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PART I


## HIGHLIGHTS OF THIS ISSUE

**This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.**



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## HIGHLIGHTS—Continued




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# List of CFR Parts Affected

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1974, and specifies how they are affected.

# REMINDERS

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

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This list includes only rules that were published in the FEDERAL REGISTER after October 1, 1972.

page no. and date

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## ACTS APPROVED BY THE PRESIDENT

NOTE: No acts approved by the President were received by the Office of the Federal Register during the period covered by this issue.

# Presidential Documents

## Title 3—The President

### EXECUTIVE ORDER 11764

**Nondiscrimination in Federally Assisted Programs**

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d—2000d–4, prohibits discrimination on the ground of race, color, or national origin in programs and activities receiving Federal financial assistance. The agencies which extend such assistance have primary responsibility for effectuating title VI. Although the Attorney General is presently responsible for coordinating enforcement of title VI, it is appropriate to clarify and broaden the role of the Attorney General with respect to title VI enforcement.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including section 301 of title 3 of the United States Code, it is ordered as follows:

SECTION 1. The Attorney General shall coordinate enforcement by Federal departments and agencies of Title VI of the Civil Rights Act of 1964. He shall prescribe standards and procedures regarding implementation of title VI and shall assist the departments and agencies in accomplishing effective implementation. He may adopt such rules and regulations and issue such orders as he deems necessary to carry out his functions under this order.

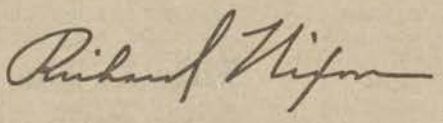
SEC. 2. (a) Each Federal department and agency shall cooperate with the Attorney General in the performance of his functions under this order and shall furnish him such reports and information as he may request.

(b) Title VI compliance reviews and investigations shall be conducted by the departments and agencies in accord with standards and procedures established by the Attorney General.

(c) Whenever a department or agency ascertains noncompliance or probable noncompliance with title VI, steps to obtain compliance by voluntary means or to enforce title VI requirements shall be carried out in accord with standards and procedures established by the Attorney General.

SEC. 3. The authority vested in the President by section 602 of title VI, 42 U.S.C. 2000d–1, to approve rules, regulations, and orders of general applicability is hereby delegated to the Attorney General.

SEC. 4. Executive Order No. 11247 of September 24, 1965, is hereby superseded.



THE WHITE HOUSE,
*January 21, 1974.*

[FR Doc.74–2022 Filed 1–21–74;3:07 pm]

# Title 3—The President

## EXECUTIVE ORDER 11765

### Sale of Vessels of the Navy

By virtue of the authority vested in me by section 7305(1) of title 10 of the United States Code, it is hereby ordered as follows:

SECTION 1. Vessels of the Navy stricken from the Naval Vessel Register pursuant to section 7304 of title 10 of the United States Code, and not subject to disposition under other law, may be sold at public sale to the highest acceptable bidder, regardless of their appraised value, after being advertised for sale for a period of not less than thirty days. Moreover, if the bid prices received after advertising are not considered reasonable by the Secretary of the Navy, or his designee, (either as to all or any part of a multiple ship advertisement) and he, or his designee, determines that readvertising will serve no useful purpose, such vessels may be sold by negotiation to the highest acceptable offeror: *Provided,* That (1) each responsible bidder has been notified of the intention to negotiate and has been given a reasonable opportunity to negotiate; (2) the negotiated price is higher than the highest rejected price of any responsible bidder; and (3) the negotiated price is the highest negotiated price offered by any responsible offeror.

SEC. 2. Each bid or offer shall be accompanied by a cash deposit (including cashier's check or certified check) in an amount not less than 10 percent of the bid or offer, or by a deposit bond, in such amount, executed by two or more acceptable sureties or by a surety appearing on the United States Treasury Department list of acceptable sureties. No other bond shall be required.

SEC. 3. Except as hereinabove modified pursuant to section 7305(1) of title 10 of the United States Code, sales of vessels of the Navy shall be conducted in accordance with the requirements in the remaining provisions of section 7305.

SEC. 4. This order supersedes Executive Order No. 10885 of August 31, 1960, entitled "Sale of Vessels of the Navy."

Richard Nixon

THE WHITE HOUSE,
*January 21, 1974.*

[FR Doc.74-2023 Filed 1-21-74;3:09 pm]

# Rules and Regulations



## Title 14—Aeronautics and Space

### CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-NW-18-AD; Amdt. 39-1767]

### PART 39—AIRWORTHINESS DIRECTIVE

### Boeing 737 Series Airplanes

*Correction*

In FR Doc. 74-564, appearing at page 1352, in the issue for Tuesday, January 8, 1974, in the third column, the effective date in the fifth paragraph reading "January 8, 1973," should be "January 8, 1974."

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[Docket No. 73-SO-60; Amdt. 39-1773]

### PART 39—AIRWORTHINESS DIRECTIVES

### Grumman G-159 Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection of the forward engine mounts for corrosion and repair if necessary on Grumman Model G-159 airplanes was published in 38 FR 23962, dated September 5, 1973.

Interested persons have been afforded an opportunity to participate in the making of the amendment. One letter questioned the proposed inspection on the basis that the corroded mount found in service on a G-159 could have been a Vickers manufactured mount intended for installation on British Aircraft Corporation Viscount airplanes. It has been determined that the mount was the correct part for the G-159 airplane. Additionally, Grumman manufactured G-159 aft engine mounts have been found in service with corrosion; accordingly, the scope of the proposed airworthiness directive has been expanded to simultaneously include inspection of the aft mount.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697) § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive: z

GRUMMAN AMERICAN AVIATION CORPORATION (GAAC). Applies to all Grumman Model G-159 airplanes certificated in all categories. Compliance required as indicated.

To detect and prevent corrosion of the bore surfaces of the support tubes of the forward and aft engine mount assemblies, Vickers Drawing No. 81037, Sheet 29 and Grumman Drawing Numbers 159W10432-1 (L/H) and 159W10432-3 (R/H), respectively, accomplish the following unless already accomplished:

(a) Within 200 hours time in service or four months after the effective date of this AD, whichever is sooner, inspect the forward and aft engine mounts, L/H and R/H, ultrasonically in accordance with GAAC Customer Bulletin (CB) Number 241A dated December 17, 1973 or later FAA approved revision or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

(b) If corrosion is indicated:

(1) Replace corroded tubes in accordance with Customer Bulletin 241A before further flight; then revert to the inspections required under Category A.

(2) If continued flight is desired, ascertain the remaining wall thickness of the corroded tubes and categorize in accordance with Addendum No. 4 to Customer Bulletin No. 241A and perform the operations for each category as given by paragraph (d).

(c) If corrosion is not indicated, perform the operations described in paragraph (d) for Category A.

(d) Category A—No treatment required, reinspect as in paragraph (a) of this AD for corrosion at intervals not exceeding 3600 hours time in service or within six years from last inspection, whichever is sooner.

Category B—Treat the tubes within 50 hours time in service in accordance with Addendum 1 or 5 of Customer Bulletin 241A and reinspect for corrosion as in paragraph (a) of this AD at intervals not exceeding 1200 hours time in service or two years, whichever is sooner.

Categories C and D—Replace corroded tubes in accordance with Customer Bulletin 241A within 150 hours time in service or three months, whichever is sooner; then revert to the inspections required under Category A.

Category E—Replace corroded tubes in accordance with Customer Bulletin 241A before further flight; then revert to the inspections required under Category A.

This amendment becomes effective January 28, 1973.

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

Issued in East Point, Georgia on January 14, 1974.

P. M. SWATEK,
*Director, Southern Region.*

[FR Doc.74-1808 Filed 1-22-74;8:45 am]

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[Docket No. 73-SO-81; Amdt. 39-1772]

### PART 39—AIRWORTHINESS DIRECTIVES

### Piper PA-25 Series Airplanes

Amendment 39-1754 (38 FR 34460), AD 73-26-1, requires inspection of the wing front spar web for cracks and repair or replacement, if necessary, on Piper PA-25 series airplanes. After issuing Amendment 39-1754, the Agency determined that a modification is available to eliminate the need for repetitive inspections on the PA-25-235 and PA-25-260. It has also been determined that repetitive inspections are not necessary on the Model PA-25 (150 h.p.). Therefore, the AD is being amended to provide for the installation of a spar web reinforcement.

Since this amendment provides an alternate means of compliance and relieves the PA-25 (150 h.p.) from repeat inspections and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1754 is amended as follows:

(1) By amending applicability to read as follows: Applies to Model PA-25 airplanes Serial Numbers 25-1 through 25-1999, PA-25-235 and PA-25-260, Serial Numbers 25-02 and 25-2000 through 25-74005573, certificated in all categories.

(2) By striking out the words "For airplanes" in each of the two sentences in the compliance statement, and inserting the words "For Model PA-25-235 and Model PA-25-260 airplanes" in place thereof.

(3) By adding the following sentence to the compliance statement: For Model PA-25 (150 h.p.) airplanes, compliance is required upon accumulation of 2000 hours wing spar time in service or within the next five hours time in service after the effective date of this AD, whichever is later, unless already accomplished.

(4) By amending paragraph (c) to read:

"Using standard dye or fluorescent penetrant inspection procedures, or equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA Southern Region, inspect the following areas for cracks:

1. The inboard end of left and right forward spar web and doubler in the area of wing spar attach fitting bolt holes.

2. The left and right forward spar lower cap rear flange around the inboard four skin attachment holes.

(5) By amending paragraph (d) to read:

If cracks are found as a result of the inspections required in paragraph (c), the affected parts must be replaced with serviceable parts of the same part number or repaired in accordance with the instructions contained in Piper Service Bulletin No. 414, before further flight.

(6) By amending paragraph (e) to read:

When Piper Kit No. 760840, Spar Web Reinforcement Plate or equivalent approved by the Chief, Engineering and Manuafcturing Branch, FAA Southern Region, is installed immediately after inspection and repair as required by this AD, repetitive inspections at 300 hour intervals are no longer necessary.

(7) By amending the sentence, immediately following paragraph (f) to read:

Piper Service Bulletin No. 410 pertains to the inspections required by this AD and Piper Service Bulletin No. 414 pertains to Piper Kit No. 760840, Spar Web Reinforcement Plate.

This amendment becomes effective January 28, 1974.

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

Issued in East Point, Georgia on January 14, 1974.

P. M. SWATEK,
*Director, Southern Region.*

[FR Doc.74-1809 Filed 1-22-74;8:45 am]

## Title 21—Food and Drugs

## CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### SUBCHAPTER C—DRUGS

### PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

### PART 135g—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

### Erythromycin Phosphate

The Commissioner of Food and Drugs has evaluated a new animal drug application (35-157V) filed by Agricultural and Veterinary Products Division, Abbott Laboratories, Abbott Park, North Chicago, IL 60064, proposing safe and effective use of erythromycin phosphate in poultry drinking water. The application is approved.

The Commissioner concludes that a negligible tolerance for erythromycin should be established to provide for residues of erythromycin in food resulting from this use of erythromycin phosphate in poultry drinking water.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 135c and 135g are amended as follows:

1. In Part 135c by adding a new section as follows:

**§ 135c.117 Erythromycin phosphate.**

(a) *Specifications.* Erythromycin phosphate is the phosphate salt of the antibiotic substance produced by the growth of *Streptomyces erythreus* or the same antibiotic substance produced by any other means. One gram of erythromycin phosphate is equivalent to 0.89 gram of erythromycin master standard.

(b) *Sponsor.* See code No. 068 in § 135.501(c) of this chapter.

(c) *Related tolerances.* See § 135g.34 of this chapter.

(d) *Conditions of use.* It is used as follows:

IN DRINKING WATER

| Ingredient | Grams per gallon | Limitations | Indications for use |
|---|---|---|---|
| 1. Erythromycin phosphate. | 0.500 | For broiler and replacement chickens; administer for 5 days; do not use in replacement pullets over 16 weeks of age; do not use in chickens producing eggs for human consumption; to assure effectiveness, treated birds must consume enough medicated water to provide a therapeutic dosage; solutions older than 3 days should not be used; withdraw 1 day before slaughter. | As an aid in the control of chronic respiratory disease due to *Mycoplasma gallisepticum* susceptible to erythromycin. |
| 2. Erythromycin phosphate. | 0.500 | For replacement chickens and chicken breeders; administer for 7 days; do not use in replacement pullets over 16 weeks of age; do not use in chickens producing eggs for human consumption; to assure effectiveness, treated birds must consume enough medicated water to provide a therapeutic dosage; solutions older than 3 days should not be used; withdraw 1 day before slaughter. | As an aid in the control of infectious coryza due to *Hemophilus gallinarum* susceptible to erythromycin. |
| 3. Erythromycin phosphate. | 0.500 | For growing turkeys; administer for 7 days; do not use in turkeys producing eggs for human consumption; to assure effectiveness, treated birds must consume enough medicated water to provide a therapeutic dosage; solutions older than 3 days should not be used; withdraw 1 day before slaughter. | As an aid in the control of blueconb (nonspecific infectious enteriti). caused by organisms susceptible ts erythromycin. |

2. In § 135g.34 by revising paragraph (b) and adding a new paragraph (d) as follows:

**§ 135g.34 Erythromycin.**

* * * * *

(b) Zero in the uncooked edible tissues of beef cattle and in milk.

