad Retirement Account which have not been repaid	−37,459,000.00
Accrued interest on such borrowed amounts	−552,774.18
Deficit in railroad unemployment insurance account proper	37,100,792.11 (D)
Add:	
Balance in railroad unemployment insurance administration fund	+5,888,729.50
Deficit in railroad unemployment insurance account	$31,212,062.61 (D)

In witness whereof the members of the Railroad Retirement Board have hereunto set their hands and caused its seal to be affixed.

Done at Chicago, Ill., this 17th day of November 1972.

By the Railroad Retirement Board.

[SEAL]

JAMES L. COWEN,
Chairman.

NEIL P. SPEIRS,
Member.

WYTHE D. QUARLES, Jr.,
Member.

R. F. BUTLER,
Secretary of the Board.

[FR Doc.72–20184 Filed 11–22–72;2:47 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

ACCURATE CALCULATOR CORP.

Order Suspending Trading

NOVEMBER 15, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Accurate Calculator Corp., being traded otherwise than on a national securities exchange, is required in the public interest and for the protection of investors;

It is ordered, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from

November 16, 1972, through November 25, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20197 Filed 11-22-72;8:48 am]

[File No. 500-1]

CLINTON OIL CO.

Order Suspending Trading

NOVEMBER 16, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.03⅓ par value, and all other securities of Clinton Oil Co., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 18, 1972, through November 27, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20198 Filed 11-22-72;8:48 am]

[70-5272]

COLUMBIA GAS TRANSMISSION CORP. ET AL.

Notice of Proposed Merger of Nonutility Subsidiary Companies

NOVEMBER 16, 1972.

Notice is hereby given that the Columbia Gas System, Inc., 20 Montchanin Road, Wilmington, DE 19807 (Columbia), a registered holding company, and two of its wholly owned nonutility subsidiary companies, Columbia Gas Transmission Corp. (Transmission), and the Preston Oil Co., 1600 Dublin Road, Columbus, OH 43212 (Preston), have filed a joint application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6, 7, 9, 10, and 12(f) and Rule 43 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the joint application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Pursuant to orders of this Commission dated October 24, 1969, and March 4, 1970, Preston has heretofore transferred its natural gas operations in the States of Louisiana and Texas to what is now Columbia Gas Development Corp., a subsidiary company of Columbia. (Holding Company Act Releases Nos. 16503 and 16624). Preston is now and has for many years been engaged in the business of producing, purchasing, storing, and selling oil in the States of Kentucky, Ohio, Pennsylvania, and West Virginia. Historically, Preston's operations have been conducted incident to the System's gas business.

In the States named above, as well as other States in the Appalachian Basin, Transmission is engaged in the business of producing, purchasing, transporting, and selling natural gas at wholesale, as an incident to the System's overall gas business.

It is stated that oil production in Preston's present area has been declining; that Preston has been operating at a deficit for some time; that the liquidation of Preston has been decided upon; that to date the process of liquidation has consisted principally in the sale of its properties outside of the Columbia System pursuant to sales by sealed bidding; and that certain other properties of Preston have been transferred to Transmission where necessary to protect Transmission's gas storage rights or gas exploration drilling rights.

Preston and Transmission now propose to enter into an agreement to merge Preston into Transmission. As surviving corporation of the merger, Transmission is to acquire all of Preston's property rights and liabilities. Columbia, as sole stockholder of both corporations, will approve the agreement of merger.

At the effective time of the merger, outstanding certificates for shares of the capital stock of Preston are to be deemed to be evidence of ownership of the proportionate number of shares of the capital stock of Transmission. Columbia will convert each of the outstanding shares of the capital stock of Preston into fully paid and nonassessable shares of the capital stock of Transmission.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees, commissions, and expenses in connection with the proposed transaction are estimated to be $5,600 for Preston and $6,400 for Transmission, each of these amounts including fees of $1,500 for services, at cost, of Columbia Gas System Service Corp., a service company subsidiary of Columbia.

Notice is further given that any interested person may, not later than December 11, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20191 Filed 11-22-72;8:47 am]

[File No. 500-1]

ECOLOGICAL SCIENCE CORP.

Order Suspending Trading

NOVEMBER 16, 1972.

The common stock, 2 cents par value, of Ecological Science Corp. being traded on the American Stock Exchange, the Philadelphia-Baltimore-Washington Stock Exchange and Pacific Coast Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Ecological Science Corp. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15 (c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchanges and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 19, 1972, through November 28, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20199 Filed 11-22-72;8:48 am]

[File No. 500-1]

FIRST LEISURE CORP.

Order Suspending Trading

NOVEMBER 16, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value and all other securities of First Leisure Corp., being traded otherwise than on a national securities

exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 17, 1972, through November 26, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20200 Filed 11-22-72;8:48 am]

[File No. 500-1]

FIRST WORLD CORP.

Order Suspending Trading

NOVEMBER 15, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the Class A and Class B common stocks, $0.15 par value, and all other securities of First World Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 16, 1972, through November 25, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20201 Filed 11-22-72;8:48 am]

[File No. 500-1]

GOODWAY, INC.

Order Suspending Trading

NOVEMBER 16, 1972.

The common stock, $0.10 par value of Goodway, Inc., being traded on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Goodway, Inc., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 19, 1972, through November 28, 1972.

By the Commission.

RONALD F. HUNT, *Secretary.*

[FR Doc.72-20202 Filed 11-22-72;8:48 am]

[812-3309]

E. F. HUTTON & COMPANY INC. AND SHEARSON, HAMMILL & CO., INC.

Notice of Filing of Application

NOVEMBER 16, 1972.

Notice is hereby given that E. F. Hutton & Company Inc., 1 Battery Park Plaza, New York, N.Y. 10004, and Shearson, Hammill & Co. Inc., 14 Wall Street, New York, NY 10005 (Applicants), prospecive representatives of a group of underwriters of a proposed offering of shares of common stock, par value $1 per share (the "Common Stock"), of USLIFE Income Fund, Inc. (the "Fund"), a registered closed-end investment company, have filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") for an order exempting Applicants and their counderwriters from section 30(f) of the Act to the extent that section adopts section 16(b) of the Securities Exchange Act of 1934 (the "Exchange Act") in respect of their transactions incident to the distribution of Fund's shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Shares of the Fund's Common Stock are to be purchased by a group of underwriters pursuant to an underwriting agreement (the "Underwriting Agreement") to be entered into between Fund and the underwriters represented by Applicants and pursuant to an agreement among the underwriters (the "Agreement Among Underwriters"). It is intended that the several underwriters will make a public offering of all the shares of the Fund's Common Stock which such underwriters are to purchase under the Underwriting Agreement, at the price therein specified, as soon on or after the effective date of Fund's Registration Statement on Form S-4 (the "Form S-4") under the Securities Act of 1933 (the "Securities Act") as the Applicants deem advisable, and such shares are initially to be offered to the public in accordance with the formula for the determination of the per share public offering price, underwriting commission, and dealer concessions to be specified in the Underwriting Agreement, at the time the Form S-4 becomes effective under the Securities Act.

The overall purpose of the Underwriting Agreement is to enable the Fund to issue and sell 4 million shares of its Common Stock (the "Firm Shares") to the public and to evolve underwriting arrangements designed to achieve such a result. The Underwriting Agreement therefore contemplates a public distribution of a substantial block of securities effected by the several underwriters who, in each case, will be engaged in the business of distributing securities and will be participating in this distribution in good faith and in the ordinary course of such business. However, due to the nature of the underwriting business, the Underwriting Agreement provides that individual transactions by the underwriters of purchase and sale will be effected in order to achieve a successful underwriting of this issue for the Fund. It is also possible, under the Underwriting Agreement and the Agreement Among Underwriters, for the same reasons, that it may be necessary for the several underwriters, or some of them, or either or both of the Applicants, to purchase shares of Common Stock of the Fund for the purpose of stabilizing the market price of the shares of Common Stock of the Fund being distributed, or to cover an overallotment or other short position created in connection with such distribution, or to sell shares of Common Stock of the Fund purchased in connection with stabilizing transactions. Moreover, it is proposed that the underwriters will have the right to purchase, on or before 30 days after the effective date of the Form S-4, all or any portion of an additional 400,000 shares of its Common Stock for the sole purpose of covering overallotments in the sale of the Firm Shares, and accordingly, upon the exercise of this right by the underwriters, the several underwriters, or some of them, or either or both of the Applicants, may purchase up to an additional 400,000 shares of the Fund's Common Stock (the "Optional Shares").

Although effectiveness of the Form S-4 is anticipated in the reasonably near future, Applicants state that it is not yet possible to determine the ultimate composition of the underwriters or the respective participation of any of the underwriters, including the participation of either of the Applicants. In addition, it is possible that the participation, to be specified in the Underwriting Agreement, in shares of Common Stock of the Fund of any of the underwriters, including the Applicants, may be increased by reason of the Underwriting Agreement, whether or not the particular underwriter consents thereto. It is possible, therefore, that, as a result of the formation of the ultimate group of underwriters or by the operation of the provisions of the Underwriting Agreement, (i) certain of the underwriters, including possibly either or both of the Applicants, may individually become obligated to purchase more than 10 percent of the aggregate amount of Common Stock of the Fund to be outstanding after either or both payment to the Fund for and receipt of the Firm Shares and payment to the Fund for and receipt of the Optional Shares, and (ii) the aggregate participation in the initial public offering of the Fund's Common Stock by the underwriters, who are obligated through the

Underwriting Agreement to purchase more than 10 percent of the aggregate amount of the Fund's Common Stock to be outstanding after either or both payment to the Fund for and receipt of the Firm Shares and payment to the Fund for and receipt of the Optional Shares, may exceed 50 percent of the number of shares of the Fund's Common Stock being so offered. Moreover, it is possible that one or more of the underwriters, including possibly either or both of the Applicants, even though they are obligated through the Underwriting Agreement to purchase 10 percent or less of the aggregate amount of the Fund's Common Stock to be outstanding after either or both payment to the Fund for and receipt of the Firm Shares and payment to the Fund for and receipt of the Optional Shares, may, as a consequence of defaults or withdrawals by other underwriters, become obligated to purchase more than 10 percent of the aggregate amount of the Fund's Common Stock to be so outstanding.

Rule 16b–2 under the Exchange Act exempts certain transactions in connection with a distribution of securities from the operation of section 16(b) of the Exchange Act. Applicants state that the purpose of the purchases by the Applicants and the other underwriters is for resale in connection with the initial distribution of shares of the Fund. The purchases and sales will thus be transactions effected in connection with a distribution of a substantial block of securities within the purpose and spirit of Rule 16b–2.

It is possible, however, that Applicants and their counderwriters will not be exempted from section 16(b) by the operation of Rule 16b–2, as they may fail to meet the requirement stated in paragraph (a)(3) of Rule 16b–2 that the aggregate participation of persons not within the purview of section 16(b) of the Exchange Act be at least equal to the participation of persons receiving the exemption under Rule 16b–2, since it is possible that one or more of the underwriters who pursuant to the Underwriting Agreement will purchase more than 10 percent of the shares of the Fund may be obligated to purchase more than 50 percent of the shares of the Fund being offered pursuant to the Underwriting Agreement.

Applicants submit that they believe that the exemption requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants further state that there is no inside information in existence since the Fund, prior to the initial distribution of the shares, will have no assets and that all information material to investors will be set forth in the final prospectus in compliance with the Securities Act and, accordingly, the several underwriters, including Applicants will not be privy to "inside information."

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 1, 1972, submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the Applicants at the addresses stated above. Proof of such service (by affidavit or, in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72–20192 Filed 11–22–72;8:47 am]

[70–5269]

MAINE YANKEE ATOMIC POWER CO.

Notice of Proposed Issue and Sale of First Mortgage Bonds and Preferred Stock

NOVEMBER 16, 1972.

Notice is hereby given that Maine Yankee Atomic Power Co., 9 Green Street, Augusta, ME 04330 (Maine Yankee), an electric utility company and an indirect subsidiary company of both Northeast Utilities and New England Electric System, registered holding companies, has filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6, 7, and 12 of the Act and Rules 50 and 62(b) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Maine Yankee is constructing a nuclear-powered electric generating plant with a net expected capacity of approximately 800 megawatts. The total capital cost of the plant, excluding the cost of the initial inventory of nuclear fuel of about $26 million, is estimated at $224,500,000. Its 11 sponsor companies are committed by capital fund agreements and power contracts to provide Maine Yankee, in accordance with their stock percentages, the capital required by Maine Yankee, and to purchase a like percentage of the capacity and power output of the Maine Yankee plant on a cost-of-service basis, which includes an appropriate return on their investment.

Maine Yankee presently proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $15 million principal amount of first mortgage bonds, —— percent Series C, due 2002. The interest rate (which shall be a multiple of one-eighth of or one-tenth of 1 percent) and the price, exclusive of accrued interest, to be paid to Maine Yankee (which shall be not less than 99 percent and not more than 102.75 percent of the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under the provisions of the first mortgage indenture dated as of November 1, 1970, between Maine Yankee and Old Colony Trust Co., as trustee, as heretofore supplemented and as to be further supplemented by a supplemental indenture, which includes a prohibition until December 1, 1977, against refunding the bonds with the proceeds of funds borrowed at a lower effective interest cost. The bonds will be secured by the physical properties of Maine Yankee and by an assignment to the indenture trustee of its interest in the power contracts and capital funds agreements with the sponsors, as specified in the indenture. The indenture further provides for a sinking fund, sufficient to retire $525,000 principal amount of bonds annually, commencing on May 1, 1974, or 98 percent prior to maturity.

Maine Yankee also proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, 150,000 shares of its cumulative preferred stock, —— percent series (Sinking Fund), par value $100 per share. The dividend rate of the preferred stock (which shall be a multiple of one twenty-fifth of 1 percent) and the price to be paid to Maine Yankee (which shall be not less than $100 nor more than $102.75 per share) will be determined by competitive bidding. The terms of the preferred stock include a prohibition against refunding the preferred stock prior to December 1, 1977, directly or indirectly, with funds derived from the issue of debt securities at a lower effective interest cost or preferred stock at a lower effective

dividend cost. The preferred stock will be redeemable at par plus accrued and unpaid dividends pursuant to a mandatory sinking fund requiring the redemption of 6,000 shares of preferred stock annually commencing on December 1, 1977. In addition, on each mandatory redemption date, Maine Yankee will have the noncumulative option to redeem at the same price not more than 6,000 additional shares of preferred stock.

Sale of the bonds is contingent upon sale of the preferred stock, but sale of the preferred stock is not dependent upon sale of the bonds. The proceeds from the issue and sale of the bonds will be deposited with the trustee in a construction fund, as provided in the first mortgage indenture, and will be withdrawn to meet current and future construction costs. Proceeds from the issue and sale of preferred stock will be applied towards repayment of $5,600,000 subordinated notes due the sponsors, bank loans presently outstanding in the amount of $14,750,000, and for other corporate purposes.

In addition, Maine Yankee proposes to amend its articles of incorporation to provide for the pro rata redemption of common stock at a price per share equal to the sum of the aggregate par value of the common stock plus capital surplus divided by the number of shares outstanding, provided that after such redemption, common stock equity is not less than 30 percent of total capitalization and the number of common shares outstanding is not less than 5,000 shares. At present, 50,000 shares of common stock are outstanding.

The fees and expense to be incurred in connection with the proposed transactions will be filed by amendment. It is stated that the Maine Public Utilities Commission has jurisdiction over the proposed transaction and that no other State commission and no Federal commission, other than this Commission has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 29, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20193 Filed 11-22-72;8:48 am]

[File Nos. (81-121-1), (1-5194)]

MARATHON INTERNATIONAL FINANCE CO.

Notice of Application and Opportunity for Hearing

NOVEMBER 15, 1972.

Notice is hereby given that Marathon International Finance Co., Dakota City, Neb. 68731 (applicant) has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (Act), for a finding that an exemption from the requirement to file Act would not be inconsistent with the reports pursuant to section 13(a) of the public interest or the protection of investors.

Section 12(h) empowers the Commission to exempt, in whole or in part, any issuer or class of issuers from the registration, periodic reporting, and proxy solicitation provisions and to grant exemptions from the insider reporting and trading provisions of the Act if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The applicant's application states, in part:

1. The applicant, a Delaware corporation, is a wholly-owned consolidated subsidiary of Marathon Oil Co. (Marathon), existing for the principal purpose of obtaining and furnishing funds for the foreign operations of the subsidiaries of Marathon and other companies in which Marathon has or may acquire an interest.

2. In March 1966 applicant issued and sold $25 million, principal amount, of 4½ percent Guaranteed Sinking Fund Debentures due 1986 (Debentures). Such Debentures are, and since August 1, 1967 have been, convertible into common shares of Marathon.

3. The Debentures were and continue to be listed on the New York Stock Exchange and such securities are registered with the Commission under section 12 (b) of the Act. As a consequence of such registration, applicant is required to file periodic reports pursuant to section 13 (a) of the Act.

4. As of May 15, 1972 Debentures aggregating, in principal amount, $20,282,000 (or over 80 percent) have been converted into 643,697 common shares of Marathon. The total principal amount of Debentures thus remaining unconverted as of May 15, 1972 was $4,718,000, held by a maximum of 4,718 Debentureholders.

5. The common shares of Marathon into which the Debentures are convertible are listed on the New York, Midwest, and Pacific Coast Stock Exchanges and such securities are registered with the Commission under section 12(b) of the Act. As a consequence of such registration, Marathon is required to file periodic reports pursuant to section 13(a) of the Act.

6. Since 1969 there has been an almost total absence of trading activity in applicant's remaining unconverted Debentures on the New York Stock Exchange.

7. The Debenture trustee reports that as at June 5, 1972 none of the Debentureholders had filed his name and address with the trustee for the purpose of receiving summaries of reports filed by applicant with the Commission pursuant to section 13(a) of the Act or had sought to inspect any of the reports, all of which were filed with the trustee.

8. Accordingly, the applicant believes that in view of the facts that a trading market in its Debentures is unlikely to become sufficiently significant; that Debentureholders, if interested in any reports filed pursuant to section 13 of the Act would be interested in those filed by Marathon and not those filed by applicant; and that the Debentureholders' disinterestedness with respect to reports filed by applicant constitutes clear and convincing evidence that such reports are irrelevant to such persons, that applicant should not continue to be subjected to the not insubstantial burden of complying with section 13(a) of the Act.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, DC.

Notice is further given that any interested person not later than December 11, 1972, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, DC 20549 and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application in whole or in part may be issued upon request or upon the Commission's own motion. If prior

to said date no submission from interested persons is received, the Commission may thereafter issue an order granting the application subject to the following conditions:

1. That applicant file with the Commission current reports on Form 8–K under the Securities Exchange Act of 1934 (Exchange Act) disclosing any material change in the legal rights of the holders of applicant's 4½ percent Guaranteed Sinking Fund Debentures Due 1986 (debentures) from those rights recited in the application presently on file with the Commission;

2. That applicant file with the Commission reports on form 8–K under the Exchange Act disclosing any material change in the trading activity in the debentures from the activity recited in the application presently on file with the Commission;

3. That the indenture trustee for the debentures may apply to the Commission at any time for reconsideration of the 12(h) exemption; and

4. That jurisdiction to reconsider the exemption be reserved to the Commission in the event of any material change in the facts recited in the application presently on file with the Commission or in the event that changes take place in the Commission's rules and regulations relating to disclosures by companies subject to section 12(b) under the Exchange Act.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20194 Filed 11-22-72;8:48 am]

[70-5264]

PENNSYLVANIA POWER CO. AND OHIO EDISON CO.

Notice of Proposed Issue and Sale of Common Stock to Holding Company and Proposed Increase in Authorized Number of Common Shares

NOVEMBER 16, 1972.

Notice is hereby given that Ohio Edison Co., 47 North Main Street, Akron, OH 44308 (Ohio Edison), a registered holding company, and its electric utility subsidiary company, Pennsylvania Power Co. (Pennsylvania), have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a)(2), 6(b), 9(a), 10, and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Pennsylvania proposes to issue and sell to Ohio Edison, its sole common stockholder, 170,000 additional shares of its authorized and unissued common stock, par value $30 per share, and Ohio Edison proposes to acquire these shares for cash at par, or for a total consideration of $5,100,000. It is proposed that the 170,000 shares be issued and sold on or about December 15, 1972.

Pennsylvania further proposes to increase its authorized number of shares of common stock of the par value of $30 per share from 1,290,000 (all of which have been issued) to 1,800,000 shares. Pennsylvania must seek the consent and approval of its sole voting stockholder Ohio Edison, and Ohio Edison proposes to give such consent and approval.

The proceeds from the sale of the common stock will be used by Pennsylvania to construct and acquire new facilities, for the betterment of existing facilities, and to reimburse its treasury in part for moneys expended for such purposes. Pennsylvania estimates that its plant additions for 1972 will aggregate $26,678,699.

It is stated that the Pennsylvania Public Utility Commission has jurisdiction over the proposed issue and sale of the common stock and that such Commission's order will be supplied by amendment. It is represented that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the issue and sale of the common stock are estimated at $4,750, including counsel fee of $2,500.

Notice is further given that any interested person may, not later than December 5, 1972, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20195 Filed 11-22-72;8:48 am]

[File No. 500-1]

ROOSEVELT MARINA, INC.

Order Suspending Trading

NOVEMBER 16, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, no par value, and all other securities of Roosevelt Marina, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 18, 1972, through November 27, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-20203 Filed 11-22-72;8:49 am]

[812-3298]

RAUSCHER-PIERCE SECURITIES CORP. AND TEXAS-SOUTHWESTERN MUNICIPAL BOND FUND, SERIES 1 AND SUBSEQUENT SERIES

Notice of Filing of Application for Exemptions

NOVEMBER 16, 1972.

Notice is hereby given that Texas-Southwestern Municipal Bond Fund, Series 1 and subsequent Series, 400 Travis Park West, San Antonio, TX 78205 (hereinafter called the "Funds" or "Applicants"), registered under the Investment Company Act of 1940 (the "Act") as unit investment trusts, have filed an application pursuant to section 6(c) of the Act for an order (i) exempting them from the provisions of section 14(a) of the Act insofar as such provisions would require the Sponsors and underwriters of each Fund to take for their own account, or place privately with not more than 25 other persons, $100,000 or more worth of Units under investment letters; (ii) exempting them from the provisions of Rule 19b–1 under the Act with regard to distribution of capital gains more than once in a taxable year; and (iii) exempting them during the initial offering period from that portion of Rule 22c–1 which requires that net assets are to be determined as of the time of the close of trading on the New York Stock Exchange and exempting them in secondary market trading from the provisions of Rule 22c–1 as required by Applicants' proposed operations. All interested persons are referred to the application on file with the Commission for a statement of the Applicants' representations contained therein which are summarized below.

The Applicants consist of Texas-Southwestern Municipal Bond Fund, Series 1 and subsequent Series of Funds,

each of which is an unmanaged Fund, with a portfolio consisting of municipal bonds. Each Fund is created under New York law pursuant to a trust agreement (Trust Agreement) among Rauscher Pierce Securities Corp. and Rowles, Winston & Co., Inc. (collectively, the "Sponsors"), United States Trust Company of New York (the "Trustee") and Standard & Poor's Corp. (the "Evaluator"). There are provisions for the liquidation of bonds in the portfolio upon the occurrence of certain credit factors and other enumerated events, and the number of Units of undivided interest in a Series may not be increased after the date of deposit. The Units are distributed by the Sponsors during the initial offering period at a 4 percent sales charge (equal to 4.167 percent of the value of the underlying bonds). The Applicants seek to follow the policies of (i) making no private placement of $100,000 worth of securities, (ii) making monthly distributions to Unitholders of combined principal (representing proceeds from the disposition of bonds, including capital gains) and interest, and (iii) determining net assets of the Funds, regardless of the time of the close of trading on the New York Stock Exchange, (a) during the initial offering period as of 3:30 p.m., effective for all transactions during the preceding 24-hour period and (b) after the completion of the initial public offering, as of 3:30 p.m. on the last business day of each week effective for all trades during the following week.

The Sponsors intend that, for a period of at least 16 months from the time of the initial public offering of Units of the various Series, at least one of them will maintain a market for such Units and continuously offer to purchase such Units at prices, subject to change at any time, which are based upon the supply of and demand for Units, but which in no event will be less than the aggregate bid side evaluation of the underlying bonds in the various Funds. Such market making activities would cease if the Trust Agreement for such Fund were terminated or the right of redemption for such Fund were suspended. The Sponsors further intend to resell such Units at a public offering price computed in the same manner as is applicable to sales during the initial public offering period. The Sponsors state that they may discontinue such purchases of Units in the secondary market if the supply of such Units should exceed demand, or for other business reasons. During the initial offering period and thereafter, the price offered by the Sponsors for the purchase of a Unit must be an amount not less than the redemption price of such Unit, which is based on the aggregate bid side evaluation of the underlying bonds on the date on which such Unit is tendered for redemption.

SECTION 14(a)

Section 14(a) provides, in part, that no registered investment company may make a public offering of its securities unless (i) such company has a net worth of at least $100,000 or (ii) provision is made in connection with the registration of such securities which insures that firm agreements will have been made by which not more than 25 persons will privately purchase securities issued by the company for an aggregate amount which, when added to the then net worth of the company, if any, will equal at least $100,000.

The applicants assert that section 14(a) of the Act is intended to limit the formation of undercapitalized investment companies. Applicants state that it is intended that each Fund, at the date of deposit and before any Unit is offered to the public, will have a net worth far in excess of $100,000, that the Sponsors intend to sell all Units to the public at an offering price disclosed in the Prospectus, that it is intended that a secondary market for the Units be maintained, as described above, and that interest rates and other applicable information concerning the underlying bonds will be discussed in the Prospectus.

The Sponsors have agreed to the requested exemption being subject to the condition that the Sponsors and any other underwriters or dealers participating in the distribution of each Fund will refund, on demand and without deduction, all sales charges paid by purchasers of Units in the initial public offering if, within 90 days from the time that the Registration Statement relating to such Fund becomes effective, either (i) the net worth of such Fund shall be reduced to less than $100,000 or (ii) such Fund shall have been terminated. The Sponsors have further agreed to instruct the Trustee on the date of deposit of each Fund to terminate such Fund in the manner provided in the Trust Agreement and distribute the assets of the Fund to the Unitholders in the event redemption by the Sponsors of unsold Units results in such Fund having a net worth of less than 40 percent of the principal amount of the initial portfolio.

RULE 19b-1

Rule 19b-1(b) provides, in part, that no registered investment company which is not a "regulated investment company" as defined in section 851 of the Internal Revenue Code shall make more than one distribution of long-term capital gains in any one taxable year.

Applicants seek to follow the course of distributing principal, including any capital gains, and interest on each of the Funds to Unitholders each month. Applicants state that distributions of principal constituting capital gains to Unitholders are anticipated to arise in the following circumstances: (1) If an issuer calls or redeems an issue held in the portfolio and (2) if bonds are liquidated in order to provide funds necessary to meet redemptions.

Applicants state that the dangers against which Rule 19b-1 is intended to guard will not exist in connection with the Funds since neither the Funds nor the Sponsors have control over the events which could trigger capital gains. The Applicants seek to make a combined distribution of principal, including capital gains, and interest each month, and state that any capital gains in such distribution will be clearly indicated as such in the accompanying report by the Trustee to Unitholders. The Applicants state that it would be to the detriment of Unitholders if the Funds were forced to withhold moneys constituting capital gains from such Unitholders until the end of the year.

Applicants point out that paragraph (b) of Rule 19b-1 provides that a unit investment trust may distribute capital gains dividends received from a regulated investment company within a reasonable time after receipt. Applicants contend that the purpose behind this provision is to avoid requiring such trusts to accumulate valid distributions received throughout the year until the yearend, and they contend that their situation is within the intended objectives of such provision.

RULE 22c-1

Rule 22c-1 provides, in part, that redeemable securities of registered investment companies may be sold, redeemed, or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Applicants state that the rule has two purposes: (1) To eliminate or reduce any dilution of the value of outstanding redeemable securities of registered investment companies which would occur through the redemption or repurchase of such securities at a price above their net asset value or the sale of such securities at a price based on a previously established net asset value which would permit a potential investor to take advantage of an upswing in the market and the accompanying increase in the net asset value of the securities; and (2) to minimize speculative trading practices in the securities of registered investment companies.

Applicants state that transactions in Units of the Funds in the secondary market cannot dilute the value of outstanding securities since each Fund consists of a stable portfolio of bonds and each Unit represents a fractional undivided interest in that portfolio. By the terms of the Trust Agreement for each Fund, the number of Units may not be increased, and therefore the Applicants state that the price at which Units are sold or repurchased does not affect the value of either the underlying bonds or the fractional undivided interest in those bonds which is represented by each outstanding Unit. Applicants state further that the only instance in which Fund assets are involved in a secondary market transaction is upon redemption

of a Unit, and in the case of redemption the Funds will follow the practice of daily pricing and forward pricing set forth in Rule 22c–1.

Applicants further assert that secondary market trading in the Funds is not attractive to speculators. They state that the Funds are designed for investors who desire fixed income, as reflected in the Prospectus. Applicants further state that it might be possible for a speculator to recover the costs of approximating the statistical techniques used by the Evaluator in evaluating the portfolio of a Fund only by making very large trades in the secondary market. Applicants state that they anticipate that the number of Units available in the secondary market will be very limited.

Applicants state that the application of Rule 22c–1 to the Funds, causing additional evaluations of the Funds by the independent Evaluator who is paid for each evaluation, would be so costly as to be significantly detrimental to the interests of the Unitholders, particularly in light of the anticipated low volume of secondary market activity.

Applicants state that "backward pricing" is necessary in order that the Sponsors are able to quote a price at which it will purchase Units. Trade accomplished at a price to be determined several days in the future, the Applicants contend, would be unsatisfactory to the Unitholders as well as to the Sponsors.

Rule 22c–1, in addition, requires that net asset value be determined as of the time of the close of trading at the New York Stock Exchange (presently, 3:30 p.m., e.s.t.). The Sponsors state that it is anticipated that many of the bonds in the portfolios of the various Funds will be traded either exclusively or principally in the over-the-counter market, and the time of the close of trading on the New York Stock Exchange is therefore not necessarily related to the evaluation procedures used in determining net asset value of the Funds. The Sponsors state also that the Evaluator has indicated that 3:30 p.m. is the proper time to obtain reliable evaluations, regardless of the time of the close of trading on the New York Stock Exchange, Inc.

Notice is further given that any interested person may, not later than December 7, 1972, at 5:30 p.m., submit to the Commission in writing a request for hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72–20196 Filed 11–22–72;8:48 am]

[File No. 500–1]

TRANS-EAST AIR, INC.

Order Suspending Trading

NOVEMBER 15, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.50 par value, and all other securities of Trans-East Air, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from November 16, 1972 through November 25, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72–20204 Filed 11–22–72;8:49 am]

CONSTRUCTION INDUSTRY STABILIZATION COMMITTEE

WINDFALL PROFITS

Renegotiated Construction Contracts

On June 15, 1972, the Price Commission published in the FEDERAL REGISTER (37 F.R. 11870) its regulations concerning the renegotiation of construction contracts when contractors receive windfall profits resulting from deferred wage increase disapprovals by the Construction Industry Stabilization Committee (6 CFR 300.58).

To assist interested parties in carrying out these regulations, a list of the local unions by area which have had deferred increases disapproved may be inspected or reviewed at the offices of the Construction Industry Stabilization Committee, U.S. Department of Labor, Washington, D.C. 20210.

Signed at Washington, D.C., this 17th day of November 1972.

JOHN T. DUNLOP,
Chairman, Construction Industry Stabilization Committee.

[FR Doc.72–20233 Filed 11–22–72;8:51 am]

ENVIRONMENTAL PROTECTION AGENCY

2-SEC-BUTYLAMINO-4-ETHYL-AMINO-6-METHOXY-S-TRIAZINE

Notice of Reextension of Temporary Tolerance

The Ciba-Geigy Corp., Ardsley, N.Y. 10502, was granted a temporary tolerance for combined residues of the herbicide 2-*sec*-butylamino-4-ethylamino-6-methoxy-*s*-triazine and its metabolites 2-*sec*-butylamino-4-amino-6-methoxy-*s*-triazine, 2-amino-4-ethylamino-6-methoxy-*s*-triazine, and 2,4-diamino-6-methoxy-*s*-triazine in or on the raw agricultural commodities fresh alfalfa and alfalfa hay at 1 part per million on June 16, 1970 (notice was published in the FEDERAL REGISTER of June 23, 1970 (35 F.R. 10237)). The temporary tolerance was extended October 8, 1971 (notice was published in the FEDERAL REGISTER of October 16, 1971 (36 F.R. 20187)).

The firm has requested a 1-year reextension to obtain additional experimental data. It is concluded that such reextension will protect the public health. A condition under which this temporary tolerance is re-extended is that the herbicide will be used in accordance with the temporary permit which is being issued concurrently and which provides for distribution under the Ciba-Geigy Corp. name.

This temporary tolerance expires June 16, 1973.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038).

Dated: November 16, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72–20178 Filed 11–22–72;8:46 am]

CHEVRON CHEMICAL CO.

Notice of Establishment of Temporary Tolerances

Chevron Chemical Co., 940 Hensley Street, Richmond, CA 94801, submitted a petition (PP 2F1248) requesting establishment of temporary tolerances for combined residues of the insecticide *O,S*-dimethyl acetylphosphoramidothioate and its metabolite *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodities broccoli at 15 parts per million, head lettuce at 10 parts per million, tomatoes at 5 parts per million, and potatoes at 0.5 part per million.

It has been determined that these temporary tolerances are safe and will protect the public health. They are therefore established as requested on condition that the insecticide be used in accordance with the temporary permit being issued concurrently by the Environmental Protection Agency and which provides for distribution under the Chevron Chemical Co. name.

These temporary tolerances expire November 16, 1973.

This action is being taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038).

Dated: November 16, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-20177 Filed 11-22-72;8:46 am]

CIBA-GEIGY CORP.

Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 3F1323) has been filed by Ciba-Geigy Corp., Ardsley, N.Y. 10502, proposing establishment of tolerances (40 CFR Part 180) for residues of the insecticide *O,O*-dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-methoxy-Δ^2-1,3,4-thiadiazolin-5-one in or on the raw agricultural commodities potatoes and tomatoes at 0.1 part per million.

The analytical method proposed in the petition for determining residues of the insecticide is a gas-liquid chromatographic procedure using flame photometric detectors for either phosphorous or sulfur.

Dated: November 16, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-20176 Filed 11-22-72;8:46 am]

INTERSTATE COMMERCE COMMISSION

[Notice 165]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by Division 3 of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73697. By order entered November 11, 1972, Division 3, acting as an Appellate Division, approved the transfer to C & R Transfer Co., Sioux Falls, S. Dak., of the operating rights set forth in permit No. MC-124576 (Sub-No. 6), issued May 21, 1968, to Williams Transportation, Inc., Belle Fourche, S. Dak., authorizing the transportation of: Posts, poles, pilings, and lumber, from points in Lawrence County, S. Dak., and Crook County, Wyo., to points in Iowa, Minnesota, Colorado, Montana, Nebraska North Dakota, South Dakota, and Wyoming, limited to a transportation service to be performed under a continuing contract, or contracts, with Whitewood Post and Pole Co., Whitewood, S. Dak. Dual operations authorized. James R. Becker, 412 West Ninth Street, Sioux Falls, SD 57104, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-20217 Filed 11-22-72;8:50 am]

[Notice 166]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73696. By order of November 3, 1972, the Motor Carrier Board approved the transfer to Aaron Smith Trucking Co., Inc., Dudley, N.C., of certificate No. MC-126139 issued March 9, 1965, to Vernon S. Aycock, doing business as Aycock Truck Line, Fremont, N.C., authorizing the transportation of fertilizer in bags, from Norfolk, Va., to points in Wayne and Wilson Counties, N.C. William A. Dees, Jr., 105 South John Street, Post Office Box 12, Goldsboro, NC 27530, attorney for applicants.

No. MC-FC-73746. By order entered November 12, 1972, the Motor Carrier Board approved the transfer to Abrams Hardware, Inc., Kendrick, Idaho, of the operating rights set forth in certificate No. MC-93518, issued March 11, 1941, to Walter E. Brocke, doing business as Kendrick-Lewiston Auto Freight, Kendrick, Idaho, authorizing the transportation of: General commodities, except commodities of excessive value, those requiring refrigeration, petroleum products, in bulk, articles which exceed the capacity of equipment, and commodities contaminating to other lading, over a regular route, between Clarkston, Wash., and Kendrick, Idaho, serving all intermediate points, and off-route points within 15 miles of Kendrick. Dennis Paul Abrams, Post Office Box D, Kendrick, ID 83537, representative for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-20218 Filed 11-22-72;8:50 am]

[Notice 155]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 17, 1972.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can

and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 74321 (Sub-No. 61 TA), filed October 31, 1972. Applicant: B. F. WALKER, INC., 650 17th Street, Denver, CO 80202. Applicant's representative: J. Marshall Forsyth (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cooling towers and fluid coolers*, which because of size or weight, require the use of special equipment, and *cooling towers, fluid coolers and accessories* for cooling towers and fluid coolers which do not require the use of special equipment, when moving in the same vehicle with cooling towers and fluid coolers which because of size or weight require the use of special equipment, from the plantsite of the Marley Co. at or near Louisville, Ky., to points in Alabama, Arkansas, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming, for 180 days. Supporting shipper: The Marley Co., Mission, Kans. Send protests to: District Supervisor Roger L. Buchanan, Bureau of Operations, Interstate Commerce Commission, 2022 Federal Building, 1961 Stout Street, Denver, CO 80202.

No. MC 103993 (Sub-No. 738 TA), filed October 31, 1972. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings and sections of buildings*, on undercarriages, from points in Wake County, N.C., to points in Maryland, for 180 days. Supporting shipper: Globe Industries, Inc., Route No. 1, Box 535A, Morrisville (Raleigh), N.C. 27500. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, Room 204, Fort Wayne, IN 46802.

No. MC 107496 (Sub-No. 866 TA), filed November 3, 1972. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, Post Office Box 855, 50304, Des Moines, IA 50309. Applicant's representative: E. Check (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed supplements*, in bulk, in tank vehicles, from the Pro-Flo, Inc., plantsite near Cameron, Ill., to points in Iowa, for 150 days. Supporting shipper: Pro-Flo, Inc. Rural Route 2, Cameron, Ill. 61432. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 110988 (Sub-No. 288 TA), filed November 3, 1972. Applicant: SCHNEIDER TANK LINES, INC., 200 West Cecil Street, Neenah, WI 54956. Applicant's representative: David A. Petersen (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foundry sand additives*, in bulk, in hopper-type vehicles, from Albion, Mich., to points in Illinois and Wisconsin, for 180 days. Supporting shipper: American Colloid Co., 5100 Suffield Court, Skokie, IL 60076 (Robert N. Garity). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 117940 (Sub-No. 82 TA), filed October 31, 1972. Applicant: NATIONWIDE CARRIERS, INC., Post Office Box 104, Maple Plain, MN 55359. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel and accessories and commodities* used in the operations of department stores, from the facilities of Holly Stores, Inc., located in North Bergen, N.J., to Allentown, Altoona, New Kensington, and Rochester, Pa., Austintown and Highland Heights, Ohio; Elkhart, Fort Wayne, Hammond, and Mishawaka, Ind., Ann Arbor, Detroit (and points in its commercial zone), Flint, Livonia, Monroe, Pontiac, and Westland, Mich., Chicago (and points in its commerical zone), Downers Grove, Elgin, Joliet, and Kankakee, Ill., Cedar Rapids, Des Moines, and Iowa City, Iowa; Lincoln and Omaha, Nebr., Colorado Springs, Denver (and points in its commercial zone), Fort Collins, Greeley, and Pueblo, Colo., Albuquerque, N. Mex., Phoenix and Scottsdale, Ariz., Bakersfield, Escondido, Lancaster, Los Angeles (and points in its commercial zone), Oxnard, Riverside, and San Francisco, Calif., service is restricted to traffic originating at the named facilities, and is further restricted against service to any facilities owned or used by Minnesota Mining and Manufacturing Co., General Floor Covering Co., or Minnesota Tile Supply Co., for 180 days. Supporting shipper: Holly Stores, Inc., 7373 Westside Avenue, North Bergen, NJ 07047. Send protests to: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 119160 (Sub-No. 6 TA), filed November 7, 1972. Applicant: H. E. SPANN AND COMPANY, INC., Post Office Box 1111, Highway 49E, Mount Pleasant, TX 75455, Applicant's representative: Paul D. Angenend, Post Office Box 2207, Austin, TX 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferro alloys*, in bulk, in dump trucks or trailers with dump bodies, from Pine Bluff, Ark., to Lone Star, Tex., for 180 days. NOTE: Applicant does not intend to tack authority. Supporting shipper: Titan Industrial Corp., 777 Third Avenue, New York, NY 10017. Send protests to: District Supervisor E. K. Willis, Jr., Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas TX 75202.

No. MC 123993 (Sub-No. 24 TA), filed November 2, 1972. Applicant: FOGLEMAN TRUCK LINE, INC., Post Office Drawer 1504, Crowley, LA 70526. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carbon black*, in railroad owned trailers, having subsequent movement by rail, from Sterlington, La., to Meridian, Miss., return empty trailers, from Meridian, Miss., to Sterlington, La., for 180 days. Supporting shipper: R. T. Vanderbilt Co., Inc., 230 Park Avenue, New York, NY 10017. Send protests to: Paul D. Collins, Interstate Commerce Commission, Bureau of Operations, T-9038 Federal Building, 701 Lozola Avenue, New Orleans, LA 70113.

No. MC 125521 (Sub-No. 22 TA), filed October 31, 1972. Applicant: FUNK MOTOR TRANSPORTATION, INC., Box 75, Bridge Street, Grand Rapids, OH 43522. Applicant's representative: Arthur R. Cline, 420 Security Building, Toledo, Ohio 43604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Newport, Ky., and Evansville, Ind., to Port Clinton, Ohio; Bowling Green, Ohio, and points within three (3) miles thereof; Tiffin, Ohio; Fostoria, Ohio, and points within four (4) miles thereof; *and empty containers or such other incidental facilities* used in transporting the above commodities from Bowling Green, Ohio, and points within three (3) miles thereof; Port Clinton, Ohio; Tiffin, Ohio; and Fostoria, Ohio and points within four (4) miles thereof, to Newport, Ky., and Evansville, Ind., for 150 days. Supporting shippers: Heineman Beverages, Inc., an Ohio corporation, 301 West Second Street, Port Clinton, OH 43452; Bowling Green Beverage, Inc., an Ohio corporation, Nims Road at North Dixie Highway, Bowling Green, Ohio 43402; The Tiffin Beverage Co., an Ohio corporation, 114 Miami Street, Tiffin, OH 44883; Hanson Distributing Co., doing business as Beerco, an Ohio corporation, State Route 12 West, Rural Route 2, Washington Township, Post Office Box 590, Fostoria, OH 44830. Send protests to: Keith D. Warner, District Supervisor, Interstate Commerce Commission,

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

Bureau of Operations, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

No. MC 125855 (Sub-No. 1 TA), filed November 2, 1972. Applicant: WALTER V. COVERT, 2444 Pattie, Wichita, KS 67216. Applicant's representative: John E. Jandera, 641 Harrison, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mill feeds*, from Wichita, Kans., to points in Newton, Barry, Stone, Lawrence, McDonald, and Taney Counties, Mo., Benton, Washington, Madison, Crawford, Carroll, Newton, Sebastian, Boone, and Logan Counties, Ark., Ottawa, Delaware, Adair, and Tulsa Counties, Okla., for 180 days. Supporting shipper: Wichita Flour Mills, Inc., 701 East 17th Street, Wichita, KS 67214. Send protests to: M. E. Taylor, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 126889 (Sub-No. 59 TA), filed November 1, 1972. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, Post Office Box 3051, Paducah, KY 42001. Applicant's representative: George M. Catlett, Suite 703–706 McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lubricating oils, industrial and technical oils, greases, wax, charcoal lighter, and lighter fluids*, in drums and packages *and empty barrels on return*, from the plantsite of City Service Co., packaging plant, Cicero, Ill., to Ashland, Bardstown, Barlow, Benton, Berea, Bowling Green, Cadiz, Campbellsville, Carrollton, Central City, Danville, Elizabethtown, Eminence, Frankfort, Franklin, Glasgow, Hartford, Hawesville, Hopkinsville, Irvington, Leitchfield, Lexington, Madisonville, Marion, Maysville, Morganfield, Mt. Sterling, Munfordville, Murray, Olive Hill, Owensboro, Paducah, Princeton, Russellville, and Williamstown, Ky., Alamo, Dyersburg, Huntingdon, and Martin, Tenn., for 180 days. Supporting shipper: Gulf Oil Co., U.S., Post Office Box 7245, Station C, Atlanta, GA 30309. Send protests to: Floyd A. Johnson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 933 Federal Office Building, 167 North Main Street, Memphis, TN 38103.

No. MC 127450 (Sub-No. 8 TA), filed November 2, 1972. Applicant: T. G. GARLAND, doing business as B & W FREIGHT LINES, 200 North Buchanan Street, Post Office Box 2884, 79105, Amarillo, TX 79107. Applicant's representative: T. G. Garland (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except household goods as defined by the Commission, those of unusual value, classes A and B explosives, and those requiring special equipment, between Amarillo, Tex., and Oklahoma City, Okla., via the following routes: From Amarillo, Tex., via U.S. Highway 287 to Hedley, Tex., thence Texas Highway 203 to the Oklahoma State line; thence Oklahoma Highway 9 to Chickasha, Okla., thence the H. E. Bailey Turnpike to Oklahoma City, Okla., and return over the same route, serving the termini and points on the route from the Texas-Oklahoma State line to Chickasha, Okla., and serving the off-route points as described by the following: Points in Oklahoma bound by Oklahoma Highway 9 on the north, U.S. Highway 81 on the east, and the Oklahoma-Texas State line on the south and west, excluding points in the area authorized in Certificate MC–127450 Sub 6, viz: All points on U.S. Highway 62 from the Texas-Oklahoma State line on the west to and including Lawton, Okla., and the off-route points of Frederick, Mangum, and Tipton. Restriction: Restricted against handling any traffic between Oklahoma City on the one hand, and any other points in Oklahoma on the other, for 180 days. NOTE: Applicant states it will interline with other carriers at Amarillo, Tex., and Oklahoma City, Okla., and tack with MC 127450, Sub 6. Supported by: There are approximately 20 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H–4395 Herring Plaza, Amarillo, TX 79101.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-20216 Filed 11-22-72;8:50 am]

[Notice 167]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 20, 1972.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and transfer rules, 49 CFR Part 1132:

No. MC–FC–74084. By application filed November 14, 1972, NEBRASKA-IOWA XPRESS, INC., 3219 Nebraska Avenue, Council Bluffs, IA 51501, seeks temporary authority to lease the operating rights of JOHNNIE O. ROBERSON, Valley Falls, Kans. 66088, under section 210a(b). The transfer to NEBRASKA-IOWA XPRESS, INC., of the operating rights of JOHNNIE O. ROBERSON is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-20219 Filed 11-22-72;8:50 am]

[S.O. 994; ICC Order 77]

ERIE LACKAWANNA RAILWAY CO.

Rerouting or Diversion of Traffic

In the opinion of Lewis R. Teeple, agent, the Erie Lackawanna Railway Co., Thomas F. Patton and Ralph S. Tyler, Jr., trustees, is unable to transport traffic over its line to and from Watkins Glen, N.Y., and to interchange traffic at Elmira, N.Y., with the Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees, because of track damage caused by flooding.

It is ordered, That:

(a) The Erie Lackawanna Railway Co., Thomas F. Patton and Ralph S. Tyler, Jr., trustees, being unable to transport traffic over its line to and from Watkins Glen, N.Y., and to interchange traffic at Elmira, N.Y., with the Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees, because of track damage caused by flooding, that carrier is hereby authorized to reroute or divert such traffic via any available route to expedite the movement. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained. The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) Notification to shippers. Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon the failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) Effective date. This order shall become effective at 12:01 a.m., November 16, 1972.

(g) Expiration date. This order shall expire at 11:59 p.m., January 31, 1973, unless otherwise modified, changed or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 16, 1972.

INTERSTATE COMMERCE COMMISSION
[SEAL] LEWIS R. TEEPLE, *Agent.*

[FR Doc.72-20221 Filed 11-22-72;8:50 am]

[Sec. 5a Application 61, Amdt. 2]

NATIONAL CLASSIFICATION COMMITTEE—AGREEMENT

Application for Approval of Amendments; Correction

NOVEMBER 16, 1972.

The above-entitled notice of application for approval of amendments dated August 9, 1972, published in the FEDERAL REGISTER on November 8, 1972 (37 F.R. 23769), incorrectly showed the amendment number as Amendment No. 22 instead of the correct number, Amendment No. 2.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-20220 Filed 11-22-72;8:50 am]

[Notice 95]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

NOVEMBER 17, 1972.

The following applications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by special Rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further procesisng steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

No. MC 1872 (Sub-No. 79), filed October 6, 1972. Applicant: ASHWORTH TRANSFER, INC., 1526 South 600 West, Salt Lake City, UT. Applicant's representative: Keith E. Taylor, 520 Kearns Building, Salt Lake City, Utah. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in cargo containers and cargo vans; and *empty cargo containers and cargo vans*, between all points in the United States (including Alaska but excluding Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles or San Francisco, Calif., or Washington, D.C.

No. MC 2202 (Sub-No. 418), filed October 5, 1972. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Applicant's representative: James W. Conner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Grand Haven, Mich., as an off-route point in connection with applicant's present authority between Grand Rapids and Muskegon, Mich. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Lansing or Detroit, Mich., or Washington, D.C.

No. MC 5326 (Sub-No. 14), filed October 13, 1972. Applicant: WILSON B. DILL, CARL M. DILL, SR., and ARTHUR B. DILL, a partnership, doing business as, DILL BROS. COMPANY, Galena, Md. 21635. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed*, from Delmar, Del., to points in Cecil, Kent, Queen Annes, Talbot, and Caroline Counties, Md. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority.

No. MC 8472 (Sub-No. 2), filed September 22, 1972. Applicant: SOUTH END CARTAGE, INC., 4222 South Knox Street, Chicago, IL. Applicant's representative: Philip A. Lee, 33 North Dearborn, Suite 1801, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, coconuts, and pineapples*, from Chicago, Ill., to points in Indiana, Michigan, Wisconsin, Illinois, Minnesota, and Iowa, restricted to the transportation of traffic moving in chassis mounted containers and restricted to the transportation of traffic having an immediate prior or subsequent movement by rail. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 11207 (Sub-No. 320), filed October 13, 1972. Applicant: DEATON, INC., 317 Avenue West, Post Office Box 938, Birmingham, AL 35201. Applicant's representative: A. Alvis Layne, 915 Pennsylvania Building, Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials, gypsum and gypsum products, composition board, insulating material, urethane and urethane products and related materials, supplies and accessories incidental thereto* (except commodities in bulk), from the plantsite and warehouse facilities of the Celotex Corp. located at Memphis, Tenn., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, and South Carolina. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Tampa, Fla.

No. MC 41404 (Sub-No. 108), filed September 12, 1972. Applicant: ARGO-COLLIER TRUCK LINES CORPORATION, Post Office Box 440, Fulton Highway, Martin, TN 38237. Applicant's

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

representative: Tom D. Copeland (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk or liquid form in tank vehicles), having a prior movement by water, from Gulfport, Miss., and New Orleans, La., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Texas, and Wisconsin. NOTE: Dual operations and common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or New Orleans, La.

No. MC 59150 (Sub-No. 73), filed October 19, 1972. Applicant: PLOOF TRANSFER COMPANY, INC., 1901 Hill Street, Jacksonville, FL 32202. Applicant's representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials, gypsum and gypsum products and such materials, equipment, and supplies* as are used in the manufacture, packaging, installation or distribution of such commodities (except liquid commodities in bulk), between the plantsite and facilities of United States Gypsum Co. at Jacksonville, Fla., on the one hand, and, on the other, points in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia, restricted to traffic originating or terminating at the plantsite and warehouse facilities of United States Gypsum Co. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Jacksonville, Fla., or Atlanta, Ga.

No. MC 59367 (Sub-No. 83), filed October 13, 1972. Applicant: DECKER TRUCK LINE, INC., Post Office Box 915, Fort Dodge, IA 50501. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk) from the plantsites and storage facilities of Farmland Foods, Inc., located at or near Carroll, Denison, and Iowa Falls, Iowa, to points in Illinois, Michigan, Minnesota, and Wisconsin. Restriction: Restricted to traffic originating at the named plantsites and destined to the named destination States.

No. MC 59396 (Sub-No. 21) (Amendment), filed September 28, 1972, published in the FEDERAL REGISTER issue of October 27, 1972, and republished this issue. Applicant: BUILDERS EXPRESS, INC., Limecrest Road, Rural Delivery, Lafayette, N.J. 07848. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing granules*, in bulk, in hard top closed dump and pneumatic trailers, from Belle Mead and Bound Brook, N.J., to Baltimore, Md., York, Philadelphia, and Harrisburg, Pa., Walpole and Millis, Mass., Stratford, Conn., and Schenectady, N.Y. NOTE: Applicant states that it currently holds authority to transport contractors materials and therefore duplicating authority may be involved. Applicant further states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to add the destination point of Schenectady, N.Y. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 59531 (Sub-No. 96), filed October 13, 1972. Applicant: ESTATE OF HARRY E. STEWART, PETER P. STEWART, HENRY EXALL, JR. PETER STEWART TRUST A–E, WALDO E. STEWART TRUST 1–5, and IAN, INC., a partnership doing business as AUTO CONVOY CO., 3020 South Kaskell Avenue, Dallas, TX 75223. Applicant's representative: Walter N. Bieneman, Suite 1700, 1 Woodward Avenue, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles, trucks, and buses*, as described in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *parts thereof* moving therewith, in secondary movements, in truckaway service, from Dallas, Tex., to points in Colorado. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 64932 (Sub-No. 508), filed October 18, 1972. Applicant: ROGERS CARTAGE CO., a Corporation, 10735 South Cicero Avenue, Oak Lawn, IL 60453. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt syrup*, in bulk, in tank vehicles, from Peoria, Ill., to points in Arkansas, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin; and (2) *chemicals*, in bulk, in tank vehicles, from Peoria, Ill., to points in Georgia, Louisiana, New York, Oklahoma, North Carolina, and South Carolina. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 66886 (Sub-No. 37), filed October 18, 1972. Applicant: BELGER CARTAGE SERVICE, INC., 2100 Walnut Street, Kansas City, MO 64108. Applicant's representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cooling towers and fluid coolers*, which because of size or weight require the use of special equipment, and *cooling towers, fluid coolers* and *accessories* for cooling towers and *fluid coolers* which do not require the use of special equipment, when moving in the *ers* and *accessories* for cooling towers and fluid coolers, which because of size or weight, require the use of special equipment, and *supplies, machinery and equipment* used in the manufacture of cooling towers and fluid coolers, between the plant site of The Marley Co., Louisville, Ky., on the one hand, and, on the other, points in Alabama, Arkansas, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky.

No. MC 81908 (Sub-No. 4), filed October 17, 1972. Applicant: GARNER TRUCKING, INC., Route No. 4, Findlay, Ohio. Applicant's representative: James R. Stiverson, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food stuffs* (except commodities in bulk) (1) from the distribution center site of Heinz U.S.A. Division, H. J. Heinz Co., located at or near Toledo, Ohio, and the plantsites and storage facilities of Heinz U.S.A. Division located at or near Bowling Green and Fremont, Ohio, to points in Indiana, Michigan, and Ohio; and (2) from the plantsite and storage facilities of Heinz U.S.A. Division located at or near Holland, Mich., to the distribution center site of Heinz U.S.A. Division located at or near Toledo, Ohio, restricted to traffic originating at and destined to the specified points in (1) and (2) above. NOTE: If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 82841 (Sub-No. 104), filed October 19, 1972. Applicant. HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, NE 68127. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a

common carrier, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, as described in Appendix V of *Descriptions in Motor Carrier Certificates*, Ex Parte No. MC 45, 64 M.C.C. 209, between Tulsa and the Port of Catoosa, Okla., on the one hand, and, on the other, points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Pittsburgh, Pa.

No. MC 82841 (Sub-No. 105), filed October 20, 1972. Applicant: HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, NE 68127. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bulkheads and bulkhead accessories*, from Douglas County, Nebr., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 83539 (Sub-No. 358), filed October 24, 1972. Applicant: C & H TRANSPORTATION CO., INC., 1936–2010 West Commerce Street (Post Office Box 5976), Dallas, TX 75222. Applicant's representative: Thomas E. James (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailer and trailer chassis*, other than those designed to be drawn by passenger automobiles, in initial movement, from the plantsite and warehouse facilities of Lufkin Industries, Inc., at or near Lufkin, Tex., to points in the United States (except Alaska and Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 93840 (Sub-No. 10), filed October 20, 1972. Applicant: W. W. GLESS, doing business as, GLESS BROS., Blue Grass, Iowa 52726. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed, liquid feed supplements, and molasses*, in bulk, from the plantsite of Cargill, Ind., located in Scott County, Iowa, to points in Illinois, Iowa, Minnesota, Missouri, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 95743 (Sub-No. 26), filed November 10, 1972. Applicant: WILLIAM F. MEHRING & SONS, INC., Route No. 1, Keymar, MD 21757. Applicant's representative: Theodore Polydoroff, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from Warfordsburg and Mount Cydonia, Pa., and from points in Morgan County, W. Va., to points in Frederick County, Md. NOTE: Applicant presently holds contract carrier authority in permit No. MC 126300 authorizing transportation of wooden stair part from Taneytown, Md., to specified points and states, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 97310 (Sub-No. 11), filed September 26, 1972. Applicant: BELL TRANSFER COMPANY, INC., 1600 B Street, Post Office Box 5636, Meridian, MS 39301. Applicant's representative: Paul O. Miller, 512 East Pearl Street, Post Office Box 2366, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except class A and B explosives, livestock, commodities of unusual value, commodities in bulk or requiring special equipment, and those injurious to other lading), (1) Between Vicksburg, Miss., and Monroe, La.; from Vicksburg, Miss., over U.S. Highway 80 and Interstate Highway 20 to Monroe, La., and return over the same route, serving all intermediate points; (2) between Vicksburg, Miss., and New Orleans, La.; from Vicksburg, Miss., over U.S. Highway 61 to New Orleans, La., and return over the same route, serving all intermediate points and serving as off-route points in Warren, Claiborne, Jefferson, Adams, Wilkinson, Amite, and Franklin Counties, Miss., and points in West Feliciana, East Feliciana, East Baton Rouge, Ascension, St. James, St. John the Baptist, and St. Charles Parishes, La.; (3) between Jackson, Miss., and New Orleans, La.; from Jackson, Miss., over U.S. Highway 51 and Interstate Highway 55 to the intersection of U.S. Highway 51 and U.S. Highway 61 at Laplace, La.; thence over U.S. Highway 61 and Interstate Highway 10 to New Orleans, La., and return over the same route, serving all intermediate points and serving as off-route points in Hinds, Copiah, Lincoln, Pike, Amite, Rankin, Walthall, Lawrence, and Simpson; and points in St. Helena, Tangipahoa, Washington, Livingston, St. John the Baptist, and Charles Parishes, La.; (4) between Meridian, Miss., and New Orleans, La.; from Meridian, Miss., over U.S. Highway 11 and Interstate Highway 59 to the intersection of U.S. Highway 90 and Interstate Highway 10; thence over U.S. Highway 90 and Interstate Highway 10 to New Orleans, La., and return over the same route, serving all intermediate points and serving as off-route points in Lauderdale, Jefferson, Clarke, Jones, Forrest, Lamar, Pearl River, and Hancock Counties, Miss.; and points in Washington and St. Tammany Parishes, La.; (5) between Baton Rouge, La., and the intersection of U.S. Highway 90 and Interstate Highway 10; from Baton Rouge, La., over U.S. Highway 190 and Interstate Highway 12 to the intersection of U.S. Highway 90 and Interstate Highway 10, and return over the same route, serving all intermediate points and serving as off-route points in St. Tammany, Tangipahoa, Livingston, and East Baton Rouge Parishes, La.; (6) between New Orleans, La., and Mobile, Ala.; from New Orleans, La., over U.S. Highway 90 and Interstate Highway 10 to Mobile, Ala., and return over the same route, serving all intermediate points and serving as off-route points in St. Tammany Parish, La.; points in Jackson, Harrison, and Hancock Counties, Miss.; and points in Mobile County, Ala.;

(7) Between Mobile, Ala., and Pensacola, Fla.; from Mobile, Ala., over U.S. Highway 90 and Interstate Highway 10 to Pensacola, Fla., and return over the same route, serving all intermediate points and serving as off-route points in Mobile and Baldwin Counties, Ala., and points in Escambia County, Fla.; (8) between Jackson, Miss., and Biloxi, Miss.; from Jackson, Miss., over U.S. Highway 49 to the intersection of U.S. Highway 49 and U.S. Highway 90; thence over U.S. Highway 90 to Biloxi, Miss., and return over the same route, serving all intermediate points and serving as off-route points in Rankin, Simpson, Smith, Covington, Marion, Lamar, Forrest, Stone, and Harrison Counties, Miss.; (9) between Natchez, Miss., and Perdue Hill; from Natchez, Miss., over U.S. Highway 84 to Perdue Hill, Ala., and return over the same route, serving all intermediate points, and serving as off-route points in Adams, Franklin, Lawrence, Jefferson Davis, Covington, Jones, and Wayne Counties, Miss.; (10) between Natchez, Miss., and Mobile, Ala.; from Natchez, Miss., over U.S. Highway 98 to Mobile, Ala., and return over the same route, serving all intermediate points and serving as off-route points in Adams, Franklin, Pike, Walthall, Marion, Lamar, Forrest, Perry, Greene, and George Counties, Miss., and points in Mobile County, Ala.; (11) between Meridian, Miss., and Mobile, Ala.; from Meridian, Miss., over U.S. Highway 45 to Mobile, Ala., and return over the same route, serving all intermediate points and serving as off-route points in Lauderdale, Clarke, Wayne, and Greene Counties, Miss., and points in Mobile County, Ala.; (12) between York, Ala., and Mobile, Ala.; from

York, Ala., over Alabama Highway 17 to the intersection of Alabama Highway 17 and U.S. Highway 45; thence over U.S. Highway 45 to Mobile, Ala., and return over the same route, serving all intermediate points; (13) between Mobile, Ala., and the intersection of U.S. Highway 43 and U.S. Highway 80; from Mobile, Ala., over U.S. Highway 43 to the intersection of U.S. Highway 43 and U.S. Highway 80 and return over the same route, serving all intermediate points, and serving Jackson, Ala., as an off-route point;

(14) Between Catherine, Ala., and the intersection of Alabama Highway 5 and U.S. Highway 43; Catherine, Ala., over Alabama Highway 5 to the intersection of Alabama Highway 5 and U.S. Highway 43 and return over the same route; (15) between Mobile, Ala., and the intersection of Alabama Highway 21 and U.S. Highway 84; from Mobile, Ala., over U.S. Highway 31 to Atmore, Ala.; thence over Alabama Highway 21 to the intersection of Alabama Highway 21 and U.S. Highway 84, and return over the same route, serving all intermediate points; (16) between Pensacola, Fla., and Atmore, Ala.; from Pensacola, Fla., over U.S. Highway 29 to the intersection of U.S. Highway 29 and Florida Highway 97; thence over Florida Highway 97 to the Alabama-Florida State line; thence over Alabama Highway 21 to Atmore, Ala., and return over the same route, serving no intermediate points; (17) serving Canton, Miss., as an off-route point in connection with applicant's presently authorized service; (18) serving points south of U.S. Highway 80 and Warren, Hinds, Rankin, Scott, Smith, Newton, Jasper, and Lauderdale Counties, Miss., as off-route points in connection with applicant's presently authorized service; and (19) (a) between Montgomery, Ala., and Atmore, Ala.; from Montgomery, Ala., over U.S. Highway 31 and Interstate Highway 65 to Atmore, Ala., and return over the same route; (b) between Demopolis, Ala., and Eutaw, Ala.; from Demopolis, Ala., over U.S. Highway 43 to Eutaw, Ala., and return over the same route, serving as alternate routes for operating convenience only. NOTE: Applicant states it intends to tack and join at all service points presently authorized in MC–97310 and all subs issued thereunder. If a hearing is deemed necessary, applicant requests it be held at either (1) Birmingham, Ala.; (2) Mobile, Ala.; (3) Meridian, Miss.; (4) Jackson, Miss.; or (5) New Orleans, La.