* * * * *

(d) 0.125 part per million (negligible residue) in uncooked edible tissues of chickens and turkeys.

*Effective date.* This order shall be effective January 23, 1974.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i).)

Dated: January 15, 1974.

C. D. VAN HOUWELING,
*Director, Bureau of Veterinary Medicine.*

[FR Doc.74-1761 Filed 1-22-74;8:45 am]

### SUBCHAPTER F—BIOLOGICS

### PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

### Reorganization and Republication; Correction

In FR Doc. 73-24521 appearing at page 32047 in the FEDERAL REGISTER of November 20, 1973, a line was inadvertently dropped from paragraph (a)(1) of § 630.12, appearing on page 32071.

As corrected § 630.12(a)(1) should read as follows:

**§ 630.12 Animal source; quarantine; personnel.**

(a) *Monkeys*—(1) *Species permissible as source of kidney tissue.* Only Macaca or Cercopithecus monkeys, or a species found by the Director, Bureau of Biologics, to be equally suitable, which have met all the requirements of §§ 600.11(f)(2) and 600.11(f)(8) of this chapter shall be used as the source of kidney tissue for the manufacture of Poliovirus Vaccine, Live, Oral.

Dated: January 16, 1974.

WILLIAM F. RANDOLPH,
*Acting Associate Commissioner for Compliance.*

[FR Doc.74-1827 Filed 1-22-74;8:45 am]

## Title 33—Navigation and Navigable Waters

## CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

### SUBCHAPTER A—GENERAL

[CGD 73-102]

### PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT AREAS

### Description of Atlantic and Pacific Areas

These amendments change the names and revise the geographic descriptions of the two Coast Guard Areas contained in the present structure of the general organization of the Coast Guard.

In each of the three sections amended by this document the Eastern Area and the Western Area are renamed to be the Atlantic Area and Pacific Area respectively. Section 3.04-1(b) is further amended by including the Second and Ninth Coast Guard Districts in the description of the Atlantic Area and by revising the geographic description of the ocean area included in the Atlantic Area.

Section 3.04–3(b) is further amended by revising the geographic description of the ocean area included in the Pacific Area.

Since these amendments are matters relating to agency organization, they are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b). They are effective in less than 30 days from the date of publication because the organizational changes described in the amendments have already been implemented.

In accordance with the foregoing, Part 3 of 33 CFR Chapter I is amended as follows:

1. Subpart 3.01 is amended by revising § 3.01–1(b) to read as follows:

**§ 3.01–1 General description.**

* * * * *

(b) The two Coast Guard Areas are the Atlantic Area (see § 3.04–1 of this part) and the Pacific Area (see § 3.04–3 of this part). The Coast Guard Area Commander is in command of a Coast Guard Area and his offices may be referred to as a Coast Guard Area Office. The office of the Commander, Atlantic Area is located in the Third Coast Guard District and the Commander of that District shall serve collaterally as Commander, Atlantic Area. The office of the Commander, Pacific Area is located in the Twelfth Coast Guard District and the Commander of that District shall serve collaterally as Commander, Pacific Area. Area Commanders have the responsibility of determining when operational matters require the coordination of forces and facilities of more than one district.

* * * * *

2. Subpart 3.04 is amended by revising § 3.04–1(b) to read as follows:

**§ 3.04–1 Atlantic Area.**

(b) The Atlantic Area shall comprise the land areas and U.S. navigable waters of the First, Second, Third, Fifth, Seventh, Eighth and Ninth Coast Guard Districts and the ocean areas lying east of a line extending from the North Pole south along 95°W longitude to the North American land mass; thence along the west coast of the North, Central, and South American land mass to the intersection with 70°W longitude; thence due south to the South Pole. These waters extend east to the Eastern Hemisphere dividing line between the Atlantic and Pacific Areas which lies along a line extending from the North Pole south along 100°E longitude to the Asian land mass and along a line extending from the South Pole north along 62°E longitude to the Asian land mass.

3. Subpart 3.04 is further amended by revising § 3.04–3(b) to read as follows:

**§ 3.04–3 Pacific Area.**

* * * * *

(b) The Pacific Area shall comprise the land areas and the U.S. navigable waters of the Eleventh, Twelfth, Thirteenth, Fourteenth and Seventeenth Coast Guard Districts and the ocean areas lying west of a line extending from the North Pole south along 95°W longitude to the North American land mass; thence along the west coast of the North, Central and South American land mass to the intersection with 70°W longitude; thence due south to the South Pole. These waters extend west to the Eastern Hemisphere dividing line between the Atlantic and Pacific Areas which lies along a line extending from the North Pole south along 100°E longitude to the Asian land mass and along a line extending from the South Pole north along 62°E longitude to the Asian land mass.

(80 Stat. 383, as amended (5 U.S.C. 552); 63 Stat. 545 (14 U.S.C. 633); 80 Stat. 937 (49 U.S.C. 1655 (b)); 49 CFR 1.45 and 1.46)

Effective date: January 23, 1974.

Dated: January 17, 1974.

T. R. SARGENT,
*Vice Admiral, U.S. Coast Guard,*
*Acting Commandant.*

[FR Doc.74–1831 Filed 1–22–74;8:45 am]

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[CGD 73–13R]

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

### Spa Creek, Md.

This amendment changes the regulations for the highway drawbridge across Spa Creek to permit closed periods on Saturdays and Sundays from May 1 through October 30 from 10 a.m. to 5 p.m. The draw shall open on the hour and half hour during this period if any vessels are waiting to pass. This change is being made due to the high concentration of vehicular traffic during this period on weekends. The present regulations which permit closed periods on weekdays during the morning and evening rush hours will continue in effect.

A notice of proposed rule making was published in the FEDERAL REGISTER on January 26, 1973 (38 FR 2466) and circulated as a public notice dated January 30, 1973 by the Commander, Fifth Coast Guard District. After reviewing all comments received (48 against, 45 for, 15 with different proposals and 2 offering no comments) the proposal that the draw open only on the hour and half hour, Monday through Friday from 6 a.m. to 12 midnight from May 1 through October 31 was considered too restrictive. The Coast Guard notified the City of Annapolis that the proposed closed periods were denied on the grounds that they would not provide for the reasonable needs of navigation. However, the statistical data submitted by the Maryland State Highway Commission did clearly show that during the weekends in the summer months there is a heavy concentration of both modes of transportation.

The City of Annapolis, by letter dated June 15, 1973, requested that the draw remain closed from 10 a.m. to 5 p.m. Saturday and Sunday from May 1 through November 1 with the proviso that the draw would open on the hour and half hour during this period if any vessels are waiting to pass.

After examining all the data it is concluded that these periods should be more equitably shared by land and water traffic.

In consideration of the foregoing, 33 CFR Part 117, is amended by revising § 117.311 to read as follows:

**§ 117.311 Spa Creek, Md., Route 2 drawbridge.**

(a) The draw shall open on signal except that:

(1) From 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal and State holidays, the draw need not open for the passage of vessels.

(2) From 10 a.m. to 5 p.m. on Saturdays and Sundays from May 1 through November 1 the draw need not open except on the hour and half hour if any vessels are waiting to pass.

(b) The draw shall open at any time for public vessels of the United States or vessels in an emergency involving danger to life or property. The opening signal is four blasts of a whistle or horn or by shouting.

(c) The owner of or agency controlling the bridge shall conspicuously post the provisions of this regulation on the upstream and downstream sides of the bridge or elsewhere in a manner that it can easily be read from an approaching vessel at all times.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 46 CFR 1.46(c)(5), 33 CFR 1.05(c)(4)).

*Effective date.* This revision shall become effective on April 1, 1974.

Dated: January 17, 1974.

W. M. BENKERT,
*Rear Admiral, U.S. Coast Guard,*
*Chief, Office of Marine Environment and Systems.*

[FR Doc.74–1832 Filed 1–22–74;8:45 am]

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[CGD 73–41R]

## PART 177—ESPECIALLY HAZARDOUS CONDITIONS

### Terminating Use of Boats

The purpose of this amendment to Part 177 of Subchapter S, 33 CFR Ch. I, is to provide, under the authority of section 13 of the Federal Boat Safety Act of 1971, for the termination of use of boats during especially hazardous conditions on certain river bars and coastal inlets along the Pacific coastline of the States of Washington and Oregon.

A notice of proposed rulemaking was published in the March 14, 1973 issue of the FEDERAL REGISTER (39 FR 6902) proposing to define additional unsafe conditions for boats being used in certain regulated boating areas along the coastlines of Washington and Oregon. The proposed rule also defined the boundaries of the Regulated Boating Areas in which the additional unsafe conditions would apply.

On April 17, 1973 and April 19, 1973, public hearings were held in Seattle, Washington, and Portland, Oregon, respectively, to receive the views of interested persons on the proposed regula-

tions. Both before and after the public hearings, written comments from interested persons were received. The Coast Guard has considered all oral and written comments in preparing the final rule.

The first area of significant concern expressed by the comments centers on the criteria of wave height and surface current. These criteria, in effect, define the unsafe bar conditions in which the boarding officers' termination authority can be used. A number of comments objected that the wave height and surface current criteria were, in effect, too conservative and that in many bar and harbor areas such conditions were common. The Coast Guard considers that these comments indicate a misunderstanding of the purpose of the wave height and surface current criteria. The criteria are not in themselves sufficient reason for termination of use. Boats will not be automatically stopped and turned back at the bar when the seas are four feet or when the current is four knots or greater. Rather, the criteria are prerequisite conditions that must be present before the Coast Guard Boarding Officer can exercise his authority to terminate use. In other words, the wave and current criteria, when present, should alert both the Coast Guard Boarding Officer and the boatmen in the Regulated Boating Areas that an unsafe condition exists and that the further use of boats may constitute an especially hazardous condition. To exercise his authority to terminate use, the boarding officer must then make a further, specific and ultimate judgment as to whether or not use of a specific boat in a specific instance is especially hazardous and therefore subject to termination. This distinction between the concept of unsafe condition and especially hazardous condition is an important one if the effect of this regulation is to be correctly understood.

In this connection, several comments suggested that boat design or construction, material condition of the boat, and experience of the operator should be factors that are taken into consideration. In addition, several other comments stated that wave steepness should be considered as part of the criteria established in the regulation. Other comments objected that wave height and surface current were rarely, if ever, uniform throughout a Regulated Boating Area. It is precisely these kinds of variables that the Coast Guard Boarding Officer will consider and evaluate when making the judgment whether or not use of a specific boat constitutes an especially hazardous condition. The factor of wave steepness or wave frequency provides a particularly good case in point. A four foot sea, if the wave frequency is low, may not be particularly hazardous. That is, the four foot waves may occur in the form of relatively moderate swells with little or no breaking action. By observation of a specific boat in this specific area of water, the boarding officer may judge that these swells are not especially hazardous to the boat (possibly, even a boat having relatively little freeboard) and that therefore termination of its use is not warranted. On the other hand, the four foot sea may be running in a severe chop (high wave frequency with steep swells). By observation of a specific boat in this specific area of water, the boarding officer may judge the waves to be especially hazardous (particularly if the boat has relatively little freeboard) and therefore require termination of its use in that area.

Several comments objected to the length-freeboard formula (used as an alternate means of establishing wave height criteria) on the basis that it would be difficult for the boarding officer to accurately determine these dimensions and on the basis that these dimensions are not representative of the seaworthiness of a boat. As previously mentioned, the wave height criteria is not in itself reason for termination. The Coast Guard feels, therefore, that measurement of the length-freeboard dimensions is not so critical as to require great exactness. The Coast Guard recognizes that the length-freeboard dimensions are not in themselves an ultimate indication of the boat's seaworthiness. It is precisely for this reason that the boarding officer will consider and evaluate many other factors of boat design/construction/condition, wave steepness, boat loading, etc. before requiring termination of use of a particular boat.

It should also be remembered that the formula would be used only when the wave height is less than four feet. Although theoretically the formula could be applied to any boat, as a practical matter the formula is in the rule to provide for relatively small boats, and particularly those which, due to design or loading, may have little freeboard. Even when the wave height is less than four feet, such boats could, due to a choppy and confused sea in the bar area, possibly ship large amounts of water and swamp.