No. MC 97310 (Sub-No. 12), filed October 24, 1972. Applicant: BELL TRANSFER COMPANY, INC., 1600 "B" Street, Post Office Box 5636, Meridian, MS 39301. Applicant's representative: Paul O. Miller III, 512 East Pearl Street, Post Office Box 2366, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, commodities in bulk or requiring special equipment and those injurious to other lading), (1) between New Orleans, La., and Pensacola, Fla., from New Orleans over U.S. Highway 90 and also Interstate Highway 10 to Pensacola, and return over the same route, serving no intermediate points; (2) between Jackson, Miss., and Pensacola, Fla., from Jackson over U.S. Highway 49 to junction U.S. Highway 98; thence over U.S. Highway 98 to junction U.S. Highway 90; thence over U.S. Highway 90 to Pensacola, and return over the same route, serving no intermediate points; (3) between Meridian, Miss., and Pensacola, Fla., from Meridian over U.S. Highway 45 to junction U.S. Highway 98; thence over U.S. Highway 98 to junction U.S. Highway 90; thence over U.S. Highway 90 to Pensacola, and return over the same route, serving no intermediate points; (4) between Montogmery, Ala., and junction U.S. Highways 231 and 90, over U.S. Highway 231, and return over the same route, serving no intermediate points; (5) between Pensacola, Fla., and junction U.S. Highways 90 and 231, over U.S. Highway 90, and return over the same route, serving all intermediate points; (6) between Tallahassee, Fla., and junction U.S. Highways 90 and 231, over U.S. Highway 90, and return over the same route, serving no intermediate points; (7) between Pensacola and Panama City, Fla., over U.S. Highway 98, and return over the same route, serving all intermediate points; (8) between Panama City and Tallahassee, Fla., from Panama City over U.S. Highway 231 to junction U.S. Highway 231 and Florida Highway 20; thence over Florida Highway 20 to Tallahassee, and return over the same route, serving all intermediate points;

(9) Between Miami, Fla., and junction U.S. Highways 41 and 90, over U.S. Highway 41, and return over the same route, serving all intermediate points and also serving the off-route points of Clearwater, St. Petersburg, Miami Beach, Hialeah, North Miami, Miami Shores, Miami Springs, South Miami, and Coral Gables, Fla.; (10) between Williston and Orlando, Fla., from Williston over U.S. Highway 27 to junction U.S. Highway 441; thence over U.S. Highway 441 to Orlando, and return over the same route, serving all intermediate points; (11) between Orlando and Miami, Fla., from Orlando over U.S. Highway 441 to junction U.S. Highway 192; thence over U.S. Highway 192 to junction U.S. Highway 1; thence over U.S. Highway 1 to Miami, and return over the same route, serving all intermediate points and serving the off-route points of Miami Beach, Hialeah, North Miami, Miami Springs, Miami Shores, South Miami, and Coral Gables, Fla.; and (12) between Tallahassee and Jacksonville, Fla., over U.S. Highway 90 and also Interstate 10, and return over the same route, serving all intermediate points. Alternate routes for operating convenience only: Between Orlando and Tampa, Fla., over U.S. Highway 92, and return over the same route, serving no intermediate points, in connection with applicant's regular route operations. NOTE: If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., New Orleans, La., or Tampa or Jacksonville, Fla.

No. MC 99284 (Sub-No. 6), filed October 12, 1972. Applicant: SULLIVAN'S MOTOR DELIVERY, INC., 711 South First Street, Milwaukee, WI 53204. Applicant's representative: Richard W. Darrow (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in shipments weighing less than 50 pounds per shipment and not more than 108 inches in circumference, between the commercial zones of Chicago, Waukegan, North Chicago, Lake Bluff, Lake Forest, and Highland Park, Ill., on the one hand, and, on the other, the commercial zones of Kenosha, Racine, Milwaukee, West Bend, Fond Du Lac, Oshkosh, Neenah, Menasha, Appleton, De Pere, Green Bay, Two Rivers, Manitowoc, Sheboygan, Port Washington, Cedarburg, and Grafton, Wis. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis., or Chicago, Ill.

No. MC 101186 (Sub-No. 12) (Clarification), filed September 6, 1972, published in the FEDERAL REGISTER issue of September 28, 1972, and republished, as clarified this issue. Applicant: ARLEDGE TRANSFER INCORPORATED, Post Office Box 157, Burlington, IA 52601. Applicant's representative: Thomas F. Kilroy, Post Office Box 624, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment); (1) Between Cedar Rapids, Iowa, and Milwaukee, Wis.; from Cedar Rapids, Iowa, over U.S. Highway 151 to its junction with Interstate Highway 94 to Milwaukee, Wis., and return over the same route; (2) Between Cedar Rapids, Iowa, and Dixon, Ill.; from Cedar Rapids, Iowa, over U.S. Highway 30 to its junction with Illinois Highway 2 (formerly Alternate U.S. Highway 30) thence over Illinois Highway 2 to Dixon, Ill., and return over the same route; serving as alternate routes for operating convenience only in (1) and (2) above, in connection with carrier's authorized regular route operations, serving no intermediate points. NOTE: The purpose of this republication is to clarify the route descriptions of the authority sought herein. If a hearing is deemed necessary, applicant requests it be held at Burlington, Iowa, or Chicago, Ill.

No. MC 105813 (Sub-No. 187), filed October 24, 1972. Applicant: BELFORD

TRUCKING CO., INC., 3500 North West, 79th Avenue, Miami, FL 33148. Applicant's representative: Arnold L. Burke, 127 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the plantsite and storage facilities utilized by Michigan Lloyd J. Harris Pie Co., at or near Saugatuck and Holland, Mich., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas, restricted to traffic originating at the named origins. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 106644 (Sub-No. 143), filed October 17, 1972. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., Post Office Box 916, Atlanta, GA 30301. Applicant's representative: Fred Coffman, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Valves, hydrants, parts, attachments, and accessories* and (b) *Materials, equipment, and supplies* used in the manufacture thereof (except commodities in bulk), between Jefferson County, Tex., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). NOTE: Applicant holds contract carrier authority under MC 104724 (Sub-No. 13), therefore, dual operations may be involved. Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Houston, Tex., or Washington, D.C.

No. MC 106644 (Sub-No. 144), filed October 17, 1972. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., Post Office Box 916, Atlanta, GA 30301. Applicant's representative: Fred Coffman, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roadbuilding, earthmoving, construction, mining, and contractors' machinery and equipment, and parts thereof* when moving at the same time or separately, from Chattanooga, Tenn., to points in the United States (including Alaska but excluding Hawaii). NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant now holds contract carrier authority under its No. MC 104724 and subs, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., or Washington, D.C.

No. MC 107010 (Sub-No. 45), filed October 16, 1972. Applicant: BULK CARRIERS, INC., 1201 North J Street, Auburn, NE 68305. Applicant's representative: David R. Parker, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Road construction materials*, in bulk, in tank vehicles, from Omaha, Nebr., to points in Iowa; and (2) *asphalt*, in bulk, in tank vehicles, from Kansas City, Kans., to points in Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr. or Kansas City, Mo.

No. MC 107037 (Sub-No. 1), filed October 18, 1972. Applicant: BROWN TRANSFER COMPANY, a corporation, 1202 East 26th Street, Kearney, NE 68847. Applicant's representative: James E. Ryan, 214 Sharp Building, Lincoln, Nebr. 68508. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving the warehouse site of Western Electric located at or near Underwood, Iowa as an off-route point in connection with applicant's presently authorized regular route operations via Omaha, Nebr., serving no intermediate points. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 107818 (Sub-No. 65), filed October 13, 1972. Applicant: GREENSTEIN TRUCKING COMPANY, a corporation, 280 Northwest 12th Avenue, Post Office Box 608, Pompano Beach, FL 33061. Applicant's representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products, yogurt, and prepared desserts*, from Walton, N.Y., and Hagerstown, Md., to points in North Carolina, South Carolina, Georgia, and Florida. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., Chicago, Ill., or Washington, D.C.

No. MC 107838 (Sub-No. 4), filed October 18, 1972. Applicant: H. & S. MOTOR FREIGHT, INC., North and Franklin Streets, Post Office Box 88, Eldon, MO 65026. Applicant's representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of household goods 17 M.C.C. 467, commodities in bulk, and those requiring special equipment), (1) between Jefferson City, Mo., and Macks Creek, Mo., from Jefferson City, Mo., over U.S. Highway 54, and return over the same route, serving all intermediate points; (2) between Springfield and Brazito, Mo., from Springfield, Mo., over U.S. Highway 65 to junction Missouri Highway 32, thence over Missouri Highway 32 to junction Missouri Highway 73, thence over Missouri Highway 73 to junction U.S. Highway 54 to Brazito, and return over the same route, serving Macks Creek, Mo., and all intermediate points between Macks Creek and Brazito, Mo.; and (3) by joinder at Eldon, Mo., and Camdenton, Mo., authority is also sought to serve between Jefferson City, Mo., and Springfield, Mo., on the one hand, and, on the other, (a) all points between Eldon, Mo., and Cole Camp, Mo., (b) all points between Camdenton and Versailles, Mo., over applicant's presently authorized regular-routes and (c) the off-route point of Tuscumbia and those points located on the Lake of the Ozarks between the above-described routes. Restriction: No service is sought to be rendered between Springfield, Mo., and Jefferson City, Mo., or between those points on the one hand, and, on the other, St. Louis, Mo., or Kansas City, Mo. NOTE: Applicant states that it does not seek to remove its present restriction against service between St. Louis, Mo.-East St. Louis, Ill., and Kansas City, Mo.-Kansas City, Kans. If a hearing is deemed necessary, applicant requests it be held at Jefferson City, Mo.

No. MC 108449 (Sub-No. 346), filed October 19, 1972. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, MN 55113. Applicant's representative: Adolph J. Bieberstein, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from the plantsite of the Chicago Bridge and Iron Co., near Indian Oaks, Ill., to points in Colorado, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Tennessee, Nebraska, New York, Ohio, Pennsylvania, West Virginia, Wisconsin, and Wyoming; and (2) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), from points in Colorado, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Pennsylvania, West Virginia, Tennessee, Wisconsin, and Wyoming to the plantsite of the Chicago Bridge and Iron Co., near Indian Oaks, Ill. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed

necessary, applicant requests it be held at Chicago, Ill., or Minneapolis, Minn.

No. MC 109540 (Sub-No. 26), filed October 18, 1972. Applicant: YEARY TRANSFER COMPANY, INC., 2171 Christian Road, Lexington, KY 40504. Applicant's representative: Fred F. Bradley, Post Office Box 773, Courthouse, Frankfort, KY 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Homogenized, reconstituted or reconstructed tobacco*, from Spotswood, N.J., and Ancram, N.Y., to points in Durham County, N.C. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Louisville, Lexington, or Frankfort, Ky.

No. MC 110563 (Sub-No. 92), filed October 16, 1972. Applicant: COLDWAY FOOD EXPRESS, INC., Post Office Box 747, Sidney, OH 45365. Applicant's representative: Joseph M. Scanlan, 111 West Washington, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Buffalo, N.Y., to points in Pennsylvania, Delaware, Maryland, Massachusetts, Connecticut, New Hampshire, New Jersey, Ohio, Indiana, Minnesota, and Washington, D.C. NOTE: Applicant states that the requested authority can be tacked with its existing authority at Cleveland, Ohio, however applicant states that it does not presently intend to do so. If a hearing is deemed necessary, applicant requests it be held at Buffalo or New York, N.Y.

No. MC 110563 (Sub-No. 93), filed October 16, 1972. Applicant: COLDWAY FOOD EXPRESS, INC., Post Office Box 747, Sidney, OH 45365. Applicant's representative: Joseph M. Scanlan, 111 West Washington, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, except hides and skins and commodity in bulk, from Coldwater, Mich., to points in Maryland, Pennsylvania, New Jersey, New York, Ohio, Kentucky, Illinois, Connecticut, Massachusetts, and Tennessee. NOTE: Applicant states that the requested authority can be tacked with its existing authority at Cleveland, Ohio, and Chicago, Ill., however applicant states it does not presently intend to do so. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Chicago, Ill.

No. MC 110563 (Sub-No. 94), filed October 16, 1972. Applicant: COLDWAY FOOD EXPRESS, INC., Post Office Box 747, Sidney, OH 45365. Applicant's representative: Joseph M. Scanlan, 111 West Washington, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, between Aurora, Nebr., on the one hand, and, on the other, points in the United States (except Hawaii and Alaska). Restriction: Restricted to traffic originating at and destined to Aurora, Nebr. NOTE: If a hearing is deemed necessary, applicant requests it be held at Lincoln or Omaha, Nebr.

No. MC 110563 (Sub-No. 95), filed October 16, 1972. Applicant: COLDWAY FOOD EXPRESS, INC., Ohio Building, Sidney, Ohio 45365. Applicant's representative: Joseph M. Scanlan, 111 West Washington, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carriers Certificates* 61 M.C.C. 209 and 766 (except hides, skins, and commodities in bulk), from Hastings, Nebr., to points in Pennsylvania, Ohio, Indiana, Illinois, Missouri, Iowa, Wisconsin, Minnesota, Texas, and Tennessee. NOTE: Applicant states that the requested authority could be tacked with its existing authority at Cleveland, Ohio and Chicago, Ill., but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Lincoln or Omaha, Nebr.

No. MC 111170 (Sub-No. 197), filed October 10, 1972. Applicant: WHEELING PIPE LINE, INC., Post Office Box 1718, El Dorado, AR 71730. Applicant's representative: Tom E. Moore (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Feed and ingredients*, in bulk and bags, from Van Buren, Ark., to points in Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, Nebraska, Oklahoma, and Texas; (2) *Dibromopropanol*, in bulk, from El Dorado, Ark., to St. Louis, Mich., and (3) *Asphalt*, in bulk, from El Dorado, Ark., to Coplant, Nebr. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark., or Memphis, Tenn.

No. MC 111545 (Sub-No. 175), filed October 16, 1972. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road, Marietta, GA 30062. Applicant's representative: Robert E. Born, Post Office Box 6426, Station A, Marietta, GA 30062. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles in initial movements, and *buildings, in sections*, moving on undercarriages, from Durham, N.C., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority can be joined with other authority now pending, but has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 111594 (Sub-No. 56), filed October 16, 1972. Applicant: C W TRANSPORT, INC., 610 High Street, Wisconsin Rapids, WI 54494. Applicant's representative: T. D. O'Connor (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between the plantsite and storage facilities of the Dana Corp., located at or near Edgerton, Wis., on the one hand, and, on the other, points in Indiana, Illinois, Kentucky, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 111729 (Sub-No. 364), filed October 19, 1972. Applicant: AMERICAN COURIER CORPORATION, 2 Nevada Drive, Lake Success, NY 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Emergency parts for earth-moving equipment*, used in construction, road building, and mining operations, restricted to articles or packages weighing in the aggregate less than 75 pounds, from one consignor to one consignee on any one day, between Palatine, Ill., on the one hand, and, on the other, points in Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, and Wisconsin. NOTE: Applicant holds contract carrier authority under MC 112750 and subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 113678 (Sub-No. 469), filed October 16, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce

City, CO 80022. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives and those requiring special equipment), which are at the time moving on bills of lading of freight forwarders under Part IV of the Interstate Commerce Act, between the facilities of ABC Freight Forwarding Corp., Midland Forwarding Corp., and National Carloading Corp., at Chicago, Ill., and St. Louis, Mo., on the one hand, and points in California on the other hand. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.; New York, N.Y., or Washington, D.C.

No. MC 113678 (Sub-No. 470), filed October 16, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, and those requiring special equipment), which are at the time moving on bills of lading of freight forwarders under Part IV of the Interstate Commerce Act, from the facilities of ABC Freight Forwarding, Corp., Midland Forwarding Corp., and National Carloading Corp., at Detroit, Mich.; Cleveland, Columbus, Cincinnati, and Dayton, Ohio; Louisville, Ky; and Indianapolis, Ind., to Denver, Colo. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.; New York, N.Y.; or Washington, D.C.

No. MC 113678 (Sub-No. 471), filed October 16, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, and those requiring special equipment), which are at the time moving on bills of lading of freight forwarders under Part IV of the Interstate Commerce Act, from the facilities of ABC Freight Forwarding Corp.; Midland Forwarding Corp.; and National Carloading Corp., at North Haven, Conn.; Chicago, Ill.; Baltimore, Md.; Boston, Mass.; St. Louis, Mo.; Newark, N.J.; New York, N.Y.; and Philadelphia, Pa., to Dallas, Houston, Laredo, and San Antonio, Tex. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.; New York, N.Y.; or Washington, D.C.

No. MC 113678 (Sub-No. 473), filed October 24, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by hardware stores, drug stores, and supermarkets, (1) from the warehouses and manufacturing facilities of Action Industries, at Cheswick, Pa., to points in Colorado, New Mexico, Arizona, and California; (2) from the warehouses and manufacturing facilities of Action Industries, at Cheswick, Pa., to points in Texas, Arkansas, Missouri, Louisiana, Kansas, and Oklahoma; and (3) between the warehouses and manufacturing facilities of Action Industries, at Cheswick, Pa., Houston, Tex., and Compton, Calif., restricted to shipments originating at or destined to plantsites or shipping facilities of Action Industries and its affiliates or subsidiaries. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., Pittsburgh, Pa., or Denver, Colo.

No. MC 113843 (Sub-No. 189), filed October 17, 1972. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, MA 02210. Applicant's representative: William J. Boyd, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from New Hampton, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia. Restriction: The above authority is restricted to the transportation of traffic originating at the plantsite and storage facilities of the Kitchens of Sara Lee at New Hampton, Iowa, and destined to the named States. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Boston, Mass.

No. MC 114211 (Sub-No. 181), filed October 19, 1972. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, Post Office Box 420, Waterloo, IA 50704. Applicant's representative: Daniel Sullivan, 327 South La Salle Street, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Grading, paving and finishing machinery and equipment, contractor's equipment, parts, accessories and attachments;* and (2) *materials, equipment and supplies* used in the manufacture or distribution of the commodities described in (1) above (except commodities in bulk), between Ida Grove, Iowa, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Chicago, Ill.

No. MC 114211 (Sub-No. 182), filed October 26, 1972. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, Post Office Box 420, Waterloo, IA 50704. Applicant's representative: Daniel Sullivan, 327 South La Salle, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Tractors* (except those with vehicle beds, bed frames, and fifth wheels); (b) *equipment* designed for use in conjunction with tractors; (c) *agricultural, industrial, and construction machinery and equipment;* (d) *trailers* designed for the transportation of the above-described commodities (except those trailers designed to be drawn by passenger automobiles); (e) *attachments* for the above-described commodities; (f) *internal combustion engines* and; (g) *parts* of the above-described commodities, from the plants, warehouse sites and experimental farms of Deere & Co., at points in Black Hawk and Dubuque Counties, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; and (2) *returned shipments of the above-described commodities*, on return. Restriction: Restricted in (1) above to the transportation of traffic originating at the plantsites, warehouse sites, and experimental farms of Deere & Co., and in (2) above to the transportation of traffic destined to said facilities. NOTE: Applicant states that no duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 114632 (Sub-No. 53), filed October 19, 1972. Applicant: APPLE LINES, INC., Post Office Box 507, Madison, SD 57042. Applicant's representative: Val Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and frozen potato products*, from Minneapolis-St. Paul, Minn., to points in Illinois, Iowa, Kansas, Missouri, Nebraska, and Oklahoma. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant now holds contract carrier authority

under its No. MC 129706, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Minneapolis-St. Paul, Minn., or Chicago, Ill.

No. MC 115491 (Sub-No. 125), filed October 18, 1972. Applicant: COMMERCIAL CARRIER CORPORATION, 502 East Bridgers Avenue, Post Office Box 67, Auburndale, FL 33823. Applicant's representative: Tony G. Russell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials, gypsum and gypsum products and such materials, equipment and supplies* as are used in the manufacture, packaging, installation, or distribution of such commodities (except liquid commodities in bulk), between the plantsite and facilities of United States Gypsum Co. at Jacksonville, Fla., on the one hand, and on the other, points in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia, restricted to traffic originating or terminating at the plantsite and warehouse facilities of United States Gypsum Co. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla.

No. MC 115840 (Sub-No. 82), filed October 19, 1972. Applicant: COLONIAL FAST FREIGHT LINES, INC., 1215 Bankhead Highway (Post Office Box 10327), Birmingham, AL 35202. Applicant's representative: C. E. Wesley (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motor vehicles* knocked down; and (2) *motor vehicles parts, attachments, and accessories;* and (3) *materials, supplies, and equipment* used in connection with manufacture of the commodities named in parts (1) and (2) above (except in bulk), between Kosciusko, Miss., on the one hand, and, on the other, points in the United States including Alaska (but excluding Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., Chattanooga, Tenn., or Louisville, Ky.

No. MC 115841 (Sub-No. 444), filed October 19, 1972. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 1215 Bankhead Highway West, Birmingham, AL 35204. Applicant's representative: Roger M. Shaner, Post Office Box 168, Concord, TN 37720. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, foodstuffs, and food preparations* (except bananas and commodities in bulk), and *advertising premiums and display materials* when moving therewith, in vehicles equipped with mechanical refrigeration, from points in Middlesex County to points in Union or Essex County, N.J., for the purpose of joinder only. NOTE: Common control may be involved. Applicant states that it intends to tack the requested authority with its existing authority in MC 115841 (Sub-No. 320) at Union or Essex County to serve points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Ohio, Wisconsin, West Virginia, Pennsylvania on and west of U.S. Highway 15. If a hearing is deemed necessary, applicant requests it be held at New York City, N.Y., or Washington, D.C.

No. MC 116004 (Sub-No. 28), filed October 17, 1972. Applicant: TEXAS-OKLAHOMA EXPRESS, INC., Post Office Box 743, Dallas, TX 75221. Applicant's representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Dallas, Tex., and Henryetta, Okla., from Dallas over U.S. Highway 75 to Atoka, Okla., thence over U.S. Highway 69 to junction with Indian Nation Turnpike, thence over Indian Nation Turnpike to Henryetta, and return over the same route, serving no intermediate points. NOTE: If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Oklahoma City, Okla.

No. MC 116254 (Sub-No. 132), filed November 6, 1972. Applicant: CHEM-HAULERS, INC., Post Office Drawer M, Sheffield, AL 35660. Applicant's representative: Walter Harwood, 1822 Parkway Towers, Nashville, TN 37219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Silica sand*, in bulk, in tank vehicles, from Ottawa, Ill., to Huntsville, Ala., and (2) *iron oxide*, in bulk, in tank vehicles, from Gadsden, Ala., to points in Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., or Birmingham, Ala.

No. MC 116982 (Sub-No. 13), filed August 24, 1972. Applicant: FUCHS, INC., Rural Route 1, Box 576, Sauk City, WI 53583. Applicant's representative: Michael J. Wyngaard, 125 West Doty Street, Madison, WI 53703. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment and supplies* which are used or useful in the manufacture, sale, distribution, erection, or completion of *building and housing units*, complete, knocked down, or in sections, and *component parts* thereof, *wood products, composition wood products, laminated products*, and *parts and accessories* for the above-named products, from points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, and South Dakota to the plants and warehouse facilities of Wick Building System, Inc., at Mazomanie, Wis. Restrictions: (1) Restricted against transportation of the named commodities in bulk; and (2) the operations herein are limited to a transportation service to be performed under a continuing contract, or contracts, with Wick Building Systems, Inc., of Mazomanie, Wis. NOTE: If a hearing is deemed necessary, applicant requests it be held at Madison or Milwaukee, Wis.

No. MC 117557 (Sub-No. 17), filed October 18, 1972. Applicant: MATSON, INC., Post Office Box 43, Cedar Rapids, IA 52406. Applicant's representative: Kenneth F. Dudley, 611 Church Street, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Road building, earthmoving, construction and contractor's machinery and parts* when moving at the same time or separately, from Winona, Minn., to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. NOTE: Applicant states that the requested authority can be tacked with its existing authority but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 117574 (Sub-No. 219), filed October 19, 1972. Applicant: DAILY EXPRESS, INC., Post Office Box 39, Carlisle, PA 17013. Applicant's representative: James W. Hagar, Post Office Box 1166, Harrisburg, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flat glass and glass glazing units*, from Clinton and Laurinburg, N.C., to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 117639 (Sub-No. 6) (amendment), filed August 30, 1972, published in the FEDERAL REGISTER issue of September 21, 1972, and republished in part, as amended, this issue. Applicant: JACK S. OCHSNER, doing business as PICK'S PACK HAULER, 607 South Burlington, Hastings, NE 68901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. NOTE: The sole purpose of this partial republication is to add to destination territory requested to be served, points in Lake County, Ind. The rest of the application remains as previously published.

No. MC 118838 (Sub-No. 12), filed October 16, 1972. Applicant: GABOR TRUCKING, INC., Post Office Box 646, Detroit Lakes, MN 56501. Applicant's *representative: Alan Foss, 502 First National* Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed and animal and poultry feed ingredients* (except liquid commodities in bulk), between ports of entry on the international boundary line between the United States and Canada located in Minnesota, North Dakota, and Montana, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). NOTE: Applicant states that duplicating authority may be involved with certificate No. MC 118838 (Sub-No. 10), authorizing service to and from points in Minnesota, Iowa, Nebraska, North Dakota, South Dakota, and Wisconsin. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 119315 (Sub-No. 17), filed October 19, 1972. Applicant: FREIGHTWAY CORPORATION, 131 Matzinger Road, Toledo, OH 43612. Applicant's representative: Paul F. Beery, 88 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Equipment, materials, and supplies used in the manufacture of glass fiber and glass fiber products* (except commodities in bulk), from points in Illinois, Indiana, Michigan, Ohio, Pennsylvania, Wisconsin, Arkansas, Minnesota, Tennessee, Missouri, Kentucky, Iowa, Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Virginia, Florida, Alabama, Mississippi, Louisiana, Maine, New Hampshire, and Vermont, to the plantsite or warehouse of Johns-Manville Fiber Glass, Inc., located in Wood County, W. Va. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 119441 (Sub-No. 30), filed October 19, 1972. Applicant: BAKER HIWAY EXPRESS, INC., Box 484, Dover, OH 44622. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe and conduit, hydrants*, and *materials and supplies* necessary for the installation thereof, from Buckhannon, W. Va., to points in Illinois, Indiana, Michigan, New York, Ohio, Pennsylvania, and Wisconsin. Restricted to traffic originating at the plantsite and warehouse facilities of Clow Corp., located at or near Buckhannon, W. Va. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Washington, D.C.

No. MC 119632 (Sub-No. 55), filed October 18, 1972. Applicant: REED LINES, INC., 634 Ralston Avenue, Defiance, OH 43512. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food, food products, and beverages* (except fresh meat, frozen foods, and commodities in bulk in tank vehicles), from the plantsites and warehouses of Pet, Inc., at Greenville, Ill., to points in Ohio, Pennsylvania, New York, West Virginia, and the Lower Peninsula of Michigan, restricted to the transportation of shipments originating at said plant or warehouse sites, and returned shipments on return from the above-named destinations to the above-named origin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Washington, D.C.

No. MC 119774 (Sub-No. 58), filed October 16, 1972. Applicant: EAGLE TRUCKING COMPANY, a Corporation, Post Office Box 471, Kilgore, TX 75662. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials, gypsum and gypsum products, composition boards, insulation materials, urethane and urethane products, and related materials, supplies, and accessories* incidental thereto (except commodities in bulk), from the plantsite and warehouse facilities of the Celotex Corp. located at Marrero, La., to points in Alabama, Mississippi, Georgia, Florida, North Carolina, South Carolina, Tennessee, Arkansas, Missouri, Illinois, Kentucky, Indiana, Ohio, West Virginia, Virginia, Pennsylvania, Maryland, Delaware, New Jersey, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla., or Washington, D.C.

No. MC 119774 (Sub-No. 59), filed October 16, 1972. Applicant: EAGLE TRUCKING COMPANY, a corporation, Post Office Box 471, Kilgore, TX 75662. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials, gypsum and gypsum products, composition boards, insulation materials, urethane and urethane products, and related materials, supplies, and accessories* incidental thereto (except commodities in bulk), from the plantsite and warehouse facilities of the Celotex Corp. located in Wayne County, N.C., to points in South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Illinois, Ohio, West Virginia, Virginia, Pennsylvania, Maryland, Delaware, New Jersey, Kentucky, Tennessee, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla., or Washington, D.C.

No. MC 119774 (Sub-No. 60), filed October 16, 1972. Applicant: EAGLE TRUCKING COMPANY, a Corporation, Post Office Box 471, Kilgore, TX 75662. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation materials*, from North Birmingham, Ala., to points in Arkansas, Louisiana, and Mississippi, restricted to traffic originating at the plantsite and storage facilities of U.S. Pipe & Foundry Co. at Birmingham, Ala. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla., or Washington, D.C.

No. MC 119774 (Sub-No. 63), filed October 16, 1972. Applicant: EAGLE TRUCKING COMPANY, a Corporation, Post Office Box 471, Kilgore, TX 75662. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials, gypsum and gypsum products, composition boards, insulation materials, urethane and urethane products, and related materials, supplies, and accessories*, incidental thereto (except commodities in bulk) from the plantsite and warehouse facilities of the Celotex Corp., located at Port Clinton, Ohio, to points in Indiana, Illinois, Kentucky, Tennessee, Virginia, west Virginia, Maryland, and Pennsylvania. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla., or Washington, D.C.

No. MC 119789 (Sub-No. 123), filed October 18, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188 (1612 East Irving Boulevard), Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*,

by motor vehicle, over irregular routes, transporting: *Canned and bottled foodstuffs*, from Lafayette and New Iberia, La., to points in Illinois, Indiana, Michigan, Ohio, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Washington, D.C.

No. MC 119789 (Sub-No. 124), filed October 18, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188 (1612 East Irving Boulevard), Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and bottled foodstuffs* from Lafayette and New Iberia, La., to points in Oregon and Washington. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Washington, D.C.

No. MC 119789 (Sub-No. 125), filed October 24, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188, Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Juvenile furniture, plastic housewares and toys*, from Worcester, Boston, Leominster, Mass.; Kingston, Pa.; Laona and Wausau, Wis.; and Union Springs, Ala., to points in California. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif., or Dallas, Tex.

No. MC 119789 (Sub-No. 126), filed November 1, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188 (1612 East Irving Boulevard), Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Columbus, Ohio, to points in Texas, Oklahoma, Arkansas, Louisiana, Kansas, Missouri, Arizona, New Mexico, California, Oregon, Washington, and Colorado. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Washington, D.C.

No. MC 119864 (Sub-No. 51), filed September 28, 1972. Applicant: HOFER MOTOR TRANSPORTATION CO., a Corporation, 26740 Eckel Road, Perrysburg, OH 43551. Applicant's representative: Dale K. Craig (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products, meat, meat products, and meat byproducts and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the East St. Louis, Ill. commercial zone and the St. Louis, Mo. commercial zone to points in Indiana, Michigan, Ohio, and Louisville, Ky. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 119968 (Sub-No. 6) (Clarification), filed October 2, 1972, published in the FEDERAL REGISTER issue of November 9, 1972, and republished this issue. Applicant: A. J. WEIGAND, INC., 1046 North Tuscarawas Avenue, Dover, OH 44622. Applicant's representative: Jacob P. Billig, 1108 16th Street, NW., Washington, DC 20036 (and), Paul F. Beery, 88 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are manufactured, sold, dealt in, or utilized by chemical manufacturing plants, from Dover Ohio, to points in Illinois, Indiana, Kentucky, Ohio, West Virginia, New York, Pennsylvania, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, and the southern peninsula of Michigan; and (2) *Such commodities* as are manufactured, sold, dealt in, or utilized by chemical manufacturing plants, from points in Illinois, Indiana, Kentucky, Ohio, West Virginia, New York, Pennsylvania, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, and the southern peninsula of Michigan to Dover, Ohio. Applicant states that it intends to tack at Dover, Ohio, the authority sought in (1) and (2) above. NOTE: Applicant states that the requested authority duplicates that authority it holds in certificate No. MC 119968, authorizing transportation of: (1) *Such commodities* as are manufactured and sold by chemical manufacturing plants (except petroleum products, in bulk, in tank vehicles) between the same above-named destinations and origins; and (2) *machinery, equipment, materials, and supplies* used by chemical manufacturing plants, from points in Illinois, Indiana, Kentucky, Ohio, West Virginia, New York, Pennsylvania, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, and the lower peninsula of Michigan, to Dover, Ohio. Applicant further states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to clarify portions of the authority requested in the previous publication. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 119974 (Sub-No. 39), filed October 4, 1972. Applicant: L. C. L. TRANSIT COMPANY, a corporation, 949 Advance Street, Green Bay, WI 54305. Applicant's representative: Charles E. Dye (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes, frozen vegetables, and dehydrated potatoes*, from Hart, Mich., to points in Indiana, Illinois, Iowa, Minnesota, Wisconsin, points in the Upper Peninsula of Michigan and St. Louis, Mo. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 119988 (Sub-No. 52), filed October 20, 1972. Applicant: GREAT WESTERN TRUCKING CO., INC., Route 3, Box 870, Post Office Box 1384, Lufkin, TX 75901. Applicant's representative: Bennie W. Haskins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Printed advertising matter* and (2) *newspaper supplements* otherwise exempt from economic regulation under section 203(b)(7) of the Act when transported in mixed loads with printed advertising matter from points in Angelina County, Tex., to Los Angeles and San Francisco, Calif., and (3) *newsprint*, from the plantsite of Southland Paper Mills, Inc., at or near Sheldon, Tex., to points in Angelina County, Tex., serving points in Angelina County, Tex., for purposes of joinder only. NOTE: Applicant states that the requested authority can be tacked with its existing authority at a point in Angelina County, Tex., and provide service (a) from points in Kansas, and Tulsa, Okla., to Los Angeles and San Francisco, Calif., and (b) from Sheldon, Tex., to points in Alabama, Florida, Kentucky, Mississippi, Tennessee, Kansas, Oklahoma, Louisiana (except New Orleans, Baton Rouge, and Alexandria and points in their commercial zones), Arkansas (except Texarkana, Fort Smith, Little Rock, North Little Rock, Pine Bluff, Crossett, Eldorado, Monticello, West Memphis, and points in their commercial zones). If a hearing is deemed necessary, applicant requests it be held at Houston or Dallas, Tex.

No. MC 123048 (Sub-No. 235), filed October 20, 1972. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, WI 53401. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers*, from points in Union County, Ill., to points in the United States (except Hawaii) and (2) *materials, equipment, and supplies* used or useful in the manufacture, sale, and distribution of trailers, from points in the United States (except Hawaii), to points in Union County, Ill. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing

is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 123993 (Sub-No. 22), filed October 17, 1972. Applicant: FOGELMAN TRUCK LINE, INC., Post Office Box 1504, Crowley, LA 70526. Applicant's representative: Austin L. Hatchell, 1102 Perry Brooks Building, Austin, TX 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn syrup and blends thereof; and blends of liquid sugar and corn syrup*, in bulk, from points in Louisiana to points in Alabama, Arkansas, Florida, Mississippi, Tennessee, and Texas. NOTE: Applicant holds contract carrier authority under MC 41116 and subs, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La.

No. MC 124796 (Sub-No. 97) (Clarification), filed May 22, 1972, published in the FEDERAL REGISTER issue of July 7, 1972, amended September 14, 1972 and republished, as clarified this issue. Applicant: CONTINENTAL CONTRACT CARRIER CORP., 15045 East Salt Lake Avenue, City of Industry, CA 91747. Applicant's representative: J. Max Harding, Post Office Box 82028, Lincoln, NE 68501. NOTE: The purpose of this partial republication is to clarify the route description under (2) (a), (b) and (c) of the application which should read as follows: (2) (a) *Pulpboard and pulpboard products*, from Rittman, Youngstown, Middletown, and Cuyahoga Falls, Ohio; Filer City, Plymouth, Kalamazoo, Detroit, and Grand Rapids, Mich.; Stroudsburg, Lancaster, and Trexlertown, Pa.; Quincy and Chicago, Ill.; Tama and Marshalltown, Iowa; Mentor, Ohio; Hutchinson and Kansas City, Kans.; St. Louis, Mo.; Denver Colo.; Counce and Jackson, Tenn.; Vincennes, Ind.; Colby and Burlington, Wis.; Minneapolis, Minn.; Lockport and Syracuse, N.Y.; Northampton, Mass.; Clifton and Garfield, N.J.; Harrisonburg, Va.; Salt Lake City, Utah; Arlington, Abilene, and San Antonio, Tex.; and Omaha, Nebr.; to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico; (b) *molded pulp products*, from Griffith, Ind., and Macon, Ga., to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico; and (c) *plastic products* from Madison, Wis.; Frederick, Md.; and Vincennes, Ind., to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico. The rest of the notice remains as previously published.

No. MC 124839 (Sub-No. 19), filed October 18, 1972. Applicant: BUILDERS TRANSPORT, INC., Post Office Box 7057, Savannah, GA 31408. Applicant's representative: William P. Sullivan, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips, waste paper, paper and paper products*, between Morristown, Tenn., and points in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Virginia, under a continuing contract or contracts with Union Camp Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Washington, D.C.

No. MC 125049 (Sub-No. 3), filed September 25, 1972. Applicant: TROINA TRUCKING COMPANY, INC., 24 Entwistle Avenue, Nutley, NJ 07110. Applicant's representative: Thomas F. X. Foley, 744 Broad Street, Newark, NJ 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Automobile parts and tools* used in the installation of automobile parts, crated and uncrated, and *display materials* used in connection with the sale of automobile parts, from Dayton, N.J. to New York, N.Y., points in Nassau, Suffolk, Rockland, and Westchester Counties, N.Y., Bucks, Chester, Delaware, Lehigh, Monroe, Montgomery, Northhampton, and Philadelphia Counties, Pa., and points in Connecticut, under a continuing contract or contracts with Goerlich's, Division of Questor Corp.; AP Parts Corp., a subsidiary of Questor Corp.; Columbus Parts Division of AP Parts Corp., and Merit Industries, Division of AP Parts Corp., Toledo, Ohio, and Dayton, N.J. NOTE: Applicant states it presently transports above noted commodities from Clifton, N.J. to points hereinabove mentioned for Goerlich's, Division of Questor Corp. of Toledo, Ohio. The proposed authority will extend such services to AP Parts Corp., a subsidiary of Questor Corp. Columbus Parts Division and Merit Industries, Inc. are divisions of AP Parts Corp. Applicant further states it will cease operating from Clifton, N.J. upon completion of transfer of Questor's facilities from Clifton, N.J. to Dayton, N.J. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 126063 (Sub-No. 10), filed October 16, 1972. Applicant: BIRD TRUCKING, INC., 1370 Swanner Road, Salt Lake City, Utah 84104. Applicant's representative: Lon Rodney Kump, 720 Newhouse Building, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plumbing supplies* from La Habra and points in Los Angeles and Orange Counties, Calif., to points in Utah and Idaho under contract with Indico, a Utah corporation; and (2) *soaps, detergents, brighteners, and caustic sodas* from Stockton, Calif., to points in Utah, Idaho, Oregon, and Washington under contracts with Beaver Chemical Co., Inc., and Walters Chemical Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah or San Francisco, Calif.

No. MC 126159 (Sub-No. 6), filed October 10, 1972. Applicant: ROC-SALT TRANSPORT, INC., 1551 South Carferry Drive, Milwaukee, WI 53207. Applicant's representative: Frank M. Coyne, 25 West Main Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, from Cincinnati, Ohio, to points in Illinois, Indiana, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 126206 (Sub-No. 2), filed September 14, 1972. Applicant: NEWCOMB, INC., 520 North Jefferson Street, Post Office Box 832, Albany, GA 31702. Applicant's representative: Norman J. Bolinger, 1729 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Dougherty, Crawford, Taylor, Marion, Schley, Webster, Stewart, Chattahoochee, Quitman, Baker, Macon, Peach, Houston, Twiggs, Talbot, Bleckley, Pulaski, Dodge, Wilcox, Telfair, Irwin, Coffee, Berrien, Atkinson, Lanier, Lowndes, Brooks, Thomas, Sumter, Dooly, Crisp, Randolph, Terrell, Lee, Worth, Turner, Ben Hill, Clay, Calhoun, Tift, Early, Mitchell, Colquitt, Cook, Miller, Seminole, Decatur, and Grady Counties, Ga., on the one hand, and, on the other, points in Alabama, Florida, North Carolina, South Carolina, and Tennessee. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Albany, Ga.

No. MC 129059 (Sub-No. 1), filed September 11, 1972. Applicant: WILSON DRIVEAWAY, INC., 3125 North Broadway, Chicago, IL 60657. Applicant's representatives: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602 and Murray Chotiner, 1701 Pennsylvania Avenue, NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles, with or without baggage, sporting equipment, and personal effects of the owners*, in secondary movements, in driveaway service, between points in New York, New Jersey, Pennsylvania, Connecticut, Illinois (except Chicago), California, and Florida, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Restriction: Restricted against the transportation of traffic (1) for or on behalf of manufacturers of automobiles, (2) moving on United States Government bills of lading, or (3) having a prior or subsequent movement by rail or water. NOTE: Applicant states that the requested authority could be tacked at Chicago, Ill., with the authority it presently holds in certificate No. MC 129059, authorizing operations between Chicago, Ill., on the one hand, and, on the other, points in the United States, excluding Alaska and Hawaii. If a hearing is deemed necessary, applicant requests it

be held at Chicago, Ill., Los Angeles, Calif., or New York, N.Y.

No. MC 129111 (Sub-No. 3), filed September 21, 1972. Applicant: FIGENSHOW TRANSPORTATION, INC., Post Office Box 7733, Tonasket, WA 98855. Applicant's representative: Donald A. Ericson, 708 Old National Bank Building, Spokane, Wash. 99201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, plywood, timbers, and furniture and mill work stock*, between points in Okanogan County, Wash., and port of entry on the international boundary line between the United States and Canada at or near Oroville, Wash., restricted to the transportation of traffic having a prior or subsequent movement in foreign commerce. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Spokane or Seattle, Wash.

No. MC 129149 (Sub-No. 7), filed August 28, 1972. Applicant: ELLIS HAINES, doing business as HAINES TRUCK LINES, 995 Washington Street, Bushnell, IL 61422. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed*, prepared, in bags, from Bushnell, Ill., to points in Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Missouri, Minnesota, New York, Nebraska, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, West Virginia, and Wisconsin, under contract with Lauhoff Grain Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., Chicago, or Springfield, Ill.

No. MC 129510 (Sub-No. 5) (amendment), filed July 5, published in the FEDERAL REGISTER issue of August 3, 1972 and republished in part, as amended, this issue. Applicant: CHESTER W. ENGLUND, doing business as C. W. ENGLUND CO., 740 Old State Road, Salinas, CA 93901. Applicant's representative: John Paul Fischer, 140 Montgomery Street, San Francisco, CA 94104. NOTE: The purpose of this partial republication is to reflect a change in the commodity description only of part (4) as previously published, and to add a new part (10), as follows: "(4) *caulking compounds* in drums, pails or boxes (not in bulk), * * *", and (10) *glass sheets*, from Oneonta, N.Y., to the plantsite of Industrial Materials, Inc., at Los Angeles, Calif. The rest of the application remains as previously published.

No. MC 133534 (Sub-No. 6), filed September 11, 1972. Applicant: ROBERT V. MARKT, Box 85, Station A, St. Joseph, MO 64503. Applicant's representative: Tom B. Kretsinger, 450 Professional Building, Kansas City, MO 64106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* (except hides and commodities in bulk), as described in sections A and C of Appendix I to the report in *Descriptions of Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite, and/or warehouse facilities of, or utilized by Farmland Foods, Inc., at or near Carroll, Denison, and Iowa, Falls, Iowa, to points in Arkansas, Iowa, Illinois, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Oklahoma, South Dakota, Texas, and Wisconsin, restricted to traffic originating at the above named origin points and destined to the States named above. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 133689 (Sub-No. 24), filed August 28, 1972. Applicant: OVERLAND EXPRESS, INC., 651 First Street SW., Post Office Box 2667, New Brighton, MN 55112. Applicant's representatives: James F. Sexton (same address as above) and Charles W. Singer, Suite 1000, 327 South La Salle Street, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from New Hampton, Iowa, and Deerfield, Ill., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, restricted to traffic originating at the plants and warehouses utilized by the Kitchens of Sara Lee at the above-named origins, and traffic from Deerfield, Ill., further restricted to shipments moving in the same vehicle with shipments originating at New Hampton, Iowa. NOTE: Applicant holds contract carrier authority in permit No. MC 76025 and Subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Minneapolis, Minn.

No. MC 133708 (Sub-No. 5), filed September 25, 1972. Applicant: FIKSE BROS., INC. 12647 East South Street, Artesia, CA 90701. Applicant's representative: Carl H. Fritze, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in bulk, from the plants and mine sites of Simplot Silica Products at or near Overton, Nev., to points in California in and South of San Luis Obispo, Kern, and San Bernardino Counties and Arizona. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 134323 (Sub-No. 33), filed October 24, 1972. Applicant: JAY LINES, INC., 720 North Grand Street, Amarillo, TX 79102. Applicant's representative: Gailyn Larson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household appliances, furnaces, air cleaners and conditioners, humidifiers, dehumidifiers and related items* (except those items, which because of size or weight require the use of special equipment), from the plantsite and warehouse facilities of Fedders Corp. at Edison, N.J., and Effingham, Ill., to points in California, Oregon, Washington, Arizona, Nevada, and Utah, under contract with Fedders Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or San Francisco, Calif.

No. MC 134511 (Sub-No. 1), filed October 30, 1972. Applicant: BEASLEY TRANSPORT, INC., Colerain, N.C. 27924. Applicant's representative: W. L. Cooke, Pritchett, Cooke & Burch, South King Street, Windsor, N.C. 27983. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gasoline, kerosene, No. 2 fuel oil and diesel fuel*, in bulk, in tank vehicles, from Norfolk and Williamston, Va., and Selma, N.C., to points in Washington, Martin, Tyrrell, and Dare Counties, N.C.; (2) *LP gas or propane gas*, in bulk, in tank vehicles, from Yorktown and Norfolk, Va., and Apex, N.C., to points in Bertie, Hertford, Martin, Washington, Tyrrell, and Dare Counties, N.C.; and (3) *motor oil and grease*, in drums or cases, from Norfolk, Va., to points in Bertie, Hertford, Martin, Washington, Tyrrell, and Dare Counties, N.C., with (1), (2), and (3) above performed under a contract or contracts with Plymouth Oil Co. of Washington County, Inc., located at Plymouth, N.C. NOTE: Common control may be involved. Applicant states that the requested authority could be tacked with authority it presently holds in certificate No. MC 134511, authorizing the transportation of *gasoline, kerosene, No. 2 fuel oil and diesel fuel*, in bulk, in tank vehicles, from Norfolk, Va., and Williamson, N.C., to points in Bertie and Hertford Counties, N.C. If a hearing is deemed necessary, applicant requests it be held at Raleigh, N.C., any other city in North Carolina, or Richmond, Va.

No. MC 134938 (Sub-No. 1), filed October 27, 1972. Applicant: CASSWAYS TRUCKING CORPORATION, 643 South Avenue, Garwood, NJ 07027. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Boiler cleaning compound*, in containers, from Avenel, N.J., to New York, N.Y., Newark, Jersey City, Bayonne, Edgewater, Elizabeth, Carteret, and Perth Amboy, N.J., Philadelphia and Chester, Pa., Wilmington, Del., Baltimore, Md., and Norfolk, Newport News, and Portsmouth, Va., with no transportation for compensation on return except as otherwise authorized; (2)

cleaning and polishing compounds, liquid rust preventing compounds, disinfectants, and metallic soaps, in containers and *advertising matter and premiums* in mixed loads with such commodities, from Avenel, N.J., to points in that part of the New York, N.Y., commercial zone, as defined in *Commercial Zones and Terminal Areas,* 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemptions of section 203(b)(8) of the Act (the "exempt" zone) Nassau and Westchester Counties, N.Y., Essex County, N.J., Philadelphia and Chester, Pa., Wilmington, Del., Baltimore, Md., Norfolk, Newport News, and Portsmouth, Va., and the District of Columbia, with no transportation for compensation on return except as otherwise authorized, restricted to shipments originating at the facilities of Magnus Chemical Co., a subsidiary of Economic Labs, Inc., of Avenel, N.J.;

(3) *Cleaning and polishing compounds,* liquid or dry, *liquid rust preventing compounds, disinfectants,* liquid or dry, and *metallic soaps* for lubricating purposes, and *advertising matter and premiums,* moving in connection with such commodities, from Garwood, N.J., to points in the New York, N.Y., commercial zone, as defined in *New York, N.Y., Commercial Zone,* 1 M.C.C. 665, points in Essex County, N.J., and Nassau and Westchester Counties, N.Y., Philadelphia and Chester, Pa., Wilmington, Del., Baltimore, Md., and Norfolk, Newport News, and Portsmouth, Va.; (4) *empty containers* for the commodities specified in (3) above, from the destination points listed in (3) above to Garwood, with authority to traverse the District of Columbia for operating convenience only; (5) *plastic granules,* in containers, from the plantsite of Cary Page Chemicals, Inc., at Edison, N.J., to points in Fairfield County, Conn., Orange, Rockland, Westchester, Bronx, New York, Richmond, and Queens Counties, N.Y., and points in New Jersey, within that part of the New York, N.Y., commercial zone, as defined in the fifth supplemental report in *Commercial Zones and Terminal Areas,* 53 M.C.C. 451, within which local operations may be conducted under the exemption provided by section 203(b)(8) of the Interstate Commerce Act (the exempt zone), with no transportation for compensation on return except as otherwise authorized, restricted to shipments from the facilities of Cary Page Chemical, Inc., of Edison, N.J.; (6) *boilers, furnaces, radiators, air-conditioning equipment, and parts* therefor, from Garwood, N.J., to New York, N.Y., Wilmington, Del., Baltimore, Md., Washington, D.C., Nassau, Suffolk, and Westchester Counties, N.Y., and points in Pennsylvania within 150 miles of Garwood, with no transportation for compensation on return; (7) *heating and air-conditioning equipment,* between Garwood, N.J., on the one hand, and, on the other, points in that part of Connecticut west of the Connecticut River; and (8) *boiler cleaning compound,* liquid or dry, in containers, from Garwood, N.J., to New York, N.Y., Newark, Jersey City, Bayonne, Edgewater, Elizabeth, Carteret, and Perth Amboy, N.J., Philadelphia and Chester, Pa., Wilmington, Del., Baltimore, Md., and Norfolk, Newport News, and Portsmouth, Va., with no transportation for compensation on return except as otherwise authorized. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York N.Y.

No. MC 135660 (Sub-No. 5), filed October 16, 1972. Applicant: BROWNSBERGER ENTERPRISES, INC., R.F.D. No. 1, Post Office Box 243, Butler, MO. Applicant's representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Plastic pipe, plastic tubing, plastic conduit, plastic molding, valves, fittings, compounds, joint sealers, bonding cement, thinner, vinyl, and accessories* used in the installation of such products, from Linn Creek, Mo., to points in Colorado and New Mexico, under contract with Central Missouri Pipe Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 135716 (Sub-No. 1), filed September 24, 1972. Applicant: STAN'S VANS, INC., 114 Adeline Street, Oakland, CA 94607. Applicant's representative: W. S. Pilling, 100 Bush Street, San Francisco, CA 94104. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Used household goods,* restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic, (1) between points in Fresno, Merced, Monterey, San Benito, and San Cruz Counties, Calif., and (2) between points in the above counties on the one hand, and, on the other, points in Alameda, Contra Costa, Mapa, Marin, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Solano, Sonoma, Stanislaus, Sutter, Yuba, and Yolo Counties, Calif. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 135725 (Sub-No. 7), filed October 18, 1972. Applicant: FRY TRUCKING, INC., Wilton, Iowa 52778. Applicant's representative: Kenneth F. Dudley, 611 Church Street, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Feed,* from Minneapolis, Minn., to points in Alabama, Georgia, Iowa, Louisiana, Maryland, Mississippi, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin; (2)(a) *feed ingredients,* from points in Illinois, Indiana, Iowa, Michigan, Minnesota, and Nebraska to Richland, Mo., and (b) *Feed,* from Richland, Mo., to points in Alabama and Florida and (3) *feed supplements and fertilizer compounds,* from Marion, Iowa; Rock Island, Ill.; and Mankoto, Minn., to points in Illinois, Iowa, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., Minneapolis, Minn., or Kansas City, Mo.

No. MC 135726 (Sub-No. 2) (correction), filed June 12, 1972, published in the FEDERAL REGISTER issue of July 20, 1972 and republished in part as corrected this issue. Applicant: GUST HRONIS, doing business as: LANG TRUCKING SERVICE, Route 1, Box 176, West Bend, WI 53095. Applicant's representative: William L. Slover, 1224 17th Street NW., Washington DC 20036. NOTE: The purpose of this partial republication is to show the correct docket number as MC No. 135726 (Sub-No. 2) in lieu of MC 13726 (Sub-No. 2) which was erroneously published in the FEDERAL REGISTER. The rest of the application remains as previously published.

No. MC 135899 (Sub-No. 2), filed October 16, 1972. Applicant: HOWARD S. CULVER, Post Office Box 135, Hebron, MD 21830. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington DC 20005. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Prefabricated buildings,* complete or in sections, from the plantsite of Delmarva Modular Housing Corp. at or near Princess Anne, Md., to points in North Carolina, South Carolina, New Jersey, New York, Pennsylvania, Ohio, West Virginia, and Connecticut, under contract with Delmarva Modular Housing Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 136500 (Sub-No. 1), filed October 24, 1972. Applicant: HARRY D. DIEPHOLZ doing business as: DIEPHOLZ TRUCKING, 3453 Western Avenue, Mattoon, IL 61938. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Rollover protective structures,* from Mattoon, Ill., to points in the United States (except Alaska and Hawaii), and (2) *commodities used in the manufacture of rollover protective structures,* (a) from Mattoon, Ill., to Portland, Oreg., and (b) from points in the United States (except

Alaska and Hawaii), to Mattoon, Ill., under contract with Tube-Lok Products. NOTE: If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., Chicago, Ill., or Springfield, Ill.

No. MC 136647 (Sub-No. 5), filed October 18, 1972. Applicant: GREEN MOUNTAIN CARRIERS, INC., Post Office Box 1319, Albany, NY 12201. Applicant's representative: Wilmot E. James, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pharmaceutical products*, except in bulk, restricted to the use of vehicles with mechanical temperature control and also restricted to a transportation service to be performed at plantsites, warehouses, or suppliers of Ayerst Laboratories, (1) between Rouses Point, N.Y., on the one hand, and, on the other, Chicago, Ill., Cleveland, Ohio, and Baltimore, Md., in connection with stopoff privileges to partially load or unload at Little Falls and Clifton, N.J., Albany, N.Y., and Detroit, Mich., (2) from Rouses Point, N.Y., to Chamblee, Ga., with stopoff privileges to partially load or unload at Little Falls and Clifton, N.J., Albany, N.Y., and Baltimore, Md. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Plattsburgh or Albany, N.Y.

No. MC 136647 (Sub-No. 6), filed October 18, 1972. Applicant: GREEN MOUNTAIN CARRIERS, INC., Post Office Box 1319, Albany, NY 12201. Applicant's representative: Wilmot E. James, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, except commodities in bulk, between Champlain, N.Y., on the one hand, and, on the other, points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and Rhode Island. Between Champlain, N.Y., on the one hand, and, on the other, the United States-Canada boundary line at or near Highgate Springs, Vt. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Montpelier, Vt., or Albany, N.Y.

No. MC 136709 (Sub-No. 1), filed October 16, 1972. Applicant: WALLACE TRUCKING COMPANY, a corporation, Route 4, Box A71, Laurinburg, NC 28352. Applicant's representative: John Arch Wallace (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Telephone equipment, and material and supplies*, including tools, used in the construction and maintenance of telephone systems and communications, between Laurinburg, N.C. and Scotland, Richmond, Robeson, Moore, Hoke, and Cumberland Counties, N.C., under a continuing contract or contracts with Western Electric Co., Inc. of Atlanta, Ga. NOTE: If a hearing is deemed necessary, applicant requests it be held at Laurinburg or Charlotte, N.C.

No. MC 136711 (Sub-No. 4), filed October 10, 1972. Applicant: DAVID G. McCORKLE, doing business as McCORKLE TRUCK LINE, 2840 South High, Oklahoma City, OK 73109 Applicant's representative: Dean Williamson, 280 National Foundation Life Center, 3535 North West 58th, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand, crushed rock, gravel, asphaltic mix, and dirt*, from the facilities of Arkhola Sand and Gravel Co., at or near Alma and Jenny Lind, Ark., to points in Oklahoma on and east of U.S. Highway 69. NOTE: If a hearing is deemed necessary, applicant requests it be held at Oklahoma City or Tulsa, Okla.

No. MC 136866 (Sub-No. 1), filed October 19, 1972. Applicant: WARREN D. FLETCHER, Box 209, Midland, Va. 22728. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, 1111 E Street NW., Washington, DC 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crushed stone* from points in Fauquier County, Va., to points in Montgomery and Prince Georges County, Md., and the District of Columbia, under contract with Sanders Quarry, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 136956 (Sub-No. 2), filed October 19, 1972. Applicant: ROYAL TRANSPORTS, INC., Post Office Box 1451, Kansas City, KS 66101. Applicant's representative: J. Max Harding, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fuel oil*, in bulk, in tank vehicles, from the refinery and distribution facilities of Phillips Petroleum Co. at Kansas City, Kans., to Jackson, Clay, and Buchanan Counties, Mo., under a continuing contract or contracts with Consolidated Fuel Oil Co., Inc., of Kansas City, Kans. NOTE: If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 136961 (Sub-No. 2), filed October 19, 1972. Applicant: LAKE CRYSTAL TRANSPORTATION COMPANY, a corporation, Post Office Box 1149, Ogden, UT 84402. Applicant's representative: William S. Richards, 900 Walker Bank Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, from points in Utah to points in Washington, Oregon, Idaho, Montana, Wyoming, Nevada, California, Colorado, New Mexico, Arizona, and Utah, under contract with Lake Crystal Salt Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 139027 (Sub-No. 2), filed October 20, 1972. Applicant: BANNER, INC., 1205 South Denver, Tulsa, OK 74119. Applicant's representative: Dean Williamson, 280 National Foundation Life Building, 3535 Northwest 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from the mining facilities of Sierra Coal Co., Inc., located at or near Porum, Okla., to the loading facilities of Sierra Coal Co., Inc., located on the Arkansas River at or near Webbers Falls, Okla. NOTE: If a hearing is deemed necessary, applicant requests it be held at Oklahoma City or Tulsa, Okla.

No. MC 138042 (correction), filed September 12, 1972, published FEDERAL REGISTER, issue of October 5, 1972, and republished as corrected this issue. Applicant: MARK INTERSTATE CARRIERS CO., INC., 58–19 Maspeth Avenue, Maspeth, NY 11378. Applicant's representative: Morris Honig, 150 Broadway, New York, NY 10038. NOTE: The purpose of this republication is to show applicant's correct name as shown above, in lieu of Mark Carriers Co., Inc. The rest of the previously published notice remains the same.

No. MC 138081, filed September 11, 1972. Applicant: AGWAY SYSTEMS INC., Motor Freight Division, AGWAY MOTOR LINE, Chetham Lane, Post Office Box 989, Baton Rouge, LA 70821. Applicant's representative: L. F. Aguillard (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* between Baton Rouge, La., on the one hand, and, on the other, those points in that portion of Louisiana bounded by a line beginning at Baton Rouge and extending along U.S. Highway 61 to Sorento, La., thence along Louisiana Highway 22 to junction unnumbered highway near Union, La., thence along unnumbered highway to junction Louisiana Highway 18, thence along Louisiana Highway 18 to junction Louisiana Highway 1, and thence along Louisiana Highway 1 to Baton Rouge, including points on said highways. Applicant states that the service will be performed in connection with rail piggyback; export, import and, coastwise through the port of Baton Rouge; storage in transit at Baton Rouge, La. NOTE: If a hearing is deemed necessary, applicant requests it be held at Baton Rouge, La.

No. MC 138135 (Sub-No. 1), filed October 19, 1972. Applicant: WALTER SWAN WAREHOUSE & TRANSPORTATION CO., INC., Bethpage, Sweet Hollow Road, Old Bethpage, NY 11804. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1)

Household appliances and air conditioners, from carrier's warehouse in Old Bethpage, N.Y., to New York, N.Y., and points in Nassau and Suffolk Counties, N.Y., and (2) *returned, exchanged household appliances and air conditioners*, on return. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 138139, filed October 2, 1972. Applicant: FRANCIS NORRIS REYELL, doing business as NORRIS REYELL & SONS, Route 2, West Chazy, N.Y. 12992. Applicant's representative: Lawrence B. Lennon, 48 Court Street, Post Office Box 1009, Plattsburgh, NY 12901. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial fertilizer* (except commodities in bulk, in tank vehicles), from ports of entry on the international boundary line between the United States and Canada at or near Champlain and Massena, N.Y., to points in Clinton and Essex Counties, N.Y., under a continuing contract with Plattsburgh Agway Co-op, Inc., Plattsburgh, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Plattsburgh, N.Y., Montpelier, Vt., or Albany, N.Y.

No. MC 138140, filed September 20, 1972. Applicant: ALLIANCE VAN LINES, INC., 210 East Main, Hobbs, NM 88240. Applicant's representative: Joe G. Fender, 802 Houston First Savings Building, Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in cargo containers and/or cargo vans and *empty cargo containers and empty cargo vans*, between the port facilities at Galveston, Tex., on the one hand, and, on the other, points in Texas, Oklahoma, Louisiana, and Arkansas. NOTE: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Galveston or Houston, Tex.

No. MC 138142, filed October 16, 1972. Applicant: THIGPEN TRUCKING, INC., Route No. 2, Box 139, Franklinton, LA 70438. Applicant's representative: Theodore Polydoroff, Suite 600, 1250 Connecticut Avenue, NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hydrolized animal and vegetable fat and animal feed supplement*, in bulk, tank vehicles, from the plantsite of Adams Laboratories, Inc., at or near Franklinton (Washington Parish), La., to points in Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Maryland, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia and (2) *Materials and supplies* used in the manufacture of hydrolized animal and vegetable fat and *materials and supplies* used in the manufacture of animal feed supplements, in bulk, in tank vehicles, from points in the above-named destination territory to the plantsite of Adams Laboratories, Inc., at or near Franklinton (Washington Parish), La. Restriction: The above service is restricted to the operations authorized herein or limited to a transportation service to be performed under a continuing contract with Adams Laboratories, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 138143, filed September 18, 1972. Applicant: SPECIALIZED CARTAGE, INC., 1400 East Anaheim Street, Wilmington, CA 90744. Applicant's representative: Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, CA 90212. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel, iron and steel articles, aluminum, aluminum articles, lumber, and forest products*, between points in California, Oregon, Washington, Idaho, Utah, Nevada, Colorado, New Mexico, Oklahoma, Texas, and Arizona, under contract with Goehring Lumber Co., Inc.; Marcrest Pacific Co., Inc.; and Crest Steel Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 138153, filed September 13, 1972. Applicant: SWANSON TRUCKING AND PIGGYBACK SERVICE, INC., 3801 Sandra Drive, Fayetteville, NC 28304. Applicant's representative: Harold D. Downing, 110½ Gillespie Street, Fayetteville, NC 28301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, between points in North Carolina. NOTE: If a hearing is deemed necessary, applicant requests it be held at Fayetteville, N.C.

No. MC 138154, filed October 17, 1972. Applicant: TIDEWATER DISTRIBUTION SERVICES, INC., 47 Sixth Street, East Brunswick, NJ 08816. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Packaging materials, equipment and supplies*, between the facilities of Jiffy Manufacturing Co., at or near Clyde, N.J., on the one hand, and, on the other, points in New York, N.Y., commercial zone as defined by the Commission; points in Nassau, Suffolk, Westchester, Orange, and Rockland Counties, N.Y., and points in Fairfield County, Conn. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Newark, N.J.

No. MC 138155, filed October 19, 1972. Applicant: CITY TOWING SERVICE, INC., 1060 Bay Street, Springfield, MA 01109. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, MA 01103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, stolen, disabled, repossessed, and abandoned motor vehicles*, by towing or otherwise, between points in Massachusetts, on the one hand, and, on the other, points in Connecticut, Rhode Island, New Hampshire, Vermont, Maine, New York, and New Jersey. NOTE: If a hearing is deemed necessary, applicant requests it be held at Springfield, Mass.; Hartford, Conn.; Boston, Mass., or Albany, N.Y.

No. MC 138156, filed October 18, 1972. Applicant: JOE McILVAINE, doing business as JOE McILVAINE TRUCKING, 191 Main Street, Creston, OH 44217. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (a) *Feed supplements*, in bags, from Rogers, Minn., to points in Illinois, Indiana, Michigan, Ohio, Pennsylvania, Kentucky, Wisconsin, Maryland, New Jersey, New York, Vermont, Connecticut, Tennessee, Alabama, Florida, and Massachusetts and (b) *Soybean meal*, in bags, from Decatur, Ill., and Cedar Rapids, Iowa to Rogers, Minn., under contract with K & K Manufacturing, Inc. NOTE: If a hearing is deemed necessary, applicant requests modified procedure.

MOTOR CARRIER OF PASSENGERS

No. MC 138141, filed September 25, 1972. Applicant: LOUIS SANTORA, JR., doing business as AAA UNITED LIMOUSINE SERVICE, Post Office Box 144, Raritan, NJ 08869. Applicant's representative: Paul J. Keeler, Post Office Box 253, South Plainfield, NJ 07080. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in special operations in nonscheduled door-to-door service of not more than seven passengers in any one vehicle not including the driver thereof, between points in Middlesex, Somerset, Hunterdon, Mercer, and Morris Counties, N.J., on the one hand, and, on the other, LaGuardia Airport, John F. Kennedy International Airport, and the Borough of Manhattan, New York, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

APPLICATIONS FOR FREIGHT FORWARDERS

No. FF-369 (Sub-No. 2) (KAREVAN, INC. EXTENSION—DOMESTIC SERVICE), filed November 7, 1972. Applicant: KAREVAN, INC., Pier 91, Building 41, Seattle, Wash. Applicant's representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. Authority sought under section 410, Part IV of the Interstate Commerce Act for an amended permit authorizing new operations as a freight forwarder in the forwarding of *used household goods and unaccompanied baggage*, between points in the United States (including Hawaii, but excluding Alaska), in domestic service, without restriction to import-export traffic.

APPLICATION FOR FILING WATER CARRIERS

No. W-81 (Sub-No. 3) (McALLISTER LIGHTERAGE LINE, INC. EXTENSION—INTERCOASTAL), filed November 10, 1972. Applicant: McALLISTER LIGHTERAGE LINE, INC., 17 Battery Place, New York, NY 10004. Applicant's representative: Gordon P. MacDougall, 705 Ring Building, Washington, D.C. 20036. By application filed November 10, 1972, applicant seeks revision of certificate (No. WC-81), to cover the following proposed changes: Extension of operation as a *common carrier* by water, in interstate or foreign commerce, (1) by non-self-propelled vessels with the use of separate towing vessels in the transportation of *oversized articles*, and by towing vessels in the performance of towage in the transportation of *oversized articles*, between ports and points along the Pacific coast and tributary waterways, on the one hand, and, on the other, ports and points within applicant's existing operating authority; and (2) by self-propelled vessels in the transportation of *oversized articles*, between ports and points along the Pacific coast and tributary waterways, on the one hand, and, on the other, points within applicant's existing authority.

No. W-457 (Sub-No. 6) (McALLISTER BROTHERS, INC. EXTENSION—INTERCOASTAL), filed November 10, 1972. Applicant: McALLISTER BROTHERS, INC., 17 Battery Place, New York, NY 10004. Applicant's representative: Gordon P. MacDougall, 705 Ring Building, Washington, D.C. 20036. By application filed November 10, 1972, applicant seeks a revision of certificate (No. WC-457), to cover the following proposed changes: Extension of operation as a common carrier by towing vessels, in interstate or foreign commerce, in the performance of towage in the transportation of *articles* exceeding 19 feet in height, or 12 feet in width, or 90 feet in length, or 100 net tons in weight, *component parts thereof*, and *related equipment* (hereinafter called "oversized articles"), between ports and points along the Pacific coast and tributary waterways, on the one hand, and, on the other, ports and points within applicant's existing towing authority.

APPLICATION FOR FILING OF POSTAL CERTIFICATE

Interstate Commerce Commission, No. MC-137021 (Notice of Filing an Application for a Postal Certificate of Public Convenience and Necessity), filed November 1, 1972. Applicant: ELMER KRUEGER, Box 808, Norfolk, NE 68701. By application filed November 1, 1972, applicant seeks a Postal Certificate of Public Convenience and Necessity to transport *Mail* in the following territory: Between Norfolk and O'Neill, Nebr., from Norfolk over U.S. Highway 275 to junction U.S. Highway 20, thence over U.S. Highway 20 to O'Neill, and return over the same routes, serving all intermediate points, and the off-route point of Battle Creek, Nebr. NOTE: Appended to the application is a copy of a postal contract held by applicant which was in effect on July 1, 1971, the critical "grandfather" date: Route No. 68737 relating to service between Norfolk and O'Neill, Nebr.

Any interested person desiring to oppose the application may file with the Commission an original and one copy of his written representations, views, or arguments in opposition to the application within 30 days from the date of this publication in the FEDERAL REGISTER. A copy of each such pleading should be served upon applicant.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-20127 Filed 11-22-72;8:49 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR MATHEMATICAL SCIENCES

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given that a meeting of the Advisory Panel for Mathematical Sciences will be held at 9 a.m. on December 8, 1972, in Room 338, 1800 G Street NW., Washington, DC 20550. The purpose of this panel is to provide advice and recommendations (a) concerning support for research in the mathematical sciences; and (b) as part of the review and evaluation process for specific proposals and projects.

The agenda for this meeting will include:

1. Introduction and opening remarks by the Head, Mathematical Sciences Section.
2. Section activities in fiscal year 72—discussion led by the Section Head, Mathematical Sciences Section.
3. Remarks on the NSF fiscal year 1973 budget by the Division Director, Division of Mathematical and Physical Sciences.
4. Operating alternatives within a level budget—Division Director, Division of Mathematical and Physical Sciences.
5. Graduate Fellowships; Funding for Science Education—Acting Division Director, Division of Graduate Education in Science.
6. Executive Order 11671 and the role of advisory committees and panels—comments by the Deputy Assistant Director for Research.
7. Review and evaluation of pending proposals.

The meeting will be open to public observation through the period covered by agenda items 1 through 6 only. The remainder of the meeting will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated August 23, 1972, pursuant to the provisions of Executive Order 11671, section 13(d).

Further information concerning this panel may be obtained from Dr. William H. Pell, Head, Mathematical Sciences Section, Division of Mathematical and Physical Sciences, Room 303, 1800 G Street NW., Washington, DC 20550. Summary minutes relative to this meeting may be obtained by contacting the Management Analysis Office, Room 245, 1800 G Street NW., Washington, DC 20550.

T. E. JENKINS,
Assistant Director for Administration.

NOVEMBER 16, 1972.

[FR Doc.72-20352 Filed 11-22-72;11:32 am]

INTERNATIONAL DECADE OF OCEAN EXPLORATION PROPOSAL REVIEW PANEL

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given that a meeting of the International Decade of Ocean Exploration Proposal Review Panel will be held at 8:30 a.m. on December 5-7, 1972, in Room 642, 1800 G Street NW., Washington, DC 20550. The purpose of this panel is to provide advice and recommendations as part of the review and evaluation process for specific proposals and projects.

The agenda will be devoted to the review and evaluation of research proposals or projects, therefore, the meeting will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated August 23, 1972, pursuant to the provisions of Executive Order 11671, section 13(d).

For further information relative to this panel, contact Mr. Feenan Jennings, Head, International Decade of Ocean Exploration, Room 710, 1800 G Street NW., Washington, DC 20550.

T. E. JENKINS,
Assistant Director for Administration.

NOVEMBER 16, 1972.

[FR Doc.72-20351 Filed 11-22-72;11:32 am]

NATIONAL MAGNET LABORATORY VISITING COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given that a meeting of the National Magnet Laboratory Visiting Committee will be held at 9:15 a.m. on December 4 and 5, 1972, at the Francis Bitter National Magnet Laboratory, 170 Albany Street, Cambridge, MA 02139. The purpose of the committee is to review, evaluate, and provide advice and recommendations concerning the research and management operations of the National Magnet Laboratory.

The agenda for this meeting will include:

DECEMBER 4 SESSION

1. Welcoming Remarks—Vice President for Research, Massachusetts Institute of Technology.
2. Status and Future of the Laboratory—Director, National Magnet Laboratory.

Presentations of Scientific Research Program:

3. Magnetic Semiconductors — Project Leader, Ultrasonics.
4. Magnetism and Superconductivity—Project Leader, Theory of Magnetism and Superconductivity.
5. Quantum Magnet-Optics—Project Leader, Quantum Optics.
6. Soft X-ray and Plasma Studies—Project Leader and Staff Member, Soft X-rays.
7. Magnet Technology—Staff Member, Soft X-rays.
8. Magnetic Separation and Magneplane—Coproject Leader, Applied Magnetism.
9. Tour of the Laboratory.

DECEMBER 5 SESSION

Evaluation of the Laboratory's management and programs.

The December 4 session will be open to the public. The December 5 session will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated August 23, 1972, pursuant to the provisions of Executive Order 11671, section 13(d). Persons who desire to attend the open portion of the meeting should notify Dr. Howard W. Etzel, Deputy Division Director, Division of Materials Research, by telephone (202—632–7414), or by mail (Room 336, 1800 G Street NW., Washington, DC 20550), prior to the meeting.

For further information relative to this committee, contact Dr. Howard W. Etzel at the above address. Summary minutes of this meeting may be obtained from the Management Analysis Office, Room 245, 1800 G Street NW., Washington, DC 20550.

T. E. JENKINS,
Assistant Director
for Administration.

NOVEMBER 16, 1972.

[FR Doc.72-20350 Filed 11-22-72;11:32 am]

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PART II

PAY BOARD

■

ECONOMIC STABILIZATION

Revision of Regulations

Title 6—ECONOMIC STABILIZATION

Chapter II—Pay Board

REVISION OF CHAPTER

On July 20, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 14531). That notice proposed to revise and republish Parts 201 and 202 of Pay Board regulations. Interested persons were allowed to submit written comments or suggestions to the Board within the period of 30 days from the date of publication of the proposed regulations. In addition, public hearings on the provisions of the proposed revision were scheduled and conducted during the month of August in Chicago, Ill.; San Francisco, Calif.; Atlanta, Ga.; and Washington, D.C. Persons who desired to make oral presentations were given an opportunity to do so in accordance with the notice of hearing (37 F.R. 14531).

During the course of the recodification hearings more than 60 presentations were made. In addition to this oral testimony over 1,200 pages of written submissions were received. The Pay Board then reviewed the extensive submissions and, in the process of this review, considered the totality of its regulations. Policy decisions were reached affecting the regulations (both substantive and procedural).

The revision of Parts 201 and 202 as previously proposed is hereby adopted with certain modifications as set forth below. Because of the revision of Parts 201 and 202, it proved necessary to make certain conforming changes to other parts not published for comment. In view of this, the Board determined that these other parts, together with the Board's rulings and delegations, should also be reviewed, and in some cases revised, in the light of a year's experience. Accordingly, this document contains all Pay Board regulations, delegations, and rulings, updated and revised in a single publication for the convenience of the public.

The discussion which follows highlights significant changes. While not an exhaustive outline, it has been prepared for the convenience of the public by reference to parts, subparts, sections, appendices, etc., in the following order: Part 200 (information), Part 201 (stabilization of wages and salaries), Part 202 (prenotification and reporting), Part 205 (procedures), appendix (special regulations), and orders (delegations of authority).

PART 200

Technical and substantive changes have been made in Part 200. The purpose of these changes is to clarify existing Pay Board policy with respect to requesting and obtaining information from the Board under the Freedom of Information Act, 5 U.S.C. 552. For the guidance and convenience of the public, a list of items has been included to indicate those items generally available for inspection and copying (§ 200.21). In addition, information and records not required to be disclosed have been enumerated (§ 200.22). New provisions with respect to authentication of records have been added (§ 200.23) and the section with respect to fees has been revised (§ 200.28).

PART 201

Part 201, as set forth in the notice of proposed rule making on July 20, 1972, contained a complete revision of format. Subsequent to that publication the Board amended existing regulations to carry out immediate changes in Board policy. These changes continued to reflect the old numbering system. With these recodified final regulations additional minor changes have been made to the numbering system for Subparts A, B, E, and G. Accordingly, to properly explain the changes made in certain situations it becomes necessary to identify three separate sets of numbers. Wherever reference is made to an "old" section number, the reference means the regulations in effect immediately prior to this recodification. Whenever reference is made to a "proposed" section number, the reference means the numbering system incorporated in the notice of proposed rule making, published July 20, 1972. Reference to a "new" section number means as recodified in the regulations which follow.

SUBPART A

Section 201.1 *Purpose and scope.* New § 201.1 substantially incorporates the provisions of proposed § 201.1, except for minor changes of a technical or clarifying nature. Old §§ 201.12 and 201.16 were incorporated in proposed § 201.1 and are carried into new § 201.1 except that a sentence has been deleted. Since regulations in effect for Phase I dealing with wages and salaries have now been superseded, that sentence has been deleted.

Section 201.2 *Definitions.* Old § 201.2 has been deleted because all Phase I rules applicable to wages and salaries are now considered to have been superseded by the rules prescribed in this chapter. Old § 201.3, relating to definitions, has been renumbered as new § 201.2. New definitions have been added for the terms "average hourly benefit rate", "average hourly included benefit rate", "average hourly qualified benefit rate", "employee", "employer", and "pay adjustment". The definition of "tandem relationship" has been incorporated (as proposed) in new § 201.32(d). The definitions of "included benefit" and "qualified benefit" have been revised to conform to new §§ 201.58 and 201.59. The definition of "wages and salaries" has been altered to reflect that payments to (or on behalf of) retirees are wages and salaries within the meaning of the regulations. New definitions of "employee" and "employer" are also added to clarify the Board's rules as to coverage by this chapter.

SUBPART B

Section 201.10 *General wage and salary standard.* Paragraph (a) of this section contains minor changes of a clarifying nature. Paragraph (c) of this section has been added to clarify the fact that the Pay Board or its delegate retains authority under the Act to limit increases in particular cases other than as provided in the standard.

Section 201.11 *Exceptions.* Old § 201.11 contained all exceptions prescribed by the Board and the procedural rules applicable thereto. Under recodification each subparagraph of paragraph (a) of such section has been republished as a new section. Proposed § 201.29 has been deleted in favor of incorporating the specific procedural provisions within the particular section. Old § 201.11(b), relating to the overall limitation on exceptions, has been revised to include examples which make clear that although two or more exceptions might apply, the maximum permissible increase is only that available under any one of such exceptions. Moreover, each new exception section contains a rule with respect to the limitation of increases applicable under such exception. This rule does not represent any change in the substance of Pay Board policies with respect to these exceptions. New paragraph (c) of § 201.11 provides a cross reference to reporting requirements and procedures in Parts 202 and 205, respectively. Old § 201.11(d) has been retained as a cross reference to new § 201.30 which incorporates the rules with respect to exceptions on a case-by-case basis. A new paragraph (e) has been added to make clear that in applying for any exception to the standard the burden of proof is on the applicant.

Section 201.12 *Exception for certain tandem wage and salary increases.* Old § 201.12 has been deleted and the substance of such rule incorporated into new § 201.1. New § 201.12 incorporates the exception previously contained in old § 201.11(a)(1) with a liberalizing substantive change. Under the old rule, a tandem exception could not be claimed with respect to tandem second year increases in a contract because of the 6-month limitation in old § 201.11(a)(1)(i)(b). New § 201.12(a)(4) provides that the 6-month lag period runs from the effective date of a wage and salary increase in the leader unit rather than from the effective date of the contract or pay practice applicable to the leader unit. The format of the exception has also been altered to provide greater clarity.

Section 201.13 *Exception for certain tandem qualified benefit relationships.* Old § 201.13 contained rules with respect to retroactivity now incorporated in several sections of Subpart C. Proposed § 201.13 has been renumbered as new § 201.14 in order to set forth both tandem exceptions in numerical order. Thus, proposed § 201.17 has been renumbered as new § 201.13 and substantially incorporates the rules contained in old

§ 201.11(a)(7). This new section has been revised for substantially the same reasons set forth above with respect to the exception for tandem wage and salary increases.

Section 201.14 *Exception for essential employees.* Old § 201.14 contained rules with respect to deferred increases now provided in new § 201.35. Proposed § 201.14 has been renumbered as new § 201.15. New § 201.14 substantially incorporates the rules prescribed in § 201.11(a)(2) and has only been revised to reflect a change in format, including the procedures and limitation provisions previously applicable.

Section 201.15 *Exception for certain catch-up increases.* Old § 201.15 contained rules with respect to wage and salary increases payable under section 203(c)(3) of the Economic Stabilization Act of 1970, as amended. These rules are now incorporated in new § 201.36. Proposed § 201.15 has been renumbered as new § 201.16. New § 201.15 contains all of the provisions in old § 201.11(a)(3) and technical and conforming changes with respect to procedures and the limitation.

Section 201.16 *Exception for qualified merit plans.* Old § 201.16 has been substantially incorporated into new § 201.1 except for the sentence preserving the Phase I rule. Proposed § 201.16 has been renumbered as new § 201.17. New § 201.16 contains all of the provisions in old § 201.11(a)(5), as recently amended to discontinue the exception for new control years, and technical and conforming changes with respect to procedures and the limitation.

Section 201.17 *Exception for governmental wage determinations.* Old § 201.17 has been substantially incorporated into new § 201.41. Proposed § 201.17 has been renumbered as new § 201.13. New § 201.17 contains all of the provisions in old § 201.11(a)(6) and technical and conforming changes with respect to procedures and the limitation. In addition, a provision has been added to make clear that the exception relates to wage determinations applicable only to private sector employees.

Section 201.18 *Exception for intra-unit inequities.* New § 201.18 contains all of the provisions in old § 201.11(a)(8) and proposed § 201.18. A technical and conforming change has been added with respect to procedures.

Section 201.19 *Exception for low wage employees.* New § 201.19 contains all of the provisions in old § 201.11(a)(9). Examples have been added and minor technical and conforming changes have been made.

Section 201.30 *Exceptions on a case-by-case determination.* New § 201.30 contains all of the provisions in old § 201.11(d) and proposed § 201.30. Only changes of a clarifying or technical and conforming nature have been made with respect to procedures and the limitation. New paragraph (a) makes clear that notwithstanding the 7 percent limitation on a particular exception, the Board in a particular case may consider treating a request for exception in excess of the percentage limitation as a separate request under § 201.30 upon proper showing by an applicant. Such new paragraph (a) also delineates between criteria for exceptions not covered in Subpart B and exceptions covered but subject to the limitation of 7 percent.

SUBPART C

Section 201.31 *Retroactive increases pursuant to § 203(c)(2) of the Act.* New § 201.31 incorporates the provisions of old § 201.13 (a)–(c) and is adopted as proposed with minor technical and conforming changes. In addition, a new substantive rule has been adopted that provides for the treatment of certain wage reopeners scheduled to take place between August 15 and November 14, 1971. This new policy has the effect of revoking Pay Board Ruling 1972–51 (36 F.R. 13276).

Section 201.32 *Retroactivity pursuant to certain consecutive agreements or practices and certain tandem relationships.* New § 201.32 incorporates the provisions of old § 201.13 (e) and (f), and is adopted as proposed with minor technical and conforming changes.

Section 201.33 *Retroactivity for certain low wage employees and for certain one-time benefits.* New § 201.33 incorporates the provisions of old § 201.13(g), and is adopted as proposed.

Section 201.34 *Increases in wages and salaries scheduled after November 13, 1971, for services rendered in certain periods on or before such date.* New § 201.34 incorporates the provisions of old § 201.18, and is adopted as proposed with minor technical and conforming changes.

Section 201.35 *Wage and salary increases effective after November 13, 1971.* New § 201.35 incorporates the provisions of old § 201.14, and is adopted with clarifying, technical and conforming changes. In addition, a new substantive policy, set forth in paragraph (c), has been adopted providing for the treatment of certain wage reopeners scheduled to take place after November 13, 1971, under contracts agreed to before August 15, 1971. Increases pursuant to these wage reopeners are treated as deferred increases, with certain special procedural requirements. A clarifying change has been made with respect to the "expiration" of pay practices previously set forth. All wage and salary increases pursuant to pay practices in any control year beginning on or after November 14, 1972, will be subject to the general wage and salary standard and exceptions thereto. Special clarifying rules are provided for those "pay practices previously set forth" within the meaning of Subpart F.

Section 201.36 *Funds raised or provided prior to August 15, 1971, for wage and salary increases on and after such date.* New § 201.36 incorporates the provisions of old § 201.15, and is adopted as proposed with minor clarifying changes. Paragraph (d) of new § 201.36 incorporates the provisions of old § 201.13(d).

Section 201.40 *Retroactivity on a case-by-case determination.* New §201.40 is an expansion of the rule provided in old § 201.13(h) and proposed § 201.40. However, the expansion has been further revised to reflect clarifying, technical and conforming changes similar to those in new § 201.30.

SUBPART D

Section 201.41 *Violations.* New § 201.41 incorporates the provisions of old § 201.17, and is adopted as proposed with clarifying, technical, and conforming changes, including two additional examples.

Sections 201.42 and 201.43 *Criminal fine and civil penalty.* New §§ 201.42 and 201.43 are adopted as proposed in the notice of rule making.

SUBPART E

Generally, in addition to changes of a technical and conforming nature, revisions of proposed Subpart E (formerly Subpart C) Computation Rules have been made in order to attain the following objectives:

(1) Provide the method of computation necessitated by the Pay Board's adoption of the "short-form" PB–3A;

(2) Simplify the explanation of each adjustment which may be required with respect to the average straight-time hourly rate;

(3) Separate, for greater clarity, the average hourly benefit rate into its components—the average hourly included benefit rate and the average hourly qualified benefit rate;

(4) Prescribe rules covering new jobs, job classifications or positions, and apprenticeship and probationary programs;

(5) Set forth special computational rules relating to reductions in hours worked per day or per week; modifications of certain longevity or automatic progression plans; changes of appropriate employee units; and retroactive payments; and

(6) Add illustrative examples of the application of the regulations in this subpart.

More specifically, the following is a section-by-section analysis of revised Subpart E:

Section 201.51 *General.* New § 201.51 incorporates the provisions of old § 201.51, and is adopted as proposed with minor technical, clarifying, and conforming changes, except with respect to proposed § 201.51(d), relating to cost-of-living adjustments. That provision has been incorporated as a special computational rule in new § 201.64.

Section 201.52 *Determination of control year.* Old and proposed § 201.52 have been renumbered as § 201.53. New § 201.52 adopts proposed § 201.53 with certain changes, including the addition of examples in new paragraph (g). Changes of a clarifying and technical nature have been made in new paragraphs (c)(3), (d), and (e). Paragraph (c)(3) has been revised to cover contracts without a fixed expiration date. Paragraph (d) has been revised to make clear the prohibition against changing control years. Paragraph (e) has been revised to make clear that control year elections may only be made with respect to the first control year.

Section 201.53 *Formula for computation of annual aggregate increase in the base compensation rate.* Old and proposed § 201.53 have been renumbered as § 201.52. New § 201.53 revises old and proposed § 201.52 to more accurately reflect the formulas prescribed on form PB–3 and the new "short-form" PB–3A. Other changes conform to the separation of the average hourly benefit rate into its components (new §§ 201.58 and 201.59). New paragraph (b) has been added to prescribe the formula for use with respect to Category III pay adjustments where the optional "short form" method has been elected.

Section 201.54 *Base compensation rate.* New § 201.54 adopts, with conforming changes, the provisions of old and proposed § 201.54.

Section 201.55 *Average straight-time hourly rate and adjustment thereto.* Proposed § 201.55 included all the rules for determining, and computing adjustments to, the average straight-time hourly rate. Many of these rules are now included in new §§ 201.56 and 201.57. New § 201.55 contains substantially the same rules with respect to items included and excluded in determining total straight-time payroll expenditures but with a revised format. Other changes in that section are of a clarifying, technical, and conforming nature.

Section 201.56 *Computation method; average straight-time hourly rate; certain merit adjustments.* Old and proposed § 201.56 have been renumbered as new §§ 201.58 and 201.59. New § 201.56 contains substantially the same rules as proposed §§ 201.55(b)(1) and 201.55(c) with certain clarifying, conforming, and technical changes. In addition, a new substantive rule has been added to extend the "double snapshot" computation to appropriate employee units coming into existence for the first time after November 14, 1971, as part of a new company, new plant, or other business activity if they adopt merit plans. Furthermore, the rule with respect to compensating adjustments has been clarified to indicate that compensating adjustments are not available if the change in average skill levels or length of service has been reflected by exclusions for promotion, longevity, automatic progression, or apprenticeship or probationary increases during the same control year.

Section 201.57 *Computation method; average straight-time hourly rate; other than certain merit adjustments.* Old and proposed § 201.57 have been renumbered as new § 201.60. New § 201.57 contains substantially the same rules as proposed §§ 201.55(b)(2) and 201.55(c)(2) with certain clarifying, conforming, and technical changes. This "ice cube" method of computation applies to appropriate employee units existing on November 13, 1971, which did not have merit plans in effect on such date. Such method also applies to such existing units which adopt merit plans after November 13, 1971, for the first time and to new units formed after November 13, 1971, which have not adopted merit plans.

Section 201.58 *Average hourly included benefit rate and adjustments thereto.* Old and proposed § 201.58 have been incorporated in new § 201.59. New § 201.58 reflects the separation of old § 201.56 into specific benefits as set forth in the method of computation on forms PB–3 and PB–3A. Such new section contains substantially the same rules as proposed in § 201.56 with respect to included benefits, and contains certain clarifying, conforming, and technical changes including examples in new paragraph (e). New paragraph (d) has been drafted to clarify that included benefit cost savings may be offset against increases in certain included benefit costs, including those resulting from the secondary effect of increases in the average straight-time hourly rate.

Section 201.59 *Average hourly qualified benefit rate and adjustments thereto.* Old and proposed § 201.59 have been renumbered as new § 201.61. New § 201.59 reflects the separation of old § 201.56 into specific benefits and includes the rules contained in old and proposed § 201.58 with certain clarifying, conforming, and technical changes. New paragraph (h) has been drafted to clarify that qualified benefit cost savings may be offset against increases in certain qualified benefit costs, including those resulting from the secondary effect of increases in the average straight-time hourly rate. Such paragraph also establishes a modified rule on cost savings attributable to changes in actuarial assumptions. In addition, a new substantive rule has been added to provide that in the case of qualified profit sharing plans the contribution for a control year shall not be charged as an adjustment to the extent that it is in excess of the base year contribution, where the total contribution is less than the highest contribution made during any one of the last 3 full plan years ending prior to the control year. A proration formula is provided for use in this exclusion. The Pay Board policy under the old regulations, that both discretionary and formula qualified profit sharing plans are subject to the qualified benefit standard and the 5.5-percent standard, has also been restated in clearer fashion.

Section 201.60 *Exclusions from adjustment computations.* New § 201.60 adopts old and proposed § 201.57 with certain clarifying, technical, and conforming changes. In addition, new paragraph (e) expands the exclusion to include not only the Fair Labor Standards Act, but also various Federal and State employment discrimination laws. New paragraph (f) includes a clarifying change with respect to the nonapplicability of the wage determination exclusion to Government employees. This change parallels the clarifying change made in new § 201.17. In addition, an exclusion has been added to cover qualified apprenticeship and probationary programs.

Section 201.61 *Productivity incentive programs.* New § 201.61 adopts old and proposed § 201.59 with certain clarifying, technical, and conforming changes. New paragraph (f) has been revised to clarify the inapplicability of new § 201.61 to any variable compensation plan or practice which is based on company profits or which reflects factors in major part related to the efforts of employees not covered by the plan or practice.

Section 201.62 *New jobs, job classifications, or positions.* New § 201.62 adopts with modification the substance of a "comparability" rule issued during Phase I. See OEP Circular No. 101 (36 F.R. 18739), section 502(9). The new section provides rules for the creation of new jobs within existing units, but specifically excludes from those rules the reclassification of jobs within existing units. In addition, the new section provides rules with respect to the creation of new jobs in an appropriate employee unit which did not previously exist and the establishment of job rates for the new jobs in the new unit.

Section 201.63 *Qualified apprenticeship and probationary programs.* New § 201.63 adopts with minor modification the substance of the rules covering apprenticeship and probationary programs that were issued during Phase I. See OEP Circular No. 101 (36 F.R. 18739), section 503(4); and OEP Circular No. 102 (36 F.R. 20482), section 503(3). The probationary period has been extended from 3 to 6 months and the rules apply to programs established after Phase I.

Section 201.64 *Special computational rules.* New § 201.64 contains several special rules. Paragraph (a) adopts the rules with respect to computation of cost of living adjustments found in old § 201.11(a)(4) and proposed § 201.51(d). An example has been added. Paragraph (b) contains a clarifying rule that provides a method of computing pay adjustments attributable to a reduction in hours worked without a corresponding reduction in pay rates. An example is provided to illustrate the computation. If such method is not appropriate in a particular case, the Board will prescribe a more appropriate method. Paragraph (c) contains clarifying rules for the computation of chargeable increases attributable to longevity or automatic progression plan changes adopted after November 13, 1971. Paragraph (d) contains a clarifying rule that prohibits changing the determination of an appropriate employee unit unless prior approval is obtained from the Pay Board or its delegate. A self-executing exception to that rule has been provided for changes required because of an intervening, substantial revision of this historical or contractual wage and salary relationship which renders the former unit no longer appropriate. Paragraph (e) contains a rule clarifying the method of calculating increases in the base compensation rate where allowable retroactive payments are included in the base compensation rate. These payments are required to be included in both the divisor and dividend of the computations made pursuant to § 201.53 (a)(1), (2), and (3).

Subpart F

The executive and variable compensation regulations deal, for the most part, with forms of pay and pay plans which because of their nature, are unlike other wages and salaries and therefore require special rules to assure control. In addition to changes to clarify the regulations, certain computational rules have been added to reflect policy decisions. Because the "old" section numbers and the "proposed" ones are the same, in this discus-

sion of changes reference has been made to the proposed Subpart F.

Section 201.71 *Scope.* The reference in § 201.71(b) to sales or commission plans or practices or production incentive programs in the context of "existing contracts" and "pay practices previously set forth" has been eliminated, reflecting the parallel treatment of these plans, practices and programs under § 201.77 of the regulations.

Section 201.72 *Definitions.* To the definition of "job perquisite" has been added a reference to financial consulting or advisory services paid for by an employer. The "incentive compensation" definition has been altered to make reference to performance share awards and to set forth that stock bonus plans, whether or not tax qualified, are to be treated as incentive compensation.

Section 201.73 *Executive salaries and job prequisites.* The provisions of proposed § 201.73 have been incorporated with minor clarifying changes.

Section 201.74 *Incentive compensation plans (other than stock options).* New § 201.74 makes specific reference to, and provision for, those incentive compensation arrangements which are (or were) operating under § 201.35. Thus, the definition of "base year amount" and the calculation of "allowable amounts" for these arrangements upon their expiration as "existing contracts" or "pay practices previously set forth" have been revised. Provision has also been made for plan years of all incentive compensation plans (other than stock options) after the first plan year controlled. An increase in the allowable amount of payment under a bonus plan has been provided for in paragraph (b)(3), increasing that amount in subsequent plan years by the sum of the previous allowable amount and that amount multiplied by the standard established in § 201.10(a). In addition, the new paragraph (b)(5) reflects a policy decision to provide for growth or contraction in incentive compensation plans. In essence, an adjustment factor has been set forth as: the aggregate base salaries in the base year plus the base salaries of new employees added to the plan unit minus the base salaries of those who terminated from the plan unit divided by the base year aggregate salaries. The rules provide that this adjustment factor is to be multiplied by the otherwise allowable amount to reflect increases or decreases in plan participants since the base year. In light of these changes in the computational method, the provision for credits to wages and salaries for amounts granted less than the allowable amount has been deleted.

In new § 201.74(c)(3)(ii) a valuation has been provided for "performance share" awards. It has been indicated, however, that this valuation only applies upon Pay Board approval of the incentive compensation plan under which the "performance share" awards are made.

Section 201.75 *Incentive compensation practices (other than stock options).* Because the computations under incentive compensation practices mirror those under incentive compensation plans, those rule changes reflected in § 201.74 have also been made in this section. In addition, in those practices where a definite method or clear formula is not utilized in determining the aggregate amount of incentive compensation attributable to a practice year, a formula has been implied in new paragraph (a)(1). Thus, a formula of the base year amount selected, divided by the profits prior to Federal taxes in the base year, is deemed to apply in such a circumstance. This formula must be continued in application and utilized as a limitation upon permissible payment during controls independent of the computational provisions for determining the allowable amount of incentive compensation for the practice year.

Section 201.76 *Stock options.* New § 201.76 reflects a policy decision to alter the method of determining the aggregate share limitation applicable to those stock options which are deemed not to increase wages and salaries. In essence, the revised calculation set forth in paragraph (b)(1)(iii) extends the base period to cover all fiscal years during which the plan operated that ends before the fiscal year for which determination is made. Provision has been made that the average number of shares subject to option grant be calculated and that amount be subject to a self-executing adjustment for growth and contraction whereby such average is to be multiplied by a fraction, consisting of the number of current plan participants over the average number of plan unit participants during the base period. For those plans under which no options were granted during any of the fiscal years in the base period the limitation has been set forth in paragraph (c)(1)(i) at 25 percent of the total shares authorized for issuance at the time the plan was first adopted, or if amended to increase share authorization, at the time the plan was last amended. These rules are applicable to fiscal years beginning on or after November 14, 1972. For other fiscal years the current rules incorporated in the new section continue to apply. In addition, provision has been made for plans in pay practices previously set forth and contracts which cease to operate under § 201.35. These provisions reflect a similar treatment of such plans in the nonstock options areas covered by §§ 201.74 and 201.75.

Section 201.77 *Sales or commission plans or practices and certain production incentive programs.* In addition to clarifying changes, reference has been made in paragraph (b) to a change in a sales or commission plan or practice or a production incentive program which is not considered as increasing the aggregate amount of compensation, i.e., the downward revision of a rate or formula.

Section 201.78 *New or revised plans, practices or programs.* Some examples have been added in paragraph (b) to reflect modifications or revisions of incentive compensation plans which must be submitted to the Pay Board for prior approval. Reference has been made in paragraph (c) to performance share plans and to the required prior approval of such plans before the valuation set forth in § 201.74 can be utilized for awards under this type of incentive compensation plan. The treatment of plans, practices or programs which operate (or operated) under § 201.35 has been set forth in paragraph (d). Therein, it has been provided that, to the extent incentive compensation attributable to these pay systems is not treated as wages and salaries under Subpart F, such incentive compensation is not to be included in computing the base compensation rate of any appropriate employee unit. New paragraph (f) contains a discussion of the criteria the Board will consider in applications submitted for prior approval or for exception to the provisions of Subpart F.

Section 201.79 *New organizations and changes in organizational form.* Certain clarifying changes have been made. A new paragraph has been added to deal specifically with mergers and other similar reorganizations. With regard to these reorganizations, rules have been added that apply to the addition of employees to existing plans including the necessity in some circumstances for securing prior Pay Board approval.

Subpart G

This subpart has been substantially revised to reflect a different format. There is no longer any reference to the March 28, 1971, or November 14, 1971, dates for purposes of computing the maximum permissible increase. In addition, a provision has been included that is consistent with new § 201.10(c) which would enable the Board to limit an increase in a particular case other than as provided in the standard. All other changes are of a clarifying technical and conforming nature.

Subpart H

This subpart was not included in the notice of rule making published July 20, 1972. The old subpart was published on September 30, 1972 (37 F.R. 20530) and contained §§ 201.91 through 201.95 which have been recodified in this document. In accordance with a July 1972, policy decision of the Pay Board, a new § 201.96 has been added, relating to State mandated pay adjustments. Examples have been included in that section to illustrate its applicability. Conforming and technical changes have been made in new § 201.93(f) and in new § 201.94(a) as necessitated by new § 201.96. In addition § 201.93(a) has been revised to require as part of the certification a statement of the approximate number of employees in the units covered by the certification.

Appendix

Old Appendix A has been deleted by decision of the Pay Board as no longer necessary. Accordingly, proposed Appendix B now appears as the new Appendix and has been updated to reflect changed section numbers from regulations in effect prior to November 14, 1972.

Part 202

Part 202, as set forth in the notice of proposed rule making on July 20, 1972, was substantially similar to Part 202 of the regulations then in effect. Since the publication of the proposed Part 202, policy changes in other substantive areas

have required amendments to existing regulations. Section numbers have not been changed.

SUBPART A—INTRODUCTION

Section 202.1 *Purpose.* New § 202.1 is adopted as proposed, except that certain general material, duplicating material in § 201.1 which is applicable to the entire chapter, has been deleted from the section.

Section 202.2 *Classification and reclassification.* New § 202.2 is adopted as proposed, with technical and conforming changes and an additional provision classifying State mandated pay adjustments as Category I. The additional provision was added to old § 202.2 prior to this document.

Section 202.3 *Definitions.* New § 202.3 is adopted as proposed, with clarifying, technical, and conforming changes.

SUBPART B—CATEGORY I PAY ADJUSTMENTS

Section 202.10 *Prenotification and reporting requirements.* New § 202.10 incorporates the provisions of proposed § 202.10, with clarifying, technical, and conforming changes and certain additional material. Paragraph (a)(2) establishes a requirement that Category I prenotification include copies of collective bargaining agreements and a summary of pay adjustments. Paragraph (b)(1) has been revised to conform to regulations concerning certification of pay adjustments (§ 201.93). Paragraph (b)(6), relating to wage increases which apply to individual employees, reduces the number of separate prenotifications required from 2 to 1 per year if the increases are budgeted in advance of the year, and prescribes the scope and content of each prenotification. Paragraph (b)(7), relating to cost of living allowance increases, requires an initial prenotification containing estimates of the expected amounts of such increases, and further prenotification only if the actual amounts of the cost of living allowance increases, as proposed, will exceed the previously estimated amounts.

SUBPART C—CATEGORY II PAY ADJUSTMENTS

Section 202.20 *Prenotification and reporting requirements.* New § 202.20 incorporates the provisions of proposed § 202.20, with clarifying, technical, and conforming changes and certain additional material. Paragraph (a)(2) establishes a requirement that Category II reports include copies of collective bargaining agreements and summaries of pay adjustments. Paragraph (b)(1) has been revised to conform to regulations concerning certification of pay adjustments (§ 201.93). Paragraph (b)(6), relating to wage increases which apply to individual employees, reduces the number of separate reports required from three to one or two per year if the increases are budgeted in advance of the year, and in certain cases, from three to two per year if the increases are not so budgeted. This paragraph also prescribes the scope and content of each report. Paragraph (b)(8), relating to cost of living allowance increases, permits the advance submission of estimates of such increases, with a further report required only if the actual increases exceed the estimates as previously reported.

SUBPART D—CATEGORY III PAY ADJUSTMENTS

Section 202.30 *Prenotification and reporting requirements.* New § 202.30 incorporates the provisions of proposed § 202.30, with clarifying, technical, and conforming changes and certain additional material. Paragraph (b)(6) has been added to conform to regulations concerning certification of pay adjustments (§ 201.93) and to set forth the reporting requirements applicable to pay adjustments for certain public officials (§ 201.94). Paragraph (b)(7) reflects recent policy changes with respect to certain wage reopening provisions (§ 201.35).

PART 205

Section number references to Part 201 have been changed to reflect the new numbers in that part. In addition, both technical and substantive changes have been made in Part 205. Significant modifications and additions are as follows: The definitions of "adverse action" and "person aggrieved" (§ 205.2) have been revised so that appeals from IRS adverse actions with respect to interpretations and rulings are no longer ex parte proceedings.

NOTE: This is already the case in pay adjustment proceedings.

The requirement in § 205.4(b) to serve copies of documents filed with the Board on the other party at interest (in collective bargaining situations) has been expanded to apply to all documents filed by such parties with the Board. Section 205.6(e), which requires service of determinations, decisions and orders on all parties at interest, has been expanded by making that provision applicable to appeals from IRS adverse actions in cases involving interpretations and rulings.

NOTE: In addition, the section continues to apply to pay adjustment cases.

The provisions contained in new § 205.9 govern requests for subpenas. More specifically, that section provides that the Board may issue a subpena, at the request of a party at interest, or otherwise, but the Board will not issue a subpena to a party at interest for use by the party. Procedures for requesting the Board to issue a subpena are fully set out in new § 205.9. New § 205.10 governs motions to quash the issuance of a subpena and new § 205.11 allows persons submitting documents to the Board, in response to a subpena or otherwise, to request confidentiality, and provides for disclosure of such documents to a party at interest if confidentiality is not requested. If confidentiality is requested, the merits of such request will be considered carefully on a case-by-case basis. This new rule on disclosure relates only to release of information to a party at interest directly affected by a Board proceeding and in no way restricts, expands, or otherwise affects, disclosure to the public of information pursuant to Subpart B, Part 200, Pay Board Public Information Regulations. Section 205.21 has been revised to provide that a determination of violation by IRS may not be appealed to the Pay Board. Sections 205.22, 205.23, and 205.26 have been revised to provide that appeals to the Pay Board from IRS adverse actions must now be filed with the appropriate district director who issued the adverse action being appealed. The appropriate district director will then attach the appeal to the case file and forward them both to the Pay Board for disposition. Section 205.29 which was previously entitled "Further review" has now been completely revised so as to conform to the review sections contained in Subpart C. Section 205.41 (Reconsideration) has been deleted since it unnecessarily duplicated the review provisions contained in §§ 205.34 through 205.40. Subpart E (Formal Hearings) has been revised to provide that the Chairman will be the presiding officer at formal hearings unless a Hearing Officer is specifically appointed (§ 205.61). In addition, the powers of the presiding officer have been listed in § 205.63.

APPENDIX TO CHAPTER II

Special Regulation No. 1, published August 10, 1972 (37 F.R. 16091) relating to modification of the small business exemption in the lumber industry, has been recodified with conforming and technical changes as an appendix to Chapter II of Title 6.

DELEGATION ORDERS

The Pay Board delegations of authority have been modified to show changed section numbers resulting from recodification. In addition, Delegation Orders No. 3 (to the Chairman) and No. 3A (to the Executive Director) have been expanded to reflect resolutions of the Pay Board, and Order No. 4 (to the Secretary of the Treasury) has been revised to more clearly indicate the authority previously delegated under that order. Since this revision is essential to the expeditious implementation of the Economic Stabilization Act of 1970, as amended, and Executive Order No. 11640, as amended, the Board finds that the time for submission of written comments by interested persons in accordance with the usual rule making procedure is impracticable and that good cause exists for promulgating this revision in less than 30 days. Interested persons may submit written comments regarding this revision within 20 days after publication of this document. Communications should be addressed to the Office of General Counsel, Pay Board, Washington, D.C. 20508.

The regulations, delegations of authority, and rulings republished in this document supersede all previous regulations, delegations of authority, and rulings previously issued by the Board prior to this document. The regulations, delegations of authority and rulings hereby superseded remain in full force and effect with respect to any completed actions taken during periods prior to the effective date of this document.

Effective date. Unless otherwise provided herein, the provisions of this document are effective November 14, 1972.

By direction of the Board.

GEORGE H. BOLDT,
Chairman.

REVISION OF CHAPTER

PART 200—INFORMATION

Subpart A—[Reserved]

Subpart B—Public Information

Sec.
200.20 Purpose.
200.21 Information and records available to to the public.
200.22 Information and records not required to be disclosed.
200.23 Authentication of records.
200.24 Request for inspection of records.
200.25 Determination of availability of records.
200.26 Request for review of nonavailability.
200.27 Final determination of availability.
200.28 Fees.

Subpart C—Use of Information

200.50 Purpose and scope.
200.51 Definitions.
200.52 Use of economic stabilization information.

AUTHORITY: The provisions of this Part 200 are issued under the Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Public Law 92-210, 85 Stat. 743; Executive Order No. 11640 (37 F.R. 1213, Jan. 27, 1972), as amended; Cost of Living Council Orders No. 3 (36 F.R. 20202, Oct. 16, 1971) and No. 6 (37 F.R. 2727, Feb. 4, 1972); 26 U.S.C. 7602; and 5 U.S.C. 552.

Subpart A—[Reserved]

Subpart B—Public Information

§ 200.20 Purpose.

This subpart sets forth the policies and procedures of the Pay Board governing public access to information contained in the files, documents, and records of the Pay Board. In accordance with the spirit as well as the letter of the Freedom of Information Act, 5 U.S.C. 552, it is the policy of the Pay Board that disclosure is to be the general rule rather than the exception. This policy in favor of disclosure extends in many instances to information technically exempt from disclosure under the law where such disclosure would not adversely affect some legitimate public or private interest intended to be protected by law, would not otherwise violate law, and would not impose an unreasonable administrative burden on the Pay Board. Similarly, this subpart recognizes that the soundness and fairness of Pay Board actions depend, in large measure, upon the reliability of technical and business information submitted by parties at interest. Since the release of such information may jeopardize the competitive business position of such parties, it is the policy of the Pay Board to consider carefully the merits of any request for confidentiality.

§ 200.21 Information and records available to the public.

(a) *In general.* All Pay Board information and records which are not exempt by law are available for inspection and copying by members of the public (for exempt records, see § 200.22). In addition, the Chairman of the Pay Board, or his delegate, is authorized, in his discretion, to make exempt information and records available for inspection and copying if he deems disclosure to be in the public interest, and disclosure is not otherwise prohibited by law.

(b) *Information and records available.* For the guidance and convenience of the public, a list of items are included which are generally available for inspection and copying. An identifiable item not listed may nevertheless be available upon request. Conversely, an item included herein may be withheld, in whole or in part, because a portion of it is exempt. The list is as follows:

(1) Published regulations, rulings and delegations of authority;

(2) Pay Board resolutions;

(3) Pay Board minutes;

(4) Final votes of Pay Board members on specific cases before the Board;

(5) Pay Board agenda;

(6) News releases;

(7) Official speeches by Pay Board staff when there is a prepared text;

(8) Testimony of Pay Board members and staff before congressional committees;

(9) Prepared statistical releases on Agency activities;

(10) Organizational and functional statements;

(11) Economic research studies of a general nature (completed);

(12) Decisions and orders;

(13) Pay Board public use forms (blank); and

(14) Names and positions of Pay Board staff.

(c) *Proceedings before the Board.* Supplemental rules governing requests for information by a party at interest to a proceeding before the Board are contained in §§ 205.4 (b) and (c) (documents filed with the Board by a party at interest which are required to be served on the other party at interest), 205.6(e) (service by Board of decisions and orders), 205.9 (requests for subpenas), and 205.11 (disclosure of information and requests for confidentiality) of this chapter.

§ 200.22 Information and records not required to be disclosed.

(a) *In general.* In accordance with 5 U.S.C. 552(b), this subpart does not require disclosure of the following records:

(1) Records specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) Records related solely to the internal personnel rules and practices of the Board;

(3) Records specifically exempted from disclosure by statute, including but not limited to records containing information referred to in section 205 of the Economic Stabilization Act of 1970, as amended;

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

(5) Interagency or intragency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Board;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory files compiled for law enforcement purposes, except to the extent available by law to a party other than an agency, and except that the Chairman of the Pay Board, or his delegate, is specifically authorized to divulge or disclose to a complainant, or to an individual with specific knowledge of a complaint, the nature and result of the investigation of such complaint in circumstances where no violation has been found; or

(8) Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(b) *Identifiable record.* The Pay Board will, on occasion, not be able to honor a request for inspection and copying because the record requested cannot be identified. In such an event, the request will be returned to the person who initiated it and he will be advised why the record is not identifiable and what additional clarification, if any, he may submit to assist in its identification.

(c) *Possession of record.* If the record is not in the Pay Board's possession or does not exist, the person initiating the request will be so notified.

(d) *Record of other agency.* A person who requests a record which belongs to another agency, but which is currently in the custody and control of the Pay Board, should submit his request to the agency to which the record belongs. If the agency to which the record belongs consents, in writing, to making the record available, it will be disclosed in accordance with the provisions of this subpart.

(e) *Identifying details omitted.* Information furnished to requesting members of the public may have identifying details omitted to avoid unwarranted invasions of personal privacy, or violation of 18 U.S.C. 1905. That statute imposes criminal penalties for the disclosure of trade secrets, financial data, and other confidential information.

§ 200.23 Authentication of records.

(a) *True copies.* The Executive Director of the Pay Board will designate an

official custodian who will have authority to attest or otherwise authenticate copies of records made available under the provisions of this subpart.

(b) *Existence of records.* The Executive Director or the official custodian may issue such statements, certificates, or other documents as may be required to show that after a diligent search, no record or entry of the tenor specified in a request has been found to exist. (See Rule 44, Federal Rules of Civil Procedure.)

§ 200.24 Request for inspection of records.

(a) *Place, time, etc.* A request for inspection and copying of records may be filed, in person or by mail, with the Director of the Case Information Center, Pay Board, 2025 M Street NW., Washington, DC 20508 between 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

(b) *Forms, identification of information.* Such requests shall be made on a specified Pay Board form, and should identify with specificity the documents or other information sought. Copies of that form are available in the Case Information Center of the Pay Board.

§ 200.25 Determination of availability of records.

If the record is of the nature described in § 200.22, the requesting party will be informed in writing of the specific reason(s) why the record may not be disclosed.

§ 200.26 Request for review of nonavailability.

Any person, whose request to inspect a record has been denied in accordance with § 200.25, may request a review of the initial denial. Such review will be made by the Chairman of the Pay Board, and will be based upon the original request, the denial, and any written argument submitted by the person requesting the review.

§ 200.27 Final determination of availability.

The decision upon review, as provided for in § 200.26, will be promptly made in writing and transmitted to the person requesting such review. If the decision is wholly or partly in favor of said person, the requested record to that extent will be made available for inspection. To the extent that the decision is adverse to the request, the reason(s) for the denial will be stated. A decision upon review as provided herein shall constitute the final action of the Board as to the availability of a requested record.

§ 200.28 Fees.

(a) *Establishment of fees.* The Administrative Director of the Pay Board may establish such fees and charges for record searching, reproduction, and related expenses incurred with respect to records made available to the public as are deemed reasonable and appropriate.

(b) *No charge for certain records and documents.* It has been determined that certain records and documents, which may be furnished without significant disruption of other business activities (and the record or document may otherwise be disclosed), may be made available without charge.

(c) *Schedule of authorized fees.* For copies of documents other than those duplicated and distributed for no fee:

Each page	$0.15

Time in excess of the first half-hour spent in searching for, or producing, the requested record or document will be charged at the following rate:

Per hour	$4.00

(d) *No charge to Federal agency.* When the request for copies of any record or document, available for inspection pursuant to the provisions of this part, is made by a Federal agency or instrumentality thereof, copies as requested will be made available without charge.

Subpart C—Use of Information

§ 200.50 Purpose and scope.

This subpart sets forth the policies and procedures of the Pay Board for the use of economic stabilization information, obtained from or on behalf of the Board for economic stabilization purposes, by the Internal Revenue Service.

§ 200.51 Definitions.

For the purpose of this subpart—"Economic stabilization information" includes—

(a) The amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association obtained in connection with economic stabilization matters;

(b) Any schedule, list, written statement, or other written document filed by or on behalf of any person with the Pay Board, any body under its jurisdiction, or the Internal Revenue Service, in connection with economic stabilization matters; and

(c) All other reports, oral or written information, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any part thereof, relating to any person and held by the Pay Board, any body under its jurisdiction, or the Internal Revenue Service, in connection with economic stabilization matters. "Person" has the meaning given by section 7701(a)(1) of the Internal Revenue Code of 1954 (68 Stat. 911; 26 U.S.C. 7701(a)(1)).

§ 200.52 Use of economic stabilization information.

Any information which is acquired by the Internal Revenue Service, or the Pay Board, or any body under the jurisdiction of the Pay Board, for stabilization purposes, may be used by the Internal Revenue Service or the Pay Board in the performance of any of their duties or in connection with any proceeding conducted under the Economic Stabilization Act of 1970, as amended.

PART 201—STABILIZATION OF WAGES AND SALARIES

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201.14 Exception for essential employees.
201.15 Exception for certain catchup increases.
201.16 Exception for qualified merit plans.
201.17 Exception for governmental wage determinations.
201.18 Exception for intraunit inequities.
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201.96 State mandated pay adjustments.
Appendix—Cross-Reference Table

AUTHORITY: The provisions of this Part 201 issued under Economic Stabilization Act of 1970, as amended; Public Law 92-210, 85 Stat. 743; Executive Order No. 11640, 37 F.R. 1213 (1972), as amended by Executive Order No. 11660, 37 F.R. 6175 (1972); and Cost of Living Council Order No. 3, 36 F.R. 20202 (1972), as amended.

Subpart A—Introduction

§ 201.1 Purpose and scope.

The purpose of the regulations in this chapter is to establish rules and standards to stabilize wages and salaries, as defined in § 201.2, in accordance with the provisions of Executive Order No. 11640 37 F.R. 1213 (1972), as amended. No reduction in the amount of wages and salaries being paid on November 13, 1971, will be required pursuant to this part unless and to the extent that such wages and salaries were increased in violation of the Economic Stabilization Act of 1970, as amended, and orders and regulations issued pursuant thereto. Any collective-bargaining agreement subject to Executive Order No. 11588, 36 F.R. 6339 (1971), relating to the stabilization of wages and salaries in the construction industry, as amended by Executive Order No. 11640, further providing for the stabilization of the economy, shall be subject to Pay Board regulations as provided in Amended Pay Board Order No. 2. All persons are required by law to comply, and are expected to do so voluntarily, with the provisions of the Economic Stabilization Act of 1970, as amended, and the regulations, rulings, and orders issued thereunder. The regulations in this chapter shall be construed in a manner consistent with the policies of the Act, and every person subject to the provisions of such regulations shall be required to interpret and apply such provisions in good faith to carry out such policies.

§ 201.2 Definitions.

As used in this part, unless the context indicates otherwise, the term:

"Act" means the Economic Stabilization Act of 1970, as amended.

"Appropriate employee unit" means a group composed of all employees in a bargaining unit or in a recognized employee category. Such bargaining unit or employee category may exist in a plant or other establishment or in a department thereof, or in a company, or in an industry, or in a governmental unit or in an agency or instrumentality thereof, and shall be determined so as to preserve, as nearly as possible, contractual or historical wage and salary relationships.

"Average hourly benefit rate" means the sum of the average hourly included benefit rate and the average hourly qualified benefit rate.

"Average hourly included benefit rate" means the rate determined pursuant to § 201.58.

"Average hourly qualified benefit rate" means the rate determined pursuant to § 201.59.

"Base date" means, with respect to an appropriate employee unit, the day prior to the first day of a control year.

"Base payroll period" means, with respect to an appropriate employee unit, the most recent payroll period which ends on or before the base date, or, if such payroll period is not representative because of seasonal variations or for other valid reasons, the most recent payroll period prior to the base date which, under all the facts and circumstances, fairly represents the base year. A payroll period may be a week, 2 weeks, month, or other accepted time period, in accordance with demonstrated practices.

"Base year" means, with respect to an appropriate employee unit, the 12-month period ending on the base date.

"Chargeable increases" means those wage and salary increases or adjustments in the average straight-time hourly rate or average hourly benefit rate which are included in the amount used to determine whether the maximum permissible annual aggregate wage and salary increase has been exceeded with respect to an appropriate employee unit.

"Code" means the Internal Revenue Code of 1954, as amended.

"Control year" means, with respect to an appropriate employee unit, the period of time determined pursuant to § 201.52.

"Employee" includes any individual residing in a State or the District of Columbia who is either an employee within the meaning of section 3121(d) of the Code, or an agent-driver or commission-driver engaged in the distribution of milk for his principal, or an employee within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. §§ 151 et seq.

"Employer" means any person which employs one or more individuals who are employees within the meaning of this section.

"Employment contract" or "contract" means a collective bargaining agreement or an individual contract of employment.

"Freeze" means the period of economic stabilization beginning on August 16, 1971, and ending on November 13, 1971.

"Included benefit" means any benefit (other than a qualified benefit) the cost of which is taken into account in determining the total cost of included benefits and adjustments therein pursuant to § 201.58.

"Maximum permissible annual aggregate wage and salary increase" means, with respect to an appropriate employee unit during any control year, the limitation on increases in the base compensation rate. This limitation is the general wage and salary standard described in § 201.10(a), or, if appropriate, any exception thereto pursuant to Subpart B, including any decision of the Pay Board or its delegate relating to such unit pursuant to § 201.10(c) or 201.30.

"Party at interest" means:

(1) A bargaining representative of employers who could be required to pay the wages and salaries in question, or in the absence of such bargaining representative, an employer who could be required to pay the wages and salaries in question; or

(2) A bargaining representative of employees who could receive payment of wages and salaries in question, or in the absence of such bargaining representative, an employee who could receive payment of the wages and salaries in question.

"Pay adjustment" means an increase in wages and salaries.

"Pay Board" or "Board" means the Pay Board established pursuant to Executive Order No. 11640, 37 F.R. 1213 (1972), as amended, or its delegate.

"Person" includes any individual, estate, trust, sole proprietorship, partnership, association, company, joint venture, corporation, fiduciary, labor organization, State or local governmental unit or instrumentality of such governmental unit, or a charitable, educational, or other such institution; however, the term does not include a foreign or domestic corporation in a foreign country, or an organization that includes within its membership foreign governments or instrumentalities thereof, or a foreign government, or an instrumentality thereof, except to the extent that such instrumentality is doing business in the United States.

"Qualified benefit" means any benefit which is taken into account in determining the total cost of qualified benefits and adjustments therein, pursuant to § 201.59.

"Wages and salaries" includes all forms of direct and indirect remuneration or inducement to employees by their employers for personal services, which are reasonably subject to valuation, including but not limited to: Vacation and holiday payments; bonuses; layoff and severance pay plans; supplemental unemployment benefits; night shift, overtime, and incentive pay; employer

contributions for insurance plans (but not including Federal public plans, e.g. old-age, survivors, health, and disability insurance under the social security system, Railroad Retirement Acts, Federal Insurance Contributions Acts, Federal Unemployment Tax Acts, and Civil Service Retirement Acts, and not including any workman's compensation or unemployment insurance plan pursuant to State law whether the participation of the employer is optional or obligatory), savings, pension, profit sharing, annuity funds, and other deferred compensation and welfare benefits (including payments to or on behalf of retirees); payments in kind; job perquisites; housing allowances; uniform and other work clothing allowances (but not including employer-required uniforms and work clothing whether or not for safety purposes); cost-of-living allowances; commission rates; stock options; fringe benefits; and benefits which result in more pay per hour or other unit of work or production (e.g. by shortening the workday without a proportionate decrease in pay).

Subpart B—General Pay Standard and Exceptions

§ 201.10 General wage and salary standard.

(a) *Standard.* The general wage and salary standard (hereinafter the "standard") is established at 5.5 percent. The standard shall apply to any wage and salary increase payable with respect to an appropriate employee unit pursuant to an employment contract entered into or modified after November 13, 1971, or to a pay practice established, modified, or administered with discretion after November 13, 1971. Except as otherwise provided in this title or by decision of the Pay Board or its delegate, the standard shall be the maximum permissible annual aggregate wage and salary increase for such an appropriate employee unit during a control year.

(b) *Criteria for standard.* The appropriateness of the standard will be reviewed periodically by the Pay Board to insure that the standard—

(1) Is generally fair and equitable;

(2) Generally fosters orderly economic growth and generally prevents gross inequities, hardships, serious market disruptions, domestic shortages of raw materials, localized shortages of labor, and windfall profits;

(3) Takes into account such factors as changes in productivity and the cost of living, as well as other factors consistent with the purposes of the Act; and

(4) Calls for generally comparable sacrifices by business and labor as well as other segments of the economy.

(c) *Increases other than the standard.* Notwithstanding the provisions of paragraph (a) of this section, an increase in wages and salaries for an appropriate employee unit may be otherwise limited during a contract or control year or other period of time to an amount determined by the Pay Board or its delegate to be necessary to preserve ongoing collective bargaining relationships, to foster orderly economic growth, or to prevent gross inequities, hardships, serious market disruptions, or localized shortages of labor.

§ 201.11 Exceptions.

(a) *In general.* This subpart provides rules under which certain wage and salary increases in excess of the standard may be permitted with respect to an appropriate employee unit for a control year.

(b) *Limitation on exceptions*—(1) *If two or more exceptions are applicable.* If two or more of the exceptions provided in this subpart are applicable to an appropriate employee unit, the maximum permissible annual aggregate wage and salary increase for such unit shall be the maximum increase for which such unit qualifies under any one of such exceptions.

(2) *Overall limitation.* Except as provided in §§ 201.13, 201.16(c), 201.17, 201.19, and 201.30, the maximum permissible annual aggregate wage and salary increase with respect to an appropriate employee unit, whether any or all of the exceptions described in this subpart are applicable, shall not exceed 7 percent.

(3) *Application illustrated.* The application of this paragraph may be illustrated by the following examples.

Example (1). An appropriate employee unit qualifies under § 201.12 for an annual aggregate wage and salary increase of 6.8 percent on the basis of a tandem wage and salary relationship. The unit also qualifies under § 201.14 for an increase of 6.4 percent to attract or retain essential employees. Under the limitation of § 201.11(b)(1), the maximum permissible annual aggregate wage and salary increase for this unit is 6.8 percent.

Example (2). An appropriate employee unit qualifies under § 201.12 for an annual aggregate wage and salary increase of 7 percent on the basis of a tandem wage and salary relationship. The unit also qualifies under § 201.14 for an increase of 7 percent to attract or retain essential employees. Under the limitation of § 201.11(b)(2), the maximum permissible annual aggregate wage and salary increase for this unit is 7 percent.

(c) *Reporting requirements; procedures.* An application for approval of a wage and salary increase under the provisions of this subpart, or a report of a pay adjustment, if required, shall be made in accordance with the provisions of Part 202 of this chapter. Any submission to the Pay Board shall be subject to the procedural rules of Part 205 of this chapter.

(d) *Exceptions on a case-by-case basis.* An application for approval of a wage and salary increase in excess of the standard which is not within the provisions of any other section in this subpart, or which is in excess of the maximum permissible annual aggregate increase provided under any other section in this subpart, may be submitted to the Pay Board or its delegate in accordance with the provisions of § 201.30.

(e) *Burden of proof.* In any case in which application is made to the Pay Board or its delegate for approval of a wage and salary increase in excess of the standard, the burden of establishing sufficient and proper cause to justify approval of such increase under the applicable criteria shall be on the party or parties seeking such approval.

§ 201.12 Exception for certain tandem wage and salary relationships.

(a) *Conditions for exception.* A wage and salary increase in excess of the standard may be permitted as an exception to the standard pursuant to the normal and historical operation of a tandem wage and salary relationship if a party at interest demonstrates that—

(1) *Tandem wage and salary relationship.* The amount and nature of the wage and salary increases in a follower unit have been generally equal in value to, and the timing of such increases has been directly related to, the amount, nature, and timing of increases in a leader unit of employees of the same employer or of other employers within a commonly recognized industry or local labor market area;

(2) *Past practice.* The same tandem wage and salary relationship between the follower unit and the leader unit has been established as a past practice—

(i) In the case of a pay practice in the follower unit, for the 5 prior consecutive years; or

(ii) In the case of a collective bargaining agreement in the follower unit, for the immediately preceding two collective bargaining agreements;

(3) *Increase in excess of standard.* Maintenance of the tandem wage and salary relationship between such follower unit and such leader unit in accordance with the historical pattern would, because of a wage and salary increase in such leader unit, result in a wage and salary increase in excess of the standard in such follower unit; and

(4) *Maximum 6-month lag period.* Such wage and salary increase in such leader unit became effective not more than 6 months prior to the proposed effective date of the wage and salary increase in such follower unit.

(b) *Definitions*—(1) *Leader unit.* For purposes of this section, the term "leader unit" means an appropriate employee unit to which a tandem wage and salary relationship is claimed.

(2) *Follower unit.* For purposes of this section, the term "follower unit" means the appropriate employee unit claiming a tandem wage and salary relationship.

(c) *Limitation on exception.* The maximum permissible annual aggregate wage and salary increase for a follower unit under the provisions of this section shall be the lesser of—

(1) The increase necessary to maintain the tandem wage and salary relationship in accordance with the historical pattern, or

(2) Seven percent.

(d) *Procedure.* A wage and salary increase in excess of the standard shall not be put into effect under the provisions of this section without the prior approval of the Pay Board or its delegate.

§ 201.13 Exception for certain tandem qualified benefit relationships.

(a) *Conditions for exception.* A wage and salary increase in excess of the

standard may be permitted as an exception to the standard pursuant to the normal and historical operation of a tandem qualified benefit relationship if a party at interest demonstrates that—

(1) *Tandem qualified benefit relationship.* The nature and levels of the qualified benefits in a follower unit have been generally equal or closely comparable to, and the timing of changes in qualified benefits has been directly related to the nature, levels, and changes in qualified benefits in a leader unit of employees of the same employer or of other employers within a commonly recognized industry or local labor market area, or within an established unit or reference group of employees for determination of qualified benefits;

(2) *Past practice.* The same tandem qualified benefit relationship between the follower unit and the leader unit has been established as a past practice—

(i) In the case of a pay practice in the follower unit, for the 5 prior consecutive years; or

(ii) In the case of a collective bargaining agreement in the follower unit, for the immediately preceding two collective bargaining agreements;

(3) *Increase in excess of standard.* Maintenance of the tandem qualified benefit relationship between such follower unit and such leader unit in accordance with the historical pattern would, because of an increase in qualified benefits in such leader unit, result in a wage and salary increase in excess of the qualified benefit standard in such follower unit; and

(4) *Maximum 12-month-lag period.* Such increase in qualified benefits in such leader unit became effective not more than 12 months prior to the proposed effective date of the increase in qualified benefits in such follower unit.