Several comments also questioned how the Coast Guard would accurately measure wave height and surface current in the regulated boating areas. In all instances, measurement will be accomplished by Coast Guard Boarding Officers operating in the area. Measurement will be based on the boarding officers' personal judgment, or what is popularly known as "seaman's eye". This idiom expresses the ability of an experienced mariner to accurately judge such measures as wave heights, distance, and relative motion over large expanses of open water. It is interesting to note that wave height data regularly reported by U.S. Coast Guard and Navy ships at sea is commonly measured not by special scientific instrumentation but by the "seaman's eye" of officer and petty officer personnel of the bridge watch. This measurement of the wave height is sufficiently consistent to be utilized by the National Weather Service in preparing marine weather reports.

Another major area of concern is reflected in comments which questioned the ability of Coast Guard personnel to correctly and fairly judge and evaluate the factors involved in determining whether an especially hazardous condition exists. Section 13 of the Federal Boat Safety Act of 1971 (85 Stat. 215, U.S.C. 1462) specifies that a Coast Guard Boarding Officer has the authority to direct the operator of a boat to take immediate and reasonable steps to correct an especially hazardous condition. A Coast Guard Boarding Officer may be any petty officer, warrant officer, or commissioned officer of the Coast Guard. However, Commandant's Instruction 5910.15A of 7 August 1973 states that only those boarding officers who have received special training in the principles and enforcement of boating safety will be given the termination of use authority provided for in section 13 of the Federal Boat Safety Act of 1971 and implemented by Part 177. This policy limitation will be continued and should provide adequate assurance to the boating public that the authority will be exercised only by personnel who are competent and qualified to make accurate and reasonable judgments.

Another area of concern is reflected in several comments which objected that that the proposed regulation would limit the boat operators freedom of choice in the operation of his boat. These comments reflect directly on the intent of the regulation since its very purpose recognizes that there are occasions when boat operators are either unwilling or unable to realize that they are using their boat in an especially hazardous condition and that another judgment, in this case, that of the Coast Guard Boarding Officer, is necessary to assure their safety. The purpose of the regulation also recognizes that the operator's reckless acts often involve other lives, including guests on the operator's boat or those who might be called upon to remove the guests from a position of peril. The Coast Guard feels, therefore, that in especially hazardous conditions, the freedom of the boat operator must be subject to certain control and limitation.

Several people who attended the public hearings in Seattle and Portland expressed a general concern that the regulation would place a particular hardship on the charter fishing boat operator who carriers six or fewer passengers (for hire). Section 3(1)(c) of the Federal Boat Safety Act specifically includes this group of commercial operators as being subject to the provision of the Act, and regulations issued under the Act. However, the Coast Guard considers that the high experience level of the charter boat operators and their knowledge of the changeable conditions which create the hazards in the bar areas, and the fact that they are licensed operators, make it unlikely that this regulation will be used to limit their activities. The principle intent of the regulation is directed rather at the relatively inexperienced boat operator who may come from some distance to the bar area and find himself suddenly in an extremely hazardous condition with which he is unable to cope. The Coast Guard feels, therefore, that it is unnecessary to except the charter

boat operators from the applicability of the regulation. Rather, it should be understood that the spirit and intent of the regulation is to protect the unwary and inexperienced.

Several comments recommended that the Regulated Boating Areas be depicted in terms of the area within a radius drawn from a fixed geographical point or navigation aid, rather than being described in the more cumbersome terms of latitude and longitude. The Coast Guard recognizes that the use of circles would make the plotting of Regulated Boating Areas easier. However, the hazardous bar areas are quite irregular and sometimes extensive. The difficulty with the use of circles or arcs of circles is that this imprecise method inevitably will include areas of water that should not be considered potentially hazardous and may likewise exclude areas of water that are potentially hazardous. Because the Regulated Boating Areas establish the boundaries within which the Coast Guard Boarding Officer may use his authority to terminate use, the Coast Guard considers that the limits of these areas should be established in the regulation with precision and exactness. As a practical matter, the boat operator may find the general limits of the hazardous bar areas depicted in either the Coast Guard Auxiliary "Bar Guides" or in the pamphlet entitled, "Boating in Coastal Waters", published by the Oregon State Marine Board. It should be kept in mind that the Regulated Boating Areas are not prohibited areas which the operator must stay clear of; nor are they areas in which the operator will be automatically fined or penalized if he is stopped by a Coast Guard Boarding Officer. The important consideration for the boat operator is to know when he is operating in the general vicinity of the Regulated Boating Areas and to be prepared for the rapidly changing tidal and sea conditions which may be especially hazardous to his boat. The operator can do this by reference to the "Bar Guide" or "Boating in Coastal Waters". If the operator carries and uses a chart, then he would be prudent to have the exact coordinates of the Regulated Boating Areas marked.

Several comments suggested that boating deaths and accidents due to hazardous bar conditions could be more positively controlled if the Coast Guard established a prominent signal to warn boaters of unsafe bar conditions. Rough Bar Warning Signs are presently installed at five of the more heavily used bar areas. These signs are large diamond daymarks bearing the words "ROUGH BAR" and are equipped with flashing amber lights that are turned on when observed seas at the bar are four feet in height or over and are considered unsafe. In the bar areas which have no warning signs, bar condition reports are broadcast on commercial radio stations, and in some areas on television stations, throughout the day (in some areas as frequently as every half hour). The Coast Guard feels that these bar warning signs, together with the television and radio broadcasts, provide the boat operator with ample warning of rough and unsafe bar conditions. The bar warning signs and broadcasts are not, however, a practical alternative to achieving the desired effects of this rule. Past experience has shown that many boat operators, either through overconfidence or inexperience, ignore the initial warning signs, and further ignore the testimony of their senses, and continue to operate in the bar areas when prudence would dictate otherwise.

One comment suggested that the rule be issued under the authority of the Ports and Waterways Act of 1972 (authority to control vessels in hazardous areas) rather than the authority of section 13 of the Federal Boat Safety Act. It is felt that the Federal Boat Safety Act is the more narrow and applicable Act since the specific intent of this regulation is to prevent the use of a limited class of vessels (boats) in especially hazardous conditions.

As a result of comments received from the Commander, Thirteenth Coast Guard District, two minor revisions to the Columbia River Bar Regulated Boating Area, defined in § 177.08(d), have been made in the final rule. The first revision extends the Columbia River Bar area to include the western portion of Desdimona Sands, which is a dangerous area for recreational boats, especially during flood tide. The second revision corrects a drafting error, which appeared in the notice of proposed rulemaking, by replacing the word "eastward" with the words "northwestward and southwestward" in the description of the north shoreline perimeter of the area.

Finally, two minor revisions have been made by the Coast Guard to correct drafting inaccuracies that appeared in the notice. The term "recreational" has been deleted from the phrase "Regulated Recreational Boating Area" to avoid any possible misunderstanding of the applicability of the rule. This correction was made because the rule applies not only to the purely recreational boat operator but also to the commercial charter boat operator carrying six or fewer passengers. In § 177.07(f)(3), which describes the surface current criteria, the words "greater than 4 knots" have been changed to read "4 knots or greater". This correction was made so as to have consistent usage in the language describing both wave height (4 feet or greater) and surface current (4 knots or greater).

In consideration of the foregoing, the proposed amendment to Part 177 of Subchapter S, 33 CFR Ch. I, as published in the March 14, 1973 issue of the FEDERAL REGISTER (38 FR 6902), is hereby adopted as proposed subject to the following changes:

(1) The paragraph which was designated § 177.07(g) in the notice of proposed rulemaking is redesignated § 177.07(f).

(2) The word "recreational" is deleted from the phrase "Regulated Recreational Boating Area" wherever the phrase appears in the text of the regulation and is also deleted from the heading of § 177.08.

(3) Sections 177.07(f)(3) and 177.08(d) are revised as set forth below.

(Sec. 39, 85 Stat. 228, 46 USC 1488; 49 CFR 1.46(o)(1))

Effective date: This amendment is effective on February 22, 1974.

Dated: January 16, 1974.

T. R. SARGENT,
*Vice Admiral U.S. Coast Guard,*
*Acting Commandant.*

1. Section 177.07 is amended by adding paragraph (f) as follows:

**§ 177.07 Other unsafe conditions.**

* * * * *

(f) Is operated in a Regulated Boating Area as described in 177.08 when—

(1) The wave height within the Regulated Boating Area is 4 feet or greater; or

(2) The wave height within the Regu- is equal to or greater than the wave hegiht determined by the formula $\frac{L}{10}+F=W$ where:

L=Overall length of a boat measured in feet in a straight horizontal line along and parallel with the centerline between the intersections of this line with the vertical planes of the stem and stern profiles excluding deckhouses and equipment.

F=The minimum freeboard when measured in feet from the lowest point along the upper strake edge to the surface of the water.

W=Maximum wave height in feet to the nearest highest whole number; or

(3) The surface current is 4 knots or greater within the Regulated Boating Area.

2. Section 177.08 is added as follows:

**§ 177.08 Regulated boating areas.**

For the purpose of this part the following are regulated boating areas.

(a) *Quillayute River Entrance, Wash.* From the west end of James Island 47° 54'23" N., 124°39'05" W. southward to buoy No. 2 at 47°53'42" N., 124°38'42" W. eastward to the shoreline at 47°53'42" N., 124°37'51" W., thence northward along the shoreline to 47°54'29" N., 124° 38'20" W. thence northward to 47°54'36" N., 124°38'22" W. thence westward to the beginning.

(b) *Grays Harbor Entrance, Wash.* From a point on the shoreline at 46° 59'00" N., 124°10'10" W. westward to 46°59'00" N., 124°15'30" W. thence southward to 46°51'00" N., 124°15'30" W. thence eastward to a point on the shoreline at 46°51'00" N., 124°06'40" W. thence northward along the shoreline to a point at the south jetty 46°54'20" N., 124°08'07" W. thence eastward to 46° 54'10" N., 124°05'00" W. thence northward to 46°55'00" N., 124°03'30" W. thence northwestward to Damon Point at 46°56'50" N., 124°06'30" W. thence westward along the north shoreline of the harbor to the north jetty at 46°55'40" N., 124°10'27" W. thence northward along the shoreline to the beginning.

(c) *Willapa Bay, Wash.* From a point on the shoreline at 46°46'00" N., 124°

05'40" W. westward to 46°44'00" N., 124° 10'45" W. thence southward to 46°35'00" N., 124°10'45" W. thence eastward to a point on the shoreline at 46°35'00" N., 124°03'45" W. thence northward along the shoreline around the north end of Leadbetter Point thence southward along the east shoreline of Leadbetter Point to 46°36'00" N., 124°02'15" W. thence eastward to 46°36'00" N., 124°00'00" W. thence northward to Toke Point at 46° 42'15" N., 123°58'00" W. thence westward along the north shoreline of the harbor and northward along the seaward shoreline to the beginning.

(d) *Columbia River Bar, Wash.-Oreg.* From a point on the shoreline at 46°18'-00" N., 124°04'39" W. thence westward to 46°18'00" N., 124°09'30" W. thence southward to 46°12'00" N., 124°09'30" W. thence eastward to a point on the shoreline at 46°12'00" N., 123° 59'33" W. thence eastward to Tansy Point Range Front Light at 46°11'16" N., 123°55'05" W.; thence northward to Chinook Point at 46°15'08" N., 123°55'25" W. thence northwestward to the north end of Sand Island at 46°17'29" N., 124°01'25" W. thence southwestward to a point on the north shoreline of the harbor at 46°-16'25" N., 124°02'28" W. thence northwestward and southwestward along the north shoreline of the harbor and northward along the seaward shoreline to the beginning.

(e) *Nehalem River Bar, Oreg.* From a point on the shoreline 45°41'25" N., 123°-56'16" W. thence westward 45°41'25" N., 123°59'00" W. thence southward to 45°37'25" N., 123°59'00" W. thence eastward to a point on the shoreline at 45°-37'25" N., 123°56'38" W. thence northward along the shoreline to the north end of the south jetty at 45°39'40" N., 123°-55'45" W. thence westward to a point on the shoreline at 45°39'45" N., 123°56'-19" W. thence northward along the shoreline to the beginning.

(f) *Tillamook Bay Bar, Oreg.* From a point on the shoreline at 45°35'15" N., 123°57'05" W. thence westward 45°35' 15" N., 124°00'00" W. thence southward to 45°30'00" N., 124°00'00" W. thence eastward to a point on the shoreline at 45°30'00" N., 123°57'40" W. thence northward along the shoreline to the north end of Kincheloe Point at 45°33' 30" N., 123°56'05" W. thence northward to a point on the north shoreline of the harbor at 45°33'40" N., 123°55'59" W. thence westward along the north shoreline of the harbor then northward along the seaward shoreline to the beginning.

(g) *Netarts Bay Bar, Oreg.* From a point on the shoreline at 45°28'05" N. thence westward to 45°28'05" N., 124°00' 00" W. thence southward to 45°24'00" N., 124°00'00" W. thence eastward to a point on the shoreline at 45°24'00" N., 123°57'45" W. thence northward along the shoreline to 45°26'03" N., 123°57'15" W. thence eastward to a point on the north shoreline of the harbor at 45°26' 00" N., 123°56'57" W. thence northward along the shoreline to the beginning.

(h) *Siletz Bay Bar, Oreg.* From a point on the shoreline at 44°56'32" N., 124°-01'29" W. thence westward to 44°56'32" N., 124°03'00" W. thence southward to 44°54'40" N., 124°03'15" W. thence eastward to a point on the shoreline at 44°54'40" N., 124°01'55" W. thence northward along the shoreline to 44°55'-35" N., 124°01'25" W. thence northward to a point on the north shoreline of the harbor at 44°55'45" N., 124°01'20" W. thence westward and northward along the shoreline to the beginning.

(i) *Depoe Bay Bar, Oreg.* From a point on the shoreline at 44°49'15" N., 124° 04'00" W. thence westward to 44°49'15" N., 124°04'35" W. thence southward to 44°47'55" N., 124°04'55" W. thence eastward to a point on the shoreline at 44°-47'53" N., 124°04'25" W. thence northward along the shoreline and eastward along the south bank of the entrance channel to the highway bridge thence northward to the north bank at the bridge thence westward along the north bank of the entrance channel and northward along the seaward shorelfne to the beginning.

(j) *Yaquina Bay Bar, Oreg.* From a point on the shoreline at 44°38'11" N., 124°03'47" W. thence westward to 44°-38'11" N., 124°05'55" W. thence southward to 44°35'15" N., 124°06'05" W. thence eastward to a point on the shoreline at 44°35'15" N., 124°04'02" W. thence northward along the shoreline and eastward along the south bank of the entrance channel to the highway bridge thence northward to the north bank of the entrance channel at the bridge thence westward along the north bank of the entrance channel and northward along the seaway shoreline to the beginning.

(k) *Siuslaw River Bar, Oreg.* From a point on the shoreline at 44°02'00" N., 124°08'00" W. thence westward to 44°-02'00" N., 124°09'30" W. thence southward to 44°00'00" N., 124°09'30" W. thence eastward to a point on the shoreline at 44°00'00" N., 124°08'12" W. thence northward along the shoreline and southward along the west bank of the entrance channel to 44°00'35" N., 124°07'48" W. thence southeastward to a point on the east bank of the entrance channel at 44°00'20" N., 124°07'31" W. thence northward along the east bank of the entrance channel and northward along the seaward shoreline to the beginning.

(l) *Umpqua River Bar, Oreg.* From a point on the shoreline at 43°41'20" N., 124°11'58" W. thence westward to 43°-41'20" N., 124°13'32" W. thence southward to 43°38'35" N., 124°14'25" W. thence eastward to a point on the shoreline at 43°38'35" N., 124°12'35" W. thence northward along the shoreline to the north end of the training jetty at 43°40'15" N., 124°11'45" W. thence northward to a point on the west bank of the entrance channel at 43°40'40" N., 124°11'41" W. thence southwestward along the west bank of the entrance channel thence northward along the seaward shoreline to the beginning.

(m) *Coos Bay Bar, Oreg.* From a point on the shoreline at 43°22'15" N., 124°19'-34" W. thence westward to 43°22'20" N., 124°22'28" W. thence southwestward to 43°21'00" N., 124°23'35" W. thence southeastward to a point on the shoreline at 43°20'25" N., 124°22'28" W. thence northward along the shoreline and eastward along the south shore of the entrance channel to a point on the shoreline at 43°20'52" N., 124°19'12" W. thence eastward to a point on the east shoreline of the harbor at 43°21'00" N., 124°18'50" W. thence northward to a point on the west shoreline of the harbor at 43°21'45" N., 124°19'10" W. thence south and west along the west shoreline of the harbor thence northward along the seaward shoreline to the beginning.

(n) *Coquille River Bar, Oreg.*—From a point on the shoreline at 43°08'25" N., 124°25'04" W. thence southwestward to 43°07'50" N., 124°27'05" W. thence southwestward to 43°07'03" N., 124°28'-25" W. thence eastward to a point on the shoreline at 43°06'00" N., 124°25'55" W. thence northward along the shoreline and eastward along the south shoreline of the channel entrance to 43°07'17" N., 124°25'00" W. thence northward to the east end of the north jetty at 43°07'24" N., 124°24'59" W. thence westward along the north shoreline of the entrance channel and northward along the seaward shoreline to the beginning.

(o) *Rogue River Bar, Oreg.*—From a point on the shoreline at 42°26'25" N., 124°26'03" W. thence westward to 42°-26'10" N., 124°27'05" W. thence southward to 42°24'15" N., 124°27'05" W. thence eastward to a point on the shoreline at 42°24'15" N., 124°25'30" W. thence northward along the shoreline and eastward along the south shoreline of the entrance channel to the highway bridge thence northward across the inner harbor jetty to a point on the north shoreline of the entrance channel at the highway bridge thence westward along the north shoreline of the entrance channel thence northward along the seaward shoreline to the beginning.

(p) *Chetco River Bar, Oreg.*—From a point on the shoreline at 42°02'35" N., 124°17'20" W. thence southeastward to 42°01'45" N., 124°16'30" W. thence northwestward to a point on the shoreline at 42°02'10" N., 124°15'35" W. thence northwestward along the shoreline thence northward along the east shoreline of the channel entrance to 42°-02'47" N., 124°16'03" W. thence northward along the west face of the inner jetty and east shoreline of the channel entrance to the highway bridge thence westward to the west shoreline of the channel at the highway bridge thence southward along the west shoreline of the channel thence westward along the seaward shoreline to the beginning.

[FR Doc.74-1830 Filed 1-22-74;8:45 am]

## Title 40—Protection of Environment

### CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

### SUBCHAPTER E—PESTICIDE PROGRAMS

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

### O,O-Diethyl O-[p-(Methylsulfinyl)phenyl] Phosphorothioate

In response to a request submitted by Chemagro Division of Baychem

Corp., Post Office Box 4913, Hawthorn Road, Kansas City, MO 64120, and based on data submitted in Pesticide Petition No. 8E0696, a notice was published by the Environmental Protection Agency in the FEDERAL REGISTER of November 12, 1973 (38 FR 31183), proposing establishment of a tolerance for negligible residues of the insecticide *O,O*-diethyl *O*-[*p*-(methylsulfinyl) phenyl] phosphorothioate in or on the raw agricultural commodity plantain at 0.02 part per million. No comments or requests for referral to an advisory committee were received.

It is concluded that the proposal should be adopted.

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 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), § 180.234 is amended by revising the paragraph "0.02 part per million (negligible residue * * *" to read as follows:

**§ 180.234 *O,O*-Diethyl *O*-[*p*-(methylsulfinyl) phenyl] phosphorothioate; tolerances for residues.**

* * * * *

0.02 part per million (negligible residue) in or on bananas, plantain, and sugarcane.

Any person who will be adversely affected by the foregoing order may at any time on or before February 22, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & 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 January 23, 1974.

(Sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e))

Dated: January 16, 1974.

HENRY J. KORP,
*Deputy Assistant Administrator for Pesticides Programs.*

[FR Doc.74-1846 Filed 1-22-74;8:45 am]

## Title 43—Public Lands: Interior

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

### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5405]

### ALASKA

### Partial Revocation of Public Land Orders No. 5150, 5151, and 5190

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), and by virtue of the authority vested in the Secretary of the Interior by section 17 of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 708 (hereinafter referred to as the Act), it is hereby ordered as follows:

1. Public Land Order No. 5150 as amended by Public Land Order No. 5151 of December 29, 1971 and modified by Public Land Order No. 5190 of March 17, 1972, which withdrew lands for a utility and transportation corridor, are hereby revoked insofar as they describe the following lands:

COPPER RIVER MERIDIAN

T. 1 N., R. 1 E.,
sec. 5, lot 2, S½NE¼, SE¼;
sec. 9;
sec. 10, W½SW¼;
sec. 14, SW¼SW¼;
sec. 15, W½, W½SE¼, SE¼SE¼;
secs. 22 and 23;
sec. 24, lot 3, W½SW¼;
sec. 25, lot 3, SE¼NW¼, W½NW¼, S½;
sec. 26, N½, SE¼;
sec. 35, N½;
sec. 36, N½NE¼.
T. 2 N., R. 1 E. (partly surveyed),
sec. 7, lots 1, 2, 3, 4, 6, 7, 8, NE¼, NE¼NW¼, E½SE¼.
T. 2 N., R. 1 W. (partly surveyed),
sec. 13, lots 6, 48, 49;
sec. 14, lots 1, 2, W½NW¼, N½SW¼;
sec. 15;
sec. 22, lots 1 thru 5, W½NE¼, W½, NW¼SE¼;
sec. 23, lots 2 thru 5, SE¼NW¼, NE¼SW¼, S½SW¼;
sec. 27, lots 1 thru 4, NE¼NE¼, S½NE¼, SE¼NW¼, SW¼.
T. 3 N., R. 1 W.,
sec. 4, lots 6, 7, 8, 10, SW¼SW¼SW¼, SW¼SE¼SW¼SW¼;
sec. 5, E½SE¼;
sec. 8, SW¼SE¼;
sec. 9, lots 1, 6, 7, NE¼, E½SE¼NW¼, SW¼SE¼NW¼, NW¼NE¼NW¼NW¼, S½NE¼NW¼NW¼, W½NW¼NW¼, SE¼NW¼NW¼;
sec. 17, E½;
sec. 21, NE¼;
sec. 22, W½W½;
sec. 26, N½SE¼, SW¼SE¼;
sec. 27, N½.
T. 4 N., R. 1 W. (partly surveyed),
sec. 7, lots 6, 11, 15, 17, 20, 21, 22, 26, 27, 31, 32, 36, 37, 41, 42, SE¼NE¼, E½SE¼;
sec. 29, lot 1, NW¼, N½SE¼, SW¼SE¼;
sec. 32, lot 2.
T. 1 S., R. 1 E. (partly surveyed),
sec. 15, SW¼;
sec. 22, W½;
sec. 24, E½;
sec. 25, E½E½;
sec. 27, W½;
sec. 34, W½;
sec. 36, E½E½.
T. 5 N., R. 2 W.,
sec. 2, W½;
secs. 3 and 10;
sec. 11, W½;
sec. 14, W½;
secs. 15 and 22;
sec. 23, W½;
sec. 26, W½;
secs. 27 and 34;
sec. 35, W½.
T. 6 N., R. 2 W.,
sec. 2, W½;
secs. 3 and 10;
sec. 11, W½;
sec. 14, W½;
secs. 15 and 22;
sec. 23, W½;
secs. 27 and 34;
sec. 35, W½;
sec. 26, W½.
T. 7 N., R. 2 W.,
sec. 2, W½;
secs. 3 and 10;
sec. 11, W½;
sec. 14, W½;
secs. 15 and 22.

PROTRACTED DESCRIPTIONS

T. 1 N., R. 1 W.,
sec. 2.
T. 2 N., R. 1 W. (partly surveyed),
sec. 9.
T. 5 N., R. 1 W. (partly surveyed),
secs. 4, 5, 8, 9, 17.
T. 6 N., R. 1 W.,
secs. 2 thru 5;
secs. 8 thru 11;
secs. 14 thru 17;
secs. 20 thru 23;
secs. 26 thru 29;
secs. 32, 33, 34.
T. 3 N., R. 2 W.,
secs. 2, 11, and 24.
T. 4 N., R. 2 W., (partly surveyed),
sec. 2, W½;
secs. 3 and 10;
sec. 11, W½;
sec. 14, W½;
sec. 15;
sec. 23, W½;
sec. 26, W½;
secs. 27 and 34;
sec. 35, W½.
T. 8 N., R. 2 W.,
secs. 22, 27, 34.

The area described aggregates approximately 57,283 acres, of which 10,303 acres are surveyed.

2. Upon the revocation of the withdrawal for the utility and transportation corridor as to the lands described in paragraph 1 of this order, the withdrawals made by section 11 of the act, Public Land Order No. 5156 of February 4, 1972, and Public Land Orders No. 5184 and 5188 of March 9, 1972, 37 FR 5588 and 5591, immediately attach to said lands, and the lands become subject

to all of the terms and conditions of such withdrawals.

3. This order does not otherwise serve to change the provisions and limitations of Public Land Orders No. 5150 and 5151 as to lands not described in paragraph 1 of this order.

4. It is hereby determined that the promulgation of this public land order is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. section 4332(2)(C), is required.

JANUARY 10, 1974.

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

[FR Doc.74-1836 Filed 1-22-74;8:45 am]

## Title 47—Telecommunication

### CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

### PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

### Inspection and Maintenance of Antenna Structures

In the matter of editorial amendment of Parts 17 and 81 of the Commission's rules concerning inspection and maintenance of antenna structures.

1. By this Order, it is intended to correct an inconsistency between certain provisions of Parts 17 and 81 of the Commission's rules concerning inspection and maintenance of antenna structures.