(b) *Definitions*—(1) *Leader unit.* For purposes of this section, the term "leader unit" means an appropriate employee unit to which a tandem qualified benefit relationship is claimed.

(2) *Follower unit.* For purposes of this section, the term "follower unit" means the appropriate employee unit claiming a tandem qualified benefit relationship.

(c) *Limitation on exception.* The maximum permissible annual aggregate wage and salary increase for a follower unit under the provisions of this section shall be as determined by the Pay Board or its delegate as equitable and appropriate under the circumstances and shall be subject to such terms and conditions as may be set by the Pay Board or its delegate.

(d) *Procedure.* A wage and salary increase in excess of the standard shall not be put into effect under the provisions of this section without the prior approval of the Pay Board or its delegate.

§ 201.14 Exception for essential employees.

(a) *Conditions for exception.* A wage and salary increase in excess of the standard may be permitted as an exception to the standard, if a party at interest demonstrates that—

(1) *Attraction and retention of employees.* Such increases which exceed the standard are necessary to attract or retain employees essential to the efficient operation of the employer;

(2) *Intensive recruiting activity.* A significant proportion of vacancies has been experienced in the appropriate employee unit, despite intensive recruiting activity over a period of at least 3 months;

(3) *Conditions of employment.* There has been no significant deterioration or reduction in other conditions of employment; and

(4) *Reasonable expectation.* There is a reasonable expectation that an increase will be effective in recruiting or maintaining a pool of qualified employees.

(b) *Limitation on exception.* The maximum permissible annual aggregate wage and salary increase for an appropriate employee unit under the provisions of this section shall be as determined by the Pay Board or its delegate as equitable and appropriate, not to exceed 7 percent, and shall be subject to such terms and conditions as may be set by the Pay Board or its delegate.

(c) *Procedure.* A wage and salary increase in excess of the standard shall not be put into effect under the provisions of this section without the prior approval of the Pay Board or its delegate.

§ 201.15 Exception for certain catchup increases.

(a) *In general.* Subject to the provisions of this section, an exception to the standard with respect to an appropriate employee unit may be claimed for catchup increases during a control year beginning prior to November 14, 1972, pursuant to a successor employment contract entered into or a pay practice established prior to such date.

(b) *Employment contracts.* If the sum of the annual percentage of increases, computed pursuant to paragraph (e) of this section with respect to a prior succeeded employment contract, is less than the sum of a percentage increase of 7 percent per year for each year of such prior succeeded contract, the difference between such two sums may be added to 5.5 percent to determine the maximum permissible annual aggregate wage and salary increase for the appropriate control year under the successor contract.

(c) *Pay practices.* If the sum of the annual percentage of increases, computed pursuant to paragraph (e) of this section with respect to a pay practice, is less, in the preceding 3 years, than the sum of a percentage increase of 7 percent per year for each of such preceding 3 years, the difference between such two sums may be added to 5.5 percent to determine the maximum permissible annual aggregate wage and salary increase for the appropriate control year under a pay practice.

(d) *Special rules*—(1) *Limitation.* Except as provided in subparagraph (2) of this paragraph, the exceptions provided in paragraphs (b) and (c) of this section may be claimed with respect to the appropriate control year under a successor employment contract that succeeds a contract expiring on or after July 1, 1972, or under a pay practice established on or after July 1, 1972, only if the average straight-time hourly rate for the appropriate employee unit involved, determined at the expiration of the prior succeeded contract or immediately prior to the establishment of the pay practice for which the exception is claimed is $3 or less. The average straight-time hourly rate shall be determined pursuant to § 201.55 of this part. If a successor contract succeeds a contract expiring on or before June 30, 1972, and is entered into on or after July 1, 1972,the exception provided under paragraph (b) of this section may be claimed without regard to the $3 limitation.

(2) *Certain pay practices.* The limitation set forth in subparagraph (1) of this paragraph shall not apply to a pay practice established by an employer which is a State or local governmental unit or an instrumentality thereof, if—

(i) Such pay practice next succeeds a pay practice which expired prior to July 1, 1972, and

(ii) Such employer was prevented by the law of the jurisdiction from establishing such successor pay practice prior to July 1, 1972.

(3) *Waiver of cutoff date.* A catchup exception may be claimed by an employer which is a State or local governmental unit or an instrumentality thereof with respect to a pay practice which next succeeds a pay practice expiring prior to July 1, 1972, even if such successor pay practice is not established prior to November 14, 1972. In all other cases, a catchup exception may be claimed only for increases pursuant to a successor employment contract entered into or pay practice established prior to November 14, 1972.

(e) *Calculation of annual increase*—(1) *Formula.* In any case in which a computation is required to determine the annual increase in the catchup base compensation rate with respect to an appropriate employee unit pursuant to paragraph (b) or (c) of this section, such annual increase shall be stated as a percentage which is determined by dividing the sum of—

(i) The total adjustment in the average straight-time hourly rate, plus

(ii) The total adjustment in the average hourly included benefit rate,

by the catchup base compensation rate in effect at the end of the preceding catchup year. For purposes of this section the catchup base compensation rate shall consist of the average straight-time hourly rate (determined for catchup years, as appropriate, in the manner described in § 201.55), and the average hourly included benefit rate (determined for catchup years, as appropriate, in the manner described in § 201.58). Moreover, for purposes of this section, the total adjustment in the average straight-time hourly rate for each catchup year under a prior succeeded contract or prior succeeded pay practice shall include any increase in such rate otherwise excludible in a control year pursuant to § 201.60.

Compensating adjustments for changes in the composition of an appropriate employee unit with respect to average length of service or average skill levels shall not be permitted.

(2) *Calculation illustrated.* The application of this section may be illustrated by the following examples.

Example (1). A 2-year collective bargaining agreement between Employer A and Union X expired on May 31, 1972. The catchup base compensation rate on that date was $3.80 for the employees represented by Union X. Following extensive negotiations, Employer A and Union X reached a successor agreement on July 10, 1972, which was ratified by the employees on July 15, 1972. The successor agreement is retroactive in effect to June 1, 1972, and runs through May 31, 1974. If the sum of the percentage increases for the 2 catchup years is less than 14 percent. A catchup exception may be claimed in the control year beginning June 1, 1972, although the successor agreement was neither agreed to nor ratified prior to July 1, 1972.

Example (2). Assume the same facts as in Example (1). The average straight-time hourly rate for the last payroll period ending prior to May 31, 1970 was $3.20, for the last payroll period ending prior to May 31, 1971 was $3.35, and for the last payroll period ending prior to May 31, 1972 was $3.62. The average hourly included benefit rate, at the rate in effect on May 31, 1970, was $0.16, at the rate in effect on May 31, 1971, was $0.17, and at the rate in effect on May 31, 1972, was $0.18. The total adjustment in the first catchup year of the prior succeeded contract was $0.16 [adjustment in the average straight time hourly rate ($3.35—$3.20) plus adjustment in the average hourly included benefit rate ($0.17—$0.16)]. Such total adjustment of $0.16 divided by $3.36 ($3.20+$0.16), the catchup base compensation rate in effect on May 31, 1970, provides a 4.8 percent increase in the first catchup year of the prior succeeded contract. The total adjustment in the second catchup year of the prior succeeded contract was $0.28 [($3.62—$3.35) plus ($0.18—$0.17)]. Such total adjustment of $0.28 divided by $3.52 ($3.35+$0.17), the catchup base compensation rate in effect on May 31, 1971, provides an 8.0 percent increase in the second catchup year of the prior succeeded contract. Thus, the maximum permissible annual aggregate wage and salary increase available to Employer A for the first control year (the period beginning June 1, 1972) under the successor collective-bargaining agreement is 6.7 percent [(14 percent—12.8 percent) plus 5.5 percent].

(f) *Limitation on exception.* The maximum permissible annual aggregate wage and salary increase for an appropriate employee unit under the provisions of this section shall not exceed 7 percent.

(g) *Procedures.* An application for approval of a wage and salary increase under the provisions of this section, or a report of such an increase, if required, shall be made in accordance with the provisions of Part 202 of this chapter.

§ 201.16 Exception for qualified merit plans.

(a) *Successor contracts or successor pay practices.* Wage and salary increases granted pursuant to a qualified merit plan (as defined in paragraph (b) of this section), provided for in an employment contract or pay practice previously set forth which existed prior to November 14, 1971, and which is continued in a successor employment contract or successor pay practice effective after November 13, 1971, without any changes of terms or administrative practice shall be permitted as an exception to the standard: *Provided, however,* That such exception shall apply only with respect to a control year beginning prior to November 14, 1972. For purposes of the preceding sentence, a change in the maximum or minimum terminal points of a pay rate range in a qualified merit plan shall not be deemed a change of terms if the ratio of such maximum to such minimum terminal point is not increased. For purposes of this section, a qualified merit plan provided for in a pay practice which meets all of the criteria set forth in the first sentence of this paragraph, except that such pay practice is not "previously set forth" within the meaning of § 201.35(d) because the aggregate amount to be expended cannot be documented as being finally and formally decided prior to November 14, 1971, shall be treated as a successor pay practice otherwise eligible for the exception provided in this section.

(b) *Qualified merit plan defined.* For purposes of paragraph (a) of this section, the term "qualified merit plan" means a merit plan which, prior to November 14, 1971, was reduced to writing and communicated either to the management personnel responsible for implementing the plan or to the employees covered by the plan, and which written plan—

(1) Applies to particular jobs, job classifications, or positions with respect to which the duties and responsibilities of employees are specified;

(2) Specifies merit pay rate ranges with respect to such jobs, job classifications, or positions;

(3) Clearly defines policies and establishes practices (with respect to review of an employee's performance) for determining merit pay and the size and frequency of merit pay increases with respect to such jobs, job classifications, or positions; and

(4) Establishes a system of administrative control.

(c) *Special rules.* Wage and salary increases granted pursuant to a merit plan provided for in an employment contract existing prior to November 14, 1971, and continued in a successor employment contract entered into prior to April 19, 1972, shall be excluded from the computation of the annual aggregate increase in the base compensation rate in any control year beginning prior to November 14, 1972. Such merit plan may continue to operate according to the following rules: Any increases applied to a rate range under such merit pay plan shall be considered a general increase in wages and salaries under the regulations in this chapter. However, individual increases within the rate range under such plans shall not be considered a wage and salary increase under such regulations in any control year beginning prior to November 14, 1972.

(d) *Limitation on exception.* The maximum permissible annual aggregate wage and salary increase for an appropriate employee unit under the provisions of this section shall not exceed 7 percent.

(e) *Procedures.* An application for approval of a wage and salary increase under the provisions of this section, or a report of such an increase, if required, shall be made in accordance with the provisions of Part 202 of this chapter.

§ 201.17 Exception for governmental wage determinations.

(a) *Conditions for exception.* In any case to which the provisions of § 201.60 (f) (relating to exclusions from adjustment computations with respect to Federal agency wage determinations and State and local prevailing wage laws) apply, an exception to the standard may be granted in order to permit an increase for those employees in the same appropriate employee unit who work at the same site, plant, or location who have not received an increase pursuant to such section sufficient to maintain average historical wage and salary differentials among jobs, job classifications, or positions. The average historical wage and salary differential shall be determined over the preceding 3 years and must be consistent with prior practice during such period. Such differential must have been in effect within the unit for at least 3 years. In the event that such unit has been in existence for less than 3 years, or if the average historical wage and salary differential is not representative because of corrections made in such differentials to end inequities during the preceding 3 years, the average historical wage and salary differential may be determined by reference to the period of the unit's existence or by reference to the differential existing after any such corrections.

(b) *Governmental employees.* The exception provided in this section shall not be applicable to an appropriate employee unit which includes employees of a State, a local government, the District of Columbia, or a unit or instrumentality thereof.

(c) *Limitation on exception.* The maximum permissible annual aggregate wage and salary increase for an appropriate employee unit under the provisions of this section shall be as determined by the Pay Board or its delegate as equitable and appropriate and shall be subject to such terms and conditions as may be set by the Pay Board or its delegate.

(d) *Procedures.* A wage and salary increase shall not be put into effect under the provisions of this section without the prior approval of the Pay Board or its delegate.

§ 201.18 Exception for intraunit inequities.

(a) *Conditions for exception.* An exception to the standard will be permitted if the employer demonstrates to the Pay Board (or its delegate) that wage and salary increases in excess of the standard are necessary to correct intraunit inequities (as defined in paragraph (b) of this section). In order to qualify for this exception the employer must prepare and

submit a comprehensive program which describes the cause or nature of such inequity and the manner in which such inequity is proposed to be corrected. Such program must show each of the following criteria:

(1) Job classifications that are described with sufficient detail to identify differences in job content based on relative value of the factors by which the classifications are measured (including e.g. skill, physical strain, responsibility, etc.).

(2) A realignment of wage rates that follows a systematic and orderly method for classifying, ranking or rating all of the job classifications in the unit, giving effect to skill, effort, responsibility, working conditions and other factors reflected in the classification content.

(3) Rate relationships (expressed in dollars and cents) that are established in accordance with accepted methods for job classification, historical practice in an industry, or through some other demonstrable guide in general use for classification purposes, including an explanation of the derivation of factor weightings on which the system is based.

(4) Rate relationships (expressed in dollars and cents) that reflect the different levels of skills as measured by grading selected jobs from the lowest to the highest level, on each of which a significant number of employees are grouped.

(5) A computation of the percentage increase in the wage rates or rate ranges for each job classification in the unit requesting exception pursuant to the methods described in paragraph (d) of this section.

(b) *Intraunit inequity defined.* For purposes of this section, the term "intraunit inequity" means an inequitable pay situation within an appropriate employee unit resulting from the introduction of new or changed technology whereby—

(1) Technological changes are made or introduced in equipment, methods, materials, or processes, and

(2) A comprehensive change is required in production methods and techniques which affect not less than 10 percent of the job classifications and not less than 25 percent of the employees in such appropriate employee unit.

(c) *Limitations on exception.* The maximum permissible annual aggregate wage and salary increase with respect to an appropriate employee unit for the control year this exception is claimed shall not exceed 7 percent: *Provided, however,* Such maximum shall be reduced to the extent that the amount necessary for the correction of intraunit inequities is less than 1.5 percent of the unit's base compensation rate. Once this exception has been claimed and allowed with respect to an appropriate employee unit for a control year, it may not be claimed in any succeeding control year with respect to the same unit.

(d) *Computation of increase in job classification rate or rate ranges.* The computation referred to in paragraph (a)(5) of this section shall exclude "red circle" rates which become personal rates for incumbents and shall reflect, as appropriate, the following percentages—

(1) *Single job classification rates.* For single job classification wage rates, the percentage difference between the weighted average of current job rates and the weighted average of the proposed job rates.

(2) *Job reclassifications within existing rate ranges.* For the reclassification of jobs without change in the existing rate ranges, the percentage difference between the weighted average of the rates actually paid within the range for each job classification prior to reclassification and the weighted average of the rates to be paid after such reclassification.

(3) *Revised rate range structure.* For revised rate range structures, the percentage difference between the weighted average of the midpoint of each job classification in the existing structure, and the weighted average of the midpoint of each proposed job classification in the revised structure.

(e) *Procedure.* A wage and salary increase in excess of the standard shall not be put into effect under the provisions of this section without the prior approval of the Pay Board or its delegate.

§ 201.19 Exception for low wage employees.

(a) *General rule.* An exception to the standard may be claimed with respect to an appropriate employee unit which includes one or more low wage employees. The maximum permissible annual aggregate wage and salary increase with respect to such a unit shall be the sum of—

(1) The product of the base compensation rate of such unit and the otherwise permissible increase;

(2) Excepted wage and salary increases actually paid to low wage employees;

(3) Increases in the average hourly benefit rate of such unit required as the secondary effect of increases in the individual straight-time hourly rates of low wage employees in such unit, provided that such individual straight-time hourly rates do not exceed $2.75; and

(4) Increases in the individual hourly included benefit rates of low wage employees permitted pursuant to paragraph (c) of this section.

(b) *Definitions.* For purposes of this section—

(1) *Low wage employee.* A "low wage employee" means an employee whose straight-time hourly rate in the base payroll period is less than $2.75.

(2) *Low wage base rate.* The "low wage base rate," with respect to an appropriate employee unit, means the average hourly rate of pay (stated in dollars and cents) of a group composed of all low wage employees in such unit. The low wage base rate shall be calculated, at the election of the parties, either—

(i) By adding to the average of the individual straight-time hourly rates of such group of low wage employees the average hourly rate of employer contributions to fringe benefits (both included and qualified) attributable to such low wage employees, or

(ii) By dividing the average of the individual straight-time hourly rates of such group of low wage employees by the average straight-time hourly rate of such appropriate employee unit, and multiplying the resulting figure by the base compensation rate of such unit.

(3) *Otherwise permissible increase.* The "otherwise permissible increase," with respect to an appropriate employee unit, means the maximum permissible annual aggregate wage and salary increase for such unit (expressed as a percentage) determined pursuant to—

(i) The general wage and salary standard,

(ii) The self-executing criteria for exception set forth in §§ 201.15 and 201.16, if appropriate, or

(iii) A decision and order issued by the Pay Board (or a decision on an exception request issued by the Internal Revenue Service) applicable to pay adjustments in the unit during the control year.

(4) *Excepted wage and salary increase.* An "excepted wage and salary increase," with respect to an individual low wage employee in an appropriate employee unit, means that portion of a wage and salary increase (stated in dollars and cents per hour) paid to such employee which—

(i) Is in excess of an amount equal to the product of the low wage base rate of the unit and the otherwise permissible increase; and

(ii) Does not exceed the difference between $2.75 and the sum of—

(a) Such employee's straight-time hourly rate and

(b) An amount equal to the product of the low wage base rate of such unit and the otherwise permissible increase.

(c) *Special rule with respect to included benefits.* For purposes of this section—

(1) If the appropriate employee unit includes one or more employees who are not low wage employees, any increase in the individual hourly included benefit rate of any low wage employee may be claimed as an exception, without limitation.

(2) If the appropriate employee unit does not include any employee who is not a low wage employee, any increase in the average hourly included benefit rate of such unit which does not exceed the product of $2.75 and the otherwise permissible increase may be claimed as an exception.

(d) *Effective date.* The exception provided in this section shall be applicable only to wages and salaries paid for work performed after July 14, 1972, and does not permit the retroactive payment of wages and salaries for work performed prior to July 15, 1972.

(e) *Prior approval.* A Category I pay adjustment which is within the provisions of this section may not be put into effect without prior approval of the Pay Board. A Category II or Category III pay adjustment which is within the provisions of this section may be put into effect without prior approval.

(f) *Reporting*—(1) *Category II pay adjustments.* A report of any Category II pay adjustment with respect to which an exception is claimed pursuant to this section shall be made to the Pay Board by the employer within 10 days after such pay adjustment is put into effect. Such report shall be made on forms prescribed by and pursuant to instructions issued by the Pay Board and shall include such information as is necessary to demonstrate the applicability of an exception claimed pursuant to this section.

(2) *Category III pay adjustments.* Notwithstanding the provisions of Part 202 of this chapter, a report of a Category III pay adjustment which is within the provisions of this section and which is not within the provisions of any other exception to the standard shall not be required.

(g) *Application illustrated.* The application of this section may be illustrated by the following examples.

Example (1). An appropriate employee unit contains 100 employees. Fifty of the employees receive $2 per hour in straight time pay, and 50 employees are paid $3. In addition, all employees receive included benefits which amount to 10 percent of straight-time pay, plus an additional 5 cents in qualified benefits. The low wage base rate in this unit is $2.25. ($2+$0.20+$0.05).

Example (2). Employee A is paid at a straight-time hourly rate of $2. The low wage base rate in the unit is $2.50. The appropriate percentage for the "otherwise permissible increase" is 5.5 percent. Employee A may receive an excepted increase of 61¼ cents ($2.50×5.5 percent=13¾ cents; $2.75—$2.00=$0.75; 75 cents—13¾ cents=61¼ cents). However, he receives an excepted increase only after the first 13¾ cents is paid. Thus, if Employee A receives a straight time increase of 40 cents, he would be receiving an excepted increase of 26¼ cents.

Example (3). Assume the same facts as in Example (2), except that Employee A is paid at a straight-time hourly rate of $2.70. Employee A may not receive an excepted increase, since the difference between $2.75 and his straight-time rate is less than 13¾ cents ($2.50×5.5 percent=13¾ cents).

Example (4). Employee A is paid at a straight-time hourly rate of $2. He receives an increase of 75 cents in straight-time wages. If employer contributions to fringe benefits amount to 10 percent of straight-time pay and increase proportionately to reflect increases in straight-time pay, then the 75-cent pay increase will generate an increase of 7½ cents in the average hourly benefit rate. This secondary increase is permitted under paragraph (a)(3) of this section.

Example (5). All 100 employees in a unit are paid at a straight-time hourly rate of $2. Employer contributions to fringe benefits amount to 10 percent of straight-time pay and vary proportionately. All 100 employees receive increases of 75 cents in straight-time pay. The low wage base rate in this unit is $2.20. The appropriate percentage is 5.5 percent. Therefore, of the 75-cent straight-time increase, 62.9 cents ($2.20×5.5 percent=12.1 cents; 75−12.1=62.9) is an excepted increase. The 75-cent increase generates an increase in the employees' average hourly benefit rate of 7½ cents, which is permitted. Under the "special rule" set forth in paragraph (c)(2) of this section, the employees may receive a further increase in the average hourly included benefit rate of 15.1 cents ($2.75×5.5 percent). (They may also receive additional qualified benefit increases consistent with the qualified benefit standard set forth in § 201.59(g).)

Example (6). All 100 employees in a unit are paid at a straight time hourly rate of $2. Their average hourly included benefit rate is 10 cents and their average hourly qualified benefit rate is 10 cents. The low wage base rate (which in this unit is the same as the unit's base compensation rate) is therefore $2.20. All employees receive increases of 50 cents in straight time pay. They may receive an additional chargeable increase in the average hourly benefit rate of 25 cents. These employees may also receive a further 15.1 cents increase in their included benefit rate under the "special rule," paragraph (c)(2) of this section, and any other benefit increases resulting as the secondary effect of the 50 cents increase in straight time pay (see paragraph (a)(3) of this section). (They may also receive additional qualified benefit increases consistent with the qualified benefit standard set forth in § 201.59(g).)

§ 201.30 Exceptions on a case-by-case determination.

(a) *Application for exception.* An application for approval of a wage and salary increase in excess of the standard which is not within the provisions of any other section in this subpart, or which is in excess of the maximum permissible annual aggregate increase provided under any other section in this subpart, may be submitted under the provisions of this section.

(b) *Criteria.* When the Board reviews new contracts and pay practices in individual cases with respect to payment for services rendered in any control year and in its development of additional criteria for exceptions, it shall consider such factors as changes in productivity and the cost of living, ongoing collective bargaining and pay practices, the equitable position of the employees involved, and such other factors as are necessary to foster economic growth, to promote improvement in the quality of governmental services, and to prevent gross inequities, hardships, serious market disruptions, domestic shortages of raw materials, localized shortages of labor, and windfall profits.

(c) *Limitation on exception.* The maximum permissible annual aggregate wage and salary increase for an appropriate employee unit during a control year, under the provisions of this section, shall be determined by the Pay Board or its delegate as equitable and appropriate, in accordance with the criteria set forth in paragraph (b) of this section, and shall be subject to such terms and conditions as may be set by the Pay Board or its delegate.

(d) *Procedure.* A wage and salary increase in excess of the standard shall not be put into effect under the provisions of this section without the prior approval of the Pay Board or its delegate.

Subpart C—Retroactive and Deferred Increases

§ 201.31 Retroactive increases pursuant to section 203(c)(2) of the Act.

(a) *In general.* Subject to the provisions of this section, increases in wages and salaries which were scheduled to take effect during the freeze and were not paid as a result of orders issued pursuant to the Act, may be made retroactively after November 13, 1971.

(b) *Agreements or pay practices prior to August 15, 1971.* (1) *Coverage.* Increases in wages and salaries referred to in paragraph (a) of this section may not be paid unless such increases were—

(i) *Employment contract.* Agreed to in an employment contract executed, entered into, or in effect prior to August 15, 1971; or

(ii) *Pay practice.* Contained in a pay practice (including, e.g., a schedule of wages and salaries adopted by an employer) announced, reduced to writing, placed in effect, or otherwise clearly established prior to August 15, 1971.

(2) *Certain reopening provisions.* For purposes of this paragraph, an increase shall be deemed to have been agreed to in an employment contract executed, entered into, or in effect prior to August 15, 1971, if such increase was agreed to pursuant to a wage or fringe benefit reopening provision contained in any such contract, and if the reopening was specifically scheduled by its terms, and occurred, prior to November 14, 1971.

(c) *Procedures for payment of retroactive increases up to 7 percent.* If the aggregate of increases in wages and salaries referred to in paragraph (a) of this section does not exceed 7 percent, such increases may be paid provided that—

(1) *Category II and III pay adjustments.* In the case of a Category II pay adjustment or a Category III pay adjustment (as defined in §§ 202.2(a)(2) and (3) of this chapter, respectively), the employer certifies by letter to the appropriate district director of Internal Revenue within 20 days subsequent to payment that the requirements of this section have been fulfilled; or

(2) *Category I pay adjustments.* In the case of a Category I pay adjustment (as defined in § 202.2(a)(1) of this chapter), the Board has received prenotification of such adjustment and a challenge to determine whether the requirements of this section have been fulfilled has not been made by a party at interest, the Chairman of the Board, or two or more other members of the Board within 28 days after receipt of such prenotification or within 28 days after receipt by the Board of additional proof requested to support the fact that such requirements have been fulfilled.

(d) *Procedures for payment of retroactive increases exceeding 7 percent.* If the aggregate of increases in wages and salaries referred to in paragraph (a) of this section exceeds 7 percent, such increases may be paid provided that the Board has received prenotification of the proposed payment and there has not been a challenge by a party at interest, the Chairman of the Board, or two or more members of the Board within 28 days after receipt of such prenotification or within 28 days after receipt by the Board of additional proof requested by the Board.

(e) *Special rules*—(1) *Time periods.* For purposes of computing any time periods prescribed in paragraphs (c) and

(d) of this section, the rules contained in § 205.5 of this chapter shall apply.

(2) *Computation of percentage increase.* The percentage of aggregate increases referred to in paragraphs (c) and (d) of this section shall be determined with respect to an appropriate employee unit (without regard to time weighting over the number of days any such increase was effective during the freeze) by dividing the sum of—

(i) The total adjustment in the average straight time hourly rate resulting from such increases, plus

(ii) The total adjustment in the average hourly benefit rate resulting from such increases

by the base compensation rate in effect on the day before any such increase was scheduled to take effect.

(3) *Challenges.* In the case of any challenge made pursuant to paragraph (c)(2) or (d) of this section, a determination will be made whether the proposed retroactive payment of the wage and salary increase is unreasonably inconsistent with the standard or any of the exceptions thereto as set forth in Subpart B of this part.

§ 201.32 Retroactivity pursuant to certain consecutive agreements or practices and certain tandem relationships.

(a) *In general.* Subject to the provisions of this section, increases in wages and salaries which were scheduled to take effect during the freeze and were not paid as a result of orders issued pursuant to the Act, may be made retroactively after November 13, 1971.

(b) *Certain consecutive agreements or practices.* A payment referred to in paragraph (a) of this section may be made if—

(1) *Expired agreement, schedule, or practice prior to August 16, 1971.* A prior succeeded employment contract or a prior succeeded pay practice (including, e.g., a schedule of wages and salaries adopted by an employer) expired before August 16, 1971;

(2) *Successor agreement, schedule, or practice adopted before November 14, 1971.* Such employment contract or pay practice was followed by a successor contract, or by a successor pay practice adopted after August 15, 1971, and before November 14, 1971; and

(3) *Retroactivity prior to November 14, 1971.* Evidence is presented that retroactivity is an established past practice between the employer and his employees or retroactivity was provided for in the successor contract referred to in subparagraph (2) of this paragraph.

(c) *Certain tandem relationships.* A payment referred to in paragraph (a) of this section may be made if—

(1) *Contract or pay practice before August 16, 1971.* The employment contract covering the appropriate employee unit to which a tandem relationship is claimed was reached or the pay practice covering the unit to which such relationship is claimed was put into effect prior to August 16, 1971;

(2) *Maximum 3-month-lag period—*

(i) *Contract to contract.* In the case of a tandem relationship claimed to an appropriate employee unit covered by the terms of an employment contract, the prior employment contract covering such unit expired no more than 3 months before the expiration of the prior employment contract covering the appropriate employee unit claiming tandem.

(ii) *Pay practice to pay practice.* In the case of a tandem relationship claimed to an appropriate employee unit not covered by the terms of an employment contract, the effective date of the increase with respect to which such relationship is claimed, consistent with an historical practice, occurred no more than 3 months prior to the scheduled effective date (from August 15, 1971, to November 13, 1971) of the increase in the appropriate employee unit claiming tandem, or

(iii) *Pay practice to contract.* In the case of a tandem relationship claimed by a pay practice unit to an appropriate employee unit covered by the terms of an employment contract, the effective date of the increase with respect to which such relationship is claimed, consistent with an historical practice, occurred in the contract unit no more than 3 months prior to the scheduled effective date (from August 15, 1971, to November 13, 1971) of the increase in such pay practice unit;

(3) *Historical tandem relationship.* It can be shown the tandem relationship between the appropriate employee units has been clearly established for 5 years or, in the case of a tandem relationship referred to in subparagraph (2)(i) of this paragraph, in the immediately preceding two consecutive agreements including the agreement referred to in such subparagraph; and

(4) *Historical retroactivity.* It can be shown that retroactivity is a clearly established practice in the appropriate employee unit claiming tandem or, if such unit is covered by the terms of an employment contract, retroactivity was agreed to by the parties prior to November 14, 1971.

(d) *Tandem relationship defined.* For purposes of paragraph (c) of this section, the term "tandem relationship" means a well established and consistently maintained practice whereby the precise timing, amount, and nature of general increases in wages and salaries of a given appropriate employee unit have so followed those of another such unit of employees of the same employer or of other employers within a commonly recognized industry (such as a Standard Industrial Classification two-digit category) that a general increase, in the normal operation of the practice, would have been put into effect and have been applicable to work performed on or before November 13, 1971, but for the operation of the freeze.

(e) *Procedure for payment of retroactive increases under this section.* No payment referred to in paragraph (a) of this section may be made unless a determination has been made by the appropriate district director of Internal Revenue at the request of a party at interest, with right of appeal to the Board in the event of an adverse determination, that the requirements for retroactive payment under paragraph (b) or (c) of this section, as appropriate, have been satisfied.

§ 201.33 Retroactivity for certain low wage employees and for certain one-time benefits.

(a) *In general.* Subject to the provisions of this section, increases in wages and salaries which were scheduled to take effect during the freeze and were not paid as a result of orders issued under the Act, may be made retroactively after November 13, 1971.

(b) *Certain low wage employees.* If the employer determines that an employee in an appropriate employee unit, whose straight-time hourly rate of pay prior to the freeze, was $2 per hour or less, would have become eligible to receive an increase if the freeze had not occurred, an increase in wages and salaries referred to in paragraph (a) of this section may be made to such employee.

(c) *Certain one-time benefits.* (1) If the employer determines that an employee in an appropriate employee unit would have become eligible to receive a new or increased benefit under a fringe benefit plan if the freeze had not occurred, and the employee cannot otherwise (because of death, retirement, etc., during the freeze) become eligible for the benefit after the freeze, an increase in wages and salaries referred to in paragraph (a) of this section may be made with respect to that benefit.

(2) The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). A, an employee-member of an appropriate employee unit in a company, died on September 16, 1971. Pursuant to a collective bargaining agreement reached before the freeze, A's employer was to have increased his contribution to the group life insurance plan applicable to such unit on September 1, 1971. Under the plan death benefits were scheduled to be increased up to $2,000 per employee based on age and length of employee service to the company. The life insurer is willing to pay the increased benefit to A's estate if the employer will retroactively pay the unit's increased contribution to the group life insurance plan. A retroactive payment may be made by the employer of the scheduled increase in group life insurance premiums for the appropriate employee unit in such a case to remedy the severe inequity to an employee such as A who, because of his death during the freeze, could not become eligible for the increased benefit after the freeze ended.

Example (2). B, an employee-member of an appropriate employee unit in a company, retired on October 31, 1971. Pursuant to a collective-bargaining agreement reached before the freeze, B's employer was to have increased the lump-sum payment on or after October 1, 1971, available to employees of the unit for vacation accrued but not taken prior to retirement. A retroactive increase in the lump-sum payment of accrued vacation may be made to B who, because of his retirement during the freeze, could not become eligible for the increased benefit after the freeze.

(d) *Compliance checks.* Any determination and payment made by an employer under the provisions of this section shall be subject to verification upon request with respect to whether such determination and payment comply with the regulations issued under this title.

§ 201.34 Increases in wages and salaries scheduled after November 13, 1971, for services rendered in certain periods on or before such date.

(a) *In general.* Subject to the provisions of this section, an increase in wages and salaries with respect to an appropriate employee unit for services rendered before November 14, 1971, may be made retroactively on or after such date if—

(1) *Expired agreement, schedule, or practice prior to August 15, 1971.* The prior succeeded employment contract or pay practice (including, e.g., a schedule of wages and salaries adopted by an employer) expired before August 15, 1971;

(2) *Successor agreement, schedule, or practice adopted after November 13, 1971.* Such employment contract or pay practice was followed by a successor contract or by a successor pay practice after November 13, 1971;

(3) *Retroactivity prior to August 15, 1971. Retroactivity—*

(i) Had been agreed to by the parties prior to August 15, 1971, or had been provided for in the immediately preceding two employment contracts (including the prior succeeded contract) terminating prior to August 15, 1971, or

(ii) Was provided for by the employer in the immediately preceding two pay practices (including the prior succeeded pay practice) terminating prior to August 15, 1971; and

(4) *No change in bargaining position.* In the case of a successor contract referred to in subparagraph (2) of this paragraph, it is demonstrated that the parties did not change their position during negotiations in order to compensate for or absorb the impact of the Economic Stabilization Program.

(b) *Retroactivity period.* Payment of retroactive wage and salary increases that are provided for in successor employment contracts or successor pay practices (described in paragraph (a) (2) of this section) may be made for services rendered for the period beginning the day after the expiration date of the prior succeeded contract or prior succeeded pay practice and ending on November 13, 1971.

(c) *First control year—*(1) *Base compensation rate.* Wage and salary increases paid retroactively pursuant to paragraphs (a) and (b) of this section shall not be included in the base compensation rate with respect to an appropriate employee unit for measuring increases in the first control year, unless specifically authorized by the Pay Board, subject to whatever terms and conditions it may impose, in a decision and order rendered pursuant to § 201.30.

(2) *Chargeable increases.* Unless included in the base compensation rate as provided in subparagraph (1) of this paragraph by decision and order of the Pay Board, continued payment after November 13, 1971, of increases paid retroactively pursuant to paragraphs (a) and (b) of this section shall be treated as chargeable increases with respect to an appropriate employee unit in the first control year. Thus, continued payment of a retroactive wage and salary increase is not authorized to the extent such increase and any subsequent increase occurring after such date exceed the maximum permissible annual aggregate wage and salary increase for such unit during such control year.

(d) *Procedures for payment—*(1) *In general.* No increases referred to in paragraph (a) of this section may be made unless the procedures set forth in this paragraph have been followed. Such procedures shall be in addition to the provisions of Part 202 of this chapter and shall include, as appropriate, a request for exception with respect to continued payment of any such increase after November 13, 1971, and with repect to payment of any subsequent increases scheduled after such date to the extent the total of such increases exceeds the standard for the control year. Notwithstanding the preceding two sentences, such adjustment may not be included in the base compensation rate unless specifically requested by a party at interest and authorized by the Board in a decision and order rendered pursuant to § 201.30. See paragraph (c) of this section.

(2) *Category I pay adjustment.* In the case of a Category I pay adjustment (as defined in § 202.2(a) (1) of this chapter), the Board shall receive prenotification of such adjustment (and any subsequent adjustments) and such adjustment shall be approved before payment can be made.

(3) *Category II pay adjustment.* In the case of a Category II pay adjustment (as defined in § 202.2(a) (2) of this chapter), the employer shall determine that the requirements of this section have been met and, within 10 days after making such adjustment, shall report the adjustment (and any subsequent adjustments for the control year) to the Board. Such report shall include a certification that the requirements of this section have been met.

(4) *Category III pay adjustment.* In the case of a Category III pay adjustment (as defined in § 202.2(a) (3) of this chapter), the employer shall determine that the requirements of this section have been met and, within 10 days after making such adjustment, shall report the adjustment (and any subsequent adjustments for the control year) to the appropriate district director of Internal Revenue if the total of such adjustments exceeds the standard. Such report shall include a certification that the requirements of this section have been met.

§ 201.35 Wage and salary increases effective after November 13, 1971.

(a) *In general.* Unless otherwise provided by this section, employment contracts and pay practices previously set forth which existed prior to November 14, 1971, will be allowed to operate according to their terms. However, any such specific contract or pay practice, when challenged by a party at interest, by the Chairman of the Pay Board, or by two or more other members of the Board, is subject to a review to determine whether any wage and salary increase granted pursuant to such contract or pay practice is unreasonably inconsistent with the standard or exceptions thereto as set forth in Subpart B of this part. In the event of a challenge, these terms shall be allowed to remain in effect unless and until the Board rules otherwise.

(b) *Limitation.* Notwithstanding any other provision of this section, any wage and salary increase scheduled to take effect pursuant to a pay practice (whether or not previously set forth and other than a pay practice described in § 201.72(g)) in a control year beginning on or after November 14, 1972, shall be subject to the general wage and salary standard or applicable exceptions thereto. A pay practice described in § 201.72 (g) shall be deemed to expire at the end of the plan, practice or program year (as defined in § 201.72(i)) in effect for the pay practice on November 13, 1971.

(c) *Special rule with respect to wage or fringe benefit reopening provisions—*(1) *Coverage.* A wage and salary increase pursuant to a wage or fringe benefit reopening provision in an employment contract shall be deemed pursuant to a contract which existed prior to November 14, 1971, within the meaning of paragraph (a) of this section (and therefore subject to challenge and review), if—

(i) Such reopening provision was specifically agreed to and incorporated in such contract prior to August 15, 1971;

(ii) Such reopening provision established a date certain for reopening; and

(iii) Such contract provided for a specified termination other than by operation of the reopening provision.

(2) *Procedure—*(i) *Category I pay adjustments.* A Category I pay adjustment within the provisions of this paragraph shall not be put into effect without prenotification to, and prior approval by the Pay Board.

(ii) *Category II pay adjustments—*(a) *Increase not in excess of 7 percent.* A proposed Category II pay adjustment which is within the provisions of this paragraph and which does not cause the total of all wage and salary increases for a control year to be in excess of 7 percent of the base compensation rate may be put into effect without prior approval. A report of such an increase shall be submitted to the Pay Board not later than 10 days after such increase is put into effect.

(*b*) *Increase in excess of 7 percent.* If a proposed Category II pay adjustment which is within the provisions of this paragraph causes the total of all wage and salary increases for a control year to be in excess of 7 percent of the base compensation rate, the amount of such adjustment in excess of 7 percent shall not be put into effect without the prior approval of the Pay Board.

(iii) *Category III pay adjustments—*(*a*) *Increase not in excess of 7 percent.* A proposed Category III pay adjustment

which is within the provisions of this paragraph and which does not cause the total of all wage and salary increases for a control year to be in excess of 7 percent of the base compensation rate may be put into effect without prior approval. A report of such an increase shall be submitted to the appropriate district director of Internal Revenue not later than 20 days after such increase is put into effect.

(b) *Increase in excess of 7 percent.* If a proposed Category III pay adjustment which is within the provisions of this paragraph causes the total of all wage and salary increases for a control year to be in excess of 7 percent of the base compensation rate, the amount of such adjustment in excess of 7 percent shall not be put into effect without the prior approval of the Pay Board.

(iv) *Content of report.* An application or report submitted under the provisions of this paragraph shall include copies of the employment contract in which the wage or fringe benefit reopening provision is incorporated.

(v) *Criteria.* An application for approval of a pay adjustment under the provisions of this paragraph, or a challenge to a pay adjustment reported under such provisions, shall be considered under the criteria set forth in paragraph (f) of this section.

(d) *"Previously set forth" defined.* Except as provided in Subpart F of this part, for purposes of this part, a pay practice shall be "previously set forth" only if it can be documented that prior to November 14, 1971, an adjustment to wages and salaries, or, in the case of a merit plan, the aggregate amount to be expended, was—

(1) Decided finally and formally in accordance with established procedures, and

(2) Communicated to the management personnel responsible for implementing the pay adjustment or to the employees affected.

For purposes of the preceding sentence, a formula for determining general adjustments to wages and salaries is not a pay practice previously set forth.

(e) *Merit plans*—(1) *Pay practices previously set forth.* For purposes of this section, a merit plan contained in a pay practice previously set forth will be deemed to expire on the day before the effective date of any of the following changes or modifications to the merit plan—

(i) An increase or change in the rates or rate ranges from those in effect on November 13, 1971,

(ii) An increase in the aggregate amount to be expended for merit increases above the aggregate amount as determined prior to November 14, 1971,

(iii) A change in the job classifications to which the rates or rate ranges apply, or

(iv) A change in the terms or conditions of the plan with respect to any job classification to which it applies, or a change in any policy for determining the size and frequency of merit pay adjustments or a change in any administrative controls.

The expiration of a pay practice previously set forth under the provisions of this subparagraph shall not disqualify a pay practice from being a successor pay practice under § 201.16 if it otherwise qualifies under that section.

(2) *Employment contracts.* The expiration of an employment contract which operates according to its terms pursuant to this section and which contains a merit plan shall not disqualify such merit plan from operating in a successor employment contract under § 201.16, if it otherwise qualifies under that section.

(f) *Board review.* For purposes of the review referred to in paragraph (a) of this section, the Board will consider such factors as changes in productivity and the cost of living, on-going collective bargaining and pay practices, the equitable position of the employees involved, and such other factors as are necessary to foster economic growth, to promote improvement in the quality of governmental services, and to prevent gross inequities, hardships, serious market disruptions, domestic shortages of raw material, localized shortages of labor, and windfall profits.

(g) *Notice requirement*—(1) *In general.* In accordance with the provisions of Part 202 of this chapter, prenotification shall be submitted to the Pay Board not less than 90 days prior to the scheduled effective date of any increase to be paid pursuant to an employment contract or pay practice referred to in this section (other than an increase within the provisions of paragraph (c) of this section) when such increase would affect an appropriate employee unit of 1,000 or more employees and would cause the total of all increases for a control year to be in excess of 7 percent of the base compensation rate. In addition to the prenotification requirement set forth in the preceeding sentence, no part of any such scheduled increase shall be paid or received until the latest of 90 days after notice of such increase has been given to the Pay Board, 60 days after a party at interest provides any additional information required pursuant to subparagraph (2) of this paragraph, or the scheduled effective date of such increase. For purposes of this paragraph, a fair and reasonable estimate shall be used in determining whether contingent increases (such as cost of living adjustments) will cause the total of such increases to exceed 7 percent. Furthermore, such notice shall be in accordance with the instructions contained in paragraph (h) of this section. Notice requirements with respect to other pay adjustments are contained in §§ 202.10(b)(2) and 202.20(b)(2) of this chapter. Failure to comply with any of the provisions contained in this subparagraph (as well as the subparagraphs referred to in the immediately preceding sentence) shall be a violation of Pay Board regulations within the meaning of § 201.41.

(2) *Additional information.* In addition to the provisions of subparagraph (1) of this paragraph, after June 23, 1972, the Board may require a party at interest to furnish adequate and complete supplemental information within a specified period of time as to the factors the Board considers necessary to determine whether the total of increases referred to in such subparagraph is unreasonably inconsistent with the standard or exceptions thereto as set forth in Subpart B of this part. The failure to furnish additional information requested pursuant to this subparagraph, or to furnish it on a timely basis, shall be a violation of Pay Board regulations within the meaning of § 201.41(a)(4).

(h) *Notification instructions.* The notice required by paragraph (g)(1) of this section shall be submitted on forms provided by the Pay Board. Such notice shall be accompanied by a full statement of facts prepared by a party at interest showing good cause as to why such increase is not unreasonably inconsistent with the standard or exceptions thereto as set forth in Subpart B of this part.

§ 201.36 Funds raised or provided prior to August 15, 1971 for wage and salary increases on and after such date.

(a) *In general.* Subject to the provisions of paragraphs (b) and (c) of this section, any increases in wages and salaries which have been or would be withheld under the authority granted by the Act are lawfully due and payable, if a determination is made that such increases were provided for by law, contract, agreement, or practice established prior to August 15, 1971, and that prices have been advanced, productivity has been increased, taxes have been raised, appropriations have been made, or funds have otherwise been raised or provided for in order to cover such increases.

(b) *Determinations*—(1) *Category I pay adjustments.* A Category I pay adjustment (as defined in § 202.2(a)(1) of this chapter) of the type described in paragraph (a) of this section may be put into effect provided that—

(i) The employer has filed a prenotification in the manner prescribed by the Pay Board declaring the intention to put such a pay adjustment into effect and detailing the factual basis for qualification under paragraph (a) of this section;

(ii) Twenty-eight days have passed since such prenotification has been filed with the Board or, if appropriate, 28 days have passed since any additional proof requested by the Board has been received by the Board; and

(iii) The proposed pay adjustment has not been challenged by a party at interest, by the Chairman of the Pay Board, or by two or more other members of the Board within the appropriate time period described in subdivision (ii) of this subparagraph.

(2) *Category II and Category III pay adjustments.* A Category II or Category III pay adjustment (as defined in § 202.2(a)(2) and (3) of this Chapter, respectively) of the type described in paragraph (a) of this section may be put into effect provided that—

(i) The wage and salary increases pursuant to such pay adjustment meet the requirements of paragraph (c) (1), (2), and (3) of this section; and

(ii) The employer certifies by letter to the appropriate district director of Internal Revenue not later than 20 days after such pay adjustment is put into effect that the requirements referred to in subdivision (i) of this subparagraph have been met.

(3) *By the Internal Revenue Service.* A party at interest claiming authority to make or receive payment of a wage and salary increase pursuant to paragraph (a) of this section, after giving notice to the other parties at interest, may apply to the Internal Revenue Service for a determination that the requirements of paragraph (a) of this section have been met. The application to the Internal Revenue Service shall detail the manner in which one or more of each of the requirements of paragraph (c) (1), (2), and (3) of this section have been met, or that the requirements of paragraph (a) of this section have otherwise been met. When the Service makes a determination that such requirements have or have not been met the Service will provide for notice upon request to parties at interest of the determination. Payment of an increase determined to be permissible under paragraph (a) of this section may begin within 20 days of such determination by the Service unless an appeal is taken by the Pay Board. The Service may transmit to the Board for determination any application based upon a claim that the requirements of paragraph (a) of this section have been met without meeting the requirements of paragraph (c) (1), (2), and (3) of this section.

(4) *By the Board.* If the Pay Board determines with respect to (i) a challenge of an increase under subparagraph (1) of this paragraph, or (ii) an appeal from a final determination by the Internal Revenue Service with respect to an increase under subparagraph (3) of this paragraph, or (iii) a transmittal by the Internal Revenue Service with respect to an increase under subparagraph (3) of this paragraph, that such payment qualifies under paragraph (a) of this section, the increase may be payable immediately after the Board's final decision.

(c) *Satisfaction of requirements.* For purposes of paragraphs (a) and (b) of this section, the factual requirements of paragraph (a) are deemed satisfied with respect to whether—

(1) The amount of a wage and salary increase provided for by law, contract, agreement, or practice was established prior to August 15, 1971, if such amount was determined and definite and if—

(i) A contract was executed, entered into, or became effective prior to August 15, 1971, or

(ii) A pay practice was announced, reduced to writing, placed in effect, or otherwise clearly established prior to August 15, 1971, or

(iii) A law, ordinance, or resolution, or a rule, regulation, or decision of a governmental agency having the effect of law, became effective or was finally enacted by signature of the chief executive of the governmental unit prior to August 15, 1971, or by failure of the chief executive to veto prior to August 15, 1971, or by completion of all action required for final enactment under the constitution and laws applicable to the governmental unit;

(2) Prices have been advanced, productivity has been increased, taxes have been raised, appropriations have been made, or funds have otherwise been raised or provided for, if—

(i) New taxes were enacted or levied or existing taxes were increased prior to August 15, 1971, which provide revenue for the fiscal year in which the wage and salary increase is to take effect, or

(ii) Appropriations have been passed or a budget of a governmental unit has been adopted prior to August 15, 1971, for the fiscal year in which the wage and salary increase is to take effect, and the appropriations or budget contain funds from which the increase would be payable, or

(iii) Prices have been advanced prior to August 15, 1971, or

(iv) An employer and the employee members of the unit, or their collective bargaining agent, have taken action prior to August 15, 1971, to modify work practices either relating to the introduction of new or changed equipment methods or processes, or otherwise, which is designed to and does result in an increase in the productivity of the appropriate employee unit, or

(v) An employer has taken action prior to August 15, 1971, which has otherwise raised or provided funds to provide for the wage and salary increase;

(3) The prices advanced, productivity increases made, taxes raised, appropriations made, or funds otherwise raised or provided for are in order to cover a wage and salary increase, if—

(i) The advancement of prices prior to August 15, 1971, was in direct anticipation of the wage and salary increase, and no additional advance in prices is or has been required on or after August 15, 1971, in order to raise funds to cover the wage and salary increases for the balance of the fiscal year in which it takes effect, or

(ii) Action modifying work practices to increase productivity taken by an employer and the employee members of the unit, or their collective bargaining agent, was taken to provide for a wage and salary increase and the resulting increase in productivity is adequate to cover the wage and salary increase, or

(ii) The taxes were raised or levied to fund a budget containing proposed expenditures for the wage and salary increase, and the taxes raised or levied, the existing taxes, and other resources of the taxing body are sufficient to cover the increases and all of the other projected expenditures of the taxing body for the fiscal year in which the increase takes effect, or

(iv) The amount of the appropriation or governmental budget item from which the wage and salary increase is payable is sufficient to cover the increase and all other projected expenditures to be made from the appropriation or budget item without any contemplated additional, supplemental, or deficiency appropriation or budget amendment during the fiscal year in which the increase takes effect, and without any contemplated transfer of funds appropriated for or intended for another purpose, or

(v) Action taken by an employer to otherwise raise or provide funds was taken in direct anticipation of a wage and salary increase and funds of sufficient amount to cover the cost of the wage and salary increase were raised or provided on or before August 15, 1971, or would be raised or provided thereafter without further action by the employer after August 15, 1971.

(d) *Special rule*—(1) *Price increases in anticipation of wage and salary increases.* If an employer raised the price for his products or services prior to August 15, 1971, in anticipation of wage and salary increases scheduled to be paid on or after August 15, 1971 and before November 14, 1971, and such increases were neither provided for in an employment contract nor provided for in a pay practice communicated to employees or otherwise established prior to August 15, 1971, then such increases that were not paid as a result of the freeze may be made retroactively after November 13, 1971.

(2) *Procedure for retroactive payment under this paragraph.* No payment referred to in subparagraph (1) of this paragraph may be made unless a determination has been made by the appropriate district director of Internal Revenue at the request of a party at interest, with right of appeal to the Board in the event of an adverse determination, that the requirements for retroactive payment under such subparagraph have been satisfied.

§ 201.40 Retroactivity on a case-by-case determination.

(a) *Application for approval of retroactive payment.* An application for approval of retroactive payment of wages and salaries with respect to services rendered in any period prior to November 14, 1971, which is not within the provisions of any other section of this subpart, may be submitted under the provisions of this section.

(b) *Criteria.* When the Board reviews requests for retroactive payment in individual cases, with respect to services rendered in any period prior to November 14, 1971, and in its development of further criteria for such payments, it shall consider such factors as changes in productivity and the cost of living, ongoing collective bargaining and pay practices, the equitable position of the employees involved, and such other factors as are necessary to foster economic growth, to promote improvement in the quality of governmental services, and to prevent gross inequities, hardships, serious market disruptions, domestic shortages of raw materials, localized shortages of labor, and windfall profits.

(c) *Limitation.* Approval of an application submitted under the provisions of this section shall be determined by the Pay Board or its delegate as equitable and appropriate, in accordance with the criteria set forth in paragraph (b) of this section, and shall be subject to such terms and conditions as may be set by the Pay Board or its delegate.

(d) *Procedure.* Retroactive payment under the provisions of this section shall not be made without the prior approval of the Pay Board or its delegate.

Subpart D—Violations, Sanctions, Fines and Penalties

§ 201.41 Violations.

(a) *In general.* Except as provided in paragraph (b) of this section, it shall be a violation of the provisions of this chapter, subject to the sanctions, fines, penalties, and other relief provided in the Act, for any person to—

(1) *Payment.* Pay, directly or indirectly, immediately or on a deferred basis, any portion of a wage and salary increase not authorized by the provisions of this chapter or by decision or order of the Pay Board or its delegate;

(2) *Receipt.* Receive or accept, directly or indirectly, any portion of a wage and salary increase not authorized by the provisions of this chapter or by decision or order of the Pay Board or its delegate;

(3) *Accessorial acts or attempts.* Induce, solicit, encourage, force, or require, or attempt to induce, solicit, encourage, force or require, any other person to pay or to receive, directly or indirectly, any portion of a wage and salary increase not authorized by the provisions of this chapter or by decision or order of the Pay Board or its delegate;

(4) *Compliance.* Fail or refuse to comply with a decision or order of the Pay Board or its delegate or with any regulation issued pursuant to the Act, or induce, solicit, encourage, force, or require any other person to fail or refuse to comply with a decision or order of the Pay Board or its delegate, or with any regulation issued pursuant to the Act.

(5) *Executive or variable compensation.* Pay, grant, award, receive, accept, establish, or make changes in any item of executive or variable compensation without timely filing of such notices or reports or receiving approval thereof as required by the provisions of this chapter;

(6) *Forbearance of rights.* Force or require any party at interest (as defined in § 201.2) to refrain or forbear from filing a pay challenge, request for exception, request for interpretation or ruling, prenotification, report, appeal, motion for reconsideration, or any other document or information permitted or required to be filed with the Pay Board or its delegate, or to force or require any party at interest to withdraw any such document already filed;

(7) *Filing.* Fail or refuse to file on a timely basis any prenotification, report, certification, or other document required by regulations; or

(8) *Submission of information.* Fail or refuse to submit on a timely basis to the Pay Board, or its delegate, information within the knowledge or control of a person, if the Board has required or ordered that person to submit such information after determining such information is relevant to the disposition of any matter affecting such person before the Board.

(b) *Excepted acts*—(1) *Agreements for wage and salary increases.* Notwithstanding the provisions of paragraph (a)(3) of this section, it shall not be a violation to bargain for, request, contract for, or agree to (as contrasted with paying or receiving) a wage and salary increase in excess of the maximum permissible annual aggregate wage and salary increase.

(2) *Limitation on excepted acts.* The exception provided in subparagraph (1) of this paragraph shall not apply in any situation where the Pay Board has denied an appeal from a determination by the Internal Revenue Service, or rendered a decision on a pay challenge or request for an exception.

(c) *Illustrations.* The provisions of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). On April 1, 1972, Employer A and Union X agreed to a general increase in excess of the general wage and salary standard to be effective May 1, 1972. Union X represents A's employees who are members of an appropriate employee unit containing less than 5,000 employees. On May 1, 1972, Employer A implemented only a 5.5 percent increase in the average straight-time hourly rate and only a 0.7 percent increase in qualified fringe benefits. On May 10, 1972, Employer A filed a request for exception with respect to the unpaid portion of the wage and salary increase agreed to in the contract. Since Employer A did not pay, and the employees represented by Union X did not receive, any portion of a wage and salary increase in excess of that authorized under the regulations, the parties at interest did not violate the provisions of this chapter.

Example (2). Assume the same facts as in Example (1), except that the appropriate employee unit contains 5,000 or more employees. Employer A paid and the employees of Union X received, an increase in wages and salaries which, pursuant to regulations in this chapter, may not be paid unless a timely prenotification has been filed and the Pay Board has approved the pay increase. Thus the employer, the union, and the employees are in violation of the provisions of this chapter.

Example (3). Assume the same facts as in Example (1), except that the employer refuses to submit the request for exception and the employees of the union strike to force the employer to submit the exception request. Since the strike was not called to prevent a party at interest from exercising a right available to such party under the regulations, neither the union nor the employees have violated the provisions of this chapter.

Example (4). Assume the same facts as in Example (1), except the parties also agreed that the increase in excess of the standard would be paid into an escrow account pending approval or disapproval of the request for exception. The terms of the escrow agreement provide that to the extent the exception is granted escrowed monies will be paid to the employees and to the extent that exception is disallowed the portion disallowed will revert to Employer A. The escrow agreement would terminate at that time. Since the terms of the escrow agreement provide only for payment of amounts approved by the Pay Board and reversion of the disapproved amounts, the parties to the contract did not violate the provisions of this chapter.

Example (5). Assume the same facts as in Examples (1) and (4) except that the terms of the escrow agreement provide that disapproved amounts shall continue to be paid into the fund and shall be paid out to the employees upon the relaxation or cessation of economic controls or when otherwise legally allowable. Since the terms of the escrow agreement provide for beneficial ownership by the employees of the escrowed amounts, such amounts constitute deferred compensation for services rendered in the control year such amounts are paid into escrow. Continued payment of such amounts by Employer A after a disallowance by the Pay Board results in a violation of the provisions of this chapter by all parties at interest to the agreement.

Example (6). On June 1, 1972, Employer B put into effect a 5 percent general increase in the base compensation rate for his 3,500 member appropriate employee unit not covered by a collective bargaining agreement. Employer B neglected to file a report of such increase within the appropriate 10-day period following implementation of the pay increase. Employer B is in violation of the provisions of this chapter which require that reports be filed on forms and pursuant to instructions prescribed by the Pay Board. Similarly, a violation would occur if the employees of B were covered by the terms of a collective bargaining agreement.

Example (7). On May 15, 1972, Employer C put into effect a 5.5 percent increase in the base compensation rate for a 100 member appropriate employee unit not covered by a collective bargaining agreement. On that date Employer C also communicated a promise to pay each employee a bonus of $500 upon the relaxation or cessation of economic controls. Employer C has not filed a request for exception with respect to the promise to pay each employee a $500 bonus. Since the promise to pay such bonus is an increase in wages and salaries in the form of deferred compensation, Employer C is in violation of the provisions of this chapter. Similarly, a violation would occur if the employees of Employer C were covered by the terms of a collective bargaining agreement and such agreement provided for the bonus.

Example (8). Employer D and Union Y engage in collective bargaining, but cannot agree because Union Y is requesting increases in excess of the general wage and salary standard. The employees represented by Union Y strike against Employer D over the issue of wages and salaries. A strike resulting from the failure to agree on an increase in wages and salaries is not a violation of the provisions of this chapter.

Example (9). Employer E and Union Z agree to an increase in wages and salaries that exceeds the general wage and salary standard. In order to force immediate payment of the total increase, Union Z strikes Employer E. After 3 days of the strike, Employer E puts the total increase into effect and the employees return to work. Both Union Z and the employees represented thereby are in violation because of the strike to force immediate payment of an increase not authorized by the provisions of this chapter. Employer E is in violation for paying the increase not so authorized.

Example (10). Pursuant to a 2-year collective bargaining agreement executed on June 1, 1971, an 11 percent increase is scheduled to be put into effect on June 1, 1972. On April 17, 1972, the employer filed a party at interest challenge to the deferred increase under the provisions of this chapter. After being informed of the challenge, the union

struck the employer upon his refusal to withdraw the challenge. Since the employees and the union have struck the employer to force withdrawal of a document filed under the authority of the provisions of this chapter, both the union and the striking employees are in violation of such provisions.

Example (11). Employer J and Union S, which represents over 1,000 employees of J, will enter the final year of a three year contract on January 1, 1973. Under the terms of the contract the increase in the base compensation rate on January 1, 1973 will be in excess of 7%. In accordance with the provisions of Section 201.35(g)(1) Employer J notified the Pay Board of the prospective increase more than 90 days prior to the scheduled effective date of the increase, and there has been no request from the Pay Board for additional information pursuant to Section 201.35(g)(2). Therefore Employer J may implement the entire amount of the increase on the scheduled effective date, January 1, 1973.

Example (12). Assume the same facts as in Example (11) and that Employer J has refused to implement the increase. There is no violation of paragraph (a)(3) of this section if Union S strikes in order to induce Employer J to implement the increase. Paragraph (a)(3) of this section prohibits such attempts or acts to force payment *only if* the increase is not authorized by the provisions of this chapter, or by decision or order of the Pay Board.

§ 201.42 Criminal fine.

Any person who willfully violates any provision of this chapter or any order issued thereunder shall be subject to a fine of not more than $5,000 for each violation.

§ 201.43 Civil penalty.

Any person who violates any provision of this chapter or any order issued thereunder shall be subject to a civil penalty of not more than $2,500 for each violation.

§ 201.44 Injunctions and other relief.

Whenever it appears to the Pay Board that any individual or organization has engaged, is engaged, or is about to engage in any act or practice constituting a violation of the regulations in this chapter or any other order issued thereunder, the Board may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin that act or practice. The relief sought may include a mandatory injunction commanding any person to comply with any such order or regulation and restitution of moneys received in violation of any such order or regulation.

Subpart E—Computation Rules

§ 201.51 General.

(a) *Purpose.* The purpose of the provisions of this subpart is to set forth the methods of computation of pay adjustments which shall be used under the applicable provisions of this chapter with respect to the periods of time called "control years" for which such computations are made. The methods of computation described in this subpart shall be used, among other things, to examine the relationship of pay adjustments to the maximum permissible annual aggregate increase in the base compensation rate for an appropriate employee unit during any control year (§ 201.52). Every person who makes any computation pursuant to the provisions of this subpart shall be required to make such computation in good faith and in a manner consistent with the policies of the Act.

(b) *Scope.* The provisions of this subpart include the method of computing a base compensation rate (§ 201.54) consisting of an average straight-time hourly rate (§ 201.55), an average hourly included benefit rate (§ 201.58) and an average hourly qualified benefit rate (§ 201.59). Additional rules are provided to compute increases in such components of the base compensation rate. The objective of these computations is to determine a percentage relationship between the total of the increases (excluding those increases specified in § 201.60) in such components during a control year and the base compensation rate applicable for that control year. Except as provided in § 201.64(a), all chargeable increases during any control year shall be deemed paid for the entirety of such control year.

(c) *Limitation on wage and salary increases.* Except as otherwise provided in this title, an appropriate employee unit's aggregate percentage increase in the base compensation rate (as determined pursuant to § 201.53) for any control year may not exceed its maximum permissible annual aggregate wage and salary increase (as defined in § 201.2). However, the wage and salary increases of an individual employee in an appropriate employee unit may exceed such maximum so long as the aggregate increase in the base compensation rate for such unit as a whole does not exceed such maximum.

§ 201.52 Determination of control year.

(a) *In general.* This section provides rules to determine the time period for computing the annual aggregate wage and salary increase for an appropriate employee unit. These rules preserve, as nearly as possible, both contractual and established pay relationships. In some instances, provision has been made for a first control year of less than 12 months. In this period of less than 12 months, the maximum permissible annual aggregate wage and salary increase for a full control year shall be allowed.

(b) *Pay practices*—(1) *First control year.* Except as provided in paragraph (c)(1)(ii) of this section, the first control year for an appropriate employee unit which was not covered by the terms of an employment contract in effect on November 13, 1971, shall be—

(i) The period from November 14, 1971 through November 13, 1972, or

(ii) If the unit was covered on November 13, 1971, by an established pay practice (not set by contract) whereby prospective wage and salary increases for the unit are determined for a period of 12 months or more beginning on a fixed date (other than November 14), at the election of the employer, the period of less than 12 months from November 14, 1971 through the day before the annual anniversary of such fixed date.

(2) *Succeeding control years.* Each succeeding control year shall be the 12-month period beginning on November 14, or, in the case of an established pay practice where the election described in subparagraph (1)(ii) of this paragraph is made, on an annual anniversary of the fixed date referred to in such subparagraph.

(c) *Employment contracts*—(1) *First control year*—(i) *General rule.* The first control year for an appropriate employee unit which was covered by the terms of an employment contract in effect on November 13, 1971 shall be the period of 12 months or less which begins on November 14, 1971 and ends—

(*a*) Where the expiration date of that contract is on or before November 13, 1972, on the expiration date of that contract;

(*b*) Where the expiration date of that contract is after November 13, 1972, on the annual anniversary of the expiration date of the prior succeeded contract, or, at the election of the parties, on the annual anniversary of the day prior to the first wage increase that was provided under the terms of the contract in effect on November 13, 1971; or

(*c*) Where the expiration date of that contract is after November 13, 1972, and there was no prior succeeded contract (e.g., the existing contract is the first contract between the parties), on the day prior to the annual anniversary of the effective date of the contract in effect on November 13, 1971, or, at the election of the parties, on the annual anniversary of the day prior to the first wage increase that was provided under the terms of the contract in effect on November 13, 1971.

(ii) *Special rule.* Where there was an established bargaining relationship between the parties on November 13, 1971, and there was no contract in effect on such date or the parties were operating under a contract which had been extended beyond its original expiration date, the first control year shall begin on November 14, 1971, and end on the annual anniversary of the expiration date of the prior succeeded contract or, at the election of the parties, the first control year shall begin on November 14, 1971, and end on the day before the effective date of the new contract provided that such effective date is after November 14, 1971, and no wage and salary increases are payable to the appropriate employee unit for any period prior to such effective date of the new contract.

(2) *Succeeding control years.* Each succeeding control year shall be the 12-month period ending on the annual anniversary of the date of the end of the first control year.

(3) *"Expiration date" defined.* The term "expiration date" as used in this section refers to such date specified in the contract originally negotiated by the parties and not to a later extension or modification of such date. In any case in which the contract does not specify a fixed expiration date, the first date upon which the contract could be terminated by the parties shall be deemed the expiration date.

(d) *Limitations.* (1) The first and succeeding control years established under the provisions of paragraph (b) or (c) of this section shall not thereafter be changed unless prior approval is obtained from the Pay Board. This limitation shall apply even though the appropriate employee unit goes from a pay practice status to an employment contract status or from an employment contract status to a pay practice status after November 13, 1971. Notwithstanding the preceding two sentences, in any case in which a newly organized unit is employed by an employer who, himself or through an association, is bound by a master employment contract which provides that newly organized units of the same employer shall be subject to all the terms and conditions of the master contract, the control year of such newly organized unit may, at the election of the parties, be changed to conform to the control year typical for units covered by the master agreement.

(2) There shall be no retroactive payments of an increase in wages or salaries prior to a base date established with reference to the provisions of the preceding subparagraph or paragraph (b) or (c) of this section unless allowable under Pay Board regulations or orders.

(e) *Control year election.* Any election described by this section may be exercised only with respect to the first control year of an appropriate employee unit. An election is deemed exercised in any case in which a control year has been specified on a form filed with the Pay Board (or its delegate), or in any case in which pay adjustments to an appropriate employee unit were allowable only as the result of a particular election.

(f) *Tandem relationship.* An appropriate employee unit claiming a tandem relationship to another unit shall not conform its control year to the control year of such other unit solely on account of such tandem claim.

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

Example (1). Employer A has always implemented (noncontractual) pay increases for an entire year for an appropriate employee unit on the first day of January. According to the provisions of paragraph (b) of this section, the first control year for such unit will be from November 14, 1971, to November 13, 1972, and the second and succeeding control years will begin on each succeeding November 14 thereafter; or, at the election of the employer, the first control year may be a short control year from November 14, 1971, to December 31, 1971, and the second and succeeding control years will begin on each January 1 thereafter.

Example (2). Assume the same facts as in Example (1) and that Union U organized the employees of A on December 1, 1971. Union U shall be permitted to participate in the election available to Employer A under paragraph (b)(1)(ii) of this section.

Example (3). Employer B has an employment contract with the members of Union V in effect on November 13, 1971, and the contract expires on April 30, 1972. According to the provisions of paragraph (c)(1)(i)(*a*) of this section the first control year for such unit will be from November 14, 1971, to April 30, 1972. The second and succeeding control years shall begin on each May 1 thereafter.

Example (4). Employer C has an employment contract with the members of Union W on November 13, 1971, and the contract expires on May 31, 1973. The first wage increase under such contract was June 1, 1971. The prior succeeded contract between Employer C and Union W expired April 30, 1971. According to the provisions of paragraph (c)(1)(i)(*b*) of this section the first control year for such unit will be from November 14, 1971 to April 30, 1972, which is the annual anniversary of the expiration date of the prior succeeded contract; or, at the election of the parties, the first control year will be from November 14, 1971 to May 31, 1972, which is the annual anniversary of the day prior to the first wage increase under the terms of the contract in effect on November 13, 1971. The second and succeeding control years for the unit will begin on each May 1 or June 1 thereafter depending upon the determination of the first control year.

Example (5). Employer D has an employment contract with the members of Union X in effect on November 13, 1971, and the contract expires on June 30, 1973. The contract became effective on July 1, 1970, and the first wage increase under such contract was October 1, 1970. There was no prior succeeded contract. According to the provisions of paragraph (c)(1)(i)(*c*) of this section the first control year for such unit will be from November 14, 1971 to June 30, 1972, which is the day prior to the annual anniversary of the effective date of the contract; or, at the election of the parties, the first control year will be from November 14, 1971 to September 30, 1972, which is the day prior to the annual anniversary of the first wage increase under the terms of the contract. The second and succeeding control years for the unit will begin each July 1 or October 1 thereafter depending upon the determination of the first control year.

Example (6). Employer E had an employment contract with the members of Union Y which expired July 31, 1971. The parties agreed to operate under the terms of the old contract until a new one was negotiated and signed. The new contract was signed on January 1, 1972. According to the provisions of paragraph (c)(1)(ii) of this section the first control year is from November 14, 1971 to July 31, 1972, which is the annual anniversary of the expiration of the prior succeeded contract. The second and succeeding control years will begin on each August 1 thereafter. However, at the election of the parties, the first control year may be from November 14, 1971 to December 31, 1971, which is the day before the new contract became effective provided that no wage increase is implemented prior to such date. The second and succeeding control years will begin each January 1 thereafter.

§ 201.53 Formula for computation of annual aggregate increase in the base compensation rate.

(a) *Standard computational formula.* In any case in which a computation is required to determine the annual aggregate increase in the base compensation rate with respect to an appropriate employee unit for any control year (determined pursuant to § 201.52), such increase shall be stated as a percentage which is the sum of—

(1) The total adjustment during such control year in the average straight-time hourly rate (determined pursuant to § 201.56 or 201.57), divided by such unit's base compensation rate (determined pursuant to § 201.54), applicable to such control year,

(2) The total adjustment during such control year in the average hourly included benefit rate (determined pursuant to § 201.58(c)), divided by such unit's base compensation rate (determined pursuant to § 201.54), applicable to such control year, and

(3) The total adjustment during such control year in the average hourly qualified benefit rate (determined pursuant to § 201.59(d)), divided by such unit's base compensation rate (determined pursuant to § 201.54), applicable to such control year.

(See § 201.60 for exclusions from adjustment computations.)

(b) *Optional Category III simplified computational formula.* Category III appropriate employee units (within the meaning of § 202.3(a)(3) of this chapter) may, on an optional basis, elect to determine their annual aggregate increase in their base compensation rate for any control year in accordance with the formula described in this paragraph. In such case the increase shall be stated as a percentage which is the sum of—

(1) The total adjustment during such control year in the average straight-time hourly rate (determined pursuant to § 201.56 or 201.57), divided by an amount which is equal to the product of the unit's average straight-time hourly rate for the base payroll period and a benefit factor of 1.07;

(2) The total adjustment during such control year in the average hourly included benefit rate (determined pursuant to § 201.58(c)) but excluding that portion of the adjustment which is attributable to increased included benefit costs for the control year resulting from increases in the average straight-time hourly rate during such control year, divided by an amount which is equal to the product of the unit's average straight-time hourly rate for the base payroll period and a benefit factor of 1.07; and

(3) The total adjustment during such control year in the average hourly qualified benefit rate (determined pursuant to § 201.59(d)) but excluding that portion of the adjustment which is attributable to increased qualified benefit costs resulting from increases in the average straight-time hourly rate during such control year, divided by an amount which is equal to the product of the unit's average straight-time hourly rate for the base payroll period and a qualified benefit factor of 1.19.

(See § 201.60 for exclusions from adjustment computations.)

§ 201.54 Base compensation rate.

The base compensation rate applicable to any control year shall be an average rate of pay for the appropriate employee unit, stated in dollars and cents per hour, which is equal to the sum of the average straight-time hourly rate for the base payroll period (determined pursuant to § 201.55(a)) plus the average hourly included benefit rate for the base year

(determined pursuant to § 201.58(a)) and the average hourly qualified benefit rate for the base year (determined pursuant to § 201.59(a)).

§ 201.55 Average straight-time hourly rate and adjustment thereto.

(a) *General rule.* For purposes of § 201.54 the average straight-time hourly rate for an appropriate employee unit shall be the amount, stated in dollars and cents per hour, which is determined by dividing the total straight-time payroll expenditures for the base payroll period by the total man-hours paid for (including all paid leave hours) during such period. All man-hours paid for shall be taken into account at the straight-time hourly rate, including the man-hours paid for of those employees in the unit who are not paid on an hourly rate basis. For purposes of this section "man-hours paid for" shall be the actual man-hours for which employees in the unit receive compensation during the payroll period in question. For those employees who are not on fixed hourly schedules, a reasonable estimate shall be made as to the hours for which they receive compensation during the payroll period.

(b) *Definition of "total straight-time payroll expenditures"*—(1) *Included.* The term "total straight-time payroll expenditures" shall include the following payments by an employer to an appropriate employee unit during a payroll period:

(i) Payments at straight-time rates for all man-hours actually worked (in the case of employees on piece rate, commission or incentive plans, the payments shall be at average straight-time piece, commission, or incentive earnings);

(ii) Payments for man-hours not worked at the straight-time rates applicable had the hours been worked (e.g., sick, vacation, and holiday leave and reporting pay);

(iii) Payments otherwise excludable, in whole or in part, under § 201.60; and

(iv) Payments listed in subdivisions (i) through (iii) of this subparagraph made retroactively pursuant to § 201.31, 201.32 (b) or (c), 201.33, or 201.36, or pursuant to Pay Board decision under § 201.30, 201.34, or 201.40 where such decision specifically allows the payment to be included in the base.

(2) *Excluded.* Such term shall exclude payments attributable to shift differentials, premiums for overtime, weekend, vacation, and holiday pay (but shall include the straight-time pay for such work), severance pay, bonuses, supplemental unemployment benefits, call-in and call-back premiums, and any other direct or indirect benefits.

(c) *Adjustment in average straight-time hourly rate.* The total adjustment in the average straight-time hourly rate (referred to in § 201.53) for an appropriate employee unit is the amount of increase, if any, in such rate in effect during the last payroll period of the control year compared to such rate in effect during the base payroll period. (See § 201.60 for items excluded from adjustment computations and § 201.64 (a) for the method of computation in the case of cost of living adjustments.)

§ 201.56 Computation method; average straight-time hourly rate; certain merit adjustments.

(a) *Scope.* The method of computation provided in this section shall be used in computing adjustments in the average straight-time hourly rate under a pay practice or employment contract which includes merit adjustments pursuant to a merit plan, practice or contract provision which—

(1) Was in existence on November 13, 1971;

(2) Succeeds a merit plan, practice or contract provision which was in existence on November 13, 1971; or

(3) Was established, with respect to a new appropriate employee unit, in a company, plant, or other business entity which came into existence on or after November 14, 1971; *provided, however,* such method of computation shall not be used in the first control year such new unit came into existence (see § 201.62).

(b) *Computation.* Adjustments in the average straight-time hourly rate which are within the scope of this section shall be computed with respect to a control year at or after the end of such control year and shall be expressed as an amount, stated in dollars and cents per man-hour, which is equal to the excess, if any, of—

(1) The amount determined by dividing the total straight-time payroll expenditures incurred for the last representative payroll period of the control year in question at the pay rates then in effect, by the actual man-hours paid for during such payroll period, over

(2) The amount of such average straight-time hourly rate determined with respect to the base payroll period.

(c) *Compensating adjustment.* A compensating adjustment may be made to offset any increase in the average straight-time houly rate caused by changes in the composition of an appropriate employee unit with respect to average length of service or average skill levels: *Provided however,* That a compensating adjustment may not be made with respect to a change in average length of service or skill levels if such change has been reflected by an exclusion pursuant to § 201.60 (a), (b), (c), or (j).

(d) *Computations prior to end of control year*—(1) *Submissions.* Where it is necessary to compute the adjustment in the average straight-time hourly rate prior to the end of a control year for purposes of prenotification, reporting, or requesting an exception, or otherwise pursuant to Pay Board regulations, an amount, stated in dollars and cents per hour, shall be computed, which is equal to the excess, if any, of—

(i) The amount determined by dividing the reasonable and supportable estimate of the total straight-time payroll expenditures expected to be incurred for the last payroll period of the control year by the reasonable and supportable estimate of the actual man-hours expected to be paid for during such last payroll period (such estimates shall be made in good faith and shall be subject to documentation), over

(ii) The amount of such average straight-time hourly rate determined with respect to the base payroll period.

(2) *Compliance and monitoring.* Where it is necessary to compute the adjustment in the average straight-time hourly rate prior to end of a control year for compliance or monitoring purposes, in addition to the amount computed pursuant to subparagraph (1) of this paragraph, an amount, stated in dollars and cents per hour, shall be computed, which is equal to the excess, if any, of—

(i) The amount determined by dividing the total straight-time payroll expenditures incurred for the payroll period immediately preceding the interim computation at the pay rates then in effect, by the actual man-hours paid for during such payroll period, over

(ii) The amount of such average straight-time hourly rate determined with respect to the base payroll period.

§ 201.57 Computation method; average straight-time hourly rate; other than certain merit adjustments.

(a) *Scope.* The method of computation provided in this section shall be applicable to all adjustments in the average straight-time hourly rate which are not within the provisions of § 201.56(a).

(b) *Computation.* Adjustments in the average straight-time hourly rate which are within the scope of this section shall be computed as an amount, expressed in dollars and cents per man-hour, which is equal to the excess, if any, of—

(1) The amount determined by dividing the projected total straight-time payroll expenditures which would be incurred for the last payroll period of the control year in question (computed by applying the pay rates which would be in effect during such last payroll period to the base payroll period experience, including hours paid for, work force composition, and years of service, and by assuming, in the case of piece-rate or incentive systems, no change in output per worker) by the actual man-hours paid for during the base payroll period, over

(2) The amount of such average straight-time hourly rate as determined with respect to the base payroll period.

(c) *Interim computations for compliance.* In order to insure compliance with the Pay Board's rules and regulations and to carry out the stabilization program's monitoring function, it may be necessary to compute the adjustment in an appropriate employee unit's average straight-time hourly rate with regard to a given payroll period during such unit's control year. In such a case, an amount, stated in dollars and cents per man-hour, shall be computed which is equal to the excess, if any, of—

(1) The amount determined by dividing the total straight-time payroll expenditures incurred for the payroll period immediately preceding the interim computation (such expenditures are computed by applying the pay rates in effect during such payroll period to the

base payroll period experience, including hours paid for, work force composition, and years of service, and by assuming, in the case of piece-rate or incentive systems, no change in output per worker) by the actual man-hours paid for during the base payroll period, over

(2) The amount of such average straight-time hourly rate as determined with respect to the base payroll period.

§ 201.58 Average hourly included benefit rate and adjustment thereto.

(a) *Average hourly included benefit rate.* For purposes of § 201.54, the average hourly included benefit rate of an appropriate employee unit shall be an amount, stated in dollars and cents per hour, which is determined by dividing the total cost of included benefits by the total number of man-hours actually worked by employees in such unit (i.e., excluding paid leave hours) during such base year. A reasonable estimate shall be made as to the hours actually worked during the base year by those employees who are not on fixed hourly schedules.

(b) *Definition of "total cost of included benefits."* For purposes of this section, the term "total cost of included benefits" shall include payments, or costs which would have been incurred with respect to the base year (or where applicable, control year), (computed by costing each included benefit item in effect on the last day of the base year (or where applicable, control year), at the rate in effect on the last day of such base year (or where applicable, control year)), by the employer on behalf of the appropriate employee unit for benefits other than qualified benefits (as described in § 201.59). Examples of such included benefits are:

(1) Shift differential payments;

(2) Premiums for work performed on an overtime basis, on weekends, during vacation, on holidays, outside of normal working or scheduled hours, including call-in and call-back pay premiums;

(3) Payments for time not worked including holiday pay, vacation pay, sick pay, and other paid leave (e.g., jury duty, funeral, voting pay);

(4) Severance payments;

(5) Bonus payments other than those subject to the provisions of Subpart F of this part;

(6) Supplemental unemployment benefits;

(7) Other direct and indirect benefits (including other premium payments) which are reasonably subject to valuation, except the following: Incentive compensation subject to Subpart F of this part, qualified benefits as described in § 201.59, employer contributions to certain Federal or State plans as set forth in § 201.60(d), reduction of workday or workweek (see § 201.64(b)); and

(8) Payments for included benefits listed in subparagraphs 1 through 7 of this paragraph made retroactively pursuant to § 201.31, 201.32(b) or (c), 201.33, or 201.36, or pursuant to Pay Board decision under § 201.30, 201.34, or 201.40, where such decision specifically allows the payment to be included in the base.

(c) *Adjustment in average hourly included benefit rate.* The total adjustment in average hourly included benefit rate (referred to in § 201.53) for an appropriate employee unit is the amount of increase, if any, with respect to such rate in effect at the end of the control year in question as compared to the rate in effect at the end of the base year. (See § 201.60 for items excluded from adjustment computations and § 201.64(a) for the method of computation in the case of cost-of-living adjustments.) Such total adjustment shall be an amount stated in dollars and cents per man-hour, which is equal to the excess, if any, of—

(1) The amount determined by dividing the total cost of included benefits for the control year in question which would be incurred (assuming that the control year experience, including hours worked and hours paid for, work force composition, and years of service, will be the same as that which existed during the base year) computed by costing each included benefit item at the rate which would be in effect on the last day of such control year, including increased included benefit costs resulting from increases in the average straight-time hourly rate during such control year, by the total number of man-hours actually worked (excluding paid leave hours) by employees in the appropriate employee unit during the base year, over

(2) The amount of such average hourly included benefit rate as determined with respect to the base year (see paragraph (a) of this section).

(d) *Allowable offsets.* Amounts saved as a result of a decrease in included benefit costs attributable to elimination or reduction of included benefit levels may be used to offset other increased included benefit costs resulting from new or improved included benefits, or increased included benefit costs resulting from increases in the average straight-time hourly rate during such control year.

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

Example (1). While determining the total cost of included benefits for the base year for an appropriate employee unit, Employer A finds the amount he had to contribute each month for supplemental unemployment benefits increased from $10,000 per month to $15,000 per month for the last 2 months of the base year. According to the provisions of paragraph (b) of this section, the total cost of this included benefit item to Employer A for the base year is deemed to be 12 (months) × $15,000 (per month), or $180,000.

Example (2). The average straight-time hourly rate for the base payroll period of an appropriate employee unit of Employer B is $4 per hour. B has 100 employees and they work an 8-hour day. The total cost of 10 holidays to B during the base year was $32,000. Employer B plants to implement a 5 percent wage increase and give his employees an additional holiday per year. According to the provisions of this section, the total cost of the included benefit item of holidays to Employer B, taking into account the effect of the 5 percent wage increase during the control year, will be 11 (total number of holidays) × $4.20 (straight-time hourly rate plus 5 percent wage increase of $0.20) × 100 (number of employees) × 8 (hours per day) or $36,960.

Example (3). Assume the same facts as in Example (2), except that Employer B, in accordance with the wishes of his employees, is going to reduce the number of paid holidays from 10 to 9. According to the provisions of paragraph (d) of this section, B can offset the amount saved with respect to this reduction against any increase in included benefit costs. In this case the amount saved will be 1 (number of holidays) × $4 (straight-time hourly rate) × 100 (number of employees) × 8 (hours per day) or $3,200.

Example (4). Employer C incurred a total cost of $20,000 for overtime premiums during the base year of an appropriate employee unit. Employer C estimates that there will be a reduction of overtime hours in the control year because of business or other reasons. According to the provisions of paragraph (d) of this section, Employer C cannot offset any amounts saved as a result of such reduction against new or improved included benefits since the number of base year overtime hours (the base year experience) is held constant and there is no reduction in benefit levels; i.e., there is no decrease in the premium paid for overtime hours.

§ 201.59 Average hourly qualified benefit rate and adjustment thereto.

(a) *Average hourly qualified benefit rate.* For purposes of § 201.54, the average hourly qualified benefit rate of an appropriate employee unit shall be an amount, stated in dollars and cents per hour, which is determined by dividing the total cost of qualified benefits by the total number of man-hours actually worked by employees in such unit (excluding paid leave hours) during such base year. A reasonable estimate shall be made as to the hours actually worked during the base year for those employees who are not on fixed hourly schedules.

(b) *Definition of "total cost of qualified benefits".* For purposes of this section, the term "total cost of qualified benefits" shall include payments, or costs which would have been incurred with respect to the base year (or where applicable, control year) computed by costing each qualified benefit item in effect on the last day of the base year (or where applicable, control year) at the rate in effect on the last day of such base year (or where applicable, control year), by the employer on behalf of the appropriate employee unit for qualified benefit plans; or such payments or costs made or incurred retroactively pursuant to § 201.31, 201.32 (b) or (c), 201.33, or 201.36, or pursuant to Pay Board decision under § 201.30, 201.34, or 201.40 where such decision specifically allows the payment to be included in the base.

(c) *Definition of "qualified benefit plan."* Except as provided for State and local governments in § 201.95, the term "qualified benefit plan" means—

(1) A pension, profit sharing, or annuity and savings plan which meets the requirements of section 401(a), 403(b), or 404(a)(2) of the Code,

(2) A group insurance plan, or

(3) A disability and health plan.

(d) *Adjustment in average hourly qualified benefit rate.* The total adjustment in the average hourly qualified benefit rate (referred to in § 201.53) for an appropriate employee unit is the amount of increase, if any, with respect to such rate in effect at the end of the

control year in question as compared to the rate in effect at the end of the base year. (See § 201.60 for items excluded from adjustment computations and § 201.64(a) for the method of computation in the case of cost of living adjustments, and see paragraph (f) of this section for certain increases in employer contributions to qualified benefit plans which are excludable from this adjustment calculation.) Such total adjustment shall be an amount stated in dollars and cents per man-hour, which is equal to the excess, if any, of—

(1) The amount determined by dividing the total cost of qualified benefits for the control year in question which would be incurred (assuming that the control year experience, including hours worked and hours paid for, the work force composition, age distribution, years of service, method and medium of funding and actuarial assumptions, and plan experience, will be the same as that which existed during the base year) computed by costing each qualified benefit item at the rate which would be in effect on the last day of such control year, including increased qualified benefit costs resulting from increases in the average straight-time hourly rate during such control year, by the total number of man-hours actually worked (excluding paid leave hours) by employees in the appropriate employee unit during the base year, over

(2) The amount of such average hourly qualified benefit rate as determined with respect to the base year (see paragraph (a) of this section).

(e) *Chargeable contribution adjustments.* For purposes of paragraph (d) of this section, increases in employer contributions pursuant to qualified benefit plans shall be chargeable as pay adjustments to the extent of the excess, if any, of—

(1) The sum of—

(i) Increased employer contributions attributable to new qualified benefit plans or benefit improvements in existing qualified benefit plans,

(ii) Increased employer contributions attributable to decreases in employee contributions to such plans, and

(iii) Increased employer contributions required to maintain existing benefit levels attributable to the secondary effect of an increase in the average straight-time hourly rate, over

(2) The maximum increase in employer contributions consistent with the qualified benefits standard for the appropriate employee unit as defined in paragraph (g) of this section.

(f) *Nonchargeable contribution adjustments.* For purposes of paragraph (d) of this section, increases in employer contributions pursuant to qualified benefit plans shall not be chargeable adjustments, if such increases are—

(1) Necessary to maintain existing benefit levels under qualified plans other than those contribution increases described in paragraph (e)(1) (ii) and (iii) of this section: *Provided, however,* That in all cases such plan must remain a qualified benefit plan, as defined in paragraph (c) of this section, after such increases are made; or

(2) In the case of contributions to qualified deferred profit sharing plans (whether discretionary or formula), the contribution increases which, when added to the contribution for the base year, are equal to or less than the highest contribution made by the employer on behalf of the appropriate employee unit during any one of the 3 full plan years immediately preceding the control year. For the purposes of this subparagraph the term "highest contribution made" means an amount equal to the total contribution made by the employer on behalf of the appropriate employee unit during such preceding plan year multiplied by a fraction, the numerator of which shall be the total man-hours actually worked during the base year by members of the appropriate employee unit covered by such plan, and the denominator of which shall be the total man-hours actually worked during such plan year by members of the appropriate employee unit covered by such plan.

(g) *Qualified benefits standard.* For purposes of paragraph (e)(2) of this section, the term "qualified benefits standard" means, with respect to an appropriate employee unit, an amount equal to the greater of—

(1) The sum of—

(i) 0.7 percent of such unit's base compensation rate (determined pursuant to § 201.54) with respect to the base payroll period or, in the case of a Category III unit which has elected to use the optional formula set forth in § 201.53 (b), 0.7 percent of an amount which is equal to the product of the unit's average straight-time hourly rate applicable for the base payroll period and a qualified benefit factor of 1.19, plus

(ii) The catchup percentage multiplied by the base compensation rate for the first control year. For purposes of this subdivision the "catchup percentage" is a percentage equal to the excess (if any) of 1.5 percent over the sum of the percentage increases in base compensation resulting from new or improved qualified benefit plans, or from the secondary effect of increases in the average straight-time hourly rate on qualified benefits during the 3 years preceding such first control year (such sum of the percentage increases shall be calculated by using the base compensation rate in effect during the payroll period immediately prior to each of the qualified benefit adjustments during the prior 3-year period); or

(2) Five percent of such unit's base compensation rate (determined pursuant to § 201.54) for a base payroll period, but only to the extent that the employer's resulting total contributions to qualified benefit plans with respect to such unit do not exceed 10 percent of such base compensation rate.

For purposes of subparagraph (1) of this paragraph, the 0.7 percent referred to in subdivision (i) of such subparagraph may be used in future control years to the extent not utilized in a prior control year. For purposes of such subparagraph the 1.5 percent referred to in subdivision (ii) of such subparagraph may be credited only in the first control year of a new pay practice or new employment contract. To the extent the amount of the 1.5 percent catchup credited is not utilized in such first control year the excess may be utilized in the second control year, but not thereafter.

(h) *Allowable offsets.* Amounts saved as a result of a decrease of qualified benefit costs or as a result of elimination or reduction of qualified benefit levels may be used to offset other increased qualified benefit costs resulting from new or improved qualified benefits or increased qualified benefit costs resulting from increases in the average straight-time hourly rate during the control year. Qualified benefit cost savings attributable to changes in actuarial assumptions shall be allowed as offsets only to the extent that such changes reflect cost savings which were actually realized in the base year, or to the extent approved by the Pay Board or its delegate as equitable under the circumstances of a particular case.

(i) *Illustration.* The provisions of this section may be illustrated by the following example:

Example. Employer T employs 250 employees who constitute appropriate employee unit R. Unit R is covered by pension, life insurance, and health insurance programs. During the base year, Employer T contributed $200,000, $20,000, and $50,000, respectively, for these programs. For the second control year, the pension plan will cost the employer $205,000 as a result of the secondary effect of control year adjustments in the straight-time rates. Employer T wishes to reduce the life insurance coverage by one-half; consequently, the projected control year cost will be $10,000 ($20,000−$10,000). Employer T also wishes to improve the health insurance plan at a cost that exceeds the base year cost of $50,000 by $10,000. Pursuant to paragraph (h) of this section, the amount saved by reduction in costs for life insurance coverage ($10,000) may be used to offset the total of increases in costs for the pension plan ($5,000) and health insurance ($10,000). Accordingly, the net adjustment in qualified benefit costs for the control year is an increase of $5,000 [($5,000+$10,000)−$10,000].

§ 201.60 Exclusions from adjustment computations.

For purposes of determining adjustments in the average straight-time hourly rate (§ 201.55), the average hourly included benefit rate (§ 201.58), or the average hourly qualified benefit rate (§ 201.59), the following items or factors shall be excluded:

(a) *Promotion.* Increases due to promotion where the duties and responsibilities of an employee in the appropriate employee unit have materially changed from the duties and responsibilities of such employee in the job, job classification, or position previously held.

(b) *Longevity.* Longevity increases provided for in an employment contract in effect on November 13, 1971, or provided for in a pay practice previously set forth and in existence on such date,

including the amount of increases provided for in such contract or pay practice to the extent that amount is provided for in a successor contract or pay practice. These longevity increases must be solely related to the employee's length of service and must operate without significant affirmative exercise of employer discretion or subjective evaluation of the employee's work performance. The only conditions which can attach to the increase are satisfactory work performance and length of service. If it is an established practice that once an individual's work performance for a certain length of time is determined to be satisfactory and the amount of the increase as determined in advance is not subject to any discretionary adjustment, the increase is due to longevity.

(c) *Automatic in-grade progression.* Progression increases in accordance with a step or series of steps for a given job classification (including increases pursuant to a progression schedule for newly hired employees which meets the requirements of this paragraph) provided for in an employment contract in effect on November 13, 1971, or provided for in a pay practice previously set forth and in existence on such date, including the amount of increases provided for in such contract or pay practice to the extent that amount is provided for in a successor contract or pay practice. These progression increases must be solely related to the employee's length of service in a particular job classification and must operate without significant affirmative exercise of employer discretion or subjective evaluation of the employee's work performance. The only conditions which may attach to the increase are satisfactory work performance and length of service in a particular job classification. If it is an established practice that once an individual's work performance for a certain length of time in a particular job classification is determined to be satisfactory and the amount of the resulting increase as determined in advance is not subject to any discretionary adjustment, the increase is due to automatic ingrade progression.

(d) *Employer contributions to certain Federal or State plans. Employer contributions for—*

(1) Any Federal public plans whether the participation of the employer is optional or obligatory (e.g., social security, Railroad Retirement Act, Federal Insurance Contribution Act, Federal Unemployment Tax Act); or

(2) Any workmen's compensation or unemployment insurance plan pursuant to State law whether the participation of the employer is optional or obligatory.

(e) *Federal minimum wage and employment discrimination laws.* Any increases required to be paid pursuant to the Fair Labor Standards Act of 1938, as amended, including the Equal Pay Act; the Age Discrimination in Employment Act; Civil Rights Acts, as amended, of 1866, 1870, 1871, 1964; Executive Orders 11141 and 11246 dealing with discrimination by Federal contractors; Universal Military Training and Service Act or any other Federal or State law regulating re-employment of servicemen; State fair employment practices laws, insofar as they prohibit discrimination in employment; or as a result of an enforcement action thereunder.

(f) *Governmental wage determinations*—(1) *Coverage*—(i) *Federal agency wage determinations.* That portion of any increase in wages and salaries required to be paid as a result of wage determinations made by any agency in the executive branch of the Federal Government pursuant to law for work (i) performed under contract with, or to be performed with financial assistance from the United States or the District of Columbia, or any agency or instrumentality thereof, or (ii) performed by aliens who are immigrants or who have been temporarily admitted to the United States pursuant to the Immigration and Nationality Act, 66 Stat. 166, as amended, which, with respect to an appropriate employee unit, would (except for the application of this subparagraph) cause the total of wage and salary increases to exceed the maximum permissible annual aggregate wage and salary increase.

(ii) *State and local prevailing wage laws.* That portion of any increase in wages and salaries required to be paid pursuant to the terms of (or under an order issued pursuant to the terms of) a prevailing wage law of a State or local government for work performed under contract with, or to be performed with financial assistance from a State or any agency, instrumentality, or subdivision of a State, which, with respect to an appropriate employee unit, would (except for the application of this subparagraph) cause the total of wage and salary increases to exceed the maximum permissible annual aggregate wage and salary increase.

(2) *Governmental employees.* The exclusion provided in this paragraph shall not be applicable to an appropriate employee unit which includes employees of a State, a local government, the District of Columbia, or a unit or instrumentality thereof.

(g) *Certain employer contributions to qualified benefit plans.* Employer contributions to qualified benefit plans which are excluded contributions pursuant to § 201.59.

(h) *Certain professional sports contests.* Amounts paid, either directly or indirectly, to those employees of a professional sports organization who have not been exempted from the coverage of this title and who are customarily paid from the proceeds of post-season playoff contests or from the proceeds of all-star exhibitions.

(i) *Certain productivity incentive programs.* Increases attributable to the operation of certain productivity incentive programs described in § 201.61.

(j) *Certain qualified apprenticeship and probationary programs.* Increases paid pursuant to apprenticeship and probationary programs that qualify under § 201.63.

In the case of exclusions claimed pursuant to paragraphs (e) and (f) of this section the prenotification and reporting rules of Part 202 of this chapter shall apply. Thus, pay adjustments given involving these exclusions must be separately prenotified or reported, as appropriate, for the pay adjustment category of the unit involved.

§ 201.61 Productivity incentive programs.

(a) *Existing productivity incentive programs.* A productivity incentive program (as defined in paragraph (d) of this section) in existence, or proposed for installation and communicated to employees prior to November 14, 1971, will be allowed to operate according to its terms. Thus, any increases attributable to the operation of such a program may be excluded from adjustment computations pursuant to § 201.60(i). This paragraph shall apply to productivity incentive programs on either a plantwide or less than plantwide basis. In the case of the substantial revision of such a program, the provisions of paragraph (b) or (c) of this section (whichever is applicable) shall apply.

(b) *New or revised productivity incentive programs on a plantwide basis.* Increases attributable to the operation of a new or substantially revised existing plantwide productivity incentive program (as defined in paragraph (d) of this section) may be excluded from adjustment computations pursuant to § 201.60(i) if—

(1) Within 30 days of the installation of such a program, or revision thereof, the employer has filed with the Pay Board a certification of such installation or revision which shall include a full description of the program, including the number of employees in the unit covered by such program, and (if applicable) its revision, and

(2) Increases under such program, or revisions thereof, actually reflect and are directly related to increases in productivity.

(c) *New or revised productivity incentive programs on less than a plantwide basis.* If, on less than a plantwide basis, the installation of a new productivity incentive program (as defined in paragraph (d) of this section) or the installation of changes to an existing productivity incentive program which would substantially revise the terms of such program, would cause the annual aggregate wage and salary increase of an appropriate employee unit to exceed the maximum permissible annual aggregate, increases attributable to the operation of such program may be excluded from adjustment computations pursuant to § 201.60 (i): *Provided,* That increases under such program, or revisions thereof, actually reflect and are directly related to increases in productivity. Prior to the installation of such a program or the implementation of revisions thereto, the employer shall provide the Pay Board with a description of such program and shall certify to the Board that the program, including the number of employees in the unit covered by such program, or revisions thereto, will substantially meet criteria appropriate for such plans or practices. Among the factors which may

be considered are that the plan or practice—

(1) Provides employees the expectation of a level of earnings above base rates which will vary in relationship to changes in productivity, but which will not result in increased unit labor costs for the employer;

(2) Is designed to provide earnings opportunities sufficient to motivate the participants;

(3) Contains standards of performance and provisions for revising such standards to reflect changes in equipment, methods, quality requirements, and other factors related to the basis for standards development;

(4) Contains guarantees of wages and earnings for such contingencies as downtime for reasons beyond the control of participants and for nonstandard work; and

(5) Defines the employees included and their relationship to increased productivity.

(d) *Productivity incentive program defined.* For the purposes of this part, the term "productivity incentive program" means a plan or practice which establishes a formal system whereby, in accordance with predetermined formulas, wage and salary payments to an employee or group of employees increase as the measured productivity of such employee or group increases and which contains all, or substantially all, of the factors set forth in paragraph (c) of this section: *Provided,* That where a single plan of practice is plantwide and includes all or substantially all of the employees in a plant or firm, payments may be based on the measured increase in productivity for such plant or firm as a whole.

(e) *Discontinuance.* If a productivity incentive program is discontinued and such action results in an increase in wages and salaries to the employees affected, the employer shall certify to the Pay Board within 30 days of discontinuance that such action was taken in good faith and not for the purpose of circumventing the intent of the economic stabilization program.

(f) *Disqualifying factors*—(1) *Variable compensation.* Notwithstanding the provisions of this section, any plan or practice providing for the payment or award of "incentive compensation" as defined in § 201.72(e) of this part shall be governed by Subpart F of this part. Plans, practices, or programs described in § 201.77 which do not meet the definition of productivity incentive programs (as defined in paragraph (d) of this section) are governed by Subpart F of this part.

(2) *Factors not within control of group.* No plan or practice will be considered a productivity incentive program within the meaning of this section which is based in whole, or in part, on company profits or earnings per share or which reflects factors or productivity gains, which in major part are due to the efforts of employees not covered by the plan or practice.

§ 201.62 New jobs, job classifications or positions.

(a) *Scope*—(1) *Coverage.* This section provides rules for the determination or establishment of pay rates for newly created jobs, job classifications, or positions (hereinafter referred to as "jobs") within an existing appropriate employee unit during such unit's control year. This section also provides rules for the determination or establishment of pay rates in a newly created appropriate employee unit consisting entirely of new jobs. For purposes of this section, the term "firm" shall have the same meaning as the term "person," as defined in § 201.2.

(2) *Exclusions from coverage.* This section shall not be used to redetermine the scope of, reassign jobs between, or reclassify (redefine) present jobs within, existing appropriate employee units of the same firm. Neither shall this section apply to the hiring of new employees to fill existing jobs of terminated employees within an existing appropriate employee unit of the same firm. This section may be used in determining an executive's base salary, but this section shall not apply to any other form of executive and variable compensation, the rules with respect to which are included in Subpart F.

(b) *Existing units*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, if an employer establishes a new job within an existing appropriate employee unit during such unit's control year, the pay rate (taking into consideration skill level and length of service) established for such job during such control year may not exceed the pay rate (taking into consideration skill level and length of service)—

(i) For jobs having comparable duties, responsibilities, and hours within the same appropriate employee unit;

(ii) If no comparable jobs exist within the same appropriate employee unit, for jobs having comparable duties, responsibilities, and hours within the same firm;

(iii) If no comparable jobs exist within the same appropriate employee unit or within the same firm, for jobs having comparable duties, responsibilities, and hours in other firms located within the same local labor market area; or

(iv) If no comparable jobs exist within the same appropriate employee unit, within the same firm, or within other firms located in the same local labor market area, for jobs having comparable duties, responsibilities, and hours in other firms in the same commonly recognized industry.

(2) *Special rules.* A pay rate established for a new job in an existing appropriate employee unit, or by subsequent increase thereto, during such unit's control year may exceed the pay rate referred to in subparagraph (1) of this paragraph, if the excess is treated as a chargeable increase for such unit as if paid to, or apportioned among, one or more employees who were members of the appropriate employee unit on the base date for the control year during which such job is created. In computing the chargeable increase with respect to a new job, the initial rate determined pursuant to subparagraph (1) of this paragraph shall not be included in determining the base compensation rate for the unit for the control year in which such job is created.

(c) *New appropriate employee units*—(1) *General rule.* If an employer forms a new appropriate employee unit consisting entirely of new jobs, the pay rate (taking into consideration skill level and length of service) initially established for each new job may not exceed the pay rate (taking into consideration skill level and length of service) for each such job having comparable duties, responsibilities, and hours under the appropriate sequence of rules prescribed in paragraph (b)(1) of this section.

(2) *Control year rules*—(i) *First control year.* The first control year for an appropriate empolyee unit formed pursuant to the rules prescribed in subparagraph (1) of this paragraph shall be a period of 12 months (or less) ending on November 13, succeeding its formation.

(ii) *Succeeding control years.* Except as provided in § 201.52(d)(1), relating to newly organized units under certain master employment contracts, each succeeding control year for a new appropriate employee unit formed pursuant to the rules prescribed in subparagraph (1) of this paragraph shall be a 12-month period ending on the annual anniversary of the end of the first control year.

(3) *Limitation.* Once an initial pay rate has been established for a newly created job in a new appropriate employee unit, no subsequent increase to a wage rate in excess of that determined pursuant to paragraph (b)(1) of this section (except an increase excludable from adjustment computations pursuant to § 201.60) may be paid with respect to such job during the remainder of the control year during which such job is created.

(d) *Burden of proof.* If an employer creates a new job and establishes a pay rate for such job under paragraph (b) or (c) of this section, the burden of proving that the pay rate for such job does not exceed the rate for a job having comparable duties, responsibilities, and hours under the sequences of rules prescribed in paragraph (b)(1) of this section shall be on the employer.

§ 201.63 Qualified apprenticeship and probationary programs.

(a) *General rule.* Under § 201.60(j), an exclusion from adjustment computations is available in the case of wage and salary increases paid pursuant to a qualified apprenticeship or probationary program within the meaning of this section.

(b) *Qualified apprenticeship program.* A qualified apprenticeship program is a recognized formal bona fide program of training for occupations commonly known as skilled trades or crafts, which program—

(1) *Manner of recognition*—(i) *Registration.* Is registered with the Bureau of Apprenticeship and Training of the U.S. Department of Labor, or with a State apprenticeship agency recognized by such Bureau, or

(ii) *Employment contract.* Is contained in a collective bargaining agreement, or

(iii) *Historical practice.* Is a documented, established practice of the employer;

(2) *Minimum training period.* Requires a minimum of 2 years of on-the-job training, work experience, and related instruction (e.g., in the classroom, by correspondence, etc.) in the course of which the apprentice progressively acquires new skills and masters the application of those skills already learned pursuant to the program; and

(3) *Specific wage progression.* Provides specific wage increases or progressions after specific intervals of time so that the apprentice reaches the journeyman pay rate at the conclusion of his apprenticeship.

(c) *Qualified probationary program.* A qualified probationary program is a formal bona fide program pursuant to which an employee is restricted from exercising certain employee rights (e.g., the right to participate in fringe benefits, the right to invoke a grievance procedure, etc.) for a specified period of time not exceeding 6 months during which the employer observes the performance of a newly hired employee to determine whether the employee should be retained in the job. Such probationary period of time may, but need not, be tied in with a program described in paragraph (b) of this section.

(d) *Cross-reference.* Wage and salary increases pursuant to an apprenticeship or probationary program that do not qualify for the exclusion under § 201.60 (j) may qualify for an exclusion under § 201.60(c), provided such increases meet the requirements of automatic ingrade progression.

§ 201.64 Special computational rules.

(a) *Cost of living allowance calculation*—(1) *In general.* If a wage and salary increase in an employment contract or pay practice results from a cost-of-living adjustment pursuant to and justified by a generally accepted escalator formula, the chargeable increase attributable to such cost-of-living adjustment shall be calculated by multiplying each cost-of-living adjustment by a fraction, the numerator of which shall be the number of months within the appropriate control year such cost-of-living adjustment is in effect, and the denominator of which shall be the number of months in such control year.

(2) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. Employer A determines that pursuant to his contract with Union X a $0.08 cost-of-living adjustment will be paid for the last quarter of a 12-month control year. The chargeable increase for the control year is 3/12×$0.08 or $0.02.

(b) *Reduction in hours worked per week or per day*—(1) *In general.* A reduction in scheduled hours worked per week, day, or other unit of time (without a proportionate decrease in compensation), which results in an increase in the base compensation rate, shall be deemed a chargeable adjustment. The calculation of such adjustment shall take into account the direct effect of such reduction in hours on the base compensation rate and the indirect effect of such reduction on the base compensation rate attributable to other increases which occur during the control year. Such adjustment shall be expressed as a percentage which is determined by—

(i) Dividing the excess of—

(*a*) The number of hours worked per week, day, or other unit of time in the base payroll period, over

(*b*) The number of hours worked per such week, day, or other unit of time after the proposed reduction

by the number of hours worked after such proposed reduction;

(ii) Adding to such quotient the total of wage and salary increases during the control year which results as the secondary effect of a reduction in hours (such total shall be determined by multiplying the total percentage increase in the base compensation rate (other than the increase computed pursuant to subdivision (i) of this subparagraph) for the control year by the quotient determined in subdivision (i) of this subparagraph); and

(iii) Multiplying such sum by 100.

(2) *Illustration.* The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example: A collective bargaining agreement between Employer A and Union X calls for a wage and salary increase which equals 5% of the unit's base compensation rate during a control year. In addition, the agreement provides for a reduction in hours worked per week from 40 to 35 (with no corresponding reduction in pay), during the control year. This reduction in hours is a chargeable adjustment and is computed as a percentage which is obtained by adding .143 [5÷35] and .007 (5%×.143), and multiplying the sum (.150) by 100, which yields an adjustment, expressed as a percent, or 15.0%.

(3) *Alternative methods.* In the event that the method of computation prescribed in subparagraph (1) of this paragraph does not adequately reflect the wage and salary increase attributable to a reduction in hours in a particular case or class of cases (e.g., where the method for accrual of leave is independent of a reduction in weekly hours worked), the Pay Board may prescribe a more appropriate method.

(c) *Modification of longevity or automatic progression plans in existence on November 13, 1971*—(1) *General rule*—(i) *Chargeable increase.* The aggregate amount of wage and salary increases granted pursuant to a longevity or automatic progression plan in existence on November 13, 1971, and continued in a successor plan, is excluded from the computation of chargeable increases for any control year (pursuant to § 201.60 (b) and (c)). If a modification of any such plan is made after November 13, 1971 (including, but not limited to changes in eligibility requirements and the size or frequency of increases), and such modification causes the amount of increases paid pursuant to such plan as modified to exceed the amount which would have been paid pursuant to the plan in existence on November 13, 1971, the excess amount shall be included in the computation of wage and salary increases.

(ii) *Secondary effect not chargeable.* For purposes of this paragraph, a modification of a longevity or automatic progression plan in existence on November 13, 1971, will not be deemed to have occurred if the increased amounts paid pursuant to such plan are solely the result of a general wage and salary increase.

(2) *Computation of chargeable increase*—(i) *Method of computation.* The amount of chargeable increase, if any, shall be the amount stated in dollars and cents per hour equal to the excess of:

(*a*) A projection of the sum of longevity or automatic progression increases to be granted during the control year pursuant to the modified plan (assuming the same work force composition as existed during the base payroll period but aged one additional year), over

(*b*) A projection of the sum of longevity or automatic progression increases which would have been granted during the control year if the plan in existence on November 13, 1971, had been in effect without modification (assuming the same work force composition as existed during the base payroll period but aged one year).

(ii) *Credits.* If the amount generated by such modified plan is less than the amount which would have been granted under the plan in existence on November 13, 1971, for the control year, the amount saved may not be applied to reduce the computation of wage and salary increases unless otherwise provided by the Pay Board.

(3) *Illustrations.* The provisions of this paragraph may be illustrated by the following examples:

Example (*1*). On November 13, 1971, a longevity plan provided for a 2 percent increase in weekly salary after 10 years of service. The average salary for employees with 10 years of service was $100 per week. The November 13, 1971, plan cost $2 per week per employee with 10 years of service. On March 1, 1972, salaries were increased across the board 5 percent, resulting in an average weekly salary of $105 for employees with 10 years of service. The November 13, 1971, plan now pays out 2 percent of $105 or $2.10. The additional $0.10 per week increase is not considered a modification of the plan in existence on November 13, 1971; the entire $2.10 may be excluded under § 201.60(b).

Example (*2*). A November 13, 1971, longevity plan provided for a $2 per week increase after 10 years of service. On March 1, 1972, the longevity plan was modified to provide for a $3 per week increase after 10 years of service. The additional $1 per week increase for employees with 10 years of service is a chargeable increase applicable to the employee unit.

Example (*3*). Employee unit X contains 10 employees, two with 8 years of service, seven with 9 years of service and one with 10 years of service. On November 13, 1971, the employees were covered by a longevity plan which provided for a $500 per year increase

after 10 years of service. On March 1, 1972, the longevity plan was changed to provide for a $750 per year increase after 10 years of service. The chargeable increase for the first control year would be $2000 (i.e., 8 employees × $250 per employee). This amount would be reduced to an hourly rate and charged as an increase in average straight-time hourly rate for employee unit X.

Example (4). Assume the same facts as in Example (3), but instead of increasing the longevity payment after 10 years of service, the employees would receive $500 per year after 9 years of service. The November 13, 1971, plan would cost $3,500 for the seven employees reaching their 10th anniversary. The modified plan would cost $3,500 plus $1,000 for the two employees reaching their ninth anniversary. The chargeable amount would be $4,500–$3,500=$1,000 reduced to an hourly rate for the employee unit during the control year.

(d) *Changes of appropriate employee units.* The determination of an appropriate employee unit may not be changed without the prior approval of the Pay Board or its delegate subject to such terms and conditions as may be set forth in such approval; *Provided, however,* that such a change may be made without prior Pay Board approval when such change is required to reflect a substantial revision in the contractual or historical wage and salary relationships subsequent to the initial appropriate employee unit determination, which revision renders the former unit no longer appropriate.

(e) *Retroactive payments included in base compensation rate and computation of annual aggregate increase therein.* In any case in which the total straight-time payroll expenditures (§ 201.55(b)(1)(iv)), total cost of included benefits (§ 201.58(b)(8)), or total cost of qualified benefits (§ 201.59(b)), includes payments or costs made or incurred retroactively pursuant to § 201.31, 201.32 (b) or (c), 201.33, or 201.36, or pursuant to Pay Board decision under § 201.30, 201.34, or 201.40, such payments or costs shall be included in both the divisor and dividend in the computations made pursuant to § 201.53(a) (1), (2), and (3) for the control year in which such payments are made or such costs are incurred.

Subpart F—Executive and Variable Compensation

§ 201.71 Scope.

(a) *Purpose.* The purpose of this subpart is to provide rules and standards to stabilize items of executive and variable compensation whether or not payable to an executive.

(b) *Conflict with other provisions.* To the extent that any provision of this chapter is inconsistent with the provisions of this subpart, the provisions of this subpart shall control. Thus, in the area of executive base salaries and job perquisites only those existing contracts meeting the requirements of § 201.72(f) and in the area of incentive compensation plans and practices only those existing contracts meeting the requirements of § 201.72(f) and pay practices previously set forth meeting the requirements of § 201.72(g) shall be allowed to operate under the terms and conditions imposed under § 201.35.

(c) *Exception.* The provisions of this subpart shall not affect the provisions of a collective bargaining agreement.

§ 201.72 Definitions.

For purposes of this subpart, the term—

(a) "Wages and salaries" means the same as under § 201.2 except that items constituting incentive compensation shall not be treated as wages and salaries unless otherwise provided in this subpart.

(b) "Executive compensation" includes base salary, job perquisites, and incentive compensation.

(c) "Base salary" means cash remuneration paid to an employee by an employer on account of the performance of services.

(d) "Job perquisite" means any item paid or furnished to or on behalf of an employee by an employer on account of the performance of services including, but not limited to, such items as reimbursement or payment by an employer of country club membership fees, dues, or other similar items; reimbursement or payment by an employer of uninsured medical expenses which are not covered by the employer's usual insurance program with respect to such expenses; reimbursement or payment by an employer for financial consulting or advisory services relating to an employee's personal financial affairs; the personal use of an automobile furnished by an employer; and payment by an employer for or in-kind furnishing of housing; and other such similar items.

(e) "Incentive compensation" includes the following items: Bonuses (whether payable in cash or other property); stock options; so-called phantom stock awards (including both dividend and share units); so-called performance share awards; employer contributions to stock purchase plans or stock bonus plans (whether or not qualified under section 401(a) of the Code or the regulations thereunder); and employer contributions to profit-sharing plans which fail to meet the requirements of section 401(a) of the Code. This term, however, does not include profit-sharing plans which meet the requirements of section 401(a) of the Code.

(f) "Existing contract" means a contract with respect to employment in effect on November 13, 1971, all the elements of which have been reduced to a writing which has been signed by the employee and the employer prior to November 14, 1971.

(g) "Pay practice previously set forth" means an incentive compensation plan or practice in effect on November 13, 1971, which meets all of the following requirements—

(1) The plan or practice had been communicated to the affected employees;

(2) The aggregate amount of the payment or award cannot be increased or withheld in its entirety by the exercise of any discretion;

(3) The aggregate amount of the payment or award is determined by a definite method or clear formula; and

(4) The definite method or clear formula is applied only to a wage or salary amount on a percentage or other similar basis without reference to profits, earnings, or any factor or item other than the actual wage or salary amount.

(h) "Plan, practice, or program unit" means the employees covered by an incentive compensation plan or practice, a sales or commission plan or practice, or a production incentive program.

(i) "Plan, practice, or program year" means the 12-month period with respect to which an incentive compensation plan or practice, a sales or commission plan or practice, or a production incentive program operates.

(j) "Pay Board" means the Pay Board established pursuant to Executive Order No. 11640, 37 F.R. 1213 (1972), as amended.

§ 201.73 Executive salaries and job perquisites.

(a) *In general.* Executive base salaries paid to or on behalf of and job perquisites paid or furnished to or on behalf of the employees in an appropriate employee unit during any control year shall be subject to the standard established in § 201.10(a) (or, where applicable, any exception thereto contained in Subpart B of this part).

(b) *Deferred payments*—(1) *Items deferred from an earlier year.* An item of base salary paid to the employees in an appropriate employee unit during any control year which was earned by any such employees during an earlier control year (or if not during a control year, during the applicable 12-month period beginning on November 14 and ending on November 13) shall not be considered as an item of base salary for such employees for the control year during which such item is paid.

(2) *Items deferred to a later control year.* An item of base salary paid to the employees in an appropriate employee unit during any control year shall include all such items which were earned by all such employees during such control year.

(3) *Definition.* For purposes of this paragraph, an item is considered as being "earned" during the control year in which services are performed giving rise to the obligation to pay for the performance of such services whether or not such obligation is contingent upon the performance of future services or any other condition or restriction (including, but not limited to, an agreement not to compete).

(c) *Valuation of items constituting job perquisites.* The amount of any job perquisite shall be determined as follows:

(1) The employer's current expenditure where such expenditure constitutes the only cost of the item, otherwise;

(2) The reasonable cost of providing the item to be determined from all the facts and circumstances involved.

§ 201.74 Incentive compensation plans (other than stock options).

(a) *In general*—(1) *Plans in effect on November 13, 1971.* Subject to the provisions of this section, an employer having an established written plan with respect to items of incentive compensation (but not including any plan or part thereof with respect to stock options) in effect on November 13, 1971, where the aggregate maximum amount of incentive compensation under the plan is determined according to a definite method or clear formula, may continue to administer such a plan providing the following conditions are met—

(i) There has been a payment prior to November 14, 1971, under the plan with respect to any one of the last 3 plan years ending prior to November 14, 1971;

(ii) Administration of the plan is clearly in accordance with all conditions and limitations expressed therein (other than those terms and conditions as may be restricted by this section); and

(iii) Administration of the plan is in the customary manner without any deviation from such manner for purposes of circumventing the intent of the wage and salary stabilization program.

(2) *Plans established on or after November 14, 1971.* An employer having an incentive compensation plan (but not including any plan or part thereof with respect to stock options) described in—

(i) Section 201.78(c) (with respect to adoption of new plans) and approved by the Pay Board pursuant to § 201.78, or

(ii) Section 201.79(a) (with respect to plans of new organizations) and reported to the Pay Board pursuant to § 201.79,

shall administer such a plan subject to the provisions of paragraphs (a) through (c) of this section (but not including the condition contained in subdivision (i) of paragraph (a)(1) of this section).

(3) *Certain other plans.* An employer having an incentive compensation plan (but not including any plan or part thereof with respect to stock options) described in § 201.78(d) (with respect to certain expiring plans) shall administer such a plan subject to the provisions of paragraphs (a) through (c) of this section (but not including the condition contained in subdivision (i) of paragraph (a)(1) of this section).

(b) *Computation of allowable amount*—(1) *First plan year—(i) Plans described in paragraph (a)(1) of this section.* The allowable amount of any item of incentive compensation granted to the employees in a plan unit under a plan described in paragraph (a)(1) of this section with respect to the first plan year for which payment is made on or after November 14, 1971, shall not exceed an amount determined as follows: the base year amount plus such base year amount multiplied by the standard established in § 201.10(a).

(ii) *Plans described in paragraph (a)(2) of this section.* The allowable amount of any item of incentive compensation granted to the employees in a plan unit under a plan described in subdivision (i) or (ii) of paragraph (a)(2) of this section with respect to the plan year consisting of the first consecutive 12-month period under which the plan operates shall not exceed the base year amount.

(2) *Certain plan years with respect to plans operating under § 201.35.* The allowable amount of any item of incentive compensation granted to the employees in a plan unit under a plan which operates under § 201.35 shall not exceed the amount granted with respect to such plan as allowed under § 201.35 with respect to any plan year the plan operated under that section.

(3) *Subsequent plan years.* The allowable amount of any item of incentive compensation granted to the employees in a plan unit with respect to a plan described in any one of subparagraphs (1) through (3) of paragraph (a) of this section with respect to any plan year other than a plan year described in subparagraph (1) or (2) of this paragraph shall not exceed an amount equal to the product of:

(i) the allowable amount described in paragraph (b) of this section with respect to such plan plus such amount multiplied by the standard established in § 201.10(a) and

(ii) the adjustment factor described in subparagraph (5) of this paragraph.

For purposes of subdivision (i) of this subparagraph the allowable amount with respect to any plan described in paragraph (a)(3) of this section shall be such amount which was granted with respect to the last plan year such plan operated under § 201.35.

(4) *Definition.* For purposes of this paragraph, the term "base year amount" means—

(i) In the case of a plan described in paragraph (a)(1) of this section, the amount (in dollars, or where applicable, in dividend or share units) of an item of incentive compensation granted to the employees in a plan unit with respect to one of the last 3 plan years ending prior to November 14, 1971, for which there has been a payment under the plan prior to November 14, 1971;

(ii) In the case of a plan described in paragraph (a)(2)(i) of this section, the amount (in dollars, or where applicable, in dividend or share units) of an item of incentive compensation established by the Pay Board as the amount allowed to be granted with respect to the first consecutive 12-month period under which the plan operates; and

(iii) In the case of a plan described in paragraph (a)(2)(ii) of this section, the amount (in dollars, or where applicable, in dividend or share units) of an item of incentive compensation granted under the plan with respect to the first consecutive 12-month period under which the plan operates, provided such amount is not unreasonably inconsistent with the intent and purpose of the wage and salary stabilization program or the policies of the Pay Board.

(5) *Adjustment for change in size of plan unit*—(i) *Method.* The adjustment factor indicated in subparagraph (3) of this paragraph with respect to the change in the size of any plan unit shall be a fraction, the numerator of which is the sum of the base unit salary plus base unit salary additions, less base unit salary deletions, and the denominator of which is the base unit salary.

(ii) *Definitions.* For purposes of subdivision (i) of this subparagraph the term—

(*a*) "Base unit salary" means the aggregate of the base salaries of all employees in the plan unit on the last day of the base year with respect to the plan at the annual salary rate in effect with respect to each employee on such day;

(*b*) "Base unit salary additions" means the aggregate of the base salaries of all employees in the plan unit (except those employees added to such unit solely on account of a merger or other type of acquisition occurring on or after November 14, 1971) on the last day of the plan year for which the adjustment is being made who were not in the plan unit on the last day of the base year with respect to the plan at the annual salary rate in effect with respect to each employee on the last day of the plan year for which the adjustment is being made;

(*c*) "Base unit salary deletions" means the aggregate of the base salaries of all individuals who were in the plan unit on the last day of the base year with respect to the plan but not in the plan unit on the last day of the plan year for which the adjustment is being made at the annual salary rate in effect with respect to each such individual on the last day of the base year; and

(*d*) "Base year" means—

(*1*) With respect to a plan described in paragraph (a)(1) or (2) of this section the plan year used to determine the base year amount with respect to such plan; and

(2) With respect to a plan described in paragraph (a)(3) of this section the last plan year the plan operated under § 201.35.

(c) *Rules with respect to computation of allowable amount*—(1) *Deferred payments*—(i) *Items deferred from an earlier plan year.* For purposes of computing the allowable amount of any item of incentive compensation granted with respect to any plan year, an item of incentive compensation paid to the employees in a plan unit during any plan year which was granted to any such employees with respect to an earlier plan year shall not be considered as an item of incentive compensation for such employees for the plan year during which such item is paid.

(ii) *Items deferred to a later plan year.* For purposes of computing the allowable amount of any item of incentive compensation granted with respect to any plan year, an item of incentive compensation granted to the employees in a plan unit with respect to any plan year which is deferred to a later plan year shall be considered as an item of incentive compensation with respect to such employees for the plan year during which such item is granted.

(iii) *Granted with respect to a plan year.* For purposes of this section, an item is granted with respect to the plan year for which the amount generated under the plan is computed whether or not such amount is paid during that year.

(2) *Amounts in excess of allowable amount*—(i) *Treatment.* If the amount of any item of incentive compensation granted pursuant to a plan described in paragraph (a) of this section to which paragraph (b)(1)(ii) of this section does not apply is in excess of the allowable amount of such item with respect to any plan year determined pursuant to the rules contained in paragraph (b) of this section, such excess shall be deemed to be an increase in wages and salaries with respect to the appropriate employee units of the employees participating in the plan unit in the amount determined pursuant to the rules contained in subdivision (ii) of this subparagraph during the control year with respect to each such appropriate employee unit when paid to such employees in such appropriate employee units (or if not paid, such control year such amount would have been paid had such amount been paid).

(ii) *Apportionment to appropriate employee units.* The amount of the increase in wages and salaries described in subdivision (i) of this subparagraph shall be apportioned to the appropriate employee units of the employees participating in the plan unit. The amount of such increase which shall be apportioned to an appropriate employee unit shall be determined when the amount in excess is paid (or if not paid, when such amount would have been paid had such amount been paid) as follows: the number of employees in an appropriate employee unit who are participating in such a plan unit multiplied by a fraction, the numerator of which is the amount of the excess and the denominator of which is the number of employees in the plan unit.

(iii) *Treatment of amounts apportioned.* The amount of any increase in wages and salaries apportioned to the appropriate employee units of the employees in any plan unit as described in subdivision (ii) of this subparagraph shall be considered as an increase in wages and salaries during the control year with respect to each such appropriate employee unit when paid to such employees in such appropriate employee units (or if not paid, such control year such amount would have been paid had such amount been paid). Such amount shall also be considered as a pay adjustment for purposes of the prenotification and reporting requirements of Part 202 of this chapter with respect to each such appropriate employee unit when such amount is considered as wages and salaries.

(iv) *Rule with respect to amount apportioned to appropriate employee units.* Any amount in excess of an allowable amount as described in this subparagraph and apportioned pursuant to the rules contained in subdivision (ii) of this subparagraph shall not be allowed to increase the maximum permissible annual aggregate wage and salary increase with respect to any such appropriate employee unit, but shall reduce the maximum permissible aggregate wages and salaries payable to an appropriate employee unit by such amount for the control year such amount is paid (or if not paid, the control year such amount would have been paid had such amount been paid).

(v) *Rule with respect to phantom stock awards.* For purposes of determining the amount of any excess with respect to phantom stock awards, each phantom dividend or share unit shall be deemed to be an actual share of stock not subject to any restriction.

(3) *Valuation of items of incentive compensation.* The amount of an award shall be determined as follows—

(i) For phantom stock awards: In dividend or share units;

(ii) For performance share awards: Subject to prior approval pursuant to § 201.78, in dollars in an amount equal the present fair market value of the stock to be awarded assuming attainment of at least 75 percent of the performance goal (or such other percentage or amount as established by the Pay Board) allocated over the performance period under the plan;

(iii) For bonuses awarded in stock: In dollars in an amount equal to the fair market value of such stock at the time of the award regardless of any conditions or restrictions, less the amount (if any) paid for such stock by the employee;

(iv) For bonuses awarded in property other than stock: In dollars in an amount equal to the fair market value of such property at the time of the award, regardless of any conditions or restrictions, less the amount (if any) paid for such property by the employee;

(v) For employer contributions in money such as contributions to stock bonus plans and stock purchase plans or to profit-sharing plans. In dollars in an amount equal to the employer's contribution, regardless of any deferral in time of the employee's rights under such a plan or any other condition or restriction;

(vi) For employer contributions in property other than money (including the right to purchase property, such as stock, at less than the fair market value), to plans described in subdivision (v) of this subparagraph: In dollars in an amount equal to the fair market value of such property (less the amount of any employee contributions, if any), regardless of any conditions or limitations, any deferral in time of the employee's rights under the plan, or any other condition or restriction.

(d) *Rules with respect to certain plans.* (1) Any plan described in paragraph (a)(1) of this section which fails to meet the condition of having made the payment or award required under such paragraph shall be considered as a new plan subject to the provisions of § 201.78(c) and paragraphs (a) through (c) of this section (but not including the condition contained in subdivision (i) of paragraph (a)(1) of this section).

(2) Any plan described in paragraph (a)(1) of this section which meets the definition of § 201.72 (f) or (g) and operates under § 201.35 shall not operate under such paragraph (a)(1).

(3) Any plan described in subparagraph (2) of this paragraph which no longer operates under § 201.35 shall be considered as an expired incentive compensation plan within the meaning of § 201.78(d) and shall operate under the applicable provisions of this subpart.

§ 201.75 Incentive compensation practices (other than stock options).

(a) *In general*—(1) *Practices in effect on November 13, 1971.* Subject to the provisions of this section, an employer having a practice (other than a plan described in § 201.74(a)) with respect to items of incentive compensation (but not including any plan, part thereof, or practice with respect to stock options) in effect on November 13, 1971, may continue to administer such a practice providing the following conditions are met—

(i) There has been a payment prior to November 14, 1971, under the practice as a matter of custom or habit with respect to two of the last 3 practice years ending prior to November 14, 1971 (or if the practice has been in existence less than 2 practice years ending prior to November 14, 1971, then with respect to 1 practice year ending prior to such date);

(ii) Administration of the practice is clearly in accordance with demonstrated past custom or habit (other than those customs or habits as may be restricted by this section); and

(iii) Administration of the practice is in the customary manner without any deviation from such manner for purposes of circumventing the intent of the wage and salary stabilization program.