2. Sections 81.193(a)(1) and 81.193(b)(2) of the FCC Rules require that the tower lights on antenna structures be checked daily, either visually or by observation of an automatic indicator, and an entry made in the station log of the time of the daily check. An inspection at 3 month intervals of all code and rotating beacon lights and automatic lighting control devices is also required, as well as the appropriate station log entries (§ 81.193(b)(4)(i)(ii)).

3. This combination of requirements in Part 81 is inconsistent with the requirements in Part 17 (Construction, Marking and Lighting of Antenna Structures). Sections 17.47 and 17.49 of the rules provide an alternative to the daily check of tower lights; the maintenance of an automatic alarm system, which is inspected at least every 3 months and the appropriate entry made in the station log. It was the Commission's intent for Part 83 to reflect the requirements of Part 17, which is controlling.

4. Since this problem involves an inconsistency in the rules resulting from oversight, it can be corrected editorially.

5. Authority for this amendment appears in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and in § 0.231(d) of the Commission's rules and regulations. Since the amendment is editorial in nature, the prior notice and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, do not apply.

6. In view of the above, *it is ordered*, That the rule amendment set forth below shall be adopted effective January 25, 1974.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: January 17, 1974.

Released: January 17, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOHN M. TORBET,
*Executive Director.*

Part 81 of 47 CFR Ch. I is amended as follows:

1. Section 81.193 of the rules is revised as follows:

**§ 81.193 Inspection and maintenance of antenna structure marking and associated control equipment.**

The licensee of any radio station which has an antenna structure required to be painted and illuminated pursuant to the provisions of section 303(q) of the Communications Act of 1934, as amended, and Part 17 of this chapter, shall perform the inspection and maintain the tower marking and lighting, and associated control equipment, in accordance with the requirements set forth in Part 17 of this chapt er.

2. Section 81.194 of the rules is amended by adding a new paragraph (d) as follows:

**§ 81.194 Maintenance of station log.**

* * * * *

(d) For each station whose antenna structure is required to be illuminated, appropriate entries shall be made in the station log in conformity with the requirements of Part 17 of this chapter.

[FR Doc.74-1866 Filed 1-22-74;8:45 am]

## Title 49—Transportation

### CHAPTER X—INTERSTATE COMMERCE COMMISSION

### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Corrected S. O. 1168]

### PART 1033—CAR SERVICE

### Vermont Railway, Inc.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 7th day of January 1974.

It appearing, that the Vermont Railway, Inc., in Finance Docket No. 22830, was authorized to operate for a period of ten years approximately 131.6 miles of railroad owned by the State of Vermont, located in Bennington, Rutland, Addison and Chittenden Counties, Vermont, and extending between Burlington, Vermont, and White Creek, New York, and between North Bennington, Vermont, and Bennington, Vermont; that the lease of these tracks by the State of Vermont to the Vermont Railway, Inc., has been extended; that the State of Vermont and the Vermont Railway, Inc., have agreed to continued operation of these tracks by the Vermont Railway, Inc., pending action of the Commission on the application of the railway for approval of the extended contract; that many shippers are solely dependent upon continued operation of the Vermont Railway, Inc., for essential railroad service; that the continued operation by the Vermont Railway, Inc., over the aforementioned tracks owned by the State of Vermont is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

*It is ordered*, That:

**§ 1033.1168 Service Order No. 1168.**

(a) *Vermont Railway, Inc., authorized to operate over certain tracks owned by the State of Vermont.* The Vermont Railway, Inc., be, and it is hereby authorized to operate over tracks owned by the State of Vermont between Burlington, Vermont, and White Creek, New York, and between North Bennington, Vermont, and Bennington, Vermont, a total distance of approximately 131.6 miles, pending disposition of the application of the Vermont Railway, Inc., for extension of the operating authority granted in Finance Docket No. 22830 (320 ICC 330).

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the Vermont Railway, Inc., over the aforementioned tracks owned by the State of Vermont is deemed to be due to carrier's disability, the rates applicable to traffic moved by the Vermont Railway, Inc., over these tracks owned by the State of Vermont shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 12:01 a.m., January 7, 1974.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

*It is further ordered*, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the 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 notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
*Secretary.*

[FR Doc.74-1932 Filed 1-22-74;8:45 am]

## Title 50—Wildlife and Fisheries

### CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

### PART 33—SPORT FISHING

#### Crab Orchard National Wildlife Refuge, Illinois

The following special regulation is issued and is effective January 23, 1974.

**§ 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, Illinois, 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, Minnesota 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, 1974, through December 31, 1974, in areas designated on map as I and III; and from March 15, 1974, through September 30, 1974, 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, 1974, through December 31, 1974.

(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.

(3) Jug fishing, in accordance with State regulations, is permitted on refuge waters open to fishing during dates and times specified in Paragraphs (1) and (2) above.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in 50 CFR Part 33, and are effective through December 31, 1974.

WAYNE D. ADAMS,
*Project Manager, Crab Orchard National Wildlife Refuge, Carterville, Illinois.*

JANUARY 14, 1974.

[FR Doc.74-1848 Filed 1-22-74;8:45 am]

## Title 5—Administrative Personnel

### CHAPTER I—CIVIL SERVICE COMMISSION

### PART 213—EXCEPTED SERVICE

#### Department of Health, Education, and Welfare

Section 213.3316 is amended to reflect the following title change: from one Special Assistant to the Deputy Special Assistant to the Secretary for Civil Rights to one Director, Office of Policy Communication.

Effective January 23, 1974, § 213.3316-(a)(7) is amended as set out below.

**§ 213.3316 Department of Health, Education, and Welfare.**

* * * * *

(q) *Office of the Special Assistant to the Secretary for Civil Rights.*

* * * * *

(7) Director, Office of Policy Communication.

* * * * *

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954-58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1811 Filed 1-22-74;8:45 am]

### PART 213—EXCEPTED SERVICE

#### Veterans Administration

Section 213.3327 is amended to show that the following positions are excepted under Schedule C: Two additional Confidential Assistants to the Administrator, and one additional Confidential Assistant to the Executive Assistant to the Administrator.

Effective January 23, 1974, § 213.3327 (a)(6) and (7) are amended as set out below.

**§ 213.3327 Veterans Administration.**

(a) *Office of the Administrator.*

* * * * *

(6) Three Confidential Assistants to the Administrator.

(7) Four Confidential Assistants to the Executive Assistant to the Administrator.

* * * * *

(5 U.S.C. 3301, 3302; E.O. 10577; CFR 1954-1958 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1907 Filed 1-22-74;8:45 am]

### PART 213—EXCEPTED SERVICE

#### General Services Administration

Section 213.3337 is amended to show that one additional position of Confidential Assistant to the Commissioner, Federal Supply Service, is excepted under Schedule C.

Effective January 23, 1974, § 213.3337-(c)(2) is amended as set out below.

**§ 213.3337 General Services Administration.**

* * * * *

(c) *Federal Supply Service.*

* * * * *

(2) Three Confidential Assistants to the Commissioner.

* * * * *

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954-58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1813 Filed 1-22-74;8:45 am]

### PART 213—EXCEPTED SERVICE

#### General Services Administration

Section 213.3337 is amended to show that two positions of Confidential Assistant to the Associate Administrator for Federal Management Policy are excepted under Schedule C.

Effective January 23, 1974, § 213.3337 (a)(16) is added as set out below.

**§ 213.3337 General Services Administration.**

(a) *Office of the Administrator.*

* * * * *

(16) Two Confidential Assistants to the Associate Administrator for Federal Management Policy.

* * * * *

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954-58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1812 Filed 1-22-74;8:45 am]

### PART 213—EXCEPTED SERVICE

#### National Foundation on the Arts and the Humanities

Section 213.3382 is amended to show that one position of Special Assistant for Management Policy to the Director for Planning and Management, National Endowment for the Arts, is excepted under Schedule C.

Effective January 23, 1974, § 213.3382 (g) is added as set out below.

§ 213.3382 National Foundation on the Arts and the Humanities.

* * * * *

(g) One Special Assistant for Management Policy to the Director for Planning and Management, National Endowment for the Arts.

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74–1906 Filed 1–22–74;8:45 am]

## PART 213—EXCEPTED SERVICE

### Department of Housing and Urban Development

Section 213.3384 is amended to reflect the following title change: from one Staff Assistant to the Secretary to one Staff Assistant to the Assistant to the Secretary for Public Affairs.

Effective January 23, 1974, § 213.3384 (a)(8) and § 213.3384(a)(25) are amended as set out below.

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.*

* * * * *

(8) One Staff Assistant to the Secretary.

* * * * *

(25) Three Staff Assistants to the Assistant to the Secretary for Public Affairs.

* * * * *

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74–1905 Filed 1–22–74;8:45 am]

## Title 6—Economic Stabilization

## CHAPTER I—COST OF LIVING COUNCIL

## PART 150—PHASE IV PRICE REGULATIONS

## PART 152—PHASE IV PAY REGULATIONS

### Semiconductors and Related Devices; Price and Pay Exemption

The purpose of these amendments is to exempt the sale of semiconductors and related devices by manufacturers from Phase IV price regulations and to add a parallel exemption under the Phase IV pay regulations.

The exemption is limited to manufacturers' sales of semiconductors and related devices as described in the Standard Classification Manual, 1972 edition, under Industry No. 3674, defined as semiconductors and related solid state devices, including rectifiers, integrated microcircuits (semiconductor networks), transistors, solar cells, and light sensing and emitting semiconductor (solid state) devices. It does not include receiving and transmitting tubes, picture tubes, capacitors, resistors, coils, transformers and other inductors, and connectors.

The Council is taking this action in line with the Phase IV objective of decontrolling those sectors of the economy which clearly demonstrate noninflationary behavior. Prices of semiconductors and related devices have trended downward for several years. Further, the Council has received individual assurances from manufacturers of these items that percentage price adjustments for these items (as described in SIC Code 3674) measured on a weighted average basis, will not increase and may decline during the first half of 1974, barring unforeseen major economic events.

Removal of controls from this industry will avoid some potential distortions in the industry by permitting manufacturers of semiconductors and related devices the flexibility to adjust upward the prices of a small portion of their products. These products are technologically mature devices whose volume is declining and whose unit cost is rising. These products (examples include Diode Transistor Logic (DTL), Resistor Transistor Logic (RTL), and Germanium Transistors) are necessary as replacement parts to prevent premature obsolescence of existing equipment. Most manufacturers in the industry, to avoid the profit margin limitation, have not raised their prices above base levels, and under continued controls, these manufacturers would either be forced to absorb losses or reduce or discontinue production of these items. Any price increases which occur in these lines in the first half of 1974 will be offset by price reductions on the industry's remaining volume.

Individual manufacturers have also committed to make every reasonable effort to increase productive capacity during 1974 and to take steps to improve the quality of semiconductors price reporting in the wholesale price index. In addition the Council has reason to believe that wages and salaries will continue to conform to the general wage and salary standard.

Under §§ 150.11(e) and 150.161(b), a firm with revenues from the sale of exempt items remains subject to the profit margin constraints and reporting provisions of the Phase IV program unless in its most recent fiscal year it derived both less than $50 million in annual sales and revenues from the sale or lease of nonexempt items and 90 percent or more of its annual sales and revenues from the sale of exempt items or exempt sales.

As a complementary action to the exemption from price controls, the Council has also exempted pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the semiconductor manufacturing industry. The exemption is set forth in new § 152.40a. The exemption is inapplicable to any such employee who receives an item of executive or variable compensation, or who is a member of an executive control group. The exemption is also inapplicable to any such employee whose duties and responsibilities are not of a type exclusively performed in or related to the semiconductor manufacturing industry and whose pay adjustments are historically related to the pay adjustments of employees performing such duties outside the industry and are not related to the pay adjustments of other employees that are within the exemption. The exemption is further inapplicable to employees who are part of an appropriate employee unit where 25 percent or more of the members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the semiconductor manufacturing industry or in support thereof. In cases of uncertainty of application, inquiries concerning the scope or coverage of the exemption should be addressed to the Administrator, Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

The Council retains the authority to reestablish price and wage controls over this industry if price or wage behavior is inconsistent with the policies of the Economic Stabilization Program. The Council also has the power, under §§ 150.162 and 152.6, to require firms to file special or separate reports setting forth information relating to the Economic Stabilization Program in addition to any other reports which may be required under the Phase IV controls program.

Because the purpose of these amendments is to grant an immediate exemption from the Phase IV price and pay regulations, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days. Interested persons may submit written comments regarding this amendment. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, 6 CFR Parts 150 and 152 are amended as set forth herein, effective, January 21, 1974.

Issued in Washington, D.C. on January 21, 1974.

JAMES W. MCLANE,
*Deputy Director, Cost of Living Council.*

1. § 150.54 is amended by adding a new paragraph (z) as follows:

§ 150.54 Certain Price Adjustments.