For purposes of subdivisions (ii) and (iii) of this subparagraph where the aggregate maximum amount of incentive compensation under a practice is determined according to a definite method or clear formula, such method or formula shall continue to apply. Where the aggregate maximum amount of incentive compensation under a practice is not so determined the following formula shall be deemed to apply with respect to such a practice: The base year amount with respect to such practice divided by profits of the employer prior to Federal taxes with respect to such base year. The formula so deemed to apply shall continue to apply for purposes of computing the aggregate amount of incentive compensation.

(2) *Practices established on or after November 14, 1971.* An employer having an incentive compensation practice (but not including any plan, part thereof, or practice with respect to stock options) described in—

(i) Section 201.78(c) (with respect to adoption of new practices) and approved by the Pay Board pursuant to § 201.78, or

(ii) Section 201.79(a) (with respect to practices of new organizations) and reported to the Pay Board pursuant to § 201.79,

shall administer such a practice subject to the provisions of paragraphs (a) through (c) of this section (but not including the condition contained in subdivision (i) of paragraph (a)(1) of this section).

(3) *Certain other practices.* An employer having an incentive compensation practice (but not including any plan, part thereof, or practice with respect to stock options) described in § 201.78(d) (with respect to certain expiring practices) shall administer such a practice subject to the provisions of paragraphs (a) through (c) of this section (but not including the condition contained in subdivision (i) of paragraph (a)(1) of this section).

(b) *Computation of allowable amount*—(1) *First practice year*—(i) *Practices described in paragraph (a)(1) of this section.* The allowable amount of any item of incentive compensation granted to the employees in a practice unit under a practice described in paragraph (a)(1) of this section with respect to the first practice year for which payment is made on or after November 14, 1971, shall not exceed an amount determined as follows: the base year amount plus such base year amount multiplied by the standard established in § 201.10(a).

(ii) *Practices described in paragraph (a)(2) of this section.* The allowable amount of any item of incentive compensation granted to the employees in a practice unit under a new or revised practice described in subdivision (i) or (ii) of paragraph (a)(2) of this section with respect to the practice year consisting of the first consecutive 12-month period under which the practice operates shall not exceed the base year amount.

(2) *Certain practice years with respect to practices operating under § 201.35.* The allowable amount of any item of incentive compensation granted to the employees in a practice unit under a practice which operates under § 201.35 shall not exceed the amount granted with respect to such practice as allowed under § 201.35 with respect to any practice year the practice operated under that section.

(3) *Subsequent practice years.* The allowable amount of any item of incentive compensation granted to the employees in a practice unit with respect to a practice described in any one of subparagraphs (1) through (3) of paragraph (a) of this section with respect to any practice year other than a practice year described in subparagraph (1) or (2) of this paragraph shall not exceed an amount equal to the product of:

(i) The allowable amount described in paragraph (b) of this section with respect to such practice plus such amount multiplied by the standard established in § 201.10(a); and

(ii) The adjustment factor described in subparagraph (5) of this paragraph. For purposes of subdivision (i) of this subparagraph the allowable amount with respect to any practice described in paragraph (a)(3) of this section shall be such amount which was granted with respect to the last practice year such practice operated under § 201.35.

(4) *Definition.* For purposes of this paragraph the term "base year amount" means—

(i) In the case of a practice described in paragraph (a)(1) of this section, the amount (in dollars, or where applicable, in dividend or share units) of an item of incentive compensation granted to the employees in a practice unit with respect to one of the last 3 practice years ending prior to November 14, 1971, for which there has been a payment under the practice prior to November 14, 1971;

(ii) In the case of a practice described in paragraph (a)(2)(i) of this section, the amount (in dollars, or where applicable, in dividend or share units) of an item of incentive compensation established by the Pay Board as the amount allowed to be granted with respect to the first consecutive 12-month period under which the practice operates; and

(iii) In the case of a practice described in paragraph (a)(2)(ii) of this section, the amount (in dollars, or where applicable, in dividend or share units) of an item of incentive compensation granted under the practice with respect to the first consecutive 12-month period under which the practice operates, provided such amount is not unreasonably inconsistent with the intent and purpose of the wage and salary stabilization program or the policies of the Pay Board.

(5) *Adjustment for change in size of practice unit*—(i) *Method.* The adjustment factor indicated in subparagraph (3) of this paragraph with respect to the change in the size of any practice unit shall be a fraction, the numerator of which is the sum of the base unit salary plus base unit salary additions, less base unit salary deletions, and the denominator of which is the base unit salary.

(ii) *Definitions.* For purposes of subdivision (i) of this subparagraph the term—

(*a*) "Base unit salary" means the aggregate of the base salaries of all employees in the practice unit on the last day of the base year with respect to the practice at the annual salary rate in effect with respect to each employee on such day;

(*b*) "Base unit salary additions" means the aggregate of the base salaries of all employees in the practice unit (except those employees added to such unit solely on account of a merger or other type of acquisition occurring on or after November 14, 1971) on the last day of the practice year for which the adjustment is being made who were not in the practice unit on the last day of the base year with respect to the practice at the annual salary rate in effect with respect to each employee on the last day of the practice year for which the adjustment is being made;

(*c*) "Base unit salary deletions" means the aggregate of the base salaries of all individuals who were in the practice unit on the last day of base year with respect to the practice but not in the practice unit on the last day of the practice year for which the adjustment is being made at the annual salary rate in effect with respect to each such individual on the last day of the base year; and

(*d*) "Base year" means—

(*1*) With respect to a practice described in paragraph (a)(1) or (2) of this section the practice year used to determined the base year amount with respect to such practice; and

(*2*) With respect to a practice described in paragraph (a)(3) of this section the last practice year the practice operated under § 201.35.

(c) *Rules with respect to computation of allowable amount*—(1) *Deferred payments*—(i) *Items deferred from an earlier practice year.* For purposes of computing the allowable amount of any item of incentive compensation granted with respect to any practice year, an item of incentive compensation paid to the employees in a practice unit during any practice year which was granted to any such employees with respect to an earlier practice year shall not be considered as an item of incentive compensation for such employees with respect to the practice year during which such item is paid.

(ii) *Items deferred to a later practice year.* For purposes of computing the allowable amount of any item of incentive compensation granted with respect to any practice year, an item of incentive compensation granted to the employees in a practice unit with respect to any practice year which is deferred to a later practice year shall be considered as an item of incentive compensation for such employees for the practice year during which such item is granted.

(iii) *Granted with respect to a practice year.* For purposes of this section, an item is granted with respect to the practice year for which the amount generated under the practice is computed whether or not such amount is paid during such year.

(2) *Amounts in excess of allowable amount*—(i) *Treatment.* If the amount of any item of incentive compensation granted pursuant to a practice described in paragraph (a) of this section to which paragraph (b)(1)(ii) of this section does not apply is in excess of the allowable amount of such item with respect to any practice year determined pursuant to the rules contained in paragraph (b) of this section, such excess shall be deemed to be an increase in wages and salaries with respect to the appropriate employee units of the employees participating in the practice unit in the amount determined pursuant to the rules contained in subdivision (ii) of this subparagraph during the control year with respect to each such appropriate employee unit when paid to such employees in such appropriate employee units (or if not paid, such con-

trol year such amount would have been paid had such amount been paid).

(ii) *Apportionment to appropriate employee units.* The amount of the increase in wages and salaries described in subdivision (i) of this subparagraph shall be apportioned to the appropriate employee units of the employees participating in the practice unit. The amount of such increase which shall be apportioned to an appropriate employee unit shall be determined when the amount in excess is paid (or if not paid, when such amount would have been paid had such amount been paid) as follows: the number of employees in an appropriate employee unit who are participating in such a practice unit multiplied by a fraction, the numerator of which is the amount of the excess and the denominator of which is the number of employees in the practice unit.

(iii) *Treatement of amounts apportioned.* The amount of any increase in wages and salaries apportioned to the appropriate employee units of the employees in any practice unit as described in subdivision (ii) of this subparagraph shall be considered as an increase in wages and salaries during the control year with respect to each such appropriate employee unit when paid to such employees in such appropriate employee units (or if not paid, such control year such amount would have been paid had such amount been paid). Such amount shall also be considered as a pay adjustment for purposes of the prenotification and reporting requirements of Part 202 of this chapter with respect to each such appropriate employee unit when such amount is considered as an increase in wages and salaries.

(iv) *Rule with respect to amounts apportioned to appropriate employee units.* Any amount in excess of an allowable amount as described in this subparagraph and apportioned pursuant to the rules contained in subdivision (ii) of this subparagraph shall not be allowed to increase the maximum permissible annual aggregate wage and salary increase with respect to any such appropriate employee unit, but shall reduce the maximum permissible aggregate wages and salaries payable to an appropriate employee unit by such amount for the control year such amount is paid (or if not paid, the control year such amount would have been paid had such amount been paid).

(v) *Rule with respect to phantom stock awards.* For purposes of determining the amount of any excess with respect to phantom stock awards, each phantom dividend or share unit shall be deemed to be an actual share of stock not subject to any restriction.

(3) *Valuation of items of incentive compensation.* Items of incentive compensation shall be valued according to the provisions of § 201.74(c)(3).

(d) *Rules with respect to certain practices.* (1) Any practice described in paragraph (a)(1) of this section which fails to meet the condition of having made the payment or award required under such paragraph shall be considered as a new practice subject to the provisions of § 201.78(c) and paragraphs (a) through (c) of this section (but not including the condition contained in subdivision (i) of paragraph (a)(1) of this section).

(2) Any practice described in paragraph (a)(1) of this section which meets the definition of § 201.72 (f) or (g) and operates under § 201.35 shall not operate under such paragraph (a)(1).

(3) Any practice described in subparagraph (2) of this paragraph which no longer operates under § 201.35 shall be considered as an expired incentive compensation practice within the meaning of § 201.78(d) and shall operate under the applicable provisions of this subpart.

§ 201.76 Stock options.

(a) *Certain existing stock options.* Stock options granted to the employees in a plan unit in writing prior to the close of business on December 16, 1971, under a stock option plan adopted by an employer prior to November 14, 1971, and in effect on November 13, 1971, may be exercised. The grant of such options shall not count against the allowable number of shares that may be issued under new stock options granted during an employer's fiscal year pursuant to paragraph (b)(1) or (c) of this section.

(b) *Stock options not deemed to be an increase in wages and salaries*—(1) *Grant*—(i) *Plan requirements.* New stock options under a stock option plan adopted by an employer prior to November 14, 1971, and in effect on November 13, 1971, may be granted to the employees in a plan unit under such a stock option plan but only in writing provided that such plan—

(*a*) Is approved by the employer's stockholders within 12 months of its adoption;

(*b*) Stipulates a maximum number of shares to be made available for stock option grants;

(*c*) Establishes and maintains the option price of shares that may be issued at not less than 100 percent of the fair market value of such shares on the date of grant of options for such shares; and

(*d*) Is administered in accordance with the customary manner.

(ii) *Aggregate share limitation with respect to the fiscal year beginning prior to November 14, 1972.* The allowable number of shares that may be issued under new stock options granted during an employer's fiscal year which began prior to November 14, 1972, under a stock option plan described in subdivision (i) of this subparagraph which meets the requirements of subdivisions (*a*) through (*d*) of such subdivision shall not exceed the number of shares determined as follows: The number of shares (adjusted to reflect stock splits and stock dividends) covered under stock options granted under such plan during the last 3 fiscal years of the employer ending prior to November 14, 1971, divided by 3; provided, however, if the plan was in effect on November 13, 1971, for at least 1 fiscal year of the employer ending prior to November 14, 1971, but less than 3 such fiscal years, the allowable number of shares that may be issued under new stock options granted during an employer's fiscal year which began prior to November 14, 1972, shall not exceed the number of shares (adjusted to reflect stock splits and stock dividends) covered under stock options granted during the existence of the plan through the end of the fiscal year ending before November 14, 1971, that such plan was in existence divided by the number of such fiscal years;

(iii) *Aggregate share limitation with respect to fiscal years beginning on or after November 14, 1972.* Except for fiscal years of an employer covered by paragraph (c) of this section, the allowable number of shares that may be issued under new stock options granted during an employer's fiscal year beginning on or after November 14, 1972, under a stock option plan which meets the requirements of (*a*) through (*d*) of subdivision (i) of this paragraph shall not exceed the number of shares (adjusted to reflect stock splits and stock dividends) determined:

(*a*) By dividing the total number of shares covered under stock options granted under such plan prior to the fiscal year of the employer beginning on or after November 14, 1972, with respect to which the allowable number of shares under new stock options is determined, by the number of fiscal years during which the plan operated prior to the fiscal year for which the allowable number of shares to be issued is determined; and

(*b*) By multiplying the number determined in (*a*) of this subdivision (iii) by a fraction, the numerator of which is the number of employees in the plan unit on the first day of the fiscal year with respect to which the allowable number of shares is determined and the denominator of which is the average number of employees in the plan unit during the fiscal years the plan operated prior to the fiscal year for which the allowable number of shares is determined.

For purposes of computing the average number of employees in the plan unit under (*b*) of this subdivision the plan unit shall be deemed to consist of all employees at the end of each fiscal year of the employer during which the plan operates who held options granted under such plan or who exercised options which had been granted under such plan.

(2) *Exercise.* New stock options covering shares within the applicable aggregate share limitations of this paragraph and paragraph (c) of this section under a stock option plan which meets the requirements of (*a*) through (*d*) of subdivision (i) of subparagraph (1) of this paragraph may be exercised by the employees in a plan unit under such a stock option plan.

(3) *Excess.* Options for shares in excess of the aggregate share limitation with respect to new stock options granted during an employer's fiscal year determined according to the rules contained in subparagraph (1) of this paragraph (or where applicable under para-

graph (c) of this section) under a stock option plan which meets the requirements of (*a*) through (*d*) of subdivision (i) of subparagraph (1) of this paragraph shall not be granted without the prior approval of the Pay Board pursuant to § 201.78 and options granted without such approval shall not be exercised unless prior approval has been obtained.

(c) *Rules for determining aggregate share limitation with respect to certain existing and new plans*—(1) *Certain plans in effect on November 13, 1971.* For purposes of determining the allowable number of shares that may be issued under new stock options granted during an employer's fiscal year under a stock option plan described in paragraph (b)(1)(i) of this section if any plan was—

(i) In effect on November 13, 1971, and no stock options were granted during the life of the plan prior to the employer's fiscal year beginning on or after November 14, 1972, the allowable number of shares that may be issued under new stock options granted during an employer's fiscal year beginning on or after November 14, 1972, shall not exceed 25 percent of the number of shares (adjusted to reflect stock splits and stock dividends) authorized for stock options at the time the plan was adopted, or, if amended to increase share authorization, at the time last amended. After such fiscal year, the aggregate share limitation provided in subdivision (iii) of paragraph (b)(1) of this section shall apply.

(ii) In effect on November 13, 1971, for less than a full fiscal year of the employer, (*a*) the allowable number of shares that may be issued under new stock options granted during an employer's fiscal year beginning prior to November 14, 1972, shall not exceed the greater of the number of shares (adjusted to reflect stock splits and stock dividends) subject to options actually granted prior to November 14, 1971, during such period of less than a full fiscal year, or 25 percent of the number of shares authorized for stock options during the life of the plan, and (*b*) the allowable number of shares (adjusted to reflect stock splits and stock dividends) that may be issued under new stock options pursuant to such plan during an employer's fiscal year beginning on or after November 14, 1972, shall be determined pursuant to the provisions of subdivision (i) of this subparagraph or subdivision (iii) of paragraph (b)(1) of this section, whichever is applicable.

(iii) In effect on November 13, 1971, for three or more fiscal years of the employer ending prior to November 14, 1971, and no stock options were granted during the 3 fiscal years ending before such date, (*a*) the allowable number of shares that may be issued under new stock options granted during an employer's fiscal year beginning prior to November 14, 1972, shall not exceed 25 percent of the number of shares (adjusted to reflect stock splits and stock dividends) authorized for stock options but not granted during the life of the plan; and (*b*) the allowable number of shares that may be issued under new stock options pursuant to such plan during an employer's fiscal year beginning on or after November 14, 1972, shall be determined pursuant to the provisions of subdivision (i) of this subparagraph or subdivision (iii) of paragraph (b)(1) of this section, whichever is applicable.

(2) *Plans approved pursuant to § 201.78.* The allowable number of shares that may be issued under new stock options granted under a stock option plan which is approved pursuant to § 201.78 and which meets the requirements of (*a*) through (*d*) of subdivision (i) of paragraph (b)(1) of this section shall be: (i) For the first fiscal year grants are made pursuant to such plan approval, the number of shares established by the Pay Board as the allowable number of shares applicable to the approved stock option plan; and (ii) for each fiscal year thereafter the number of shares determined pursuant to subdivision (iii) of paragraph (b)(1) of this section.

(3) *Plans reported pursuant to § 201.79.* The allowable number of shares that may be issued under new stock options granted under a stock option plan which was reported to the Pay Board pursuant to § 201.79 and which meets the requirements of (*a*) through (*d*) of paragraph (b)(1)(i) of this section shall be: (i) For the first fiscal year grants are made with respect to the reported plan, the number of shares reported as to be covered by grants during such fiscal year, provided such grants are not for the purpose of circumventing the intent of the wage and salary stabilization program and are not unreasonably inconsistent with the intent and purpose of the wage and salary stabilization program or the policies of the Pay Board; and (ii) for each fiscal year thereafter the number of shares determined pursuant to subdivision (iii) of paragraph (b)(1) of this section.

(4) *Plans described in § 201.78(d).* The allowable number of shares that may be issued under new stock options granted under a stock option plan which is described in § 201.78(d) and which meets the requirements of (*a*) through (*d*) of paragraph (b)(1)(i) of this section shall be: (i) For any fiscal year the plan operates under § 201.35, the number of shares allowed to be covered by grants under § 201.35; and (ii) for each fiscal year thereafter the number of shares determined pursuant to subdivision (iii) of paragraph (b)(1) of this section.

(d) *Special rules.* (1) For purposes of determining the allowable number of shares to be issued under new stock options during an employer's fiscal year pursuant to paragraphs (b) or (c) of this section the term "fiscal year" means the 12 month period constituting the employer's fiscal year. Parts of such a fiscal year shall be measured in months, such months constituting twelfths of a fiscal year. Parts of such a month shall be counted as a full month.

(2) For purposes of this paragraph the term "new stock option" shall include—(i) an option not previously granted with respect to shares covered under a stock option plan regardless of whether the shares covered under such new option were previously covered under another stock option, and (ii) an option previously granted where the exercise period with respect to such option is modified.

(e) *Stock options deemed to be an increase in wages and salaries*—(1) *Grant.* Except for stock options granted pursuant to the provisions of paragraph (a) of this section, the grant of any stock option under a stock option plan (whether or not such plan operated under § 201.35) failing to meet the requirements of (*a*) through (*d*) of paragraph (b)(1)(i) of this section where such plan—

(i) Was adopted prior to November 14, 1971, and was in effect on November 13, 1971, or

(ii) Was adopted on or after November 14, 1971, and was approved by the Pay Board,

shall be deemed to be an increase in wages and salaries with respect to the appropriate employee units of the employees participating in the plan unit. Except as provided in § 201.78(a) (with respect to replacement of stock option plans under which options covering all of the authorized shares have been granted), options under stock option plans adopted on or after November 14, 1971, shall not be granted until such plan is approved by the Pay Board pursuant to § 201.78.

(2) *Exercise.* Except for stock options granted pursuant to the provisions of paragraph (a) of this section, the exercise of any stock option granted under a stock option plan (whether or not such plan operates under § 201.35) failing to meet the requirements of (*a*) through (*d*) or paragraph (b)(1)(i) of this section where such plan—

(i) Was adopted prior to November 14, 1971, and was in effect on November 13, 1971, or

(ii) Was adopted on or after November 14, 1971, and was approved by the Pay Board,

shall be deemed to be an increase in wages and salaries with respect to the appropriate employee units of the employees participating in the plan unit. Except as provided in § 201.78(a) (with respect to replacement of stock option plans under which options covering all of the authorized shares have been granted), options under stock option plans adopted on or after November 14, 1971, shall not be granted or exercised until such plan is approved by the Pay Board pursuant to § 201.78.

(3) *Apportionment to appropriate employee units.* An increase in wages and salaries described in subparagraph (1) or (2) of this paragraph shall be apportioned to the appropriate employee units of the employees participating in the plan unit. The amount of such increase which shall be apportioned to such an appropriate employee unit shall be determined in the case of a grant described in subparagraph (1) of this paragraph when the option is granted and in the case of an exercise described in subparagraph (2) of this paragraph when

the option is exercised as follows: the number of employees in an appropriate employee unit who are participating in the plan unit multiplied by a fraction, the numerator of which is the amount of such increase in wages and salaries and the denominator of which is the number of employees in the plan unit.

(4) *Treatment of amounts apportioned.* The amount of any increase in wages and salaries apportioned to the appropriate employee units of the employees in any plan unit as described in subparagraph (3) of this paragraph shall be considered as an increase in wages and salaries during the control year with respect to each such appropriate employee unit the option is granted, in the case of the grant of an option, and during the control year with respect to each such appropriate employee unit the option is exercised, in the case of the exercise of an option. Such amount shall also be considered as a pay adjustment for purposes of the prenotification and reporting requirements of Part 202 of this chapter with respect to each such appropriate employee unit when such amount is considered as an increase in wages and salaries.

(5) *Rule with respect to amounts apportioned to appropriate employee units.* Any amount of increase in wages and salaries determined pursuant to this paragraph and apportioned pursuant to the rules contained in subparagraph (3) of this section shall not be allowed to increase the maximum permissible annual aggregate wage and salary increase with respect to an appropriate employee unit, but shall reduce the maximum permissible wages and salaries payable to an appropriate employee unit by the amount apportioned to such unit for the control year to which such increase in wages and salaries is apportioned.

(f) *Valuation of stock options.* For purposes of paragraph (e) of this section the value of a stock option—

(1) When granted shall be an amount equal to the value of such option at the time of grant (without taking into account any conditions or restrictions imposed under the stock option or on the shares under option) determined as follows: the sum of the option premium plus the excess of the fair market value of the shares under option at the time of the grant over the price of the shares under the option, and

(2) When exercised shall be an amount equal to the value of such option at the time of exercise (without taking into account any conditions or restrictions imposed under the stock option or on the shares under option) determined as follows: the excess of the fair market value of the shares under option at the time of exercise over the sum of the option premium plus the fair market value of the shares under the option at the time of the grant.

For purposes of this paragraph the term "option premium" means the value of the shares under option. Such value shall be an amount equal to 25 percent of the fair market value of the shares under option at the time of grant without taking into account any conditions or restrictions imposed under the stock option or on the shares under option.

(g) *Rules with respect to certain plans.* (1) Stock options granted under a stock option plan described in paragraph (b)(1)(i) of this section which meets the definition of § 201.72 (f) or (g) and operates under § 201.35 shall not operate under such paragraph (b)(1).

(2) Any plan described in subparagraph (1) of this paragraph which no longer operates under § 201.35 shall be considered as an expired stock option plan within the meaning of § 201.78(d) and shall operate under the applicable provisions of this subpart.

§ 201.77 Sales or commission plans or practices and certain production incentive programs.

(a) *In general*—(1) *Established plans, practices, or programs.* A sales or commission plan or practice established and in effect on November 13, 1971, or a production incentive program established, and in effect on such date may continue to operate in accordance with its provisions and subject to the provisions of this chapter. Generally, such plans, practices, or programs are those which directly reflect the performance of the employee participant in the form of sales or production output. Thus, for example, an incentive award related to profits is generally not a sales or commission plan or practice or a production incentive program within the meaning of this section.

(2) *New plans, practices, or programs.* An employer having a sales or commission plan or practice or a production incentive program described in § 201.78 (c) (with respect to new plans, practices, or programs) and approved by the Pay Board pursuant to § 201.78 or described in § 201.79(a) (with respect to new organizations) and reported to the Pay Board pursuant to § 201.79 shall administer such a plan, practice, or program subject to the provisions of this chapter.

(b) *Change in method of calculating earnings.* Amounts paid under a plan, practice, or program described in paragraph (a) of this section shall not be considered as an increase in wages and salaries with respect to the appropriate employee units of the employees participating in the plan, practice, or program units unless there has been a change in the method of calculating the earnings under such a plan, practice, or program resulting in an increase in the aggregate amount of compensation with respect to such plan, practice, or program unit for the plan, practice, or program year such change occurs. Thus, a downward revision of the rate or formula with respect to a plan, practice, or program where there is an increase in the aggregate amount of compensation attributable to factors unrelated to the change in rate or formula, such as an increase in volume, either in dollars or units, under such plan, practice, or program, does not result in an increase with respect to the appropriate employee units of the employees participating in the plan, practice, or program unit.

(c) *Increases in wages and salaries.* The amount of the increase in wages and salaries described in paragraph (b) of this section shall be deemed to be an increase in wages and salaries with respect to the appropriate employee units of the employees participating in the plan, practice, or program unit. Such increase shall be apportioned to the appropriate employee units of the employees participating in the plan, practice, or program unit. The amount of such increase which shall be apportioned to an appropriate employee unit shall be determined when the amount constituting the increase is paid as follows: The number of employees in an appropriate employee unit who are participating in such a plan, practice, or program unit multiplied by a fraction, the numerator of which is the amount of the increase and the denominator of which is the number of employees in the plan, practice, or program unit. The amount so apportioned to each appropriate employee unit with respect to any plan, practice, or program year shall be considered as an increase in wages and salaries during the control year such amount is paid (or if not paid, the control year such amount would have been paid had such amount been paid). Such amount shall also be considered as a pay adjustment for purposes of the prenotification and reporting requirements of Part 202 of this chapter with respect to each such appropriate employee unit when such amount is considered as an increase in wages and salaries. Such amount shall not be allowed to increase the maximum permissible annual aggregate wage and salary increase with respect to an appropriate employee unit, but shall reduce the maximum permissible aggregate wages and salaries payable to an appropriate employee unit by such amount for the control year such amount is paid. For purposes of this section, a plan, practice, or program without a specified plan, practice, or program year shall be considered as operating during the 12-month period beginning on November 14 and ending on November 13.

(d) *Certain productivity programs.* Notwithstanding the provisions of this section and §§ 201.78 and 201.79, any productivity incentive program described in § 201.61 shall be governed by the provisions of that section.

§ 201.78 New or revised plans, practices, or programs.

(a) *Replacement of existing plans, practices, or programs.* (1) An employer may, without the approval of the Pay Board, adopt a new incentive compensation plan or practice, sales or commission plan or practice, or production incentive program replacing such a plan, practice, or program operating under the provisions of this subpart which has lapsed or terminated on account of the operation of time only when such new plan, practice, or program does not increase the aggregate amount of com-

pensation that would have been granted (whether or not currently) the plan, practice, or program unit had the replaced plan, practice, or program not lapsed or terminated on account of the operation of time. Such new plan, practice, or program shall continue to operate under the applicable provisions of this subpart. Thus, an incentive compensation plan in effect on November 13, 1971, described in § 201.74(a)(1) and operating under § 201.74 which is replaced under the provisions of this subparagraph shall continue to operate under § 201.74 (including any limitations with respect to the allowable amount with respect to such plan applicable prior to replacement).

(2) Replacement of an existing plan, practice, or program other than a replacement described in subparagraph (1) of this paragraph shall be submitted to the Pay Board for prior approval pursuant to paragraph (c) of this section.

(3) For purposes of subparagraph (1) of this paragraph a stock option plan under which all of the authorized shares have been the subject of option grants shall be considered as having lapsed or terminated on account of the operation of time.

(b) *Modification or revision of existing plans, practices, or programs.* (1) An employer may, without the approval of the Pay Board, modify or revise an incentive compensation plan or practice operating under the provisions of this subpart only when such modified or revised plan or practice does not increase the aggregate amount of compensation that would have otherwise been granted (whether or not currently) a plan or practice unit under the plan or practice without taking such modification or revision into account.

(2) Any modification or revision of an incentive compensation plan or practice not described in subparagraph (1) of this paragraph shall be submitted to the Pay Board for prior approval. Modifications or revisions requiring such approval include the reduction of performance goals or targets from those in the base year under an incentive compensation plan or practice, the decrease in the price under a stock option plan at which a stock option may be exercised, and the alteration of eligibility requirements for participation in an incentive compensation plan or practice which would increase the number of employees eligible to participate in the plan or practice unit.

(3) For the treatment of a modification or revision of a sales or commission plan or practice or a production incentive program resulting in an increase in the aggregate amount of compensation that would otherwise have been granted (whether or not currently), see § 201.77.

(c) *Adoption of new plans, practices, or programs*—(1) *Approval.* An employer may adopt a new incentive compensation plan or practice, sales or commission plan or practice, or production incentive program where such a plan, practice, or program did not exist prior to November 14, 1971, only upon the prior approval of the Pay Board and under such terms and conditions as may be imposed by the Pay Board. In the case of a stock option plan requiring the prior approval of the Pay Board no stock options shall be granted in anticipation of or subject to such approval.

(2) *Performance share plans.* An employer may utilize the valuation for so-called performance share awards set forth in § 201.74(c)(3)(ii) only upon the Pay Board's prior approval (pursuant to subparagraph (1) of this paragraph) of a performance share plan under which performance share awards are to be granted, and subject to such terms and conditions as may be imposed by the Pay Board.

(d) *Rules with respect to certain expired plans, practices, and programs.* Any plan, practice, or program which meets the definitions of § 201.72(f) or § 201.72(g) and operated under the provisions of § 201.35, but which no longer operates under such section shall be allowed to operate only as provided under the provisions of this subpart; provided, however, that to the extent incentive compensation attributable to such plans, practices, or programs is not treated as wages and salaries, or as an increase thereto, under the provisions of this subpart such compensation shall not be included in computing the base compensation rate of any appropriate employee unit of which employees in the plan unit are a part. Thus, for example, items granted under an incentive compensation plan described in § 201.74(a)(1) which meets the definition of § 201.72(f) or § 201.72(g) and operated under § 201.35 are not treated as an increase in wages and salaries and are not included in computing the base compensation rate of any appropriate employee unit of which employees in the plan or practice unit are a part. However, options granted under a stock option plan in effect on November 13, 1971, failing to meet the requirements of subdivisions (*a*) through (*d*) of paragraph (b)(1)(i) of § 201.76 which meets the definition of § 201.72(f) or § 201.72(g) and operated under § 201.35 are treated as an increase in wages and salaries pursuant to the provisions of § 201.76(e) with respect to plan years such plan operated under § 201.35 and such increase is included in the base compensation rate of any appropriate employee unit of which the employees in the plan or practice unit are a part with respect to any control year beginning after November 13, 1971.

(e) *Rules with respect to plans, practices, or programs described in paragraph (a), (b), or (c) of this section.* A new plan, practice, or program adopted pursuant to paragraph (a) or (c) of this section or a plan, practice, or program modified or revised pursuant to paragraph (b) of this section or allowed to operate pursuant to paragraph (d) of this section shall comply with other relevant sections of this subpart applicable to plans, practices, or programs in effect on November 13, 1971.

(f) *Criteria.* In considering applications for approval pursuant to the provisions of this section, or for exceptions from the provisions of this section or other provisions of this subpart, the Pay Board will review the facts and circumstances of each case and utilize the criteria set forth in § 201.30 as such may be applicable.

§ 201.79 New organizations and changes in organizational form.

(a) *New organizations.* Any business, enterprise, partnership, corporation, association, or any other organization organized or established on or after November 14, 1971, which is not a successor to any such organization in existence before such date, may establish incentive compensation plans or practices, sales or commission plans or practices, or production incentive programs provided that within 90 days after establishment of such business, enterprise, partnership, corporation, association, or other organization, all such plans, practices, or programs shall be filed in report form with the Pay Board. The report filed shall in detail describe such plans, practices, of programs including the amount of each item of actual or anticipated compensation (including items described in § 201.73) with respect to each appropriate employee unit (or, where appropriate, the employees in such unit). Also, where available, this description shall include compensation levels of appropriate employee units (or, where appropriate, the employees in such unit) in comparable jobs in nearby firms. The report filed shall also demonstrate that the establishment of the entity and such plans, practices, or programs was not for the purpose of circumventing the intent of the wage and salary stabilization program and are not unreasonably inconsistent with the intent and purpose of the wage and salary stabilization program or the policies of the Pay Board.

(b) *Changes in organization form (other than mergers and similar reorganizations).* If an employer is doing business in a particular organizational form and thereafter reorganizes and conducts its business in a different organizational form and, before, after, or as part of and on account of such reorganization establishes new incentive compensation plans or practices, sales or commission plans or practices, or production incentive programs which are successors to plans, practices, or programs in effect before such reorganization and which operate under the provisions of this subpart, it shall, within 90 days after such reorganization file in report form all such plans, practices, or programs with the Pay Board. The report filed shall in detail describe such plans, practices, or programs including the amount of each item of actual or anticipated compensation (including items described in § 201.73) with respect to each appropriate employee unit (or, where appropriate, the employees in such unit). Also, when available, this description shall include compensation levels of appropriate employee units (or, where appropriate, the employees in such unit) in similar positions in

the predecessor organization (or organizations) prior to the reorganization. The report filed shall also demonstrate that the reorganization and establishment of such plans, practices, or programs were not for the purpose of circumventing the intent of the wage and salary stabilization program and are not unreasonably inconsistent with the intent and purposes of the wage and stabilization program or policies of the Pay Board. For purposes of this paragraph a plan, practice, or program is considered as a "successor" to another plan, practice, or program where such plan, practice, or program does not increase the aggregate amount of compensation that would have otherwise been granted (whether or not currently) a plan, practice, or program unit without taking the reorganization into account. Plans, practices, or programs which are not successor plans, practices, or programs shall be considered as new plans, practices, or programs subject to the provisions of § 201.78(c)(1).

(c) *Mergers and similar reorganizations.* If an employer merges with, or otherwise acquires, another business, enterprise, partnership, corporation, association, or any other organization, such employer may continue its incentive compensation plans and practices, sales or commission plans and practices, and production incentive programs pursuant to the applicable provisions of this subpart and the employees of such other organization may be added to such plans, practices, or programs pursuant to the applicable provisions of this subpart. The employer may continue the incentive compensation plans and practices, sales or commissions plans and practices, and production programs of such other organizations pursuant to the applicable provisions of this subpart and the employees of the employer may be added to such plans, practices, or programs pursuant to the applicable provisions of this subpart. Plans, practices, or programs which are not successor plans, practices, or programs within the meaning of paragraph (b) of this section shall be considered as new plans, practices, or programs subject to the provisions of § 201.78(c)(1). Employers who wish to combine plans, practices, or programs on account of such a merger shall submit such combined plans, practices, or programs to the Pay Board for prior approval.

(d) *Carryover of attributes.* For purposes of this subpart, a change in organizational form described in paragraph (b) or (c) of this section shall not affect the applicable attributes of the employer, such as appropriate employee units, plan, practice, or program units, plan, practice, or program years, or control years. Such attributes shall be carried over by the employer undertaking such a change in form, unless otherwise clearly required by the organizational change.

Subpart G—Nonunion Construction

§ 201.81 Scope.

(a) *Purpose.* The purpose of this subpart is to provide rules and standards for the stabilization of wages and salaries payable to certain employees engaged in construction, who are not covered by the terms of a collective bargaining agreement. Such employees are hereinafter referred to as nonunion construction employees.

(b) *Conflict with other provisions.* To the extent that any provision of this chapter is inconsistent with the provisions of this subpart, the provisions of this subpart shall control.

§ 201.82 Definitions.

For purposes of this subpart, the term—

(a) "Appropriate employee unit" means the same as under § 201.2, except that such unit shall be restricted to nonunion construction employees who work at a jobsite or jobsites in a particular craft (or similar classification) and in a local labor market area.

(b) "Basic wage rate" means the highest straight-time hourly rate approved for payment to union construction employees in a local labor market area by the committee authorized under Executive Order 11588, Executive Order 11640, and Pay Board Amended Order No. 2 to review wage and salary increases and other economic adjustments in the construction industry. Such rate shall be expressed in dollars and cents.

(c) "Construction" means that work defined by section 11(a) of Executive Order No. 11588, 36 F.R. 6339 (1971).

(d) "Control year" means the same as in § 201.52.

(e) "Craft" means a classification of mechanic or laborer engaged in construction at a job site.

(f) "Local labor market area" means the geographical area in the United States within which labor is normally recruited for work at a construction jobsite.

(g) "Maximum permissible annual aggregate wage and salary increase" means, with respect to the control year of an appropriate employee unit of included nonunion construction employees, an amount (expressed in dollars and cents per hour) equal to the increase in the basic wage rate approved within such control year for members of the same craft or classification engaged in construction as union construction employees at jobsites in the same local labor market area. For purposes of this definition, such term includes any additional amounts required as the secondary effect of the increase referred to in the preceding sentence upon the level of included benefits. Notwithstanding the preceding two sentences, such term means any increase granted with respect to an appropriate employee unit pursuant to a decision of the Board.

(h) "Union construction employees" means members of a particular craft engaged in construction at a jobsite who are covered by the terms of a collective-bargaining agreement.

§ 201.83 Excluded nonunion construction employees.

(a) *Offsite employees.* If employees of an employer who employs nonunion construction employees are not engaged in construction at the jobsite (e.g., office personnel, officers of the employer corporation, etc.) such employees are excluded from the coverage of §§ 201.84 through 201.88 and are therefore subject to the standard, criteria for exceptions, and other provisions of this part. See Subparts A, B, C, D, E, and F of this part. Thus, such employees may not be included in an appropriate employee unit subject to the provisions of §§ 201.84 through 201.88.

(b) *Onsite employees.* If nonunion construction employees of a particular craft are engaged in construction at the jobsite, but union construction employees of the particular craft are not working in the same local labor market area, such nonunion construction employees are excluded from the coverage of §§ 201.84 and 201.85 and are therefore subject to the standard, criteria for exceptions, and other provisions of this part. See Subparts A, B, C, D, E, and F of this part. Thus, such employees may not be included in an appropriate employee unit subject to the provisions of §§ 201.84 and 201.85.

§ 201.84 Included nonunion construction employees.

(a) *Coverage.* This section provides rules for the treatment of wage and salary increases paid to nonunion construction employees in a particular craft (or similar classification) working at jobsites in a local labor market area where union construction employees perform the same or substantially similar work.

(b) *General Rule.* The general wage and salary standard for an appropriate employee unit of included nonunion construction employees is established at 5.5 percent. The standard shall apply to any wage and salary increase payable with respect to an appropriate employee unit of included nonunion construction employees pursuant to a pay practice established, modified or administered with discretion after November 13, 1971.

(c) *Limitation.* Notwithstanding the provisions of paragraph (b) of this section, an increase in wages and salaries for an appropriate employee unit of included nonunion construction employees may be otherwise limited during a control year to an amount determined by the Pay Board or its delegate to be necessary to preserve historical wage and salary relationships, to foster orderly economic growth, or to prevent gross inequities, hardships, serious market disruptions, or localized shortages of labor.

(d) *Exception.* Nonunion construction employees in a particular craft (or similar classification) working at a jobsite or jobsites in a local labor market area may be granted a wage and salary increase (expressed in dollars and cents) that exceeds the standard, if union construction employees perform the same or substantially similar work at jobsites in the same local labor market area: provided, however, that, except as provided in § 201.86, no wage and salary increase for the control year may be granted to such nonunion construction employees in excess of the maximum permissible annual aggregate wage and salary increase.

(e) *Fringe benefits*—(1) *Included benefits.* A wage and salary increase granted pursuant to this section, or pursuant to § 201.86, shall include increases or amounts, as appropriate, attributable to the secondary effect of increases in the straight-time hourly rate as part of such wage and salary increase. Increases in the total cost of included benefits, other than secondary effect increases described in the preceding sentence, shall be subject to the provisions of § 201.58.

(2) *Qualified benefits.* Any wage and salary increase in an employer's total cost of qualified benefits (as defined in § 201.59(b)), which is granted to nonunion construction employees subject to the provisions of this section, or § 201.86, shall be subject to the qualified benefits standard and other appropriate rules in § 201.59.

§ 201.85 Percentage relationship to standard.

For purposes of § 201.88(a) a percentage shall be determined by dividing the annual aggregate wage and salary increase with respect to the appropriate employee unit of nonunion construction employees (§ 201.84) for the control year, by the base compensation rate in effect for such unit on the base date. Any request for an exception pursuant to § 201.86 shall also include the computation prescribed in the preceding sentence.

§ 201.86 Essential employees.

An exception may be granted to an employer of nonunion construction employees who is unable to recruit or retain employees of a particular craft essential to the efficient operation of such employer's business. Thus, nonunion construction employees otherwise subject to the provisions of this subpart may be granted a wage and salary increase in excess of the general wage and salary standard or the exception provided in § 201.84(d) or, if appropriate, may be paid at a rate in excess of the basic wage rate for the local-labor market area, if the payment of such excess has received prior approval of the Pay Board. A request for such exception shall be submitted on forms prescribed by the Pay Board and shall provide, in sufficient detail, evidence to support the grant of such exception.

§ 201.87 New labor market area.

If an employer of nonunion construction employees enters a local labor market area for the first time, and union construction employees in the same craft or similar classification as the nonunion construction employees are subject to a basic wage rate for such area, the employer of such nonunion construction employees may not pay such employees a rate which exceeds the basic wage rate approved for such union construction employees.

§ 201.88 Reporting requirements.

(a) Wage and salary increases granted pursuant to § 201.84 shall be reported to the Pay Board by the employer on forms prescribed by the Board within 14 days after such increases have been put into effect, if such increases are in excess of the standard.

(b) An employer of nonunion construction employees, who first enters a local labor market area and pays his employees a rate pursuant to § 201.87, shall submit a report to the Pay Board, on forms prescribed by the Board, within 14 days after such payment.

(c) Wage and salary increases excluded from the coverage of this subpart by § 201.83 shall be subject to the applicable provisions of Part 202 of this chapter.

Subpart H—State and Local Governments

§ 201.91 Scope.

(a) *Purpose.* The purpose of this subpart is to provide rules and standards for the stabilization of wages and salaries payable to employees of States, local governments, the District of Columbia, and units and instrumentalities thereof. For purposes of this subpart, such employees are referred to as governmental employees.

(b) *Conflict with other provisions.* To the extent that any provision of this chapter is inconsistent with the provisions of this subpart, the provisions of this subpart shall control.

(c) *Exclusion.* Pay adjustments which affect appropriate employee units of governmental employees and which are not expressly within the terms of any provision of this subpart are subject to the general wage and salary standard, criteria for exceptions to the standard, and all other provisions of this part.

§ 201.92 Definitions.

For purposes of this subpart, the term—

"Fiscal year" means an employer's customary 12-month fiscal accounting period.

"Government" means a State, a local government, the District of Columbia, or a unit or instrumentality thereof.

§ 201.93 Certification of pay adjustments.

(a) *In general.* For purposes of the special rules applicable to State and local governments in §§ 202.10(b)(1), 202.20(b)(1), and 202.30(b)(6)(i) of this chapter, any certification elected by a government pursuant thereto shall be made in the manner and subject to the rules set forth in this section.

(b) *Manner of certification*—(1) *Election.* An employer which is a government may submit to the Pay Board a certification that all pay adjustments not requiring prior approval in each of the appropriate employee units with respect to which certification is made will not exceed the maximum permissible annual aggregate wage and salary increase for a control year. Such certification shall be made each 6 months on forms and pursuant to instructions prescribed by the Board or, in the absence of such forms and instructions, in the language substantially as set forth in subparagraph (2) of this paragraph. Such certification shall be submitted on or before the last day of the first and seventh months of the employer's fiscal year. Such certification shall indicate the approximate number of employees in the units covered by such certification. At the option of the employer, such certification may by its terms apply—

(i) To specifically identified appropriate employee units of the employer;

(ii) To all appropriate employee units of the employer; or

(iii) To all appropriate employee units of the employer, except specifically identified units.

(2) *Certification language.* Until such time as specific forms and instructions are issued by the Pay Board, the certification elected pursuant to subparagraph (1) of this paragraph shall be made in the form of a sworn statement, executed by a duly authorized official of the employer. Such sworn statement shall contain substantially the following language:

> This is to certify that all pay adjustments which apply to or affect employees of (name of governmental unit or instrumentality) in each of the appropriate employee units designated below will, during the (first) (second) half of the fiscal year ending (date), not exceed the maximum permissible annual aggregate wage and salary increase for the control year.
>
> It is understood that no pay adjustment in excess of such maximum permissible increase may be implemented without the prior approval of the Pay Board or the Internal Revenue Service.
>
> This certification applies to (the following appropriate employee units:) (all appropriate employee units.) (all appropriate employee units with the following exceptions:)
>
> Signed this _____ day of _____ 19____:

(c) *Noncertified pay adjustments.* Any pay adjustment affecting an appropriate employee unit of governmental employees not covered by a certification shall be subject to the applicable prenotification and reporting provisions of Part 202 of this chapter.

(d) *Applications for exception.* The submission of a certification pursuant to the provisions of paragraph (b) of this section with respect to a particular appropriate employee unit shall not preclude the submission of an application for an exception to the general wage and salary standard with respect to a pay adjustment which applies to or affects such unit during the portion of a fiscal year covered by such certification. However, once such application has been submitted, the employer may no longer certify with respect to such unit during any portion of the fiscal year in which the pay adjustment sought by exception would be effective.

(e) *Computation of adjustments.* Any certification made under this section shall be pursuant to the methods of computation with respect to increases in wages and salaries set forth in Subpart E of this part. Accordingly, increases in wages and salaries are computed with respect to the control year of the applicable appropriate employee unit whereas certification is made with respect to an employer's fiscal year.

(f) *State mandated pay adjustments.* The submission of a certification pursuant to the provisions of paragraph (b) of this section with respect to a particular appropriate employee unit shall not preclude the implementation of a State mandated pay adjustment which has been approved by the Pay Board pursuant to § 201.96. However, if such State mandated pay adjustment, as implemented by an employer which is a unit or instrumentality of local government, increases the base compensation rate of such appropriate employee unit in excess of the maximum premissible wage and salary increase for a control year, such employer may no longer certify with respect to such appropriate employee unit during any portion of the fiscal year in which the State mandated pay adjustment is put into effect.

§ 201.94 Certain public officials.

(a) *General rule.* Subject to the provisions of this section, an employer which is a government may, during a control year, pay an increase in wages and salaries to an individual governmental employee in excess of the general wage and salary standard, if—

(1) Such employee is an elected or appointed official of a government;

(2) The employer elects not to include such employee in any other appropriate employee unit for purposes of determining the maximum permissible annual aggregate wage and salary increase applicable to such unit, but treats such employee as a separate appropriate employee unit;

(3) Such increase in wages and salaries is not a State mandated pay adjustment within the provisions of § 201.96;

(4) The law of the jurisdiction has prohibited any increase in the wages and salaries paid to such employee (other than an increase in fringe benefits) for a period of more than 12 months immediately preceding the effective date of an increase in wages and salaries paid pursuant to the provisions of this section; and

(5) The wages and salaries paid to such employee (other than fringe benefits) have not been increased during such period.

(b) *Limitation on pay adjustments.* The maximum permissible increase in wages and salaries which may be paid to an individual governmental employee under the provisions of this section shall be determined by computing an amount (expressed in dollars and cents) equal to the excess, if any, of—

(1) The product of the total of wages and salaries paid to such employee, determined with respect to the first payroll period following the beginning of the prohibition period (determined pursuant to paragraph (d)(2) of this section), and the multiple standard (determined pursuant to paragraph (d)(3) of this section), over

(2) The total of increases in fringe benefits which have been put into effect with respect to such employee during such prohibition period.

(c) *Manner of computation.* For purposes of this section, the amount of wages and salaries paid to an individual governmental employee may be computed and expressed in terms consistent with the employer's customary practice, e.g., on an annual or monthly basis, and not necessarily in terms of hourly compensation.

(d) *Definitions*—(1) *Fringe benefits.* For purposes of this section, the term "fringe benefits" means, with respect to an individual employee, compensation of the types which are included in determining the average hourly benefit rate. Thus, for example, nonaccountable expense allowances are fringe benefits.

(2) *Prohibition period.* For purposes of this section, the term "prohibition period" means a period of time (expressed in years and fractions thereof) immediately preceding the effective date of an increase in wages and salaries paid to an individual governmental employee, during which the law of the jurisdiction has prohibited any increase in wages and salaries (other than fringe benefits) applicable to such individual governmental employee. For purposes of the preceding sentence, a pay adjustment shall be considered to be prohibited by the law of the jurisdiction only if the employer is prevented by superior legal authority (e.g., constitution, charter, or legislation enacted by a higher level of government) from paying any wage and salary increase to an individual governmental employee (or any person occupying the position held by such employee) during a term of office or other ascertainable period of time. A pay adjustment shall not be considered to be prohibited by the law of the jurisdiction solely because a pay adjustment has not been approved, funds to make a pay adjustment have not been appropriated by the governing body of the jurisdiction, or the governing body of the jurisdiction has not met.

(3) *Multiple standard.* For purposes of this section, the term "multiple standard" means, with respect to an individual governmental employee, a percentage which is the product of:

(i) The general wage and salary standard established in § 201.10(a), and

(ii) The prohibition period as defined in subparagraph (2) of this paragraph.

(e) *Reporting.* A wage and salary increase may be paid under the provisions of this section without prior approval. However, a report of any such increase shall be made to the appropriate district director of Internal Revenue within 20 days after such pay adjustment is put into effect.

§ 201.95 Qualified public employee benefit plans.

(a) *In general.* Subject to the provisions of this section, contributions made by an employer which is a government to a qualified public employee benefit plan may be treated as excluded contributions to the extent provided in §§ 201.60(g) and 201.59.

(b) *Qualified public employee benefit plans defined.* For purposes of this section, the term "qualified public employee benefit plan" means a bona fide plan of deferred compensation established by a government for the exclusive benefit of its employees or their beneficiaries with respect to which contributions of the employer are, pursuant to the law of the jurisdiction—

(1) Made to a trust,

(2) Otherwise permanently set aside for such deferred compensation (but not necessarily in the custody of an independent third party), or

(3) Used as premiums to purchase annuity or retirement insurance contracts or used to purchase retirement bonds.

For purposes of this paragraph, the phrase "otherwise permanently set aside for such deferred compensation" includes funding in any manner other than funding on a pay-as-you-go basis. Such bona fide plan need not meet the technical requirements for qualification under section 401(a), section 403(b), or section 404(a)(2) of the Code.

(c) *Limitation.* For purposes of paragraph (a) of this section, employer contributions to qualified public employee benefit plans shall be added to other employer contributions to plans described in § 201.59(b) in determining contributions which may be excluded pursuant to the provisions of § 201.59 (d) and (e).

§ 201.96 State mandated pay adjustments.

(a) *In general.* A pay adjustment which applies to or affects any number of employees of units or instrumentalities of local government in a control year and which is mandated by the action of a legislative or administrative body or an executive officer of a State government is classified as a Category I pay adjustment pursuant to the provisions of § 202.2(a)(1)(iii) of this chapter, and is subject to the prenotification requirements of § 202.10(a) of this chapter, even if the State action occurred prior to November 14, 1972. An application for approval of such pay adjustment shall be submitted to the Pay Board by a duly authorized official of the State government.

(b) *Adjustments in mandated levels.* A pay adjustment which is within the provisions of paragraph (a) of this section shall be expressed as a percentage increase in the mandated level and shall be computed by subtracting the level of the particular State mandated wage, salary, or benefit (expressed in dollars and cents) in effect on the base date from the level of the corresponding State mandated wage, salary, or benefit which would be in effect after such proposed pay adjustment is implemented. For purposes of this paragraph only, the base date shall be the day before the effective date of such pay adjustment. Notwithstanding the provisions of Subpart E of this part, such pay adjustment may be considered by the Pay Board with respect to a 12-month control period which may be the State's fiscal year, a different annual period which reflects customary practice in the State, or such other period as the Pay Board considers appropriate, and which may not necessarily coincide with control years (determined pursuant to § 201.52) applicable

to the State government or to the affected units or instrumentalities of local government. For purposes of this paragraph only, the level of a State mandated wage, salary, or benefit may be computed and expressed in terms consistent with customary practice in the State, e.g., on an annual or monthly basis, and not necessarily in terms of hourly compensation. A State mandated reduction in hours worked is a pay adjustment subject to the provisions of this paragraph.

(c) *Pay adjustments above mandated levels.* If any portion of wages, salaries, or benefits, paid in an appropriate employee unit is affected by, established by, or subject to State mandate, a pay adjustment in such unit not made pursuant to State mandate shall be subject to the general wage and salary standard and the criteria for exception thereto, if applicable. The computation of the amount of such pay adjustment applicable to an appropriate employee unit (as determined pursuant to § 201.2) shall be made in accordance with the rules set forth in Subpart E of this part. Any increase in wages and salaries paid pursuant to State mandate shall be included in the computation of chargeable increases in the base compensation rate of such appropriate employee unit. If a proposed pay adjustment above the State mandated level would result in an increase in the base compensation rate for the appropriate employee unit in excess of the general wage and salary standard or applicable exceptions thereto for which prior approval is not required, an application for approval of such pay adjustments shall be submitted to the Pay Board or its delegate, as appropriate.

(d) *Pay Board action.* In every case subject to the provisions of paragraph (a) of this section, the Pay Board shall issue its decision based on the factual and equitable considerations present in such case. Consequently, action by the Board on any application for approval of a State mandated pay adjustment submitted under the provisions of paragraph (a) of this section shall be subject to such terms and conditions as are equitable and appropriate under the circumstances of the case. In addition, in acting on any such application, the Board may impose additional terms and conditions on pay adjustments described in paragraph (c) of this section within the affected State, and may impose procedural requirements in addition to those provided in this chapter. No provision in this section shall be deemed to preclude the submission of an application for an exception with respect to an individual appropriate employee unit, pursuant to the provisions of § 201.30.

(e) *Application illustrated.* The application of this section may be illustrated by the following examples:

Example (*1*). Public school teachers in State A are employees of local school districts. State A mandates a minimum salary which in some districts is supplemented by action of the local government. The government of State A proposes to increase the mandated minimum salary from $5,000 to $5,250 per year. This proposed pay adjustment is a Category I pay adjustment and may not be implemented without prior approval. A duly authorized official of State A should submit an application to the Pay Board.

Example (*2*). The base compensation rate of an appropriate employee unit of 500 public school teachers employed by Local School District X in State B is $4. State B, with Pay Board approval, mandates an increase in the minimum salary which, when applied to the salaries paid by District X, results in an adjustment of 10 cents or 2½ percent, in the unit's base compensation rate. District X proposes to implement additional wage and salary increases which would further raise the base compensation rate by 12 cents. The total pay adjustment for the control year is 22 cents (10 cents+12 cents). Since such total pay adjustment is a Category III pay adjustment and does not exceed 5.5 percent (22 cents÷$4=5.5 percent), it may be put into effect without prior approval.

Example (*3*). Assume the same facts as in Example (2), except that District X proposes to implement a wage and salary increase which would add 25 cents to the unit's base compensation rate. Since the total pay adjustment for the control year would be 35 cents (10 cents+25 cents), and such amount exceeds 5.5 percent of the unit's base compensation rate (35 cents÷$4=8¾ percent), the amount in excess of 5.5 percent may not be put into effect without prior approval. Since this is a Category III pay adjustment, an application for exception should be submitted to the appropriate district director of Internal Revenue.

Example (*4*). The base compensation rate of an appropriate employee unit of 1,250 public school teachers employed by Local School District Y in State C is $4. State C, with Pay Board approval, mandates an increase in the minimum salary which, when applied to the salaries paid by District Y, results in an increase of 25 cents, or 6¼ percent in the unit's base compensation rate. Since the State mandated increase has been approved by the Pay Board, District Y may pay the new, higher minimum salaries, without any further approval. Although the mandated increase, when put into effct by District Y, applies to a unit containing more than 1,000 employees, it is not necessary that a report be submitted by District Y. Since the pay adjustment already exceeds 5.5 percent of the unit's base compensation rate, no increase above the mandated increase may be put into effect by District Y during the control year without further approval.

Example (*5*). The base compensation rate of an appropriate employee unit of 600 public school teachers employed by Local School District Z in State D is $4. District Z implements a wage and salary increase in the amount of 22 cents, or 5.5 percent of the unit's base compensation rate. Subsequently, during the same control year, State D mandates an increase in the minimum salary and receives Pay Board approval. When applied to the salaries paid by District Z, the State mandate results in an increase of 10 cents, or 2.5 percent in the unit's base compensation rate. The total pay adjustment in District Z's control year is therefore 8 percent (5.5 percent+2.5 percent). District Z may implement the mandated increase without further approval, subject to any terms and conditions attached to the approval of the mandate by the Pay Board.

APPENDIX—CROSS-REFERENCE TABLE

This table has been prepared for the purpose of providing the public with a convenient means of identifying sections of the regulations in effect prior to November 14, 1972, and the regulations in effect on and after such date.

Old section number	*New section numbers*
201.1	201.1
201.2	------
201.3	201.2
201.10	201.10
201.11(a)(1)	201.12
201.11(a)(2)	201.14
201.11(a)(3)	201.15
201.11(a)(4)	201.64(a)
201.11(a)(5)	201.16
201.11(a)(6)	201.17
201.11(a)(7)	201.13
201.11(a)(8)	201.18
201.11(a)(9)	201.19
201.11(b)	201.11(b)
201.11(c)	------
201.11(d)	201.30
201.12	201.1
201.13(b)	201.31
201.13(c)	201.31(e)(3)
201.13(d)	201.36(d)
201.13(e)	201.32(b)
201.13(f)	201.32(c)
201.13(g)	201.33
201.13(h)	201.40
201.14	201.35
201.15	201.36
201.16	201.1
201.17	201.41
201.18	201.34
201.51	201.51
201.52	201.53
201.53	201.52
201.54	201.54
201.55	201.55 thru 201.57
201.56	201.58 and 201.59
201.57	201.60
201.58	201.59
201.59	201.61
201.71 thru 201.79	201.71 thru 201.79
201.81 thru 201.83	201.81 thru 201.83
201.84(a)	201.84(d)
201.84(b)	201.87
201.84(c)	201.84(e)
201.84(d)	201.86
201.85	201.85
201.86	201.88
201.91 thru 201.95	201.91 thru 201.95

PART 202—PRENOTIFICATION AND REPORTING

Subpart A—Introduction

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202.2 Classification and reclassification.
202.3 Definitions.

Subpart B—Category I Pay Adjustments

202.10 Prenotification and reporting requirements.

Subpart C—Category II Pay Adjustments

202.20 Prenotification and reporting requirements.

Subpart D—Category III Pay Adjustments

202.30 Prenotification and reporting requirements.

AUTHORITY: The provisions of this Part 202 issued under Economic Stabilization Act of 1970, as amended; Public Law 92-210, 85 Stat. 743; Executive Order No. 11640, 37 F.R. 1213 (1972), as amended by Executive Order No.

11660, 37 F.R. 6175 (1972); and Cost of Living Council Order No. 3, 36 F.R. 20202 (1972), as amended.

Subpart A—Introduction

§ 202.1 Purpose.

The purpose of the regulations in this part is to establish rules for prenotification and reporting with respect to wage and salary payments made (or proposed to be made) to employees on or after November 14, 1971. These rules are designed to provide an orderly system for compliance with the objectives of the Pay Board and the Cost of Living Council in stabilizing wages and salaries.

§ 202.2 Classification and reclassification.

(a) *In general.* For purposes of the regulations in this chapter—

(1) *Category I.* A Category I pay adjustment means a pay adjustment which—

(i) Applies to or affects an appropriate employee unit containing 5,000 or more employees;

(ii) Applies to or affects any number of employees who are engaged in construction and is pursuant to a collective-bargaining agreement; or

(iii) Applies to or affects any number of employees of units or instrumentalities of local government and is mandated by the action of a legislative or administrative body or an executive officer of a State government.

(2) *Category II.* A Category II pay adjustment means a pay adjustment which applies to or affects an appropriate employee unit containing more than 999 and fewer than 5,000 employees and which is not defined as a Category I pay adjustment within the meaning of subparagraph (1) (ii) or (iii) of this paragraph.

(3) *Category III.* A Category III pay adjustment means a pay adjustment which applies to or affects an appropriate employee unit containing fewer than 1,000 employees and which is not defined as a Category I pay adjustment within the meaning of subparagraph (1) (ii) or (iii) of this paragraph.

(b) *Reclassification of pay adjustments.* For provisions with respect to reclassification of pay adjustments, see § 101.29 of this title.

§ 202.3 Definitions.

For purposes of this part, the term—

"Appropriate employee unit" or "unit" means a group of employees as defined in § 201.2, or, if appropriate, § 201.82(a) of this chapter.

"Construction" means that work defined by section 11(a) of Executive Order No. 11588, 36 F.R. 6339 (1971).

"Control year" means, with respect to an appropriate employee unit, the period of time determined pursuant to § 201.52, or, if appropriate, § 201.82(d) of this chapter.

"Fiscal year" means an employer's customary fiscal accounting period.

"General wage and salary standard" means the standard defined in § 201.10 (a) of this chapter.

"Pay adjustment" means an increase in wages and salaries as defined in § 201.2 of this chapter, including any increase in the average hourly qualified benefit rate, whether or not in excess of the qualified benefit standard defined in § 201.59(g).

"Pay Board" or "Board" means the Pay Board established pursuant to Executive Order No. 11640, 37 F.R. 1213 (1972), as amended.

"Prenotification" means notice submitted to the Pay Board, relating to a proposed pay adjustment, on forms prescribed by and pursuant to instructions issued by the Board.

"Report" means notice submitted to the Pay Board or its delegate, relating to a pay adjustment put into effect, on forms prescribed by and pursuant to instructions issued by the Board.

Subpart B—Category I Pay Adjustments

§ 202.10 Prenotification and reporting requirements.

(a) *General rules*—(1) *Prenotification required.* Except as provided in paragraph (b) of this section, a Category I pay adjustment shall not be put into effect unless prenotification of such proposed pay adjustment has been submitted to the Pay Board and the Pay Board has approved such proposed pay adjustment. Generally, prenotification shall be submitted not less than 60 days prior to the effective date of such proposed pay adjustment, or as soon thereafter as the amount and timing of such proposed pay adjustment have been determined.

(2) *Content of prenotification.* Prenotification shall be submitted on forms prescribed by and pursuant to instructions issued by the Pay Board. In addition—

(i) *Collective bargaining agreements.* Prenotification of pay adjustments pursuant to a collective bargaining agreement shall include copies of such agreement and the prior succeeded agreement, if any, and a written summary of such pay adjustments.

(ii) *Pay practices.* Prenotification of pay adjustments pursuant to a pay practice shall include a written summary of such pay adjustments.

(b) *Special rules*—(1) *State and local governments*—(i) *Waiver of prenotification.* Prenotification of a Category I pay adjustment need not be submitted to the Pay Board if such pay adjustment—

(a) Applies to or affects an appropriate employee unit consisting of employees of a State, a local government, the District of Columbia, or any unit or instrumentality thereof,

(b) Does not exceed the general wage and salary standard, and

(c) Is not a mandated pay adjustment within the meaning of § 202.2(a) (1) (iii).

(ii) *Reporting.* A report of a pay adjustment referred to in subdivision (i) of this subparagraph shall be made to the Pay Board within 10 days after the pay adjustment has been put into effect, unless such pay adjustment is covered by a certification submitted by the employer in the manner prescribed by § 201.93 of this chapter.

(2) *Existing contracts and pay practices previously set forth.* Category I pay adjustments made pursuant to the terms of employment contracts and pay practices previously set forth which existed prior to November 14, 1971, are subject to the provisions of § 201.35 of this chapter. Prenotification shall be submitted to the Pay Board not less than 90 days prior to the scheduled effective date of any such Category I pay adjustment which would cause the total of wage and salary increases for the appropriate control year to exceed 7 percent (except for pay adjustments which are within § 201.35(c)). Prenotification shall be submitted to the Pay Board not less than 60 days prior to the scheduled effective date of all other Category I pay adjustments which are subject to the provisions of § 201.35 (except for pay adjustments which are within § 201.35(c)). Except as provided in § 201.35, such Category I pay adjustments may be put into effect without prior approval of the Pay Board.

(3) *Retroactivity.* A Category I pay adjustment which is within the provisions of § 201.31, 201.32, 201.33, 201.34, or 201.36 of this chapter is subject to the prenotification and reporting requirements of the applicable section and may be implemented only in accordance with the procedures prescribed therein.

(4) *Construction contracts.* A Category I pay adjustment which applies to or affects employees who are engaged in construction and which is determined pursuant to a collective bargaining agreement shall not be put into effect unless prenotification of such proposed pay adjustment has been submitted to the Construction Industry Stabilization Committee and the Construction Industry Stabilization Committee has approved such proposed pay adjustment.

(5) *Executive and variable compensation.* A Category I pay adjustment which is within the provisions of Subpart F of Part 201 of this chapter is subject to the prenotification and reporting requirements of such subpart and may be implemented only in accordance with the procedures prescribed therein. An application for an exception to the provisions of such subpart shall be submitted to the Pay Board in accordance with the procedures set forth in Part 205 of this chapter.

(6) *Individual increases.* Prenotification of proposed Category I pay adjustments which apply to individual employees within an appropriate employee unit during a control year (e.g., through operation of a merit plan, whether or not "qualified" under § 201.16 of this chapter, which provides for individual increases on a random or variable timing basis) shall be submitted to the Pay Board in the following manner:

(i) *Budgeted pay adjustments.* If the pay adjustments for a control year are budgeted in advance of such control year, prenotification shall be submitted to the Pay Board not less than 60 days prior to the first day of such control year, or as soon thereafter as the amount and tim-

ing of such proposed pay adjustments have been determined.

(ii) *Nonbudgeted pay adjustments*—(*a*) *Initial prenotification.* If such pay adjustments are not budgeted in advance of a control year, prenotification shall be submitted to the Pay Board not less than 60 days prior to the first day of such control year, or as soon thereafter as reasonable and supportable estimates of the amount and timing of pay adjustments anticipated or planned for during such control year can be provided. Such prenotification shall include such estimates and the grounds therefor.

(*b*) *Second prenotification.* If initial prenotification has been submitted under the provisions of this subdivision, further prenotification shall be submitted to the Pay Board not later than 60 days prior to the midpoint of the control year, or as soon thereafter as reasonable and supportable estimates of the amount and timing of all pay adjustments anticipated or planned for in such control year can be provided. Such further prenotification shall include such estimates and the grounds therefor and shall also include information as to all pay adjustments previously put into effect during the control year.

(iii) *Limitation on pay adjustments.* The total of wage and salary increases put into effect during a control year in a unit for which prenotification has been submitted under the provisions of this subparagraph shall at no time exceed the maximum permissible annual aggregate wage and salary increase which has been approved by the Pay Board following such prenotification.

(7) *Cost of living allowance increases.* Prenotification of proposed Category I pay adjustments for a control year in which increases in wages and salaries calculated pursuant to the provisions of § 201.64(a) (relating to cost of living allowance calculations) are to be paid, shall be submitted to the Pay Board in the following manner:

(i) *Initial prenotification.* The initial prenotification of pay adjustments for such control year shall include reasonable and supportable estimates of such cost of living allowance increases, if the precise amounts of such increases are not known when such prenotification is submitted.

(ii) *Further prenotification.* If, when the precise amounts of such cost of living allowance increases become known, such amounts do not exceed the amounts prenotified under subdivision (i) of this subparagraph and approved by the Pay Board pursuant to such prenotification, such increases may be put into effect as scheduled. However, if the precise amounts exceed amounts previously prenotified and approved, the portions of such increases in excess of the amounts previously prenotified and approved may not be put into effect without specific prenotification and approval. Such further prenotification shall be submitted to the Pay Board as soon as practicable after the precise amounts of such increases are determined.

(c) *Monitoring and spot checks.* Category I pay adjustments shall be subject to monitoring and spot checks after being put into effect.

Subpart C—Category II Pay Adjustments

§ 202.20 Prenotification and reporting requirements.

(a) *General rules*—(1) *Report required.* Except as provided in paragraph (b) of this section, a Category II pay adjustment which does not exceed the general wage and salary standard, or which is subject to the provisions of § 201.35 of this chapter (i.e., pursuant to the terms of an employment contract or pay practice previously set forth which existed prior to November 14, 1971), or which is within the provisions of § 201.15, § 201.16, or § 201.19 of this chapter, may be put into effect without prior approval of the Pay Board. Except as provided in paragraph (b) of this section, a report of such a Category II pay adjustment shall be made to the Pay Board within 10 days after the pay adjustment is put into effect.

(2) *Content of report.* Reports shall be submitted on forms prescribed by and pursuant to instructions issued by the Pay Board. In addition—

(i) *Collective bargaining agreements.* A report of pay adjustments pursuant to a collective bargaining agreement shall include copies of such agreement and the prior succeeded agreement, if any, and a written summary of such pay adjustments.

(ii) *Pay practices.* A report of pay adjustments pursuant to a pay practice shall include a written summary of such pay adjustments.

(b) *Special rules*—(1) *State and local governments.* Notwithstanding any other provision of this paragraph, a Category II pay adjustment which applies to or affects an appropriate employee unit consisting of employees of a State, a local government, the District of Columbia, or any unit or instrumentality thereof, and does not exceed the general wage and salary standard or any exceptions thereto which do not require prior approval within the meaning of paragraph (c) of this section, need not be reported to the Pay Board, if such pay adjustment is covered by a certification submitted by the employer in the manner prescribed by § 201.93 of this chapter.

(2) *Existing contracts and pay practices previously set forth.* Category II pay adjustments made pursuant to the terms of employment contracts and pay practices previously set forth which existed prior to November 14, 1971, are subject to the provisions of § 201.35 of this chapter. Prenotification shall be submitted to the Pay Board not less than 90 days prior to the scheduled effective date of any such pay adjustment which would cause the total of wage and salary increases for the appropriate control year to exceed 7 percent (except for pay adjustments which are within § 201.35 (c) (2) (ii) (*b*)). A report shall be made to the Pay Board within 10 days after any other Category II pay adjustment subject to the provisions of § 201.35 is put into effect. Except as provided in § 201.35 all such pay adjustments may be put into effect wihout prior approval of the Pay Board.

(3) *Retroactivity.* A Category II pay adjustment which is within the provisions of § 201.31, § 201.32, § 201.33, § 201.34, or § 201.36 of this chapter is subject to the prenotification and reporting requirements of the applicable section and may be implemented only in accordance with the procedures prescribed therein.

(4) *Nonunion construction.* Certain Category II pay adjustments which apply to or affect employees engaged in construction and which are not determined pursuant to collective bargaining agreements are subject to the provisions of Subpart G of Part 201 of this chapter. Such pay adjustments are subject to the reporting requirements of such subpart and may be implemented only in accordance with the procedures prescribed therein.

(5) *Executive and variable compensation.* A Category II pay adjustment which is within the provisions of Subpart F of Part 201 of this chapter is subject to the prenotification and reporting requirements of such subpart and may be implemented only in accordance with the procedures prescribed therein. An application for an exception to the provisions of such subpart shall be submitted to the Pay Board in accordance with the procedures set forth in Part 205 of this chapter.

(6) *Individual increases.* Category II pay adjustments which do not require prior approval and which apply to individual employees within an appropriate employee unit during a control year (e.g., through operation of a merit plan, whether or not "qualified" under § 201.16 of this chapter, which provides for individual increases on a random or variable timing basis) shall be reported to the Pay Board in the following manner:

(i) *Budgeted pay adjustments*—(*a*) *Initial report.* If the pay adjustments for a control year are budgeted in advance of such control year, a report of all such budgeted pay adjustments shall be submitted to the Pay Board not later than 10 days after the start of such control year. If such pay adjustments are made pursuant to a qualified merit plan for which an exception is claimed pursuant to § 201.16 of this chapter, such report shall include a certification that such qualified merit plan satisfies the requirements of such section.

(*b*) *Further report.* If the total of pay adjustments actually put into effect during the control year does not exceed the total of budgeted pay adjustments reported under the provisions of (*a*) of this subdivision, no further report is required with respect to such control year. However, if the total of pay adjustments actually put into effect during the control year exceeds the total of budgeted pay adjustments reported under the provisions of such subdivision, a further re-

port of all pay adjustments actually put into effect during the control year shall be submitted to the Pay Board as soon as practicable after the amount and timing of such pay adjustments are known, but in no case later than 10 days after the close of the control year: *Provided, however,* That the total of pay adjustments in the unit for the control year shall not exceed the maximum permissible annual aggregate wage and salary increase without prior approval of the Pay Board.

(ii) *Nonbudgeted pay adjustments*—(*a*) *Initial report.* If the pay adjustments for a control year are not budgeted in advance of such control year, a report of all pay adjustments anticipated or planned for during such control year shall be submitted to the Pay Board not later than 10 days after the start of such control year. Such report shall include reasonable and supportable estimates as to the amount and timing of pay adjustments. If such pay adjustments are made pursuant to a qualified merit plan for which an exception is claimed pursuant to § 201.16 of this chapter, such report shall include a certification that such qualified merit plan satisfies the requirements of such section.

(*b*) *Second report.* If an initial report of nonbudgeted pay adjustments has been submitted under the provisions of (*a*) of this subdivision, a second report shall be submitted to the Pay Board not later than 10 days after the midpoint of the control year. Such second report shall include information as to all pay adjustments previously put into effect during the control year and all pay adjustments anticipated or planned for during the remainder of such control year. Such report shall include reasonable and supportable estimates as to the amount and timing of all pay adjustments not previously put into effect.

(*c*) *Further report.* If the total of pay adjustments actually put into effect during the control year does not exceed the total of pay adjustments reported in the second report submitted under the provisions of (*b*) of this subdivision, no further report is required with respect to such control year. However, if the total of pay adjustments actually put into effect during the control year exceeds the total of pay adjustments reported in such second report, a further report of such pay adjustments actually put into effect shall be submitted to the Pay Board as soon as practicable after the amount and timing of such pay adjustments are known, but in no case later than 10 days after the close of the control year: *Provided, however,* That the total of pay adjustments in the unit for the control year shall not exceed the maximum permissible annual aggregate wage and salary increase without prior approval of the Pay Board.

(7) *Catchup.* A report of a Category II pay adjustment with respect to which a catchup exception is claimed under the provisions of § 201.15 of this chapter shall include a certification that the conditions of such section are satisfied.

(8) *Cost of living allowance increases.* Reports of Category II pay adjustments for a control year in which increases in wages and salaries calculated pursuant to the provisions of § 201.64(a) (relating to cost of living allowance calculations) are to be paid, shall be submitted to the Pay Board in the following manner:

(i) *Initial report.* If a report is submitted to the Pay Board with respect to pay adjustments during such control year, prior to the date on which such cost of living allowance increases are to be paid, and the precise amounts of such cost of living allowance increases are not known when such report is submitted, such report shall include reasonable and supportable estimates of such amounts.

(ii) *Further report.* If, when the precise amounts of such cost of living allowance increases become known, such amounts do not exceed the amounts reported under subdivision (i) of this subparagraph, no further report of such increases is required. However, if the precise amounts exceed the amounts previously reported, a report of such increases shall be submitted to the Pay Board not less than 10 days after such increases are put into effect: *Provided, however,* That the total of pay adjustments in the unit for the control year shall not exceed the maximum permissible annual aggregate wage and salary increase without prior approval of the Pay Board.

(9) *Exception for low wage employees.* A report of a Category II pay adjustment with respect to which an exception for low wage employees is claimed under the provisions of § 201.19 of this chapter shall include such information as is necessary to demonstrate the applicability of such exception.

(c) *Prior approval.* A Category II pay adjustment which exceeds the general wage and salary standard, is not within the provisions of § 201.15, § 201.16, § 201.19, or § 201.35 of this chapter, and is not otherwise permissible under the provisions of this chapter, shall not be put into effect without prior approval of the Pay Board. An application for approval of such a proposed Category II pay adjustment shall be submitted to the Pay Board in accordance with the procedures set forth in Part 205 of this chapter.

(d) *Monitoring and spot checks.* Category II pay adjustments shall be subject to monitoring and spot checks after being put into effect.

Subpart D—Category III Pay Adjustments

§ 202.30 Prenotification and reporting requirements.

(a) *General rule.* Except as provided in paragraph (b) of this section, a Category III pay adjustment which does not exceed the general wage and salary standard, which is subject to the provisions of § 201.35 of this chapter (i.e., pursuant to the terms of an employment contract or pay practice previously set forth which existed prior to November 14, 1971), or which is within the provisions of § 201.15, § 201.16, § 201.19 or § 201.94 of this chapter, may be put into effect without prior approval of the Pay Board. Except as provided in paragraph (b) of this section, such a Category III pay adjustment is not required to be prenotified or reported to the Pay Board.

(b) *Special rules*—(1) *Catchup.* A report of a Category III pay adjustment with respect to which a catchup exception is claimed under the provisions of § 201.15 of this chapter shall be made to the appropriate district director of Internal Revenue within 20 days after the pay adjustment is put into effect. Such report shall include a certification that the conditions of such section are satisfied.

(2) *Retroactivity.* A Category III pay adjustment which is within the provisions of § 201.31, 201.32, 201.33, 201.34 or 201.36 of this chapter is subject to the prenotification and reporting requirements of the applicable section and may be implemented only in accordance with the procedures prescribed therein.

(3) *Nonunion construction.* Certain Category III pay adjustments which apply to or affect employees engaged in construction and which are not determined pursuant to collective bargaining agreements are subject to the provisions of Subpart G of Part 201 of this chapter. Such pay adjustments are subject to the reporting requirements of such subpart and may be implemented only in accordance with the procedures prescribed therein.

(4) *Executive and variable compensation.* A Category III pay adjustment which is within the provisions of Subpart F of Part 201 of this chapter is subject to the prenotification and reporting requirements of such subpart and may be implemented only in accordance with the procedures prescribed therein. An application for an exception to the provisions of such subpart shall be submitted to the Pay Board in accordance with the procedures set forth in Part 205 of this chapter.

(5) *Qualified merit plans.* A report of a Category III pay adjustment under a qualified merit plan with respect to which an exception is claimed pursuant to § 201.16 of this chapter shall be made to the appropriate district director of Internal Revenue within 20 days after the first increase under such a plan is paid to an employee during a control year. Such report shall include a certification that such qualified merit plan satisfies the requirements of such section.

(6) *State and local governments*—(i) *Certification.* Notwithstanding any other provision of this paragraph, a Category III pay adjustment which applies to or affects an appropriate employee unit consisting of employees of a State, a local government, the District of Columbia, or any unit or instrumentality thereof, and which is put into effect pursuant to the terms of § 201.15, § 201.16, or § 201.19 of this chapter, need not be reported to the Internal Revenue Service, if such pay adjustment is covered by a certification

submitted by the employer in the manner prescribed by § 201.93 of this chapter.

(ii) *Certain public officials.* A report of a pay adjustment put into effect pursuant to the provisions of § 201.94 of this chapter shall be submitted to the appropriate district director of Internal Revenue within 20 days after such pay adjustment is put into effect.

(7) *Increases pursuant to certain wage reopening provisions.* A Category III pay adjustment which is within the provisions of § 201.35(c) of this chapter shall be put into effect only as provided in such section and shall be subject to the prenotification and reporting requirements set forth therein.

(c) *Prior approval.* A Category III pay adjustment which exceeds the general wage and salary standard, is not within the provisions of § 201.15, § 201.16, § 201.19, § 201.35, or § 201.94 of this chapter, and is not otherwise permissible under the provisions of this chapter, shall not be put into effect without prior approval of the Pay Board or its delegate. An application for approval of such a proposed Category III pay adjustment shall be submitted to the appropriate district director of Internal Revenue in accordance with the procedures set forth in Chapter IV of this title.

(d) *Monitoring and spot checks.* Category III pay adjustments shall be subject to monitoring and spot checks after being put into effect.

PART 205—PROCEDURES

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AUTHORITY: The provisions of this Part 205 are issued under the Economic Stabilization Act of 1970, as amended. Public Law 91–379, 84 Stat. 799; Public Law 91–558, 84 Stat. 1468; Public Law 92–8, 85 Stat. 13; Public Law 92–15, 85 Stat. 38; Public Law 92–210, 85 Stat. 743; Executive Order No. 11640 (37 F.R. 1213, Jan. 27, 1972), as amended; Cost of Living Council Orders No. 3 (36 F.R. 20202, Oct. 16, 1971) and No. 6 (37 F.R. 2727, Feb. 4, 1972).

Subpart A—General

§ 205.1 Purpose and scope.

(a) This part establishes procedures for—

(1) Appeals from adverse actions by the Internal Revenue Service;

(2) Initial action on requests for exceptions or pay challenges and review of the action taken with respect to such requests or challenges;

(3) Petitions and comments on rule making;

(4) Formal hearings on certain wage and salary increases; and

(5) Initial action on retroactive pay adjustments and review of the action taken with respect to such adjustments.

(b) Pursuant to section 214(b)(3) of the Economic Stabilization Act of 1970, as amended, if any small business enterprise files a request, challenge, application, or appeal under the provisions of this part, such request, challenge, application, or appeal will be accorded expeditious handling by affording it priority treatment.

§ 205.2 Definitions.

For purposes of this part—

"Act" means the Economic Stabilization Act of 1970, as amended.

"Adverse action" means an action by the Board or IRS denying the position, in whole or in part, of a party at interest (as defined by § 201.2 of this chapter) with respect to a pay adjustment, or with respect to an interpretation issued by IRS or ruling issued by the Office of the Chief Counsel for the Internal Revenue Service.

"Board" means the Pay Board as established by Executive Order No. 11627, and as continued by Executive Order No. 11640 and 11660, or its delegate. The term delegate, as here used, does not encompass IRS or the Office of the Chief Counsel for the Internal Revenue Service.

"District Director" means a district director of the IRS.

"Exception" means an order issued by the Board or its delegate to a person as defined by § 201.2 of this chapter waiving requirements of a specific rule, regulation, or order issued pursuant to the Act.

"Hearing Officer" means a person appointed by the Board for purposes of conducting a hearing in accordance with Subparts B, C, E, and F of this part.

"IRS" means the Internal Revenue Service.

"Pay adjustment" means a change in wages or salaries.

"Pay challenge" means an objection to an existing contract or pay practice previously set forth in accordance with § 201.35 of this chapter, filed by—

(a) A party at interest as defined in §201.2 of this chapter; or

(b) The Chairman, or two or more other members of the Board.

"Person aggrieved" means:

(a) In cases where the IRS or Board has denied the position, in whole or in part, of a party at interest (as defined by § 201.2 of this chapter) with respect to a pay adjustment, a person who is a party at interest; or

(b) In cases in which the IRS or the Office of the Chief Counsel for the Internal Revenue Service has denied the position, in whole or in part, of a party at interest with respect to an interpretation or ruling, a person who is a party at interest.

"Petition" means a written objection to or proposal for a published ruling or regulation promulgated by the Board.

"Regulation" means a regulation issued by the Board which appears in Chapter II of Title 6, Code of Federal Regulations.

§ 205.3 Representation.

(a) A person may take any action or make any appearance which is required or permitted by this part on his own behalf, or he may be represented by any natural person, age 21 years or older, whom he has designated to represent him. Such designation shall be in writing and signed by the person legally authorized to so designate and shall be filed with the Board.

(b) Persons acting in a representative capacity before the Pay Board may be barred from appearances before the Board for disreputable conduct which includes, but is not limited to, the following:

(1) Filing false or altered documents, affidavits, and other papers;

(2) Making false or misleading representations either orally or in writing; or

(3) Using intemperate or abusive language or engaging in disruptive conduct before the Board or its representative.

§ 205.4 Filing of documents.

(a) A document required to be filed directly with the Board under this chapter is considered filed when it has been received at the Pay Board offices. Documents received after regular business hours are deemed filed on the next regular business day.

(b) An employer or employer association filing any document with respect to—

(1) A reporting, prenotification, or certification requirement under this chapter,
(2) A request for exception,
(3) A challenge,
(4) A retroactive pay adjustment, or
(5) An appeal or request for review,

shall at the same time serve copies of each such document on the collective bargaining agent, if any, of the affected employee unit. If any of the above documents is filed by a collective bargaining agent, such collective bargaining agent must at the same time serve copies of each such document on the affected employer or employer association.

(c) A certificate of service shall accompany all such documents filed with the Board.

§ 205.5 Computation of time.

(a) In computing any period of time prescribed or allowed by this chapter for the performance of any act, the day of the act, event, or default on which the designated period of time begins to run will not be counted.

(b) If the last day of the period falls on a Saturday, Sunday, or a Federal legal holiday, the period will be extended to the next day which is not a Saturday, Sunday, or Federal legal holiday.

(c) If the period prescribed or allowed is 7 days or less, an intervening Saturday, Sunday, or Federal legal holiday will not be counted.

§ 205.6 Service.

(a) All documents required to be served under this part are to be served personally, by registered or certified mail, by regular U.S. mail (this option available only for service by the Board), or, where circumstances render such service impracticable, service will be effected as provided for by paragraph (e) of this section.

(b) If a person is represented by a duly authorized representative, service on the representative shall constitute service on the person.

(c) A certificate of service shall be filed with the Board for each document served.

(d) Service by mail is complete upon mailing.

(e) Whenever the Board serves a determination, or decision and order upon a person, a copy of such determination, or decision and order will also be served on any person aggrieved. If, however, such person aggrieved is an unrepresented employee, the Board will provide the employer of such employee with a copy of such determination, or decision and order. Such employer shall immediately notify any employee who is a person aggrieved of the nature of the determination, or decision and order and of the availability for inspection of such determination, or decision and order. Reasonable rules shall be established by the employer with respect to such inspections.

§ 205.7 Extension of time.

If an action is required to be taken within a prescribed time under this chapter, an extension of time will be granted only upon a showing of good cause.

§ 205.8 Subpenas; witness fees.

(a) The Chairman of the Board or his duly authorized agent may sign and issue subpenas.

(b) A subpena may require the attendance of witnesses and the production of relevant papers, books, and documents in the possession or under the control of the person served.

(c) A subpena may be served by any person who is not a party and not less than 18 years of age.

(d) The original subpena bearing a certificate of service shall be filed with the issuing official.

(e) A witness subpenaed by the Board shall be paid the same fees and mileage as are paid witnesses in district courts of the United States.

§ 205.9 Request for subpena.

(a) The Board may issue a subpena, at the request of a party at interest (or otherwise), in accordance with section 206 of the Act. The Board will not issue a subpena to a party at interest for use by the party. A request for a subpena may be filed with the Board by a party at interest in connection with any proceeding under this part. The party at interest filing such a request shall serve a copy of the request (including any supporting documentation) upon any other party at interest, and upon any person (whether or not a party at interest) to whom the subpena is to be directed.

(b) A request for subpena must include:

(1) The names of the parties to the proceeding, the number of employees in the unit, and the case number if available;

(2) A specific description of the papers, books, documents, or other data to be produced;

(3) The names and addresses of the officials who are believed to have custody of such documents;

(4) The name or title of any witness requested to appear and a description of the information sought or the testimony to be given by such witness;

(5) A certification that a written request for the same information has been served on the person or persons to whom the subpena is to be directed and that such request was denied or that 10 days have elapsed from service of such request without receipt of the requested information;

(6) A statement setting forth in detail the relevance of the information sought to the particular proceeding, with specific references to Pay Board regulations;

(7) Argument supporting the reasonable scope of the information sought as it relates to the particular proceeding; and

(8) A prima facie showing that the information to be obtained will support the position of the party at interest requesting the subpena.

(c) A request for subpena shall be accompanied by a certification that a copy of such request has been served upon the persons referred to in paragraph (a) of this section.

(d) A request for a subpena shall be filed as early in the applicable proceeding before the Pay Board as is feasible, but not later than 30 days after commencement of the proceeding before the Board. For purposes of the preceding sentence, a proceeding (e.g. an application for exception, a party at interest challenge, an appeal from an IRS adverse decision with respect to a pay adjustment, etc.) shall be deemed to have commenced before the Board upon receipt by the Board of the document requiring action, or, in the case of a Board-initiated challenge, upon service (see § 205.6(e)) by the Board on the parties at interest of a notification of such challenge. Failure to file a request for a subpena within 30 days of the commencement of a proceeding shall result in denial of the request for subpena. Notwithstanding the preceding sentence, the Board, in its discretion, may grant an extension of time to request a subpena upon a showing of good cause.

§ 205.10 Motion to quash issuance of subpena.

Any person who would be adversely affected if the request for subpena were granted may, within 14 days of the filing of the request, file a motion with the Board to limit the scope of such subpena or to quash its issuance.

§ 205.11 Disclosure of information; request for confidentiality.

(a) In the absence of the filing of a request for confidentiality, described in paragraph (b) of this section, or if the Board determines that no serious injury would result from disclosure, the Board may release any document or other information described in paragraph (c) of this section to a party at interest requesting it, provided that the Board determines that the information is relevant in a proceeding before the Board. If a request for confidentiality is submitted and the Board determines that the information is, in fact, confidential, disclosure may still be made in accordance with means specially designed, on a case-by-case basis, to protect administrative due process, and, at the same time, maintain confidentiality.

(b) Any person submitting a document to the Board may simultaneously file a request for confidentiality setting forth the adverse consequences of disclosure of such document to a party at interest. Such a request should include—

(1) A specific description of those items in the document which are believed to merit confidential treatment;

(2) Reasons for such belief;

(3) A description of those persons who already have knowledge of the information claimed to be confidential; and

(4) A description of the damage that would result from disclosure.

(c) Any document or other information submitted to the Board by a party at interest on or after November 23, 1972 is subject to the provisions of this section, including any document with respect to a reporting, prenotification, or certification requirement under this chapter, a request for exception, a challenge, a retroactive pay adjustment, an appeal or request for review, or any document submitted at the request of the Board or in response to a subpena by the Board.

§ 205.12 Consolidations.

Upon the initiative of the Board, the Chairman of the Board, a Hearing Officer, or in response to a party's motion, two or more appeals, requests for exception, pay challenges or other cases which involve substantially the same parties or issues which are closely related, may be consolidated if it is found that such consolidation will expedite the proceedings.

Subpart B—Appeals From IRS Adverse Actions

§ 205.20 Purpose and scope.

(a) The purpose of this subpart is to establish the rules of practice of the Board which govern the conduct of its administrative review proceedings with respect to appeals from IRS adverse actions.

(b) The Board has jurisdiction to consider and decide appeals from adverse actions by IRS and the Office of the Chief Counsel for the Internal Revenue Service.

(c) The Board may review all relevant questions of law and fact.

(d) Review will be limited to the evidence in the record before IRS or the Office of the Chief Counsel for the Internal Revenue Service at the time the adverse action was taken except as otherwise directed by the Board.

(e) Determinations, decisions and other actions of the Board pursuant to §§ 205.25 through 205.29 will be rendered by the Chairman or his delegate unless the Pay Board directs otherwise.

§ 205.21 Who may appeal.

Any person aggrieved by an action of IRS or the Office of the Chief Counsel for the Internal Revenue Service taken or issued pursuant to Part 401 of this title, or in accordance with delegated authority, may file an appeal with the Board, provided that a determination of violation may not be the subject of an appeal.

§ 205.22 Where to file appeal.

(a) An appeal to the Pay Board shall be filed with the IRS official who issued the adverse action being appealed. At the same time, appellant shall serve copies of such appeal and supporting documents on the parties at interest as provided for in § 205.4 (b) and (c).

(b) Appeals filed under paragraph (a) of this section will be attached to the case file and forwarded to the Board.

§ 205.23 When to file appeal.

Before filing an appeal under this subpart, a recipient of an adverse action by a District Director must have exhausted his administrative remedies within IRS by filing a timely appeal within IRS as permitted by § 401.601 of this title. An appeal to the Board must be filed with the appropriate IRS official within 30 days of service by IRS of the adverse action upon which the appeal is based.

§ 205.24 Contents.

An appeal may be accompanied by a brief and must include the name and address of the appellant (and of other parties at interest), a clear designation that the document is an appeal to the Board, a copy of the adverse action appealed from, a concise statement of the facts and contentions, grounds for appeal, and the relief requested, and a certification that he has complied with §§ 205.22 and 205.23.

§ 205.25 Screening of appeals.

(a) The Board will determine whether an appeal makes a prima facie showing that the adverse action—

(1) Was erroneous in fact or in law; or

(2) In the case of a decision denying a pay adjustment,

was erroneous in fact or in law or appears to be otherwise inequitable.

(b) Where the Board determines that the appeal has failed to make a prima facie showing, the Board may summarily reject the appeal, serve a copy of its determination upon appellant, and advise him that he may request review in accordance with § 205.29 if appropriate. If review is not available under § 205.29, appellant will be advised that he may seek judicial review under the Act. A copy of such determination will also be served on the other parties at interest in accordance with § 205.6(e).

(c) Where the Board determines that the appellant has made a prima facie showing, it will proceed in accordance with the provisions of §§ 205.26 through 205.28.

§ 205.26 Record.

(a) The case file, together with the appeal and briefs, if any, and any statement submitted by IRS or the Office of Chief Counsel for the Internal Revenue Service, as appropriate, will constitute the record on appeal.

(b) The Board on its own motion may request any additional evidence it deems necessary.

§ 205.27 Informal hearings.

(a) If the Board in its discretion deems that a hearing or presentation is advisable, it may direct that an informal hearing or presentation be held before the Board, its delegate, or a Hearing Officer.

(b) The Board will notify the appellant and other parties, as appropriate, in writing, of the time and place of the hearing.

(c) The appellant and other parties, as appropriate, may present oral argument and submit such additional documentary evidence as the Hearing Officer, the Board, or its delegate deems necessary to fully disclose the position of the party or parties.

(d) If a Hearing Officer is used, he will conduct the hearing as expeditiously as possible in accordance with instructions received from the Board.

(e) Within 30 days after the close of the hearing, the Hearing Officer, if one is appointed, will submit a report to the Board and, if the Board so directs, a recommendation with respect to the appellant's request for relief.

§ 205.28 Decision by Board.

After receipt of an appeal and the IRS record (see § 205.26) or at the conclusion of a hearing or presentation, if a hearing or presentation has been provided for—

(a) The Board will consider the record, issue a decision in writing, and direct it and an appropriate order to the appellant;

(b) A copy of the decision and order will be served upon the appropriate parties in accordance with § 205.6(e); and

(c) If the decision denies the relief requested, in whole or in part, the decision will contain a statement of the grounds for denial unless the denial is self-explanatory or is affirming a prior denial. Any person aggrieved will be advised that he may request review in accordance with § 205.29 if appropriate. If review is not available under § 205.29, appellant will be advised that he may seek judicial review under the Act.

§ 205.29 Review.

(a) Any person aggrieved by a determination under § 205.25(a)(2) or by the Board's decision under § 205.28, with respect to a pay adjustment, may request review within 14 days of service of such determination or decision.

(b) The procedural regulations contained in §§ 205.34 through 205.40 (relating to reviews) are generally adopted with respect to this subpart.

Subpart C—Initial Requests for Exceptions and Pay Challenges

§ 205.30 Purpose and scope.

(a) The purpose of this subpart is to establish procedures for initial action by the Board on requests for exceptions or pay challenges and for review by the Board of the action taken with respect to such requests or challenges.

(b) This subpart shall not apply to those requests in which the initial adverse action is taken by IRS pursuant to authority delegated by the Board. In those cases on which the initial adverse action is taken by IRS, appeals from adverse actions may be filed with the Board in accordance with the regulations under Subpart B of this part.

(c) Any case involving a request for exception or pay challenge filed with IRS and certified by IRS to the Board without decision is subject to this subpart.

(d) In all cases under paragraph (a) or (b) of this section, filing and processing of—

(1) Requests for exceptions shall be filed in accordance with the regulations issued under Subpart D of Part 401 of this title unless the Board directs otherwise.

(2) Pay challenges to existing contracts and pay practices previously set

forth by parties at interest shall be filed and processed in accordance with the regulations issued under Subpart E of Part 401 of this title unless the Board directs otherwise.

§ 205.31 Initial action on requests for exception.

(a) The Board in its discretion may allow the applicant, other parties at interest and other parties, if appropriate, to make an oral presentation, or provide for an informal hearing (pursuant to § 205.39), or a formal hearing (pursuant to Subpart E of this part).

(b) In general, the Board will render its decision on the record which will consist of the request, any written submissions by the applicant and other appropriate parties to the IRS or the Board, if appropriate, at the time of the request, and any information developed by the IRS. However, if a presentation or hearing is conducted in accordance with paragraph (a) of this section, the record may also contain an account of such presentation or hearing in the form of a report, minutes, or transcript.

(c) After considering the record the Board will issue a decision in writing and direct it and an appropriate order to the person filing the request for exception.

(d) If the Board grants an exception, it will—

(1) Serve upon the applicant, other parties to the proceedings, and any other person required to be served under § 205.6 (e) a copy of its decision and order, and

(2) Allow any person aggrieved to request review of the Board's action pursuant to §§ 205.34 through 205.40.

(e) If the Board denies an exception, in whole or in part, it will—

(1) Serve upon the applicant, other parties to the proceedings, and any other person required to be served under § 205.6(e) a copy of its decision which will contain a statement of the grounds for denial unless the denial is self-explanatory, and an appropriate order, and

(2) Allow any person aggrieved to request review of the Board's action pursuant to §§ 205.34 through 205.40

§ 205.32 Application for leave to participate in pay challenge proceedings.

(a) Upon receipt of a pay challenge, the Board will notify the parties at interest in the same manner as provided for in § 205.6(e) that a pay challenge has been filed and that they may participate in the proceedings by submitting a brief or other documentary evidence, or otherwise in accordance with § 205.33.

(b) In addition, a person who is—

(1) An employer whose competitive position in a labor market would be adversely affected if the challenge were upheld, or

(2) An employee representative, or, in the absence of such representative, an employee whose bargaining position would be adversely affected if the challenge were upheld,

may make timely application to the Board for leave to participate in its proceedings. Such person shall state his name and address, identify the docket number of the challenge, if known, state specifically the manner in which he is interested in the challenged adjustment, specify the relief sought, and sign the application for leave to participate.

(c) Upon receipt of an application filed in accordance with paragraph (b) of this section, the Board will determine whether the applicant's participation in the proceedings will contribute to the equitable disposition of the challenge.

(d) If the applicant meets the requirement of paragraph (c) of this section, he will be granted leave to participate upon such terms and conditions as the Board may designate. In such case, the Board will notify the applicant in writing and afford him a reasonable opportunity to submit documentary evidence or briefs in support of his position.

(e) If the Board denies leave to participate in the proceedings, it will so notify the applicant in writing.

§ 205.33 Initial action on pay challenges.

(a) The Board in its discretion may allow an oral presentation, or provide for an informal hearing (pursuant to § 205.39), or a formal hearing (pursuant to Subpart E of this part).

(b) In general, the Board will render its decision on the record which will consist of the challenge, any information developed by IRS and other written submissions by the parties at interest and other persons granted leave to participate under § 205.32(d). However, if a presentation or hearing is conducted in accordance with paragraph (a) of this section, the record may also contain an account of such presentation or hearing in the form of a report, minutes, or transcript.

(c) After considering the record, the Board will issue a decision in writing and direct it and an appropriate order to the person filing the pay challenge.

(d) Where the Board allows the challenged pay adjustment to stand, it will serve upon each party to the proceedings a copy of its decision and order.

(e) Where the Board denies a pay adjustment, in whole or in part, it will serve upon the parties at interest (see § 205.6(e)) and other parties to the proceedings a copy of its decision and order. The decision will contain a statement of the grounds for denial unless the denial is self-explanatory.

(f) Any person aggrieved by a decision of the Board under paragraph (c) of this section may request review by the Board pursuant to § 205.34.

§ 205.34 Scope of review.

(a) The Board will review the approval or the denial of a pay adjustment if the request for review makes a prima facie showing that—

(1) The initial action was erroneous in fact or in law or

(2) It appears to be otherwise inequitable.

(b) If the Board determines that the request for review failed to make a prima facie showing, the Board may summarily reject the request for review, notify the applicant and other parties at interest of its action, and advise the applicant that he has exhausted his administrative remedies and that he may seek judicial review under the Act.

(c) If the Board determines that the request for review has made a prima facie showing, it will proceed in accordance with the provisions of §§ 205.39 and 205.40.

§ 205.35 Who may request review.

Any person aggrieved may request review by the Board.

§ 205.36 Where to file.

A request for review shall be filed with the Pay Board, 2025 M Street NW., Washington, DC 20508.

§ 205.37 When to file.

A request for review must be filed within 14 days of service of the decision allowing or denying the relief requested.

§ 205.38 Contents.

A request for review shall—

(a) Be in writing and signed by the party requesting such review;

(b) Be designated clearly as a request for review;

(c) Include a copy of the adverse action from which review is requested;

(d) Contain a concise statement of the grounds for review and the requested relief;

and, such request may be accompanied by briefs.

§ 205.39 Informal hearings.

(a) If the Board in its discretion deems that a hearing or presentation is advisable, it may direct that an informal hearing or presentation be held before the Board, its delegate, or a Hearing Officer.

(b) The Board will notify the parties at interest and other parties, as appropriate, in writing, of the time and place of the hearing.

(c) The appellant and other parties, as appropriate, may present oral argument and submit such additional documentary evidence as the Hearing Officer, the Board, or its delegate deems necessary to fully disclose the position of the party or parties.

(d) If a Hearing Officer is used, he will conduct the hearing as expeditiously as possible in accordance with instructions received from the Board.

(e) Within 30 days after the close of the hearing, the Hearing Officer, if one is used, will submit a report to the Board, and, when the Board so directs, a recommendation with respect to the disposition of the case.

§ 205.40 Decision by Board on review.

(a) The Board will issue a decision in writing and direct it and an appropriate order to the person requesting review.

(b) A copy of the decision and order will be served upon the parties at interest (see § 205.6(e)) and other parties to the proceedings.

(c) If the decision denies the relief requested by any person aggrieved, in

whole or in part, the decision will contain a statement of the grounds for denial unless the denial is self-explanatory or is affirming a prior denial.

(d) Any person aggrieved may seek judicial review under the Act if the decision denies the relief requested.

Subpart D—Petition and Comment on Rule Making

§ 205.50 Scope.

The Board shall afford any interested person the right to petition or comment on the issuance, amendment, or repeal of any ruling or regulation promulgated by the Board.

§ 205.51 Where to file.

Petitions or comments shall be filed with the Pay Board, 2025 M Street NW., Washington, DC 20508.

§ 205.52 When to file.

A petition or comment may be filed at any time.

Subpart E—Formal Hearings

§ 205.60 Purpose and scope.

(a) To the maximum extent possible, the Board will conduct formal hearing for the purpose of hearing arguments or acquiring information bearing on a wage or salary increase or proposed wage or salary increase if such increase or proposed increase has or may have a significantly large impact upon the national economy.

(b) A formal hearing held pursuant to this subpart will be open to the public, but such hearings may be closed to the public for the purpose of receiving information considered to be confidential under section 205 of the Act.

§ 205.61 Appointment of Presiding Officer.

If a formal hearing is directed by the Board in accordance with § 205.60, a Hearing Officer may be appointed by the Board to preside over such hearing. In the absence of the appointment of a Hearing Officer, the Chairman, or his delegate, will preside over the hearing.

§ 205.62 Notice of hearing.

At the Board's discretion, notice will be published in the FEDERAL REGISTER of the nature, date, and time of the hearing and of the appointment of the Hearing Officer if appropriate. Thereafter, all documents and other papers shall be filed with the Hearing Officer, or in the absence of the appointment of a Hearing Officer, with the Executive Secretariat of the Board.

§ 205.63 Powers and duties of the Presiding Officer.

(a) In addition to any other powers specified in this part, the presiding officer shall have the power:

(1) To administer oaths and affirmations;

(2) To examine or cross-examine witnesses;

(3) To issue subpenas authorized by the Act;

(4) To rule upon offers of proof and receive evidence;

(5) To regulate the course and conduct of the hearing, including—

(i) Continuing the hearing from day to day or adjourning it to a later date or different place by announcement thereof at the hearing or by other appropriate notice;

(ii) Taking official notice of any material fact not appearing in evidence in the record;

(iii) Excluding from the hearing persons who engaged in misconduct; and

(iv) Striking all related testimony of a witness who refuses to answer questions ruled to be proper;

(6) To rule on motions and to dispose of procedural requests or similar matters; and

(7) To issue recommendations and prepare orders.

(b) The presiding officer will conduct the hearing as expeditiously as possible, in accordance with instructions received from the Board in each individual case. If a Hearing Officer is appointed as the presiding officer, he will, within 30 days after the close of the hearing, transmit the record of the hearing together with his recommendations and proposed order, if any, to the Board. A copy of any such recommendation or proposed order will be served on the parties at interest and other parties to the proceedings.

(c) The Hearing Officer's authority in each case will terminate upon transmitting the record of the hearing and his recommendation and proposed order, if any, to the Board.

§ 205.64 Record.

(a) The record of a formal hearing will consist of an account of the proceedings of such hearing and all documents and exhibits submitted during the course of such hearing.

(b) The Board will determine whether the account of the hearing shall be in the form of a report, minutes or transcript. If the hearing is conducted by a Hearing Officer, such determinations will be part of the instructions given to such Officer pursuant to § 205.63(b).

(c) Copies of the account of the hearing may be obtained by any party upon payment of the fees fixed therefor, if any.

Subpart F—Retroactive Pay Adjustments

§ 205.80 Purpose and scope.

(a) The purpose of this subpart is to establish procedures for initial action by the Board on requests for retroactive pay adjustments and for review by the Board of the action taken with respect to such requests.

(b) This subpart shall not apply to those requests for retroactive pay adjustments in which the initial adverse action is taken by IRS pursuant to authority delegated by the Board. In those cases in which the initial adverse action is taken by IRS, appeals from adverse actions may be filed with the Board in accordance with the regulations under Subpart B of this part.

(c) Any case involving retroactivity filed with IRS and certified by IRS to the Board without decision is subject to this subpart.

(d) In all cases under paragraphs (a) and (b) of this section, requests for retroactive pay adjustments shall be filed with the Board or IRS as expressly provided for by the substantive provision under which application is being made.

§ 205.81 Retroactive pay adjustment challenges; proceedings.

(a) For purposes of this subpart, a challenge to a retroactive pay adjustment may be filed by a party at interest (as defined in § 201.2 of this chapter), the Chairman, or two or more other members of the Board. Such challenge must be filed within 28 days of prenotification or within 28 days of providing any additional information requested by the Board.

(b) Upon receipt of such a challenge, the Board will notify the parties at interest in the same manner as provided for in § 205.6(e) that a challenge to a retroactive pay adjustment has been filed and that they may participate in the proceedings by submitting a brief or other documentary evidence, or otherwise if the Board so directs.

(c) In addition, a person who is—

(1) An employer whose competitive position in a labor market would be adversely affected if the challenge were upheld or

(2) An employee-representative, or, in the absence of such representative, an employee whose bargaining position would be adversely affected if the challenge were upheld.

may make timely application to the Board for leave to participate in its proceedings. Such person shall state his name and address, identify the docket number of the challenge, if known, state specifically the manner in which he is interested in the challenged adjustment, specify the relief sought, and sign the application for leave to participate.

(d) Upon receipt of an application filed in accordance with paragraph (c) of this section, the Board will determine whether the applicant's participation in the proceedings will contribute to the equitable disposition of the challenge.

(e) If the applicant meets the requirement of paragraph (d) of this section, he will be granted leave to participate upon such terms and conditions as the Board may designate. In such case, the Board will notify the applicant in writing and afford him a reasonable opportunity to submit documentary evidence or briefs in support of his position.

§ 205.82 Board decisions.

The procedural regulations contained in §§ 205.33 through 205.40 (relating to pay challenges) are generally adopted with respect to retroactive pay adjustments.

APPENDIX—SPECIAL REGULATIONS

[Special Regulation No. 1]

Firms Engaged In Sale of Certain Lumber and Wood Products

MODIFICATION OF SMALL BUSINESS EXEMPTION

Pursuant to the amendments to § 101.51 of Part 101 of the regulations of the Cost of Living Council, effective July 17, 1972, the small business exemption of the Council was made inapplicable to any firm, otherwise exempt under such section, which in its most recent fiscal year derived more than $100,000 of its sales or revenues from or by the sale or brokerage of lumber, plywood, veneer, millwork, and structual wood members and associated wood products such as hard-board and particle board.

The effect of the amendments is to make the wage stabilization regulations of the Pay Board in Chapter II of Title 6 of the Code of Federal Regulations applicable to the employees of manufacturers, brokers, wholesalers, and retailers who were covered by the exemption. In addition, the wage control provisions will apply to the employees of new firms which entered the business of selling those products during the period the exemption was in effect, and who meet the gross sales test of § 101.51(b)(2)(vii) of Part 101 of the regulations of the Cost of Living Council.

Each appropriate employee unit of such firms no longer exempted from the stabilization program shall assume its proper control year in accordance with § 201.52 of Pay Board Regulations and shall be subject to the general wage and salary standard of § 201.10(a) of Pay Board Regulations. Wage and salary adjustments made to any employee unit after May 1, 1972 and prior to July 17, 1972 may be continued under this Order; provided that, if such adjustment exceeds the maximum permissible wage and salary increase of such unit for an appropriate control year, no additional wage or salary adjustment may be made during such control year. Hardships or other inequities fostered by this modification of the small business exemption will be considered by the Pay Board pursuant to § 201.30 of the Pay Board Regulations.

(Economic Stabilization Act of 1970, as amended (Public Law 92-210, 85 Stat. 743), Executive Order No. 11640, 37 F.R. 1213 (1972) as amended by Executive Order No. 11660, 37 F.R. 6175 (1972), and Cost of Living Council Order No. 3, 36 F.R. 20202 (1971), as amended) [37 F.R. 16091, Aug. 10, 1972]

DELEGATIONS OF AUTHORITY

[Order 1, Revision 1]

SECRETARY OF THE TREASURY

Delegation of Authority

Pursuant to Executive Order 11640, as amended, and the authority delegated to the Pay Board (hereinafter referred to as the Board) by Cost of Living Council Order No. 3, as amended (hereinafter referred to as the order), it is hereby ordered as follows:

1. There is hereby delegated to the Secretary of the Treasury (hereinafter referred to as the Secretary), subject to the general policy guidance of and coordination with the Board and consistent with the general policy of Executive Order 11640 as developed by the Cost of Living Council, authority to interpret, implement, administer, monitor, and enforce the stabilization of wages and salaries pursuant to the criteria, standards, and implementation procedures established by the Board. Such functions will include, but not be limited to, the following:

(a) Operation and maintenance of local service and compliance centers established in support of the economic stabilization program in Standard Metropolitan Statistical Areas and such other places as the Secretary may determine;

(b) Dissemination of information and guidance to the public;

(c) Issuance of rulings and the receiving, analyzing, and responding to inquiries relating to the application of regulations and other guidance issued by the Board and the establishment and operation of an appeal procedure;

(d) Receiving, analyzing, investigating, and preparing and forwarding to the Board for decision recommendations upon applications for exceptions from the criteria, standards, and the implementation procedures;

(e) Conducting monitoring investigations as to the effectiveness of the stabilization program;

(f) Receiving, investigating, and resolving by obtaining compliance, where possible, complaints received with respect to program violations and recommending enforcement action to the Board, where necessary;

(g) Making factual determinations on behalf of the Board or in furtherance of any functions herein delegated; and

(h) Maintaining adequate records and the making of periodic reports to the Board.

2. All executive departments and agencies shall furnish such necessary assistance to the Secretary as may be authorized by law.

3. The Secretary may redelegate to any agency, instrumentality, or official of the United States any authority under this order, and may, in carrying out the functions delegated by this order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

4. Effective date: November 14, 1971.

[Order 2, Amended]

CONSTRUCTION INDUSTRY STABILIZATION COMMITTEE

Authorization Regarding Wages, Salaries and Other Economic Adjustments

In order to more clearly delineate the delegation of authority from the Pay Board to the Construction Industry Stabilization Committee (CISC), the Pay Board has determined that it would be appropriate to amend Pay Board Order No. 2.

Pursuant to the authority vested in the Pay Board by Executive Order No. 11640, and Cost of Living Council Order No. 3, as amended, it is hereby ordered as follows:

1. The Pay Board authorizes the Construction Industry Stabilization Committee (CISC) to administer Pay Board regulations to the extent applicable with respect to collective bargaining agreements in the construction industry. CISC shall also administer CISC "Substantive Policies" as approved by the authorized construction subcommittee of the Pay Board, which are attached as a supplement to this order.

2. All wage and salary increases and other economic adjustments contained in collective bargaining agreements in the construction industry scheduled to take effect on or after August 16, 1971, require approval of CISC regardless of the number of employees involved.

3. Pay adjustments shall be governed by Pay Board regulations as provided in the "Substantive Policies" of CISC. Pay Board regulations established subsequent to this date shall be made applicable to collective bargaining agreements in the construction industry to the extent specifically provided in such regulations, or as otherwise modified following consultation between the Pay Board and CISC.

4. In administering the foregoing regulations of the Pay Board, CISC shall comply with the following procedures:

a. CISC shall make regular reports to the Pay Board, particularly relating to (i) cases received for processing by CISC, (ii) the current administrative report and the agenda of cases to be considered by CISC, (iii) the results of cases approved and denied, and the cases returned to the parties for modification or further negotiation. It shall also report with respect to such other matters, such as significant activities of the craft boards, as are deemed by CISC to be responsive in carrying out the delegation of authority under this order, or are in response to specific requests of the Pay Board.

b. CISC shall consult with the Pay Board on a timely basis with respect to any matter of unusual import or of special significance to the effectiveness of the stabilization objectives, particularly in those situations or application of policy which may establish precedents outside of the construction industry.

c. Because of the relation of construction contract administration to the general administration of Pay Board regulations or policies, if special instances arise where CISC wishes to make exceptions to applicable Pay Board regulations or policies or to modify or add to the approved "Substantive Policies," CISC will first work out an agreement with respect thereto with the construction subcommittee of the Pay Board.

d. CISC and the Pay Board will each appoint a liaison committee and provide

for alternates to serve in place of members of the liaison committees. The purpose of the liaison committees will be to consult regularly and to coordinate procedures, policies, and general activities of CISC and the Pay Board insofar as they relate to matters delegated to CISC. The Executive Directors of the Pay Board and CISC shall consult as to any case where a question of appropriate jurisdiction is raised.

e. CISC shall refer to the Pay Board any request for legal action by the Justice Department to enforce compliance with wage stabilization standards or CISC orders.

f. Significant CISC public information releases, and public reports, including annual reports, shall be reviewed by the construction subcommittee of the Pay Board before being issued. Provisions can be made for the issuance of routing repetitive reports or releases.

SUPPLEMENTARY "SUBSTANTIVE POLICIES"

(1) The CISC will carry out its responsibilities in the framework of the general regulations of the Pay Board, and where applicable, Pay Board regulations will be used by CISC. However, specific regulations of the Pay Board with respect to matters such as tandem relationships, deferred increases, merit increases, incentives, and the like may not be directly applicable in all instances to construction and will need supplementation. In addition, CISC will apply the policies set forth below. Together, they constitute a complete substitute for the standards set forth in sections 6(a) and 6(b) of Executive Order 11588 dated March 29, 1971. These CISC policies shall be applied so as to conform as closely as the special conditions of the construction industry permit to those of the Pay Board.

(2) No agreement is automatically entitled to the "general wage and salary standard" or the exceptions thereto of the Pay Board. Moreover, the application of equal percentage adjustments to all crafts in any locality is often not a practical basis for stabilization; on occasion cents-per-hour developments among some or all crafts may be more appropriate.

(3) Pending final resolution of treatment of fringe benefits exempt under section 203(g) of the Economic Stabilization Act Amendments of December 22, 1971, these benefits, together with all other benefits, will be considered in determining economic adjustments subject to the review of the CISC.

(4) In the application of exceptions in individual cases providing for adjustments in excess of the "general wage and salary standard," the following principles are to be applied:

(a) There are some few situations with long established formulas for setting wage rates on the basis of averaging other construction rates for the same craft in other localities. The adjustments provided by these formulas may be approved except where they are shown to have an unstabilizing effect, or where the formula includes deferred increases which are themselves found to be unreasonably inconsistent with stabilization. The CISC will not approve "me-too" clauses, but will examine all economic adjustments provided by contract clauses.

(b) There are a few intercraft relationships, often within a single international union, which are so well recognized that adjustments, at least to a degree, to restore appropriate relationships among these classifications may be approved. The case of plumbers and fitters or plaster tenders, lathers and plasterers may be illustrative in some localities.

(c) In general, any restoration to appropriate historic relationships among crafts or localities should be spread over a period of 2 or 3 years or more. The CISC in reviewing historical relationships will also give attention to clear evidence of changing historical relationships over the past decade.

(d) Attention should be directed to questions of appropriate differentiation of rates by crafts among branches of the industry, such as heavy and highway, housing and commercial work, and local parties and craft boards may be urged to review or consider such differentiations.

(e) The CISC may give special consideration to agreements which provide for significant changes in the geographical structure of bargaining, including the development of wage zones under one agreement, where such changes would promote the stabilization of collective bargaining and the effective utilization of manpower and management resources.

(5) Deferred increases which would cause unstabilizing effects on wage relationships in a locality or among localities (i.e., which would prove unreasonably inconsistent with the application of such standards to a locality or a branch of the industry), should be promptly reviewed and agreement sought on adjustments at a local level or the adjustment spread over a sufficiently long period to reduce unstabilizing effects and to achieve settlements at reasonable amounts. In general, such deferred increases are now held up and may not be placed into effect without approval of the CISC. The CISC is to proceed promptly to identify those cases on a locality by locality basis and to seek revisions in agreements. The CISC ordinarily intends to handle these cases directly with the International Unions and the national offices of contractor associations in the first instance, rather than with the craft dispute boards.

(6) In the consideration of all applications in 1972, the CISC recognizes the necessity to show continued retardation in the rate of increases permitted for 1972 as measured by Pay Board standards. The CISC shall also apply this principle to agreements extending into 1973 and 1974.

(7) The CISC is to continue to apply its policy on economic adjustments which are broader than wages and fringe benefits, that is, which would include the money value of all economic adjustments including work rules.

(8) The CISC is to seek to improve the role of the craft boards and to enhance their contribution to the improvement of collective bargaining and procedures for dispute settlements in the industry.

Effective date: April 25, 1972.

[Order 3, Revision 1]

CHAIRMAN

Delegation of Authority

Pursuant to the authority vested in the Pay Board by Executive Order No. 11640, as amended, and Cost of Living Council Order No. 3, as amended, it is hereby ordered as follows:

1. There is delegated to the Chairman of the Pay Board responsibility for all administrative functions, including, but not limited to, contracting, acquisition of supplies, financial certifications, expenditure and allocation of funds, travel approval, personnel actions, and staff organization.

2. There is delegated to the Chairman authority to recommend litigation and to represent the Pay Board in litigation: *Provided, however,* That such litigation shall be only for the purpose of enforcing, defending, or intervening in actions related to policies and regulations established by the Pay Board, Pay Board decisions and orders, and other actions taken by the Board.

3. There is delegated to the Chairman authority to approve for publication or dissemination "Questions and Answers" and rulings concerning the interpretation of (a) the Economic Stabilization Act of 1970, as amended, (b) Pay Board policy decisions, and (c) Pay Board regulations.

4. The Chairman shall have the authority to approve pay adjustments within the General Wage and Salary Standard, to approve or deny requests for exceptions thereto (including requests for approval of new or modified variable compensation plans or practices pursuant to Subpart F of Part 201, Pay Board Regulations), to review and rule on retroactive and deferred pay adjustments in accordance with Subpart C of Part 201, Pay Board Regulations, and to rule on appeals from Internal Revenue Service determinations.

5. The Chairman shall have the authority to rule on requests for review (or reconsideration) of initial decisions made pursuant to paragraph 4 of this order.

6. The Chairman shall have the authority to consider any request for review (or reconsideration) of a Pay Board decision and to affirm any such decision in accordance with Part 205, Pay Board Procedural Regulations.

7. There is delegated to the Chairman the authority to request information in connection with any proceeding before the Board, or in connection with compliance investigations. This authority includes, but is not limited to, the right to issue subpenas and request judicial enforcement thereof.

8. Decisions made pursuant to this delegation of authority shall be made on the basis of the standards and criteria set forth in applicable Pay Board regulations.

9. The Chairman is hereby authorized to redelegate any authority delegated to him by this order: *Provided however,* That—

a. With respect to Category I pay adjustments, the Chairman may redelegate only the authority to approve increases within the General Wage and Salary Standard, within established exceptions to such standard, or which are tandem pursuant to § 201.12 of Pay Board regulations (regardless of the amount of the increase) to other increases approved by the Pay Board.

b. With respect to deferred increases challenged pursuant to § 201.35, the Chairman may redelegate only the authority to approve such increases which are found to be not unreasonably inconsistent with criteria established by the Pay Board.

c. With respect to review of initial decisions, the Chairman may not redelegate the authority to review decisions of the Chairman or decisions of the Pay Board.

10. Where references are made in this order to specific CFR sections, such delegated authority shall extend to any subsequent renumbering of such sections. Where substantive changes are made to said enumerated CFR sections, the authority delegated in this order shall extend to such changes unless expressly stated otherwise by the Pay Board in its regulations.

11. This order supersedes Pay Board Order No. 3 which is hereby revoked.

12. The effective date of this order shall be January 21, 1972.

Unanimously adopted by the Board November 2, 1972.

[Order 3A, Revision 1]

EXECUTIVE DIRECTOR

Delegation of Authority

Pursuant to the authority delegated to the Chairman of the Pay Board by section 9 of Pay Board Order No. 3, Revision 1, it is hereby ordered as follows:

1. There is delegated to the Executive Director of the Pay Board the authorities delegated to the Chairman of the Pay Board by Order No. 3, Revision 1, subject to the limitations provided by paragraph 9 of that order.

2. The Executive Director of the Pay Board is authorized to redelegate the authority delegated by paragraph 1 of this order to such officers and employees of the Pay Board staff as he deems necessary for the orderly and efficient performance of Pay Board functions.

3. This order supersedes Pay Board Order No. 3A, which is hereby revoked.

4. This order shall be effective as of January 21, 1972.

[Order 4, Revision 1]

SECRETARY OF THE TREASURY

Delegation of Authority

Pursuant to the authority vested in the Pay Board by Executive Order No. 11640, as amended, and by Cost of Living Council Order No. 3, as amended, it is hereby ordered as follows:

1. The delegation of authority to the Secretary of the Treasury contained in Pay Board Order No. 1 is hereby reaffirmed and continued. It has been determined that this order confers upon the Secretary of the Treasury the authority to perform functions which include, but are not limited to, the following:

(a) Determinations that certain proposed retroactive payments in all Pay Categories satisfy the criteria for such payments pursuant to 6 CFR 201.32(b), 201.32(c), and 201.36(d): *Provided,* That in the event of an adverse ruling an appeal may be made to the Pay Board; and

(b) Processing challenges by parties at interest made in accordance with 6 CFR 201.35 to existing contracts or pay practices previously set forth, investigating such challenges, and reporting the positions of all parties at interest, including the forwarding of supporting documents, to the Pay Board for determination.

2. In addition to the authority delegated by Order No. 1 and continued by this order, the Secretary of the Treasury, or his duly authorized agent, shall have the authority to sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths, all in accordance with section 206 of the Act, for any purpose related to the Act.

3. In addition to the authority delegated by Order No. 1 and continued by this order, the Secretary of the Treasury shall have the authority to review reports of wage and salary increases allowed as self-executing exceptions.

4. In addition to the authority delegated by Order No. 1 and continued by this order, the Secretary of the Treasury shall have the authority to:

(a) Approve requests for exceptions concerning Category III pay adjustments which meet the conditions set forth in 6 CFR 201.12 (tandem wage and salary relationships); in 6 CFR 201.13 (tandem qualified benefit relationships); in 6 CFR 201.14 (essential employees); in 6 CFR 201.17 (governmental wage determinations); in 6 CFR 201.18 (intraunit inequities); or in such additional criteria for exceptions as may hereafter be established by the Pay Board, and

(b) Deny all requests for exceptions concerning Category III pay adjustments which do not meet the conditions of the criteria specified in section 4(a) of this order, or certify such requests to the Pay Board without decision.

5. In addition to the authority delegated by Order No. 1 and continued by this order, the Secretary of the Treasury shall have the authority to:

(a) Review certifications of retroactive pay adjustments made by Category II or Category III employers in accordance with 6 CFR 201.31(c)(1);

(b) Review certifications of retroactive pay adjustments or certain deferred increases made by Category II or Category III employers in accordance with 6 CFR 201.36(b)(2);

(c) Make determinations for parties at interest in accordance with 6 CFR 201.36(b)(3) as to whether the requirements for retroactive pay adjustments or certain deferred increases pursuant to 6 CFR 201.36 (a) and (c) have been met; and

(d) Make a determination or transmit to the Pay Board for determination any application by a party at interest in accordance with 6 CFR 201.36(b)(3) that claims that the requirements for a retroactive pay adjustment or a deferred increase pursuant to 6 CFR 201.36(a) have been met without meeting the requirements of 6 CFR 201.36(c).

6. Where references are made in this order to specific CFR sections, such delegated authority shall extend to any subsequent renumbering of such sections. Where substantive changes are made to said enumerated CFR sections, the authority delegated in this order shall extend to such changes unless expressly stated otherwise by the Pay Board in its regulations.

7. The Secretary of the Treasury may redelegate to any agency, instrumentality, or official of the United States any authority under this order, and may, in carrying out the functions delegated by this order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

8. Unless otherwise provided, this order is effective on November 14, 1972.

[Order 5, Revision 1]

SECRETARY OF THE TREASURY

Delegation of Authority

Pursuant to the authority vested in the Pay Board by Executive Order No. 11640, as amended by Executive Order No. 11660, and Cost of Living Council Order No. 3, as amended, it is hereby ordered as follows:

1. In addition to the authority delegated to the Secretary of the Treasury in sections 1(b) and 4 of Pay Board Order No. 4, for the purpose of uniformity in administration of pay controls within certain trade, industry, and other specified groups of employees, there is hereby delegated to the Secretary of the Treasury the authority to—

(a) Issue a decision on any request for exception, and

(b) Challenge, review, and issue a decision under 6 CFR 201.35 (a),

in the case of any Category III pay adjustment that applies to a specified group of employees the precedent for which has been set by a Pay Board decision and order providing that all Category III pay adjustments within the particular group are appropriate for such action by the Secretary of the Treasury.

2. Where references are made in this order to specific CFR sections, such delegated authority shall extend to any subsequent renumbering of such sections. Where substantive changes are made to said enumerated CFR sections, the authority delegated in this order shall extend to such changes unless expressly stated otherwise by the Pay Board in its regulations.

3. The Secretary of the Treasury may redelegate to any agency, instrumen-

tality, or official of the United States any authority under this order, and may, in carrying out the functions delegated by this order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

4. Effective date: July 12, 1972.

[FR Doc.72-20372 Filed 11-22-72;1:56 pm]

RULINGS—INTERNAL REVENUE SERVICE/PAY BOARD

1972-74 Revocation of Pay Board rulings.
1972-75 Continued payment of challenged pay adjustments.
1972-76 Existing contracts.
1972-77 Appropriate employee unit.
1972-78 Bona fide promotions.
1972-79 Cost of living increases as part of existing contracts and pay practices.
1972-80 Pay adjustments and appropriate employee units.
1972-81 Competitive wage and salary increases to retain key employees.
1972-82 Incorporation of an existing business.
1972-83 Inclusion of vacation and holiday benefits in total compensation package.
1972-84 Averaging of wage and salary increase over 12-month period.
1972-85 Appropriate employee units.
1972-86 Phase one exception request as a pay practice.
1972-87 Right to seek injunctive relief.
1972-88 Longevity raises.
1972-89 Pay practice previously set forth.
1972-90 Fair Labor Standards Act.
1972-91 Party at interest for purposes of a pay challenge.
1972-92 Deferred wage and salary increases prohibited by Pay Board.
1972-93 Retroactive wage increases.
1972-94 Treatment of longevity increases.
1972-95 Overtime compensation.
1972-96 Party at interest.
1972-97 Increases in "token" salaries of corporate officers.
1972-98 Reduction in workweek without proportionate decrease in pay.
1972-99 Control year.
1972-100 Difference between merit increases and longevity increases.
1972-101 Effect of "previously set forth" test on merit plan.
1972-102 Coverage of new employees under previously existing employment contracts.
1972-103 Wage increases less than the allowable standard.
1972-104 Subsequent wage determinations pursuant to preexistent authority to increase wages.
1972-105 Qualified benefits standard.
1972-106 Davis-Bacon Act.
1972-107 Merit increases.
1972-108 Construction workers.
1972-109 Piece-rate compensation.
1972-110 Incentive compensation.
1972-111 Employee loan: indirect remuneration.
1972-112 Essential employees.
1972-113 Stock option plans.
1972-114 Sales commission plan.
1972-115 Directors' fees.
1972-116 New organization.
1972-117 Required employee donations as "wages and salaries."
1972-118 Retroactive salary increases to reflect increased productivity.
1972-119 Retroactive wage increase, based upon price increase.
1972-120 Pay practice previously set forth.

Rulings—Internal Revenue Service, Department of the Treasury

[Pay Board Ruling 1972-74]

REVOCATION OF PAY BOARD RULINGS

Pay Board Ruling

As part of its recodification, the Pay Board will update and republish its prior rulings to reflect changes in its regulations and, in some cases, changes in form or terminology, prior to, and as a part of recodification. Accordingly, this ruling revokes all Pay Board rulings heretofore published. Those rulings which are updated and are in current conformance with the final recodification of the Pay Board regulations are being republished in this issue of the FEDERAL REGISTER (Pay Board Rulings 1972-74 through 1972-120).