* * * * *

(z) *Semiconductors.* Prices charged by manufacturers of semiconductors and related devices, described in the Standard Industrial Classification Manual,

1972 edition, under Code 3674, are exempt.

* * * * *

2. In 6 CFR Part 152, Subpart D is amended by adding thereto a new § 152.40a to read as follows:

**§ 152.40a Semiconductor manufacturing industry.**

(a) *Exemption.* Pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the semiconductor manufacturing industry or in support thereof are exempt from and not included in the coverage of this title.

(b) *Establishment in the semiconductor manufacturing industry.* For purposes of this section, "Establishment in the semiconductor manufacturing industry" means an establishment classified in the Standard Industrial Classification Manual, 1972, edition, under Industrial Code 3674 (Semiconductors and Related Devices).

(c) *Covered employees.* For purposes of this section, an employee is considered to be engaged on a regular and continuing basis in the operation of an establishment in the semiconductor manufacturing industry or in support thereof only if such employee is employed at an establishment in the semiconductor manufacturing industry and only if such employee is employed by the firm which operates such establishment.

(d) *Limitations.* The exemption provided in paragraph (a) of this section shall not be applicable to—

(1) An employee who receives an item of executive or variable compensation subject to the provisions of Subpart K of this part, other than an item of executive or variable compensation pursuant to a plan or program subject to § 152.127;

(2) An employee who is a member of an executive control group (determined pursuant to § 152.130);

(3) Employees whose occupational duties and responsibilities are of a type not exclusively performed in or related to the semiconductor manufacturing industry and whose pay adjustments are—

(i) Historically related to the pay adjustments of employees performing such duties outside the semiconductor manufacturing industry; and

(ii) Not related to pay adjustments of another unit of employees engaged on a regular and continuing basis in the operation of an establishment in the semiconductor manufacturing industry or in support thereof within the meaning of paragraph (c) of this section; or

(4) Employees who are members of an appropriate employee unit of which 25 percent or more of the employees who are members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the semiconductor manufacturing industry or in support thereof.

(e) *Effective date.* The exemption provided in this section shall be applicable to pay adjustments with respect to work performed on and after January 21, 1974.

[FR Doc.74-1972 Filed 1-21-74;12:09 pm]

## PART 150—PHASE IV PRICE REGULATIONS

## PART 152—PHASE IV PAY REGULATIONS

### Exemption of Mobile Homes, Travel Trailers and Campers—Price and Pay

The purpose of these amendments is to exempt the sale of mobile homes, travel trailers and campers by manufacturers from Phase IV price regulations and to add a parallel exemption under the Phase IV pay regulations.

Section 150.54 is amended to add a new paragraph (aa) to exempt prices charged by manufacturers for products described in Industry No. 2451 of the Standard Industrial Classification Manual, 1972 edition. Products described in that classification include mobile buildings for commercial use, mobile classrooms, mobile dwellings and mobile homes, except recreational. As described in that classification, the affected mobile homes are generally over 35 feet long, at least 8 feet wide, do not have facilities for storage of water or waste, and are equipped with wheels.

The mobile home industry is a highly competitive one comprised of more than 330 firms with no firm or small number of firms controlling the market. Prices in the industry have been relatively stable over the past year. Although prices may increase because of high material costs during 1974, the increases should be tempered by the effects of competition coupled with a slowdown in the industry's production. In exchange for the exemption of the sale of these products at the manufacturing level, the Council has obtained commitments from the leading manufacturers for price restraint.

Although mobile homes are manufactured products, their primary use is for housing. Most of the nation's housing stock is currently exempt. This amendment puts producers of mobile homes on an equal footing with the bulk of the existing U.S. housing stock under the Economic Stabilization Program.

The amendment also includes an exemption for recreational vehicles as described in Industry No. 3792 of the Standard Industrial Classification Manual, 1972 edition. The primary products exempted are travel trailers and motor homes, but the exemption extends to tent-type travel trailers; canopies, caps and covers for pickup trucks; campers for mounting on trucks; and housetrailers not used as permanent dwellings. The exempted trailers are generally 35 feet long or less, 8 feet wide or less and have storage facilities water and waste.

The industry has experienced rapid growth over the past three years. However, with growing concern over gasoline shortages, sales of travel trailers and motor homes have declined. The decline has been a sharp one, amounting to 35 percent from 1972 levels for some firms in the industry. Sales are not likely to improve until there is an appreciable increase in the supply of gasoline.

The Council has determined that the price restraints imposed by controls on this industry are no longer necessary. High competition coupled with a continuing decline in demand in the short term should assure price restraint in this industry.

Under §§ 150.11(e) and 150.161(b), a firm with revenues from the sale of exempt items remains subject to the profit margin constraints and reporting provisions of the Phase IV program unless in its most recent fiscal year it derived both less than $50 million in annual sales and revenues from the sale or lease of non-exempt items and 90% or more of its annual sales and revenues from the sale of exempt items or exempt sales.

As a complementary action to the exemption from price controls, the Council has also exempted pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the mobile homes, travel trailers or campers manufacturing industry. The exemption is set forth in new § 152.40c. The exemption is inapplicable to any such employee who receives an item of incentive compensation, or who is a member of an executive control group. The exemption is also inapplicable to any such employee whose duties and responsibilities are not of a type exclusively performed in or related to the mobile homes, travel trailers or campers manufacturing industry and whose pay adjustments are historically related to the pay adjustments of employees performing such duties outside the industry and are not related to the pay adjustments of other employees that are within the exemption. The exemption is further inapplicable to employees who are part of an appropriate employee unit where 25 percent or more of the members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the mobile homes, travel trailers or campers manufacturing industry or in support thereof. In cases of uncertainty of application, inquiries concerning the scope or coverage of the exemption should be addressed to the Administrator, Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

The Council retains the authority to reestablish price and wage controls over any of the industries exempted by these amendments if price or wage behavior is inconsistent with the policies of the Economic Stabilization Program. The Council also has the power, under §§ 150.162 and 152.6 to require firms to file special or separate reports setting forth information relating to the Economic Stabilization Program in addition to any other reports which may be required under the Phase IV controls program.

Because the purpose of these amendments is to grant an immediate exemption from the Phase IV price and pay regulations, the Council finds that publication in accordance with normal rule making procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days. Interested persons may submit written comments regarding this amendment. Communications should be addressed to

the Office of the General Counsel, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, FR 1489).

In consideration of the foregoing, Parts 150 and 152 of Title 6 of the Code of Federal Regulations are amended as set forth herein, effective January 21, 1974.

Issued in Washington, D.C., on January 21, 1974.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

1. Section 150.54 is amended to add a new paragraph (aa) to read as follows:

**§ 150.54 Certain price adjustments.**

* * * * *

(aa) *Mobile homes, travel trailers and campers.* Prices charged by manufacturers for products described in Industry Nos. 2451 and 3792 of the Standard Industrial Classification Manual, 1972 edition, are exempt.

2. In 6 CFR Part 152, Subpart D is amended by adding thereto a new § 152.40c to read as follows:

**§ 152.40c Mobile Homes, Travel Trailers and Campers Manufacturing Industry.**

(a) *Exemption.* Pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the mobile homes, travel trailers, or campers manufacturing industry or in support of such operation are exempt from and not limited by the provisions of this title.

(b) *Establishment in the mobile homes, travel trailers or campers manufacturing industry.* For purposes of this section, "Establishment in the mobile homes, travel trailers or campers manufacturing industry" means an establishment classified in the Standard Industrial Classification Manual, 1972 edition, under Industrial Code 2451 (Mobile Homes) and primarily engaged in the manufacture of mobile homes; or under Industrial Code 3792 (Travel Trailers and Campers) and primarily engaged in the manufacture of travel trailers or campers.

(c) *Covered employees.* For purposes of this section, an employee is considered to be engaged on a regular and continuing basis in the operation of an establishment in the mobile homes, travel trailers, or campers manufacturing industry or in support of such operation only if such employee is employed at an establishment in the mobile homes, travel trailers or campers manufacturing industry and only if such employee is employed by the firm which operates such establishment.

(d) *Limitation.* The exemption provided in paragraph (a) of this section shall not be applicable to—

(1) An employee who receives an item of incentive compensation subject to the provisions of §§ 152.124, 152.125, or § 152.126;

(2) An employee who is a member of an executive control group (determined pursuant to § 152.130);

(3) Employees whose occupational duties and responsibilities are of a type not exclusively performed in or related to the mobile homes, travel trailers or campers manufacturing industry and whose pay adjustments are—

(i) Historically related to the pay adjustments of employees performing such duties outside the mobile homes, travel trailers or campers manufacturing industry; and

(ii) Not related to pay adjustments of another unit of employees engaged on a regular and continuing basis in the operation of an establishment in the mobile homes, travel trailers, or campers manufacturing industry or in support of such operation within the meaning of paragraph (c) of this section; or

(4) Employees who are members of an appropriate employee unit if 25 percent or more of the employees who are members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the mobile homes, travel trailers or campers manufacturing industry or in support of such operation.

(e) *Effective date.* The exemption provided in this section shall be applicable to pay adjustments with respect to work performed on and after January 21, 1974.

[FR Doc.74-1973 Filed 1-21-74;12:09 pm]

## PART 152—PHASE IV PAY REGULATIONS

### Miscellaneous Amendments Applicable to the Health Care Industry

The purpose of the amendments set forth below is to provide special rules for prenotification and reporting of pay adjustments affecting employees in the health care industry, including rules with respect to prenotification and reporting for low wage employees.

Section 152.93 has been completely revised. Paragraph (a)(2) of that section requires that copies of appropriate collective bargaining agreements (both the current agreement and the prior succeeded agreement) be submitted with any prenotification, report, or exception request submitted to the Council. Paragraph (b) of § 152.93 provides rules for prenotifying or reporting pay adjustments for low wage employees where a prenotification or report is otherwise required under the Phase II rules (6 CFR Part 202) incorporated by reference in § 152.92.

In the case of appropriate employee units containing low wage employees, § 152.93(b) requires that a prenotification, report, or exception request on the Council's Form PB-3 or Form PB-3A (optional for units containing fewer than 1,000 employees) must include a base compensation rate computed on the basis of wages and salaries actually in effect on the base date and all increases in such rate actually put into effect or proposed to be put into effect during the control year for all employees in the unit. This necessarily includes those employees who earn $3.50 or less on the base date. In addition, the prenotification, report, or exception request is required to include another Form PB-3 or PB-3A, as appropriate, covering separately the base compensation rate and increases therein for those employees in the unit earning on the base date a straight-time hourly rate of $3.50 or more. If the separate Form PB-3 or PB-3A, covering employees at $3.50 or more on the base date, indicates a percentage in excess of the general wage and salary standard, § 152.93(b)(2) provides that no pay adjustment in excess of such standard with respect to such employees may be implemented without prior approval by the Council.

Over and above these rules, a statement is also required pursuant to § 152.93(b)(1)(iii) to indicate the number of employees whose straight-time hourly rates on the base date are less than $3.50 and will exceed $3.50 during or at the end of the control year as a result of the proposed or reported pay adjustments. Further, § 152.93(b)(1)(iv) requires a brief narrative description of pay adjustments for the two years preceding the control year prenotified or reported. This brief narrative should describe the distribution of wage and salary increases within the appropriate employee unit and the impact of such increases on differentials between job classifications.

Because the immediate implementation of Executive Order 11730 is required, and because the purpose of these regulations is to provide immediate guidance as to Cost of Living Council decisions, the Council finds that publication in accordance with normal rule making procedures is impracticable and that good cause exists for making these amendments effective in less than 30 days. Interested persons may submit comments regarding these amendments. Communications should be addressed to the Office of General Counsel, Cost of Living Council, Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Public Law 92-210, 85 Stat. 743; Public Law 93-28, 87 Stat. 27; E.O. 11595, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, Part 152 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective January 21, 1974.

Issued in Washington, D.C., on January 21, 1974.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

1. In 6 CFR Part 152, § 152.32 is amended by revising paragraph (d)(3) to read as follows:

**§ 152.32 Low wage employees.**

* * * * *

(d) *Employees earning more than $3.50.* * * *

(3) *Health care industry.* For rules with respect to pay adjustments affecting employees in the health care industry, see § 152.93(b).

* * * * *

2. In 6 CFR Part 152, § 152.93 is amended to read as follows:

**§ 152.93 Procedures for prenotification and reporting.**

(a) *Content of prenotification and reports*—(1) *General rule.* Prenotification, reports and exception requests relating to pay adjustments shall be submitted on forms prescribed by and pursuant to instructions issued by the Council. All submissions must be sent to Office of Wage Stabilization, P.O. Box 472, Washington, D.C. 20044.

(2) *Collective bargaining agreements.* A prenotification, report, or exception request with respect to pay adjustments pursuant to a collective bargaining agreement shall include copies of such agreement and the prior succeeded agreement, if any.