This ruling has been approved by the General Counsel of the Pay Board.

Dated:

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved:

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[Pay Board Ruling 1972-75]

CONTINUED PAYMENT OF CHALLENGED PAY ADJUSTMENTS

Facts. Corporation A has a contract with its employees that was in existence prior to November 14, 1971, which provides for pay adjustments to take effect thereafter which exceed the 5.5 percent standard established by the Pay Board. The contract is challenged and the challenge is pending before the Pay Board.

Issue. May the employer continue to pay its employees the increased wages provided in the contract during the period the challenge to the pay adjustments is pending before the Pay Board.

Ruling. So long as the pay adjustments were provided for in a contract that was existing prior to November 14, 1971, the employer may continue to pay the employees at the increased rate during the period the pay adjustments are under challenge unless and until the Pay Board rules otherwise. (See Economic Stabilization Regulations, § 201.35 for applicable reporting requirements.)

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972-76]

EXISTING CONTRACTS

Facts. As the result of negotiations with the union representative for the employees of Corporation A, Corporation A entered into a collective bargaining agreement on October 25, 1971, to increase the wages of its employees effective December 1, 1971, to an amount representing 10 percent of all wages and salaries paid its employees.

Issue. Is Corporation A prohibited from making payments under the agreement?

Ruling. No. The agreement will be allowed to operate according to its terms even though it exceeds the 5.5 percent standard, for it was entered into prior to November 14, 1971. It will be subject to review if challenged by a party at interest, the chairman of the Pay Board, or by two or more members of the Pay Board. (See Economic Stabilization Regulations. § 201.35, for applicable reporting requirements.)

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972-77]

APPROPRIATE EMPLOYEE UNIT

Facts. Corporation A has 200 employees and four different labor unions representing different units of employees. One of the unions seeks a contract which would increase the wages of its particular unit of employees 10 percent over the present wages of the unit, but not more than 5.5 percent of total wages paid by the corporation.

Issue. Is the wage increase sought by the union prohibited in the absence of prior approval of the Pay Board?

Ruling. Yes. The 5.5 percent standard is applied to the aggregate annual wage and salary increase within any appropriate employee unit and not to the total payroll of the corporation. In the absence of unusual circumstances, the established collective bargaining units, where they exist, are presumed to be the "appropriate employees units" for the measurement of changes in wage and salary levels.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972-78]

BONA FIDE PROMOTIONS

Facts. Due to a vacancy Corporation A promoted one of its office managers to be a vice president of the corporation. The starting salary for the position as vice president represented an increase in salary of 30 percent over what the employee had been receiving.

Issue. Is the increase of salary prohibited?

Ruling. No. Bona fide promotions to positions of greater skill, effort, and responsibility are excluded from the 5.5 percent limitation since remuneration goes with the job, not the man. (See also, Economic Stabilization Regulations, § 201.60.)

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972-79]

COST OF LIVING INCREASES AS PART OF EXISTING CONTRACTS AND PAY PRACTICES

Facts. Employer A and his employees negotiated a new labor contract, effective July 1, 1971, providing for an automatic cost of living increase every 3 months. The first increment was due on Decem-

ber 1, 1971. The employer wants to pay this increase, and continue to make future 3-month increases under the labor contract.

Issue. May the past due increase be made, as of December 1, 1971? May future increases be made at 3-month intervals, as provided by the labor contract, assuming that the cost of living continues to rise?

Ruling. Yes. Economic Stabilization Regulations, § 201.2, define "wages and salaries" as including:

> * * * all forms of direct and indirect remuneration or inducement to employees by their employers for personal services, which are reasonably subject to valuation, including * * * cost-of-living allowances * * *

Economic Stabilization Regulations, § 201.35 state that:

> (E)mployment contracts and pay practices previously set forth which existed prior to November 14, 1971, will be allowed to operate according to their terms. However, any such specific contract or pay practice, when challenged by a party at interest, by the Chairman of the Pay Board, or by two or more other members of the Board is subject to review, to determine whether any wage and salary increase * * * is unreasonably inconsistent with the criteria established by the Board.

Although a cost-of-living increase comes within the § 201.2 definition of "wages and salaries", the contract predated November 14, 1971, and therefore is permitted by § 201.35 of the regulations to take effect as of November 14, 1971, and may be continued in the future pursuant to the contract provisions, subject to the above-stated Pay Board review. Section 201.35 contains the applicable reporting requirements.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–80]

PAY ADJUSTMENTS AND APPROPRIATE EMPLOYEE UNITS

Facts. Corporation X is engaged in the manufacture of automobile seat covers. X employs 600 employees who are covered by a union contract which expired on November 27, 1971. Under this contract, X's employees' average base compensation rate was $3 per hour. In negotiating with the appropriate representatives of Y union (which is the recognized bargaining representative for X's employees), X accepted the following new contractual wage terms: 300 employees would receive a $0.15 per hour increase in wages and included benefits (i.e., a 5 percent increase); and the remaining 300 employees would receive a $0.18 per hour increase in wages and included benefits (i.e., a 6 percent increase).

Issue. 1. Whether the wage increases contained in X's new contract are pay adjustments that are subject to the general 5.5 percent general wage and salary standard?

2. Whether the 6 percent increase granted to 300 of X's employees violates the 5.5 percent general wage and salary standard?

Ruling. With respect to the first issue, X's wage increases for its employees are pay adjustments within the definition of "Pay Adjustments" provided by Economic Stabilization Regulations, 6 CFR 101.2 (1972). Thus, X's wage increases for its employees are subject to the 5.5 percent general wage and salary standard established in Economic Stabilization Regulations, § 201.10(a).

With respect to the second issue, the 6 percent wage increase granted to 300 of X's employees is not the controlling percentile for determining whether the 5.5 percent general wage and salary standard has been exceeded. Instead, § 201.10(a) provides that the 5.5 percent general standard applies to the increase granted to an appropriate employee unit. Since all 600 of X's employees comprise the "appropriate employee unit" under the present facts (see Economic Stabilization Regulations, § 201.2), the wage increase granted to all of X's employees must be computed to determine whether the 5.5 percent general wage and salary standard has been exceeded. In the instant case, 300 employees received a 6 percent increase, and 300 employees received a 5 percent increase. Thus, since the increase to the appropriate employee unit was 5.5 percent, the standard has not been exceeded.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–81]

COMPETITIVE WAGE AND SALARY INCREASES TO RETAIN KEY EMPLOYEES

Facts. Employer A has had difficulty retaining his key employees or attracting replacements because his salary scale is below that of his competitors. He refrained from increasing salaries and wages during the freeze period; now, however, he would like to increase his wage scale so as to become more competitive.

Issue. May Employer A increase his wage rate to a competitive level without regard to the 5.5 percent general wage and salary standard?

Ruling. In Economic Stabilization Regulations, § 201.14, the Pay Board has attempted to permit an employer to become more competitive in his wage rate so that he might attract or retain employees essential to an efficient operation of his firm. An employer will be permitted to increase his wage rate by as much as 7 percent, if he can demonstrate to the Board:

(1) A significant proportion of vacancies has been experienced in the appropriate employee unit, despite intensive recruiting activity over a period of at least 3 months.

(2) There has been no significant deterioration or reduction in other conditions of employment; and

(3) There is a reasonable expectation that an increase will be effective in recruiting or maintaining a pool of qualified employees.

Within these limitations, the employer may increase his wage rate by a maximum of 7 percent rather than the 5.5 percent standard. However, if he fails to satisfy the specific criteria as set forth by the Pay Board, the employer will be subject to the 5.5 percent limitation. Furthermore, the employer must apply to the Board or its delegate and receive its approval before the increase permitted under this exception may be implemented.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–82]

INCORPORATION OF AN EXISTING BUSINESS

Facts. A grocer with four employees was operating his store as a sole-proprietorship on November 13, 1971. Sometime after that date, he incorporated his business.

Issued. Whether a business in existence before November 13, 1971, which is incorporated after November 13, 1971, will be treated as an existing business or as a new business under the stabilization regulations.

Ruling. In cases where an existing business is incorporated after November 13, 1971, the appropriate employee units, the wage and salary bases of these units, and the wage years of these units of the existing business organization shall be carried over into the newly incorporated business. The wages and salaries for the positions in the new corporation would thus be subject to the same standards and criteria as would have been the lawful rates for the same or comparable jobs in the business organization had it not incorporated.

A determination of the appropriate employee unit of the grocer himself would take into account the contractual or historical wage and salary relationships within the business organization. If treated as such in the old business, the employer-as-employee of the newly incorporated grocery store may be treated as a separate, appropriate employee unit, which would be distinguished from the unit (or units) formed by the other employees of the store.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–83]

INCLUSION OF VACATION AND HOLIDAY BENEFITS IN TOTAL COMPENSATION PACKAGE

Facts. X corporation has 1,500 production workers, all represented by one bargaining representative. X's present contract with these employees was entered into on November 30, 1970, and expires November 30, 1974. The contract provides (i) that these employes will receive an average wage increase of 5 percent commencing on November 30, 1971, and (ii) that X's employees generally will receive additional vacation and holiday benefits beginning November 30, 1971. The average value of the increase in incidental benefits is 1 percent of the employee's total remuneration.

Issue. 1. Are pay adjustments that result from existing contracts and pay

practices subject to the 5.5 percent general wage and salary standard?

2. Is the 1 percent general increase in the incidental benefits accorded to X's employees included in determining whether the 5.5 percent general wage and salary standard has been exceeded?

Ruling. With respect to the first issue, Economic Stabilization Regulations (§ 201.35) provide that pay adjustments under contracts and pay practices existing prior to November 14, 1971, will be permitted to operate according to their terms, except that, if such pay adjustments are challenged by two or more members of the Pay Board by the Chairman of the Pay Board or by a party at interest, the pay adjustments are subject to review by the Board to determine if they are unreasonably inconsistent with criteria established by the Pay Board. (Since X's pay adjustments apply to or affect more than 1,000 employees, the pay adjustments must be reported to the Pay Board.)

With respect to the second issue, Economic Stabilization Regulations (§ 201.56) provides that the increased vacation and holiday benefits which are subject to being reasonably valued, must be considered in calculating the total compensation package granted to X's employees. Accordingly, X's combined wage and benefits increase will be considered in calculating the total compensation package granted to X's employees. Accordingly, X's combined wage and benefits increase will be considered by the Pay Board (assuming that X's pay adjustments are challenged) in determining whether the increase is unreasonably inconsistent with the criteria established by the Pay Board.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–84]

AVERAGING OF WAGE AND SALARY INCREASE OVER 12-MONTH PERIOD

Facts. Where no collective bargaining agreement exists, Employer A has not given his employees an increase since November 13, 1971. He wishes to grant a 10 percent general wage increase to his employees on June 1, 1972. Employer A contends that since the 10 percent increase will only be effective for half of the control year commencing November 14, 1971, it will only constitute a 5 percent increase over the entire control year, well within the general wage and salary standard.

Issue. May an increase in wages and salaries which only applies to a portion of a 12-month year be averaged over the entire year, so as to reduce the effective percentage increase?

Ruling. No. The general wage and salary standard of 5.5 percent applies to the "annual aggregate wage and salary increase." For Employer A that means the standard applies to the total percentage increase within the control year. No averaging of the percentage increases is anticipated or permitted by Economic Stabilization Regulations, § 201.10(a).

The only exception to this rule is provided for cost-of-living increases by Economic Stabilization Regulations, § 201.64(a) which specifically permit cost-of-living increases to be averaged by time weighting over the 12-month period the adjustment is in effect, pursuant to a specific formula. However, no other wage and salary increase may be so averaged or time weighted over the 12-month annual period.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–85]

APPROPRIATE EMPLOYEE UNITS

Facts. Since 1948, company X has had a formal salary plan and policy regulating and controlling salary practices. The plan has always pertained to all company salaried employees as a total unit regardless of the division or department to which they may be assigned. All increases granted are based on merited performance within a particular position assignment, or granted to recognize a bona fide promotion to a higher level position. General across-the-board increases are not granted to salaried personnel. In addition, company X has traditionally managed and administered its hourly employee wage practices for both its union and nonunion plants on a plant by plant basis taking into account local area practices and a particular plant's ability to pay.

Issue. For purposes of the Economic Stabilization Regulations, may company X continue to treat its 17,743 salaried employees as an appropriate employee unit and may it also continue to treat the hourly employees in each of its individual plans as an appropriate employee unit?

Ruling. Economic Stabilization Regulations, § 201.2 provide that "an appropriate employee unit" includes a group composed of all employees in a bargaining unit or in a recognized employee category. It further states "such bargaining unit or employee category may exist in a plant or other establishment or in a department thereof, or in a company, or in an industry * * * and shall be determined so as to preserve, as nearly as possible, contractual or historical wage and salary relationships." In the instant case, since 1948 company X has had a formal salary plan and policy regulating and controlling its salary practices. Such plan has always pertained to all salaried employees as a unit regardless of the division or department to which they are assigned. Additionally, company X has historically and contractually bargained with its organized hourly employees on a plant-by-plant basis. It has also treated its unorganized hourly employees on a plant-by-plant unit basis. Therefore, for purposes of the Economic Stabilization Regulations all of the salaried employees of company X constitute an appropriate employee unit and all hourly employees within each particular plant constitute an appropriate employee unit within that plant.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–86]

PHASE ONE EXCEPTION REQUEST AS A PAY PRACTICE

Facts. On August 20, 1971, employer A determined that certain of his employees were receiving inadequate compensation for their services. On August 25, he applied for an exception with the Office of Emergency Preparedness on the grounds that severe inequities would result if the raise could not be put into effect. His request was denied.

On November 20, 1971, employer A reapplied for an exception, basing his aplication on the fact that the proposed increase was above a 5.5 percent wage standard.

Issue. May the employer treat his original request for an exception during phase I as a "pay practice previously set forth"? (Economic Stabilization Regulations, § 201.35.)

Ruling. Yes. Section 201.35 states that "existing contracts" and "pay practices previously set forth" prior to November 13, 1971, will be allowed to operate after that date subject to challenge by a party at interest or two or more members of the Pay Board, or by the Chairman of the Pay Board. In order for employer A to treat his request under phase I as "a pay practice previously set forth," the adjustment must have been finally decided and communicated to employees affected or management personnel responsible for administering the adjustment. Both conditions have been fulfilled.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–87]

RIGHT TO SEEK INJUNCTIVE RELIEF

Facts. Employer X has entered into collective bargaining agreements for a number of years with a union representing an employee bargaining unit of 100. The prior contract had an expiration date of September 4, 1971. Collective bargaining sessions for a new contract began in late August 1971, but were suspended because of the "freeze." Negotiations were renewed November 4–13, 1971. The unit went on strike on November 15, 1971.

On November 21, 1971, a memorandum of agreement was entered into by the employer and the union which called for aggregate wage increases of approximately 20 percent. Faced with the threat of a continued strike unless the increases were implemented, the employer paid the new wages but filed a complaint with the District Director contending that the pay adjustment exceeded 5.5 percent.

Issue. Can an employer, who is in violation of the Economic Stabilization Regulations by paying an increase in excess of 5.5 percent without the prior approval of the Pay Board, request the Internal Revenue Service to seek injunctive relief against the payment of these increases to the employees?

Ruling. Yes. The District Director, upon receipt of such a request will, in appropriate cases, recommend through the Stabilization Agencies that the Attorney General of the United States apply for an injunction, Economic Stabilization Regulations, 6 CFR § 401.502(c) (1972), if it can be shown that an individual or organization has engaged, is engaged, or is about to engage in any acts or practices that constitute a violation of the regulations. It constitutes a violation for any person to pay or to receive or force any person to pay or to receive any portion of a wage and salary increase not authorized by such regulations or Pay Board decision. Economic Stabilization Regulations, § 201.41.

However, an employer who is in violation of the regulations and does request the Internal Revenue Service to seek injunctive relief will not be immune from prosecution or other legal action that might be available against him under the circumstances.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–88]

LONGEVITY RAISES

Facts. For the past several years prior to November 14, 1971, a printing firm regularly increased employees' wages by allowing an automatic wage increase of $5 a week every 6 months. Such increase is solely a function of continuous service; it is granted to an individual after he has completed 6 months' service since his last such increment.

Issue. May the printing firm continue paying its longevity raises without charging these increases to the 5.5-percent standard?

Ruling. Yes. Economic Stabilization Regulations, § 201.58(b), provides that longevity increases in existence on November 13, 1971, and continued in successor contracts or pay practices are excluded from adjustment computations.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–89]

PAY PRACTICE PREVIOUSLY SET FORTH

Facts. On November 13, 1971, a company announced that it would grant a prospective pay increase to employees, but did not specify how much or when the increase might be granted.

Issue. Whether the mere announcement on November 13, 1971, of a pay increase to be granted after that date constitutes a "pay practice previously set forth" within the meaning of Economic Stabilization Regulations, § 201.35?

Ruling. The mere announcement on November 13, 1971, of a prospective pay increase does not constitute a "pay practice previously set forth" within the meaning of § 201.35. The announcement specified neither the amount of the increase, nor whether the increase would be applicable to certain or all employees of the company, nor any date or dates such an increase would be put into effect after November 13, 1971. It was therefore not finally and formally decided prior to November 14, 1971.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–90; Cost of Living Council Ruling 1972–46]

FAIR LABOR STANDARDS ACT

Facts. A, a Texas corporation, is in the business of manufacturing wood specialties. Until February 24, 1972, A had sold its products exclusively within Texas. On that date, at a meeting between A's corporate management and X, a prospective customer from Oklahoma, it was decided that A would provide all of X's requirements for wood specialties. It was also agreed that A would begin a promotional program in surrounding States to market more of its specialty products. A has been paying its employees at a wage rate which is less than the minimum standard required by the Fair Labor Standards Act of 1938, 29 U.S.C. 206(a)(1). In order to raise its employees' wages to a rate which would comply with the aforementioned section, A would have to increase wages some 26 percent above the rate its employees were paid prior to February 24, 1972.

Issue. May A raise employees' wages to comply with the Fair Labor Standards Act, without regard to the general wage and salary standard?

Ruling. Yes. A is allowed to raise wages to the extent necessary to comply with the Fair Labor Standards Act, even though such raise is in excess of the 5.5 percent standard. The authority for this opinion is found in the Economic Stabilization Regulations, 6 CFR 101.103 (1972), which states that "this title (Title 6) shall not be exercised to preclude the payment of any pay adjustment: (1) Required under the Fair Labor Standards Act of 1938 * * *." Accordingly, even though a 26 percent wage increase is normally far in excess of Stabilization guidelines, the foregoing special provision allows employees to catch up to basic minimum wage standards when the employer for whom they work becomes engaged in the production of goods for interstate commerce. (See also Economic Stabilization Regulations, § 201.58(e), which exclude such an increase from adjustment computations.)

This ruling has been approved by the General Counsels of the Pay Board and the Cost of Living Council.

[Pay Board Ruling 1972–91]

PARTY AT INTEREST FOR PURPOSES OF A PAY CHALLENGE

Facts. The X County Board of Supervisors is a governing body with authority under State law to determine salaries of county judges. Pursuant to a resolution adopted by the Board of Supervisors prior to November 14, 1971, the salaries of county judges were increased on January 2, 1972, by amounts in excess of the 5.5 percent wage guideline. Three of the board members, constituting a minority of the board, voted against the salary increase and desire to initiate a pay challenge with the Internal Revenue Service in accordance with Economic Stabilization Regulations 6 CFR 401.401 (1972).

Issue. Whether a minority of the board is a "party at interest" for purposes of initiating a pay challenge.

Ruling. No. A minority of the board would not be an employer who could be required to pay the wages and salaries in question and would not be a "party at interest" as that term is defined in Regulations § 201.2. Accordingly, the minority would not be authorized to initiate a pay challenge. However, it could submit a complaint to the appropriate district office of the Internal Revenue Service pursuant to Regulation 6 CFR 401.501 (1972).

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–92]

DEFERRED WAGE AND SALARY INCREASES PROHIBITED BY PAY BOARD

Facts. Employer A and the union representing his employees agree to a 9 percent increase, effective immediately, on March 1, 1972. There is a further provision in the agreement which states that in the event the Pay Board disapproves any portion of the increase that portion will be payable retroactively to March 1, 1972, when controls are lifted. The Pay Board subsequently approves a 5.5 percent increase but expressly disapproves the provision of the agreement cited above, stating that it constitutes a 3.5 percent increase in wages and salaries payable as deferred compensation. The parties nevertheless decide to leave it in the agreement.

Issue. Does the action of the parties in leaving the deferred increase provision in effect constitute a violation within the meaning of Economic Stabilization Regulations, § 201.41?

Ruling. Yes. Section 201.41(a)(4) provides that it is a violation to "Fail or refuse to comply with a decision or order of the Pay Board or its delegate or with any regulation issued pursuant to the Act, or induce, solicit, encourage, force, or require any other person to fail or refuse to comply with a decision or order of the Pay Board or its delegate or with any regulation issued pursuant to the Act." This subsection makes clear that if the Board renders a decision, it is a violation for any person to refuse to comply with it.

Moreover, the language in § 201.41 providing that it shall not be a violation to "bargain for, request, contract for, or agree to (as contrasted with paying or receiving) a wage and salary increase in excess of the maximum permissible annual aggregate wage and salary increase" does not remove the basis for a violation. This clause was included in § 201.41 to permit the parties to bargain freely prior to submitting their eventual agreement to the Pay Board for approval of an exception to the standard. Once the Board has decided that an agreement to pay an amount in excess of the standard constitutes an actual increase in wages and salaries, such agreement no longer comes

within the proviso permitting agreements in excess of the standard. The Board has ruled that it is more than an agreement—it is a wage and salary increase payable as deferred compensation.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–93]

RETROACTIVE WAGE INCREASES

Facts. Based upon its high profits for the 1970–71 fiscal year, Employer A announced to his employees prior to the freeze that he would make a large contribution on September 15, 1971, into the existing employee profit-sharing plan. Had the contribution been made, it would have produced a 15 percent increase in the total compensation for the appropriate employee unit. The actual contribution was precluded by the freeze period of the Economic Stabilization Program. Three of Employer A's employees retired between September 15, 1971, and November 14, 1971. Each of the three employees would have been eligible to receive an increased benefit under the profit-sharing plan at the time of his retirement. Employer A is willing to make the increased contribution to the profit-sharing plan, retroactive to its original date, September 15, 1971.

Issue. May the retroactive contribution to the existing profit-sharing plan be made?

Ruling. Yes. Economic Stabilization Regulations, § 201.33(c)(1), permit the payment of wage and salary increases if the employer determines, subject to compliance checks by the Internal Revenue Service, that:

> An employee in an appropriate employee unit would have become eligible to receive a new or increased benefit under a fringe benefit plan if the freeze had not occurred, and the employee cannot otherwise (because of death, retirement, etc., during the freeze) become eligible for the benefit after the freeze * * *.

Moreover, Economic Stabilization Regulations, § 201.33, give examples of two situations in which the retroactive payment of increased benefits may be made.

In this situation, the appropriate employee unit would have become eligible for the increased benefit, but for the freeze. Three of the employees who retired from the unit during the freeze will not receive any increased benefits if the retroactive payments are not permitted. Therefore, the increased contribution to the profit-sharing plan may be made retroactively without violating the regulations.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–94]

TREATMENT OF LONGEVITY INCREASES

Facts. An employment contract which was in existence prior to November 14, 1971, provided for a 2-percent longevity increase. A new employment contract which was negotiated after November 14, 1971, increases the longevity payments from 2 percent to 4 percent.

Issue. For purposes of the 5.5 percent general wage and salary standard, will the 2 percent increase in longevity payments be taken into account?

Ruling. Yes. Economic Stabilization Regulations, § 201.60(b), provide that longevity increases provided for in an employment contract in effect on November 13, 1971, or provided for in a pay practice previously set forth and in existence on such date and contained in successor contracts or pay practices are excluded from adjustment computations. However, no such exclusion is provided for increases in longevity increments provided for in the successor contract or pay practice entered into after November 14, 1971. Therefore, in the instant case, the longevity increase of 2 percent paid pursuant to the contract entered into after November 13, 1971, is subject to the provisions of Economic Stabilization Regulations § 201.10(a). (See § 201.64(c) for applicable computation rules.)

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–95]

OVERTIME COMPENSATION

Facts. Engineers of an electronics firm, hired on the basis of a 40-hour workweek for a yearly salary, have recently had to work substantial amounts of overtime. There has been no preexisting practice of paying engineer-employees overtime, nor has there been any provision made for such pay in employee-employer labor contracts. Further, each of these employees is "an employee employed in a bona fide * * * professional capacity" within the meaning of the section 13(a)(1) exemption of the Fair Labor Standards Act and therefore no overtime payments are required to be made to them by that Act.

Issue. May the engineers now be paid time and a half for overtime work without charging their increased pay to the 5.5 percent standard?

Ruling. No. Economic Stabilization Regulations, § 201.10(a), which establish the 5.5 percent standard applies to "any wage and salary increase payable with respect to an appropriate employee unit pursuant to * * * a pay practice established * * * after November 13, 1971."

Economic Stabilization Regulations, § 201.2 which define wages and salaries specifically include "overtime pay." Since payment for overtime to engineers was not a practice in effect prior to November 14, 1971, in this firm and since such payments are considered part of an employee's wages and salaries, the firm may not pay subject engineers for overtime without charging such payments to the 5.5 percent standard.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–96]

PARTY AT INTEREST

Facts. An employer association has been the bargining representative for various employers for the past 5 years in wage negotiations with a trade union of less than 1,000 employees. On October 20, 1971, the bargaining representative and the trade union agreed on wage terms that would grant a 12 percent increase for the wage year beginning March 1, 1972. Employer X, who was represented in this agreement by the bargaining representative and bound by its terms, believes that this 12 percent increase is unreasonably inconsistent with the policies of the Economic Stabilization Program and now seeks to initiate a pay challenge pursuant to Economic Stabilization Regulations, § 201.35. The bargaining representative has refused to initiate a pay challenge for X because a majority of the employers bound by the contract would not consent to the challenge.

Issue. Can employer X-initiate a pay challenge as a party at interest?

Ruling. No. A pay challenge may be initiated only by a party at interest, which is defined in Regulations § 201.2, as:

> "Party at interest" means: (1) A bargaining representative of employers who could be required to pay the wages and salaries in question, or in the absence of such bargaining representative, an employer who could be required to pay the wages and salaries in question.

In this situation, employer X had a bargaining representative at the time the increase was negotiated; therefore, a challenge would have to be initiated through the bargaining representative. Since a majority of the employers in the Association accept the contract and refuse to initiate a challenge, employer X cannot reject the contract nor would withdrawal from the association for the purpose of negotiating future contracts entitle him to make a direct pay challenge under § 201.35 as a party at interest.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–97]

INCREASES IN "TOKEN" SALARIES OF CORPORATE OFFICERS

Facts. Corporation A's officers have foregone the receipt of anything more than token wages and salaries in order that all available corporate income could be spent on expansion and growth. However, the Corporation desires to commence paying substantially increased salaries to its officers, as of January 1972.

Issue. May the officers' salaries be increased in an amount greater than the general wage and salary standard without Pay Board approval, because their wages did not reflect the responsibility and the work performed?

Ruling. No. Unless excepted by the Economic Stabilization Regulations, all wages and salaries, as defined by Economic Stabilization Regulations, § 201.2, are subject to the 5.5 percent general wage and salary standard. That is, the total amount of wages and salaries being paid to the "appropriate employee unit", here comprised of the officers of Corporation A, for 1972, cannot exceed the total amount being paid as of November 13, 1971, by more than 5.5 percent.

Since these officers were only receiving token wages and salaries on November 13, 1971, the permissible increase by 5.5 percent could not produce much greater compensation for 1972.

However, if Corporation A desires to increase the compensation for its officers by more than is permissible under the general wage and salary standard, it could request an exception under Regulations § 201.30 of which paragraph (b) reads as follows:

(b) *Criteria.* When the Board reviews new contracts and pay practices in individual cases with respect to payment for services rendered in any control year and in its development of additional criteria for exceptions, it shall consider such factors as changes in productivity and the cost of living, on-going collective bargaining and pay practices, the equitable position of the employees involved, and such other factors as are necessary to foster economic growth, to promote improvement in the quality of governmental services, and to prevent gross inequities, hardships, serious market disruptions, domestic shortages of raw materials, localized shortages of labor, and windfall profits.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–98; Cost of Living Council Ruling 1972–66]

REDUCTION IN THE WORKWEEK WITHOUT A PROPORTIONATE DECREASE IN PAY

Facts. In May of 1970, City X and the Firefighters Association contractually agreed to reduce the workweek of firefighters to 58.8 hours per week on January 1, 1971; to 57.4 hours on January 1, 1972; and to 56 hours on January 1, 1973. Additionally, a salary scale was agreed to effective July 1, 1970. Such salary scale is currently in effect, as is the workweek of 57.4 hours. The city and association are presently negotiating a new salary scale for firefighters to be effective July 1, 1972.

Issue. In setting a new salary scale, is the scheduled workweek reduction to 56 hours, which results in an increase in the average straight-time hourly rate, includable in computing the permissible annual aggregate increase?

Ruling. Yes. Economic Stabilization Regulations, 6 CFR 101.2 (1972) include in the definition of "pay adjustment" "* * * benefits which result in more pay per hour or other unit of work or production (e.g., by shortening the workday without a proportionate decrease in pay)". Such benefit is also included in the Pay Board definition of "wages and salaries". (See Regulations § 201.2.) Therefore, a projected decrease in hours worked without a proportionate decrease in pay must be taken into consideration in determining the permissible annual aggregate increase for an appropriate employee unit. In the instant case, such permissible increase will be the general wage and salary standard of § 201.10(a) (or, if applicable, an exception thereto under Subpart B of Part 201 of Pay Board Regulations), because the pay adjustment under negotiation—i.e., the new salary schedule—is a modification of an existing contract. (See § 201.64(b) for applicable computation rules.)

This ruling has been approved by the General Counsels of the Pay Board and the Cost of Living Council.

[Pay Board Ruling 1972–99]

CONTROL YEAR

Facts. The assembly line employees of Company A, who were not under contract at the time, received a 5.5 percent general wage and salary increase on December 10, 1971. On January 15, 1972, these employees voted to join a national union. At the same time, Company A joined an employer's association to bargain collectively with the union. In a collective bargaining agreement dated April 15, 1972, the association agreed to grant a 5.5 percent wage and salary increase effective May 1, 1972, to all employees of Association members represented by the national union.

Issue. Having already granted the assembly line employees a 5.5 percent increase, may Company A now grant another 5.5 percent increase to the employees pursuant to the collective bargaining agreement?

Ruling. No. Economic Stabilization Regulations, § 201.52(b)(1), provide that the first control year for an appropriate employee unit which was not covered by the terms of an employment contract in effect on November 13, 1971, will be "the period from November 14, 1971, through November 13, 1972." Moreover, § 201.52(d)(1) states that "The base date for the first and succeeding control years * * * shall not thereafter be changed even though the appropriate employee unit goes from a pay practice status to an employment contract status * * * after November 13, 1971."

Finally, Regulations, § 201.51(c), impose a limitation on compensation increases with respect to an appropriate employee unit for any control year. Such limitation is the maximum permissible annual aggregate wage and salary increase pursuant to Regulations § 201.10(a).

The control year for these employees cannot change, without Pay Board approval. Moreover, they have already received an increase equivalent to the general wage and salary standard. Accordingly, no further increase for these employees may be granted until the second control year beginning November 14, 1972, unless payments to such employees qualify for an exception under Subpart B of Part 201.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–100]

DIFFERENCE BETWEEN MERIT INCREASES AND LONGEVITY INCREASES

Facts. State employees are entitled to receive specific pay increases at periodic intervals according to a State statute enacted prior to August 15, 1971, which sets forth wage progression schedules. An employee obtains such an increase only after a rating is made by his supervisor certifying that the employee's work is satisfactory.

Issue. May wage increases which are dependent upon a supervisor's rating be regarded as longevity raises?

Ruling. The fact that an increase is dependent upon a certification that an individual's performance is satisfactory is not of itself sufficient to determine whether the increase will be considered as a longevity increase. This determination will depend on an examination of all the terms of the employment situation. If the increases are "solely related to the employee's length of service and operate without significant affirmative exercise of employer discretion or subjective evaluation of the employee's work performance," then such raises are considered longevity increases. (See Economic Stabilization Regulations, § 201.58(b)). On the other hand, if in providing for wage increases, there is consideration given for superior performance, then such raises would not be considered longevity increases.

The important question, then, is what the supervisor's rating is set up to do. In the instant case, the rating serves only as a review of whether the employee has performed his work satisfactorily. Section 201.58(b) states that "(i)f it is an established practice that once an individual's work performance for a certain length of time is determined to be satisfactory and the amount of the increase as determined in advance is not subject to any discretionary adjustment, the increase is due to longevity." As the periodic increases are fixed by State statute and an employee rating does not call for any review other than whether the employee's work is satisfactory, these wage increases are considered longevity increases.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–101]

EFFECT OF THE "PREVIOUSLY SET FORTH" TEST ON A MERIT PLAN

Facts. In June 1971, the Board of Directors at Hospital X, as part of their yearly practice of reviewing their previous year's merit plan, made certain changes in that plan for the forthcoming year. At that time, subject to these changes, the plan, as amended, was approved for the year commencing July 1, 1971. Prior to that date, on June 28, 1971, such plan was communicated to Hospital X's employees; however, at no time was any stated amount budgeted for the merit plan.

Issue. (1) Will changes made prior to November 14, 1971, in a merit plan, approved for 1971, cause such plan to fail the "previously set forth" test as defined in Economic Stabilization Regulations, § 201.35(d)?

(2) Will the determination that no stated amount was budgeted for the amended plan cause such plan to fail the above test?

Ruling. The answer with respect to the first issue is "No." Provided such rate changes were made prior to November 14,

1971, as was the case here, they shall be allowed to take effect subject to the usual requirements of § 201.35(a).

The answer with respect to the second issue is "Yes." Section 201.35(d) provides that "Except as provided in Subpart F of this part, for purposes of this section, a pay practice shall be 'previously set forth' only if it can be documented that prior to November 14, 1971, an adjustment * * * in the case of a merit plan, the aggregate amount to be expended was—

(1) Decided finally and formally in accordance with established procedures, and

(2) Communicated to the management personnel responsible for implementing the pay adjustment or to the employees affected."

In the instant case, even though the final decision was made to implement the merit plan by the Board of Trustees in June 1971, and the decision was communicated by memorandum dated June 28, 1971, to the appropriate employee unit, hospital X did not at any time prior to November 14, 1971, set an aggregate amount to be expended for their merit plan. Hence, the merit plan fails to qualify under the "previously set forth" test of § 201.35(d).

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–102]

COVERAGE OF NEW EMPLOYEES UNDER PREVIOUSLY EXISTING EMPLOYMENT CONTRACTS

Facts. Prior to August 15, 1971, a master collective bargaining agreement was reached between a national union and an association representing a wide majority of employers within a certain industry throughout the Nation.

The terms of the collective bargaining agreement provide that:

> When a majority of the eligible employees performing work covered by * * * the * * * agreement (to which their employer is a prior signator), execute a card authorizing a signatory local union to represent them as their collective bargaining agent * * * then such employees shall automatically be covered by this agreement.

On January 30, 1972, employer A, a party to the agreement, expanded his manufacturing operations into a nearby city, resulting in the need to hire 300 new assembly line employees to operate the new plant. Certain other employees were transferred from other plants covered by the agreement. The average wage of the newly hired workers was $3.25 per hour.

On March 15, 1972, the new assembly line employees, voted, to become members of a signatory local union of the national union. Pursuant to the above provisions of the agreement they were immediately covered by the agreement and eligible to be paid the wage level provided in the agreement, $3.80 an hour.

Issue. Under Economic Stabilization Regulations, § 201.35, relating to existing contracts and pay practices previously set forth, may employer A put the increases in question into effect?

Ruling. Yes. Section 201.35 provides that "Employment contracts and pay practices previously set forth which existed prior to November 14, 1971, will be allowed to operate according to their terms." Such employment contracts and pay practices, however, can be "challenged by a party at interest, by the Chairman of the Pay Board or by two or more other members of the Board * * *." In the instant case, the master contract to which employer A is a party existed prior to November 14, 1971, and therefore is within the thrust of § 201.35.

The new employees have elected to be represented by the union. Pursuant to the terms of the master agreement, their wage scale automatically becomes that of the union members. Since employer A was an original party to the agreement, which provided for automatic coverage under the agreement upon showing of majority support, his obligations to his employees are controlled by the provision contained therein. Since the employment contract was in existence prior to November 14, 1971, employer A may put the scheduled increases into effect. For determination of applicable control year, see Regulations, § 201.52(d).

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–103]

WAGE INCREASES LESS THAN THE ALLOWABLE STANDARD

Facts. A operates a small manufacturing firm whose employees are seeking a 5.5 percent wage increase. Because of a decline in business during the past year, however, A can only afford to pay an increase of 2 percent. The employees agree to accept 2 percent but ask that the difference of 3.5 percent be carried forward and added to the permissible standard for wage and salary increases during the next control year. Assuming that the general wage and salary standard remains at 5.5 percent, would the maximum permissible increase for the next control year then be 9 percent?

Issue. If a wage increase during 1 control year is less than the maximum allowable increase, can the difference between the two be carried over and added to the allowable increase for a subsequent control year?

Ruling. No. The general wage and salary standard of 5.5 percent is the "maximum permissible annual aggregate wage and salary increase" for any given control year. Economic Stabilization Regulations, § 201.10(a). The only exceptions to this limitation are set forth in Subpart B of Part 201 of the Regulations.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–104]

SUBSEQUENT WAGE DETERMINATIONS PURSUANT TO PREEXISTENT AUTHORITY TO INCREASE WAGES

Facts. The salary schedule for probation officers in State X, established by State statute, provides salaries for six officers which exceed the present salary of their superior, the Commissioner of Probation. Moreover, 37 other officers receive salaries which exceed the salaries of the Deputy Commissioners. Pursuant to State statute, the Y Committee on Probation has the power to remedy this inequity by increasing within certain specified limits the salaries of the Commissioner and Deputy Commissioners. The legislation providing the Y Committee with such power was enacted on September 1, 1970. In February of 1972, the Y Committee formally voted to correct the inequity by increasing the salaries of the Commissioner and Deputy Commissioners.

Issue. Does the State statute from which the Y Committee derives its authority to increase the salaries of the Commissioner and Deputy Commissioner constitute a "pay practice previously set forth" which existed prior to November 14, 1971, within the meaning of Economic Stabilization Regulations, § 201.35?

Ruling. No. Section 201.35(a) of the regulations provides in part that "employment contracts and pay practices previously set forth which existed prior to November 14, 1971, will be allowed to operate according to their terms". Section 201.35(d) provides in part that "a pay practice shall be previously set forth only if it can be documented that prior to November 14, 1971, an adjustment to wages and salaries was decided finally and formally in accordance with established procedures". Since the specific pay increases were not determined by the State statute but by the vote of the Y Committee, which did not occur until February 1972, there was no "pay practice previously set forth" prior to November 14, 1971.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–105]

QUALIFIED BENEFIT STANDARD

Facts. Corporation X has a qualified benefit plan for its employees. The corporation does not wish to increase the employee benefits or the contributions under the plan for the first control year. However, the corporation desires to increase its contributions to fund increased employee benefits under the qualified benefit plan in the second control year. It is provided by Economic Stabilization Regulations § 201.59(g) that:

> For purposes of subparagraph (1) of this paragraph, the 0.7 percent referred to in subdivision (i) of such subparagraph may be used in future control years to the extent not utilized in a prior control year.

Issue. (1) Does § 201.59(g) require that part of the 0.7 percent figure must be used by the corporation in a previous control year in order to use the remainder in a subsequent control year?

(2) Does § 201.59(g) allow the 0.7 percent figure to be cumulative if not used?

Ruling. The answer with respect to the first issue is no. It is provided by § 201.59 (g) that the 0.7 percent increase "may be used in future control years to the

extent not utilized in a prior control year." If no part of the 0.7 percent increase were utilized by the corporation in the prior control year, then the entire 0.7 percent increase may be carried over to the following control year, or carried over to a future control year.

The answer with respect to the second issue is yes. The 0.7 percent figure is cumulative if not used in a prior control year, and the corporation may accumulate credit for increasing its contribution to its qualified benefit plan in a future control year. Thus, Corporation X could have a 1.4 percent increase in the second control year under the qualified benefit standard without charging it against the general wage and salary standard.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–106; Cost of Living Council Ruling 1972–116]

DAVIS-BACON ACT

Facts. The Davis-Bacon Act, 40 U.S.C. section 276a (1970), requires that employees working on Government highway construction contracts must be paid prevailing area wages. Thus, the pay of wage-earning employees must conform to the prevailing wage scale as previously determined under the Davis-Bacon Act. Supervisory, clerical, and administrative salaried employees in the field crews, such as superintendents, field office managers, and administrators are not covered by the Davis-Bacon Act.

The needs of the highway construction industry require the transfer of employees from one geographical area to another to work on project locations. When the transfer is from a lower base economic area to a higher base economic area, by law the employer must meet the prevailing standard for wage earning employees. However, an economic differential is also experienced by salaried employees. Industry practice has been to also meet the prevailing wage for the salaried employees, because of the shortage of qualified personnel to fill these jobs and the employer's need to maintain a consistent work force to meet obligations under the contract being performed.

Issue. Can employers in highway construction work pay the equivalent of Davis-Bacon Act prevailing area wage to salaried supervisory, clerical, and administrative employees, who are not covered by the Davis-Bacon Act?

Ruling. The wages paid by an employer to his wage earning employees to comply with Federal statutes, such as the Davis-Bacon Act, have no effect on the salary paid to employees who are not covered by that Federal statute. The salaried supervisory, clerical, and administrative employees thus do not come within the exclusion from coverage in the Economic Stabilization Regulations, 6 CFR 101.103 (1972). However, Regulations § 201.17 provide that, under certain circumstances, an exception may be granted to maintain historical differentials within a unit affected by Davis-Bacon determinations. If some of the above employees are in the same appropriate employee unit as those who received Davis-Bacon increases, they may be eligible for an exception if the criteria of § 201.17 are met. Prior approval of the Pay Board is required for this exception.

This ruling has been approved by the General Counsels of the Cost of Living Council and the Pay Board.

[Pay Board Ruling 1972–107]

MERIT INCREASES

Facts. Employer X has a plan which it instituted in 1968 for its employees that provides for merit increases of from $500 to $3,000 each year. The $500 increase is for satisfactory performance and virtually all employees receive at least that amount. The increases in excess of $500 up to the $3,000 limitation are at the discretion of the employer for good, excellent, and distinguished work performances.

Issue. Can the $500 increase be considered a longevity increase and therefore be excluded from adjustment computations by reason of Economic Stabilization Regulations, § 201.58(b), relating to the longevity exclusion?

Ruling. No. To be considered a longevity increase under § 201.58(b), the increase must be solely related to the employee's length of service and must operate without significant affirmative exercise of employer discretion or subjective evaluation of the employee's work. The amount of the increase has to be determined in advance and cannot be subject to any discretionary adjustments.

This $500 increase is subject to discretionary adjustment as the employer can award a merit increase up to $3,000. The $500 award is in effect the lowest increase within a merit rate range. Hence, the $500 increase will be considered a merit increase instead of a longevity increase and be subject to the regulations dealing with merit plans.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–108]

CONSTRUCTION WORKERS

Facts. As employees, the members of local union A perform "in shop" maintenance on construction equipment. That is, all repair and servicing of equipment is done in a special repair shop off the job site. Most of the shops with whom the union has contracts are manufacturer distributors under dealerships for various types of construction products and are not in direct construction or building work.

The employment contracts for shop mechanics are negotiated separately from the construction mechanic's contracts. The rates of pay for shop mechanics are substantially lower than those for members of the union working in the construction field. In addition, because of their year-round employment, as opposed to the seasonal construction employee, their fringe benefits are entirely different.

Issue. Are these employees to be considered as being "construction" workers, so that a wage agreement affecting them would require the prior approval of the Construction Industry Stabilization Committee before taking effect?

Ruling. 29 CFR 9.2(e) (1972), issued pursuant to authority granted by Executive Order No. 11588, made by the President on March 29, 1971, to implement the power delegated to him by the Economic Stabilization Act of 1970 (Public Law 91–379, 84 Stat. 799), as amended, provides that:

> (e) "Construction" means (1) all work relating to the erecting, constructing, altering, remodeling, painting, or decorating of installations such as buildings, bridges, highways * * * but shall not include maintenance work performed by workers employed on a permanent basis in a particular plant or facility for the purpose of keeping such plant or facility in efficient operating condition.

Moreover, 29 CFR 9.2(p) (1972) defines "construction industry" as including:

> Every person, firm, company, or entity * * * and every employee employed by such person, firm, company, or entity for the performance of work relating to a project of construction * * * [E]xcluded from the construction industry are * * * suppliers of * * * services or supplies to members of the industry generally, except those operations * * * or services which are performed in connection with specific projects of construction in such a manner as to make them a part thereof.

Clearly, maintenance work, performed under the above limitations, would not be within these definitions of "construction" or "construction industry." In fact, it would be closely related to the type of work specifically excepted from the definition. These workers perform maintenance on a permanent basis, within a delineated shop area, in order to keep the equipment in efficient operating condition.

Moreover, the compensation system for these workers is totally divorced from that of the construction workers, although they may be a part of the same union. The salary range is lower and the fringe benefits differ: even the term of employment is different. The only connection with the construction industry which these workers retain is in the fact that they repair construction equipment. However, they do this work in the employ of equipment distributors, not the construction companies.

Therefore, there can be no doubt but that these workers, under the specific conditions set forth herein, are not considered to be "construction" workers, and their employment contracts would not require prior approval by the C.I.S.C. before taking effect.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–109]

PIECE-RATE COMPENSATION

Facts. X is a nonunion contractor engaged in the erection of drywall for residential, commercial, and industrial buildings. X pays his employees solely on a piece rate basis and pays no fringe benefits or other compensation. Prior to the freeze he paid his drywall installers (residential and commercial) $1.55 per

piece and his drywall finishers (tapers, sanders, point-up men) $0.55 per piece for a one-story detached home with uniform 8 foot ceiling and a nail-on application. He also had different rates in effect prior to the freeze for more difficult hanging such as that required for multiple story residential construction, townhouses, high-rise apartments, cathedral ceilings, metal stud installations, etc. X wishes to grant an increase to his drywall installers and drywall finishers, but due to the diverse fluctuations in the labor force, the seasonal nature of the industry, and the effect of weather conditions on the piece rate, converting the piece rate to a straight-time hourly rate will not give an accurate reflection of the increase.

Issue. May X grant a 5.5 percent increase based on the piece rate in existence during the base period, where it is virtually impossible to convert the piece rate to a straight-time hourly rate?

Ruling. Yes, the piece rate system that X uses to pay his employees is a type of production incentive plan under Economic Stabilization Regulations, § 201.77. Pursuant to that section, any increase in the amount of compensation to the members of an appropriate unit which is due to a change in the method of calculating the earnings of any employee is considered to be an increase in the wages and salaries for the appropriate control year.

The facts of the case demonstrate that an accurate reflection of the increases cannot be computed on a straight-time hourly rate due to the particular nature of the industry. Where an accurate measurement cannot be computed or where it is impossible to compute the increases on a straight-time hourly rate, the proper method of computing the allowable piece rate in the first control year, is to take the piece rate in effect on the base date and add to it the product of the general wage and salary standard, or any applicable exceptions, and such piece rate.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–110]

INCENTIVE COMPENSATION

Facts. X Corporation adopted a written plan of incentive compensation for its executives on April 1, 1971. The plan does not qualify as an "existing contract" or as a "pay practice previously set forth" under the Economic Stabilization Regulations. The plan was established prior to November 14, 1971. No payments have been made under the plan. The aggregate amount of incentive compensation payable under the plan is determined according to a definite method or clear formula. Administration of the plan is in accordance with all conditions and limitations expressed therein and is in the customary manner without any deviation from such manner for purposes of circumventing the intent of the wage and salary stabilization program.

Issue. Under Economic Stabilization Regulations, § 201.74 may X Corporation administer the plan as an established incentive compensation plan?

Ruling. No. The plan has been in existence less than 1 year. Accordingly, it does not comply for administration under § 201.74 (a)(1), since it does not meet the condition that a payment was made in any of the last 3 plan years ending before November 14, 1971. It must be treated under the regulations as a new plan, § 201.74(d)(1), and must be approved by the Pay Board, § 201.78(c).

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–111]

EMPLOYEE LOAN—INDIRECT REMUNERATION

Facts. An executive of a corporation received a bona fide loan of $50,000 from the corporation pursuant to an employment agreement entered into after November 13, 1971. The loan had an annual simple interest rate of 3 percent and there was an unconditional written promise to pay on demand or on a specified date.

Issue. Would the difference in annual interest paid based upon the agreed interest rate and the annual interest that would have been charged in an arm's length transaction be included in wages and salary as indirect remuneration under Economic Stabilization Regulations, § 201.2?

Ruling. Yes. Where an employer makes a loan or advance directly or indirectly to an employee pursuant to an agreement entered into after November 13, 1971, and charges no interest, or charges interest at a rate which is not equal to an arm's length rate as defined in this ruling, the difference between the annual interest paid based upon the agreed interest rate and the annual interest that would have been paid if an arm's length interest rate had been charged will be included as an item of wages and salary.

Ruling. For purposes of this ruling, the arm's-length interest rate shall be the rate of interest that would have been charged at the time the indebtedness arose in independent transactions under similar circumstances not involving an employer-employee relationship. All relevant factors will be considered, including the amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans.

This ruling applies to all loans or advances of money or other consideration (whether or not evidenced by a written instrument) which are forms of bona fide indebtedness.

For example, if the arm's-length rate of interest is determined to be 6 percent per annum in the instant factual situation, then $1,500 will be included as an item of wages and salaries in the first year of the loan, determined as follows:

This ruling has been approved by the General Counsel of the Pay Board.

$50,000×6 percent arm's-length interest rate	$3,000
$50,000×3 percent actual simple interest rate	−1,500
Included in wages and salaries	$1,500

[Pay Board Ruling 1972–112]

ESSENTIAL EMPLOYEES

Facts. An employer pays his employees a flat rate of compensation. In addition, the employer has a written incentive plan which qualifies under the Economic Stabilization Regulations, § 201.74(a) as an "established plan".

For the past several years, the employer has had difficulty in both retaining his old employees and recruiting new ones. Accordingly, he desires to raise his employees' salaries under the exception found in Regulations § 201.14.

Issue. Does incentive compensation paid pursuant to a § 201.74(a) "established plan" constitute wages and salaries, and as such may it be increased if the Pay Board grants the employer a § 201.14 exception?

Ruling. No. Although wages and salaries are defined by Regulations § 201.2 to include incentive pay, § 201.71(b) states that Subpart F (Executive and Variable Compensation) shall control when it is in conflict with the § 201.2 definition of wages and salaries. Therefore, the § 201.72(a) definition of wages and salaries found in Subpart F controls. This definition states that the term "wages and salaries" has the same meaning "as under § 201.2 except that items constituting incentive compensation shall not be treated as wages and salaries * * *". It follows that the employer may not treat incentive compensation which is paid pursuant to a § 201.74(a) "established plan" as wages and salaries if he is granted an exception pursuant to § 201.14.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–113]

STOCK OPTION PLANS

Facts. Corporation A has a 5-year stock option plan in existence, expiring June 30, 1973, which meets the conditions of Economic Stabilization Regulations, § 201.76(b). The original authorization under such plan was 100,000 shares. During the first 3 fiscal years of the employer during which the plan operated, all of the authorized shares were granted to the employees in the plan unit.

Issue. Must Pay Board approval be obtained in order to authorize additional shares under the existing plan?

Ruling. No. The plan may be renewed for a period of years or replenished under Regulations, § 201.78(a), which provide for the replacement of existing plans or practices which have lapsed or terminated. The grant of shares during an employer's fiscal year may not exceed the number allowable under § 201.76(b)(1) or (c), whichever is applicable, with regard to the plan prior to replenishment or renewal, and all other conditions of § 201.76(b)(1) must be met in order to qualify as a replacement of an existing plan or practice which does not require Pay Board approval.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–114]

SALES COMMISSION PLAN

Facts. On January 1, 1971, a retail firm established a sales commission plan, whereby an individual salesman's commission is computed weekly on the basis of the gross profit on the products he sells (i.e., the difference between the sales price and cost) and not on the gross sales price of the product.

Issue. Does this sales commission plan meet the requirements of the Economic Stabilization Regulations, § 201.77(a)(1), relating to established sales, commission, and production incentive plans or practices?

Ruling. Yes. According to § 201.77(a)(1), sales, commission, and production incentive plans or practices may continue to operate in accordance with their provisions if they were established and in effect before Novembr 14, 1971. Plans or practices which meet this requirement are those which directly reflect the performance of the employee participant in the form of sales or production output. Thus, since the sales commission plan here directly reflects employee performance, rather than being primarily tied to a percentage of profits without reference to the employee recipient's individual performance, it meets the requirements of § 201.77(a)(1).

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–115; Price Commission Ruling 1972–133]

DIRECTORS' FEES

Facts. A is a director of XYZ Corporation. As a director, he is paid a specified amount for each board of directors meeting he attends. A is also president of XYZ Corporation, and receives a salary for his services as president, under the terms of an employment contract with the corporation.

Issue. Are the amounts paid to A "wages" or "prices" within the Economic Stabilization Regulations?

Ruling. Amounts paid to A as a director are fees for a "service" within the Economic Stabilization Regulations; amounts paid to A as an officer of the corporation are "wages" within the regulations.

A director, as such, is not an employee of his corporation. No person can order a director to act or vote in a particular way. Even though stockholders are entitled to remove a director from his position, they may not dictate his actions so long as he remains in that office. 19 C.J.S. Corporations, Sections 742–743.

Because a director's activities are not generally subject to the control of a superior within the corporation, he cannot therefore be classified as an "employee" for purposes of the economic stabilization program.

As defined in the Economic Stabilization Regulations, a "service" includes any service performed by a person for another person other than in an employment relationship. Economic Stabilization Regulations 6 CFR 300.5 (1972). Therefore the amounts paid to A by XYZ Corporation for his services as a director are fees for a service; and thus are subject to the Price Commission Regulations.

If a person who is a corporation director performs services for the corporation beyond those required of him as a director, and subject to the control of the board of directors or a superior officer of the corporation, he may be an employee. Whether or not services are performed as an employee of the corporation must be determined on the basis of all the facts and circumstances. Wharton v. Fidelity—Baltimore National Bank, 222 Md. 177, 158 A.2d 887 (1960).

This ruling has been approved by the General Counsels of the Price Commission and the Pay Board.

[Pay Board Ruling 1972–116]

NEW ORGANIZATION

Facts. An inactive, but legally existing, corporate "shell" is being revived by investors. It is anticipated that the employees will participate in the employee compensation benefits which existed before the corporation became inactive.

Issue. Would the revived Corporation constitute a "new organization" under the Economic Stabilization Regulations, so as to be required to file a report with the Pay Board with respect to the establishment of variable and executive compensation plans?

Ruling. Yes. Economic Stabilization Regulations, § 201.79(a), provide that "Any business * * * organized or established on or after November 14, 1971," must report all incentive compensation plans to the Pay Board within 90 days after their establishment.

Although the corporation had existed at an earlier time, the intervening period of inactivity would make the revival of the corporation analogous to the organization or establishment of a new corporation. All that would remain of the old entity would be the original paperwork through which it was created. The act of raising new capital, making business commitments, and staffing the corporation would be identical to the procedures followed in the organizing of an entirely new business. Therefore, the revived corporation would come within the thrust of § 201.79(a) and would be required to report all incentive compensation to the Pay Board for review.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–117]

REQUIRED EMPLOYEE DONATIONS AS "WAGES AND SALARIES"

Facts. The employees of company X are covered by a collective bargaining agreement, one of the terms of which requires each employee to donate 12 cents of his hourly pay rate for each hour worked to an "Industrial Growth Fund," the proceeds of which are used for advertising industry products and for educating new employees.

Issue. Since the employees are required (pursuant to a collective bargaining agreement) to contribute a specified portion of their pay into the "Industrial Growth Fund," should an amount equivalent to such required contribution be excluded from wages and salaries?

Ruling. No. The term "wages and salaries" is defined to include "all forms of direct and indirect remuneration or inducement to employees by their employers for personal services, which are reasonably subject to valuation * * *". Economic Stabilization Regulations, § 201.2. Such definition does not provide any exclusion for payments by employees of a portion of their wages and salaries into funds, regardless of the purpose of such funds and irrespective of who controls such funds. The fact that an employee elects, either through his own initiative or as a result of a negotiated contract covering his employment, to contribute a portion of his direct remuneration to any fund does not change the original status of such remuneration. Accordingly, in the above situation, the 12 cents per hour earned and contributed to the "Industrial Growth Fund" constitutes "wages and salaries" within the meaning of the regulations.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972–118]

RETROACTIVE SALARY INCREASES TO REFLECT INCREASED PRODUCTIVITY

Facts. In July 1971, employer A and the union representing certain plant employees reached agreement on a new contract to be effective August 1, 1971. The contract provided for a specific wage increase to such plant employees, effective September 1, 1971, in return for certain work rules changes and the introduction of new machinery and equipment designed to increase productivity. The new machinery and new work rules were put into effect on August 1, 1971, and resulted in an immediate productivity increase which more than offset the expected cost to the employer of paying the wage increase. Because of the freeze, the wage increase was not put into effect until November 14, 1971.

Issue. Is the wage increase lawfully due and payable retroactively to September 1, 1971?

Ruling. Yes. Economic Stabilization Regulations, § 201.36(a), provide that wage and salary increases "which have been * * * withheld under the authority granted by the Act are lawfully due and payable, if a determination is made * * * that such increases were provided for by * * * agreement * * * prior to August 15, 1971, and that * * * productivity has been increased * * * in order to cover such increases."

Pursuant to § 201.36(c)(1)(i), the factual requirements of paragraph (a) are deemed satisfied with respect to whether—

(1) The amount of a wage and salary increase provided for by law, contract, agreement, or practice was established prior to August 15, 1971, if such amount was determined and definite and if—

(i) A contract was executed, entered into, or became effective prior to August 15, 1971, * * *

Moreover, pursuant to § 201.36(c)(2)(iv), the factual requirement in paragraph (a) that productivity increased is deemed satisfied if—

(iv) An employer and the employee members of the unit, or their collective bargaining agent, have taken action prior to August 15, 1971, to modify work practices either relating to the introduction of new or changed equipment methods or processes, or otherwise, which is designed to and does result in an increase in the productivity of the appropriate employee unit * * *

Furthermore, pursuant to § 201.36(c)(3)(ii), the factual requirement in paragraph (a) that productivity was increased to cover a wage or salary increase is deemed satisfied if—

(ii) Action modifying work practices to increased productivity taken by an employer and the employee members of the unit, or their collective bargaining agent, was taken to provide for a wage and salary increase and the resulting increase in productivity is adequate to cover the wage and salary increase, * * *

Under the facts described above, the amount of the wage increase was determined and definite in a contract effective prior to August 15, 1971, although the wage increase was not effective until September 1, 1971. Moreover, the work rules changes and introduction of new machinery and equipment were designed to increase productivity and did, in fact, increase productivity more than adequately to cover the wage increase provided for in the agreement.

Accordingly, the requirements of § 201.36(a) under the special rules provided in § 201.36(c) are deemed to be satisfied. Therefore, the wage increase under the facts described above is lawfully payable by employer A retroactively to September 1, 1971, subject only to the determination rules as set forth in § 201.36(b).

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972-119]

RETROACTIVE WAGE INCREASE, BASED UPON PRICE INCREASE

Facts. On August 1, 1971, company A, a mail-order company that solicits customers by the use of mail order catalogs, decided to raise its employees wages and salaries by a definite amount as of September 1, 1971. However, company A did not communicate this decision to its employees at that time, but printed new catalogs to reflect increased prices and arranged to mail the catalogs to its customers on August 16, 1971. The freeze period of the Economic Stabliization Program precluded both the mailing of the new catalogs reflecting the increased prices and the payment of scheduled wage increases. The new catalogs were finally sent out after November 13, 1971, at the conclusion of the freeze period, when the price increases had been approved by the Price Commission. Company A desires to pay the increase in wages and salaries of its employees, retroactive to September 1, 1971.

Issue. May the retroactive wage and salary increase be paid pursuant to the Economic Stabilization Regulations, § 201.36?

Ruling. No. Section 201.36(a) provides as follows:

Subject to the provisions of paragraphs (b) and (c) of this section, any increases in wages and salaries which have been or would be withheld under the authority granted by the Act are lawfully due and payable, if a determination is made that such increases were provided for by law, contract, agreement, or practice established prior to August 15, 1971, and that prices have been advanced, productivity has been increased, taxes have been raised, appropriations have been made, or funds have been otherwise raised or provided for in order to cover such increases.

The enactment of 203(c)(3) of the Economic Stabilization Act Amendments of 1971 (Public Law 92-210, 85 Stat. 743), did not alter the requirement that prices must have been increased prior to August 16, 1971, in anticipation of wage and salary increases scheduled to take effect after August 15, 1971. Company A did not actually raise the prices for its goods and services until after November 13, 1971, following approval of the proposed increase by the Price Commission. Before the determination that prices were raised prior to August 15, 1971, can be made, the necessary element of communication to the public of such price increases must have taken place. Company A's method of notifying the public of price increases is by use of mail order catalogs. Since the catalogs were not sent out until long after August 15, 1971, notice of such price increases prior to that date did not take place. As a result, the proposed retroactive wage increase cannot qualify under § 201.36.

This ruling has been approved by the General Counsel of the Pay Board.

[Pay Board Ruling 1972-120]

PAY PRACTICE PREVIOUSLY SET FORTH

Facts. A corporation has a written formula whereby it sets its maximum wage rate on the basis of an annual survey of local wage practices.

Issue. Does the implementation of the formula based upon the annual survey of local wages constitute a "pay practice previously set forth" within the meaning of Economic Stabilization Regulations, § 201.35?

Ruling. No. Section 201.35(d) provides that "* * * a formula for determining general adjustments to wages and salaries is not a pay practice previously set forth".

This ruling has been approved by the General Counsel of the Pay Board.

APPENDIX—CROSS-REFERENCE TABLE

The following table provides a reference for purposes of ascertaining the prior number of those Pay Board rulings which are republished herein as part of the Pay Board recodification.

New ruling number, 1972—	*Old ruling number, 1972—*
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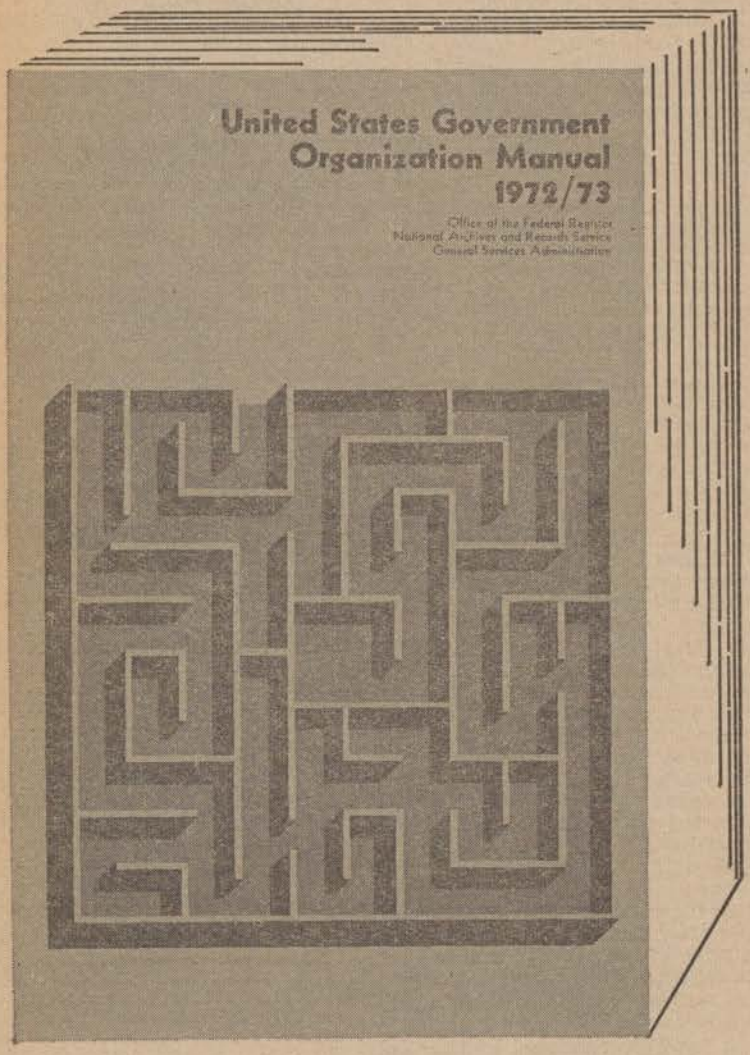

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