(b) *Low wage employee*—(1) *General.* If an appropriate employee unit includes an employee earning a straight-time hourly rate on the base date that is equal to or less than $3.50, and a prenotification, report, or exception request is submitted with respect to such unit pursuant to the provisions of this title, then such prenotification, report, or exception request shall include—

(i) A Form PB–3 (or PB–3A, if appropriate) that covers all employees in the appropriate employee unit, and that reflects—

(A) A base compensation rate computed on the basis of wages and salaries actually in effect on the base date; and

(B) All increases in the base compensation rate actually put into effect or proposed to be put into effect;

(ii) A Form PB–3 (or PB–3A, if appropriate) that covers separately those employees whose straight-time hourly rates on the base date (determined individually) are equal to or in excess of $3.50;

(iii) A statement of the number of employees whose straight-time hourly rates on the base date (determined individually) are less than $3.50, and whose straight-time hourly rates (determined individually) as a result of the proposed pay adjustments, will exceed $3.50; and

(iv) A brief narrative description of pay adjustments for the control year with respect to which the prenotification, report, or exception request is submitted, and for the two years immediately preceding such control year, including specific descriptions of the distrbution of wage and salary increases within the appropriate employee unit and the impact of such increases on differentials between job classificatons.

(2) *Prior approval required.* To the extent that the total of all pay adjustments for the control year with respect to the specific descriptions of the distribution of employees covered by a Form PB–3 (or Form PB–3A, as appropriate) completed as described in paragraph (b)(1)(ii) of this section does not exceed the general wage and salary standard, such pay adjustments may be put into effect during such control year without prenotification and prior approval. If the total of all such scheduled pay adjustments with respect to such covered employees exceeds the general wage and salary standard, prenotification and prior approval of such pay adjustments in excess of such standard shall be required. Notwithstanding the preceding two sentences, in the case of a pay adjustment affecting 5,000 or more employees, prenotification and prior approval shall be required for all pay adjustments reported on the form referred to in paragraph (b)(1)(ii) of this section, whether the total of such adjustments is less than or in excess of the general wage and salary standard.

[FR Doc.74–1971 Filed 1–21–74;12:03 pm]

## Title 7—Agriculture

## CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

### SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

## PART 723—CIGAR-FILLER (TYPE 41) AND MARYLAND TOBACCO

### Allotment Regulations

On pages 30004 through 30008 of the FEDERAL REGISTER of October 31, 1973, there was published a notice of proposed rule making governing the establishment of farm acreage allotments and normal yields for the 1974 crops of cigar-filler (type 41) and Maryland tobacco (type 32) pursuant to the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1281 et seq.). Interested persons were given 30 days after date of publication of such notice in which to submit written data, views, and recommendations with respect to the proposed rule making. There were no data, views, or recommendations submitted pursuant to said notice.

The proposed regulations are hereby adopted as published with the exception of correction of minor printing errors and with the addition of an authority clause. Since preparations are now being made to determine farm acreage allotments and normal yields for the 1974 crop, it is essential that these regulations be made effective as soon as possible. Accordingly, it is hereby determined that compliance with the 30-day effective date provision of 5 U.S.C. 553 would be impracticable and contrary to the public interest. The regulations contained herein shall become effective January 21, 1974.

The regulations are as follows:

GENERAL



AUTHORITY: Secs. 301, 313, 316, 317, 363, 375, 377, 378, 52 Stat. 38, as amended; secs. 601, 602, 79 Stat. 1206, 1028; 7 U.S.C. 1301, 1313, 1314b, 1314c, 1363, 1375, 1378, 1801 note, 1838.

GENERAL

**§ 723.51 Basis and purpose.**

The regulations contained in §§ 723.51 through 723.66 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of farm acreage allotments and normal yields for Cigar-filler (type 41) and Maryland tobacco for the 1974–75 marketing year. The material previously appearing in these sections under Subpart—Cigar-Filler (Type 41) and Maryland Tobacco Allotment Regulations, 1971–72 marketing year remain in full force and effect for the crop to which it was applicable.

**§ 723.52 Definitions.**

As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this chapter or title shall be construed as references to such parts and amendments now in effect or later issued.

(a) The provisions of Parts 718 and 719 of this chapter, including definitions, are hereby incorporated in the regulations of this part unless the context or subject matter or the provisions of the regulations of this part otherwise require.

(b) "Base period" means the five calendar years immediately preceding the year for which farm acreage allotments are currently being established.

(c) "Current year" means the calendar year for which acreage allotments are being established, or tobacco history acreage and normal yields are being determined.

(d) "New farm" means a farm for which a tobacco allotment is established in the current year and for which there is no tobacco history acreage in the base period.

(e) "Old farm" means a farm for which there was tobacco history acreage in one or more years of the base period.

(f) "Tobacco" means each one or both, as indicated by the context, of the kinds of tobacco listed in this paragraph, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the United States Department of Agriculture.

(1) Maryland tobacco, type 32.

(2) Cigar-filler tobacco, type 41.

**§ 723.53 Extent of determinations, computations and rule for rounding fractions.**

Farm acreage allotments shall be rounded to hundredths of acres in accordance with the provisions of Part 793 of this chapter.

**§ 723.54 Instructions and forms.**

The Director, Program Operations Division, shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary, for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service.

TOBACCO HISTORY ACREAGE, ACREAGE ALLOTMENTS, AND NORMAL YIELDS FOR OLD FARMS

**§ 723.55 Determination of tobacco history acreage for old farms.**

(a) The county committee shall determine from the best available data the tobacco history acreage on each old tobacco farm for each of the five years 1969–73. Data for making such determinations shall be taken from county office records, producers' records, producers' reports, estimates of other persons having knowledge of the tobacco production on the farm, and any other source available.

(b) For the year 1971, the 1971 tobacco history acreage shall be the same as the 1971 allotment if as much as 75 percent of the 1971 allotment was planted (or considered planted under conservation programs or conservation practices (Part 719 of this chapter)). If less than 75 percent of the 1971 allotment was planted or considered planted, the 1971 history acreage shall be the acreage planted or considered planted. The tobacco history acreage for 1971 shall be zero for a farm for which no 1971 tobacco acreage allotment was determined.

(c) For years for which no allotments were established for either of such kinds of tobacco, the tobacco history acreage shall consist of (1) the acreage planted to tobacco on the farm, plus (2) the acreage considered planted to tobacco on the farm. The acreage considered planted to tobacco on the farm shall consist of (i) the allotment acreage pooled under Part 719 of this chapter and (ii) tobacco acreage diverted under conservation programs or practices (if a farm was under a cropland adjustment program agreement during any year of the base period for which no tobacco acreage allotment was established, the tobacco history acreage for such year shall be the larger of: (*a*) The planted acreage, or (*b*) the nonallotment base acreage under Part 751 of this chapter designated under agreement not to exceed any tobacco acreage as determined or computed for the farm for the year immediately preceding the year of the cropland adjustment program agreement).

(d) In determining the tobacco history acreage for each year of the base period, the county committee shall make due allowances for drought, flood, hail, and other abnormal weather conditions and plant bed and other diseases.

**§ 723.56 Determination of preliminary acreage allotments for all farms.**

(a) The preliminary allotment for an old farm shall be the larger of the following:

(1) The average tobacco history acreage on the farm during the base period (1969–73), or

(2) The average tobacco history acreage on the farm in the three preceding years (1971–73).

(b) Notwithstanding the foregoing provisions of this section, no 1974 farm tobacco preliminary allotment (or 1974 farm tobacco acreage allotment) shall be determined for any land which the county committee determines has become devoted to commercial or residential development or other nonagricultural purposes, and was not and could not have been acquired under the right of eminent domain by the person or agency that did acquire it, and is retired from agricultural production: *Provided*, That this paragraph shall not preclude the determination of a preliminary acreage allotment (or allotment) for (1) an old farm returned to agricultural production if the allotment for the retired land was not allocated to other land in farm of which the retired land was a part, or (2) a farm for which an acreage allotment may be determined under the provisions of § 723.59: *And provided further*, That the provisions of this paragraph shall not preclude the allocation of the allotment for the retired land to other land contained in the farm of which the retired land was a part pursuant to Part 719 of this chapter.

**§ 723.57 Old farm tobacco acreage allotment.**

The preliminary allotments calculated for all old farms pursuant to § 723.56, and including those under § 723.59(a), shall be adjusted uniformly so that the total of such allotments plus the acreage available pursuant to §§ 723.58 and 723.62 shall not exceed the national acreage allotment: *Provided*, That for Cigar-filler (type 41) tobacco if the acreage allotment determined for any farm (except farms operated, controlled, or directed by a person who also operates, controls, or directs another farm on which tobacco is produced) is less than that acreage which, with the normal yield for the farm, would produce 2,400 pounds of tobacco, then such acreage allotment shall be increased to the smaller of (a) 120 percent thereof, or (b) that acreage which, with the normal yield for the farm, would produce 2,400 pounds of tobacco.

**§ 723.58 Correction of errors and adjusting inequities in acreage allotments for old farms.**

(a) Notwithstanding the limitations contained in any other section of this subpart, the farm acreage allotment for each kind of tobacco established for an old farm may be increased to correct an error or adjust an inequity if the county committee determines, with the approval of a representative of the State committee, that the increase is necessary to establish an allotment for such farm which is fair and equitable in relation to the allotment for other old farms in the county in which the farm is located. An acreage not to exceed one percent of the national acreage allotment for each kind of tobacco minus that part of the national reserve set aside for establishing new farm allotments shall be made available for adjusting inequities and for correcting errors. The amount of the national reserve acreage available for correcting errors and for adjusting inequities will be announced at the same time the national quota is proclaimed. The reserve acreage for old farms will be allocated to each State based on the relation of the preliminary acreage allotment in that State to the national preliminary allotment.

(b) Acreage increases to adjust inequities in acreage allotments shall be made on the basis of the past farm acreage and past farm acreage allotments of tobacco, making due allowances for drought, flood, hail, other abnormal weather conditions, plant bed and other diseases; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The total of all adjustments in old farm allotments under this paragraph shall not exceed the acreage allocated for such purpose.

(c) The allotment for a farm under a cropland conversion program agreement or land under a cropland adjustment agreement shall be given the same consideration under this section as the allotment for any other old farm.

(d) Acreage approved for a farm under this section becomes a part of the farm acreage allotment.

**§ 723.59 Reallocation and release and reapportionment of allotments determined for farms acquired by an agency having the right of eminent domain.**

(a) The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotment to a pool and reallocation from the pool shall be administered as provided in Part 719 of this chapter. The normal yield for each farm to which a reallocation is made as provided in this paragraph shall be determined as provided in § 723.61. For a farm for which allotment acreage was placed in a pool, the allotment remaining in the pool shall be the 1974 preliminary allotment.

(b) The displaced owner of a farm may, not later than May 1 of the current year, release in writing to the county committee for the year 1974 all or part of the acreage for the farm in a pool under Part 719 of this chapter for reapportionment for 1974 by the county committee to other farms in the county having allotments for the same kind of tobacco. The county committee may reapportion, not later than June 1 of the current year, the released acreage or any part thereof to other farms in the county on the basis of the past farm acreage and past farm acreage allotments of the same kind of tobacco, land, labor, equipment available for the production of such kind of tobacco, crop rotation practices, and soil and other physical factors affecting the production of such kind of tobacco. The allotment acreage released shall, for tobacco acreage history and future allotment purposes, be considered to have remained in the pool as though it had not been released therefrom. The acreage reapportioned to a farm under this paragraph shall be reduced, where applicable, so as not to exceed the acreage by which the 1974 final tobacco acreage on the farm, determined pursuant to Part 718 of this chapter, exceeds the 1974 allotment prior to being increased by reapportionment.

**§ 723.60 Farms divided or combined.**

Allotments for farms reconstituted for 1974 shall be determined in accordance with Part 719 of this chapter.

**§ 723.61 Determination of normal yields for old farms.**

The normal yield for any old farm shall be that yield which the county committee determines is normal for the farm taking into consideration (a) the yields obtained on the farm during the period, not less than the base period, for which data are available; (b) the soil and other physical factors affecting the production of tobacco on the farm; and (c) the yields obtained on other farms in the locality which are similar with respect to such factors.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

**§ 723.62 Determination of acreage allotments for new farms.**

The acreage allotment, other than an allotment made under § 723.59(a), for a new farm shall be that acreage which the county committee, with approval of the State committee determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator, the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That, the acreage allotment so determined shall not exceed 50 percent of the average of the acreage allotments established for two or more but not more than five old farms which are similar with respect to land, labor, and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco: *And provided further*, That, if the acreage planted to tobacco on a new tobacco farm is less than 75 percent of the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the sum of the tobacco planted acreage and the prevented planted tobacco acreage as determined under Part 718 of this chapter for the farm.

(a) *Written application.* The farm operator must file an application for a new farm allotment at the office of the county committee where the farm is administratively located on or before February 15 of the year for which the new farm allotment is requested.

(b) *Eligibility requirements for operator.* A new farm allotment may be established if each of the following conditions is met:

(1) *Owner and operator of the farm.* The operator shall be the sole owner of the farm. For the purpose of applying this subparagraph (1) a person who owns only part of a farm cannot be considered the owner of the farm except that both husband and wife shall be considered the owner and operator of a farm which they jointly own.

(2) *Interest in another farm.* The farm operator shall not own or operate any other farm in the United States for which a tobacco allotment or quota is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4) *Income requirement.* The operator must expect to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products.

(i) *Computing operator's income.* The following shall be considered in computing operator's income:

(a) *Income from farming.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s). The estimated return from the production of the requested new farm allotment shall not be included.

(b) *Income from nonfarming.* Nonfarming income shall include but shall not be limited to salaries, commissions, pensions, social security payments, and unemployment compensations.

(c) *Spouse's income.* The spouse's farm and nonfarm income shall be used in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of his current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provision for low-income farmers.* The county committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and nonfarm sources, is so low that it will not provide a reasonable standard of living for the operator and his family, and a State committee representative approves such action. In waiving the income provisions the county committee must exercise good judgment to see that their determination is reasonable in the light of all pertinent factors, and that this special provision is made applicable only to those who qualify. In making their determination, the county committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living for himself and his family.

(5) *Experience.* Operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained: by being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least two of the five years immediately preceding the year for which the new farm allotment is requested. If the operator was in the armed services during the five-year period, the period shall be extended one year for each year of military service during the five years. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application.

(c) *Eligibility requirements for the farm.* A new farm allotment may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment an allotment or quota for any kind of tobacco.

(2) *Available land, type of soil, and topography.* The available land, type of

soil, and topography of the land on the farm must be suitable for tobacco production. Also continuous production of tobacco must not result in an undue erosion hazard.

(3) *Downward adjustment.* The acreage allotment established as provided in this section for each kind of tobacco shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms.

(4) *False information.* Any new farm acreage allotment which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant shall be canceled by the county committee as of the date the allotment was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment shall be canceled effective for the current crop year except where the provisions of § 723.64(d) apply.

**§ 723.63 Determination of normal yields for new farms.**

The normal yield for a new farm shall be that yield per acre which the county committee determines is normal for the farm as compared with yields for other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar.

MISCELLANEOUS

**§ 723.64 Approval of determinations made under §§ 723.51 through 723.63 and notices of farm acreage allotment.**

(a) All farm acreage allotments and yields shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determination made under §§ 723.51 through 723.63. All acreage allotments and yields shall be approved by a representative of the State committee, and no official notice of acreage allotment shall be mailed to a farm operator until such allotment has been so approved, except that revised acreage allotment notices without such prior approval may be mailed in cases resulting from reconstitutions that do not involve the use of additional acreage.

(b) An official notice of the farm acreage allotment and marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. Insofar as practical, all allotment notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing thereon the date of mailing, shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of such notice certified as true and correct shall be furnished without charge to any person interested in the farm for which the allotment is established.

(c) If the records of the county committee indicate that the allotment established for any farm may be changed because of (1) removal of the farm from agricultural production, (2) division of the farm, or (3) combination of the farm, the mailing of the notice of such allotment may be delayed: *Provided*, That the notice of allotment for any farm shall be mailed no later than May 1 of the current year.

(d) If the county committee determines with the approval of the State executive director, that (1) the official written notice of the farm acreage allotment issued for any farm erroneously stated the acreage allotment to be larger than the correct allotment, and (2) the error was not so gross as to place the operator on notice thereof, and that the operator, relying upon such notice and acting in good faith (i) materially changed his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) or (ii) has planted an acreage of tobacco in excess of the correct farm acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for all purposes in connection with the tobacco marketing quota program for the current year.

**§ 723.65 Application for review.**

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the county ASCS office to have such allotment reviewed by a review committee. The procedure governing the review of farm acreage allotments and marketing quotas is contained in Part 711 of this chapter.

**§ 723.66 Lease and transfer of tobacco acreage allotments.**

(a) *Farms eligible.* Subject to the limitations provided in this section, the owner and operator (acting together if different persons) of any farm for which an old farm tobacco acreage allotment is established for the current year may lease and transfer all or any part of the farm acreage allotment established for such farm to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. The lease and transfer of an acreage allotment shall be recognized and considered valid by the county committee subject to the conditions set forth in this section.

(b) *Maximum period.* Transfer of allotments by lease shall not exceed five years.

(c) *Filing and approval of transfer agreement*—(1) *Filing transfer agreement.* The lease and transfer of any allotment or any part thereof from the farm for which the allotment was established to another tobacco farm shall not become effective until a copy of the transfer agreement, determined by the county committee to be in compliance with the provisions of this section, is filed with the county committee not later than June 1, except that a lease shall be effective if the county committee, with the approval of a State committee representative, finds that the producer was prevented from timely filing the transfer agreement due to reasons beyond his control. The county committee may redelegate authority to approve leasing agreements to the county executive director. The filing of a properly executed Form ASCS–375, Record of Transfer of Allotment or Quota, will be considered to meet the requirements of this paragraph (c)(1).

(2) *Record of transfer on ASCS–375.* No lease and transfer of any allotment under this section shall become effective until a record of the transfer has been executed on Form ASCS–375 and filed with the county committee by the parties to the transfer. If the owner and operator of the farm from which transfer by lease is to be made are different persons, both owner and operator shall execute the record of transfer; however, only the owner or operator of the receiving farm is required to sign the transfer. A county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any county office convenient to the owner's or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or are in similar hardship situations may be met by mail, provided a request is made by the receiving producer.

(d) *Normal yields.* The county committee shall determine a normal yield per acre, in accordance with the provisions of § 723.61 in the case of old farms, and, in the case of new farms, § 723.63 for each farm from which, and for each farm to which, a tobacco acreage allotment or any part thereof is leased. If the normal yield determined by the county committee for the farm to which the allotment acreage is transferred does not exceed the normal yield determined by the county committee for the farm from which the allotment acreage is transferred by more than 10 percent, the lease and transfer shall be approved acre for acre. If the normal yield determined by the county committee for the farm to which the allotment acreage is transferred exceeds the normal yield for the farm from which the allotment is transferred by more than 10 percent, the county committee shall make a downward adjustment in the amount of the allotment acreage transferred by multi-

plying the normal yield established for the farm from which the allotment acreage is transferred by the acreage being transferred and dividing the result by the normal yield established for the farm to which the allotment acreage is transferred. In the case of transfers of allotments for two or more years, the productivity adjustment and amount of allotment so transferred shall be redetermined by the county committee each year the transfer remains in effect.

(e) *Allotment acreage considered fully planted.* The amount of allotment acreage which is leased from a farm (prior to any reduction made under this section) shall be considered for the purpose of determining future allotments (and tobacco history acreage) to have been planted to tobacco on such farm. The amount of allotment acreage which is leased and transferred to a farm shall not be taken into account in establishing allotments for subsequent years for such farms.

(f) *Limit on acreage transferred.* The total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm (the sum of its own allotment and acreage leased and transferred to it after any adjustment in normal yield) shall not exceed 50 percent of the acreage of cropland in the farm.

(g) *New farm allotment.* A new farm allotment shall not be leased or transferred.

(h) *Farms under long-term land-use programs.* A transfer of an allotment to or from a farm covered by a Cropland Adjustment Program agreement shall not be approved if the transferring or receiving farm has the allotment base designated under such program agreement.

(i) *Transfer from the pool.* Allotments in a pool pursuant to Part 719 of this chapter may be eligible for lease and transfer during the three-year life of the pooled allotment. An agreement to lease and transfer shall not serve to extend the life of such pooled allotment.

(j) *Subleasing and limitation on lease and transfer to and from a farm*—(1) *No subleasing.* No transfer shall be made from a farm receiving allotment under a transfer agreement for the term of the transfer agreement.

(2) *Limitation on lease and transfer to and from a farm for the same crop year.* If a lease and transfer agreement is in effect for any farm, no transfer of allotment shall be made (i) from such farm receiving allotment by transfer or, (ii) to such farm which had allotment transferred from it.

(k) *Revised notices.* A form ASCS–375 showing the allotment acreage after lease and transfer shall be issued by the county committee to each of the operators of all farms from which or to which a tobacco allotment acreage is leased under this section.

(l) *Tobacco acreage allotment.* Except with respect to the erroneous allotment notice provisions in § 723.64 and the provisions for review in § 723.65, the term "tobacco acreage allotment" as used herein shall mean the allotment without regard to the application of the provisions of this section.

(m) *Zero allotment farm.* If the allotment for a farm for the current year is reduced to zero, no tobacco allotment acreage for such kind of tobacco may be leased to such farm for the current year.

(n) *Approval after review period.* No lease shall be approved by the county committee for any farm involved in a lease and transfer of allotment acreage until the time of filing an application for review, as shown on the original allotment notice for the farm, has expired. If an application for review is filed for a farm involved in a lease and transfer agreement, such agreement shall not be approved by the county committee until the allotment for such farm is finally determined pursuant to Part 711 of this chapter.

(o) *Acreage allotment after lease and transfer.* The acreage allotment finally determined (after lease and transfer) for a farm under the provisions of this section shall be the allotment for such farm for the current year only for the purpose of determining (1) excess acreage, (2) the amount of penalty to be collected on marketings of excess tobacco including absorption of carryover penalty tobacco, (3) eligibility for price support, and (4) the farm marketing quota and the percentage reduction for a violation in the allotment for the farm.

(p) *Cancellation, dissolution, or revision of transfer*—(1) *Cancellation.* Any transfer of allotment under this section which was approved by the county committee in error or on the basis of incorrect information furnished by the parties to the agreement shall be cancelled by the county committee. Such cancellation shall be effective as of the date of approval for purposes of determining eligibility for price support and marketing were not notified of the cancellation before the tobacco was planted. The provisions of this paragraph (p)(1) shall not preclude application of the erroneous notice provisions under § 723.64 where such provisions are applicable.

(2) *Dissolution or revision.* A transfer agreement made be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county committees. Such written notification shall be filed prior to planting the tobacco. A late filed request to dissolve or revise the transfer may be effective for the current year if the county committee with approval of a State committee representative determines that the producer was prevented from timely filing for reasons beyond his control.

(q) *Reconstituted farm.* The allotment for a farm being divided or combined in the current year shall be the allotment after lease and transfer has been made. Notwithstanding the above, in the case of a division, the county committee shall allocate the acreage that was transfered by lease to the tracts involved in the division as the parent farm owners and operators designate in writing. In the absence of such designation, the county committee shall apportion the leased acreage.

(r) *Consent of lienholder.* No transfer of allotment other than by annual lease shall be made from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lienholder.

(s) *Federally owned land.* No transfer under this section shall be made from any land owned by the United States, or any agency or instrumentality wholly owned by the United States, except that the transfer may be approved in cases where the land is leased back with uninterrupted possession to the former owner after acquisition under right of eminent domain. For such transfers, the Government agency or instrumentality is not required to sign the record of transfer.

Effective date: January 22, 1974.

Signed at Washington, D.C., on January 15, 1974.

E. J. PERSON,
*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc.74–1856 Filed 1–22–74;8:45 am]

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## CHAPTER VIII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (SUGAR), DEPARTMENT OF AGRICULTURE

### SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

[S. D. 857.23]

## PART 857—SUGARCANE; PUERTO RICO

### Proportionate Shares for Farms—1974–75 Crop

The following determination is issued pursuant to section 302 of the Sugar Act of 1948, as amended.

**§ 857.23 Proportionate shares for the 1974–75 crop of sugarcane not required.**

It is determined for the 1974–75 crop of sugarcane that, in the absence of proportionate shares, the production of sugar from such crop will not be greater than the quantity needed to enable the area to meet its quota for 1975, the calendar year during which the larger part of the sugar from such crop normally will be marketed, and provide a normal carryover inventory. Consequently, proportionate shares will not be in effect in Puerto Rico for the 1974–75 crop of sugarcane.

(Secs. 301, 302, 403, 61 Stat. 929, 930, as amended, 932; 7 U.S.C. 1131, 1132, 1153)

STATEMENT OF BASES AND CONSIDERATIONS

Section 302 of the Sugar Act, as amended, provides, in part, that the Secretary shall determine for each crop year whether the production of sugar from any crop of sugarcane will, in the absence of proportionate shares, be greater than the quantity needed to enable the area to meet its quota and provide a normal carryover inventory, as estimated by the Secretary for such area for the calendar year during which the larger part of the sugar from such crop normally would be

marketed. Such determination may be made only after due notice and opportunity for an informal public hearing.

In accordance with this provision of the Act, an informal public hearing was held in Washington, D.C., on December 20, 1973. Interested persons were invited to submit views and recommendations concerning the possible establishment of proportionate shares for the 1974–75 crop of Puerto Rico sugarcane.

A written statement was submitted subsequent to the hearing by the Sugar Corporation of Puerto Rico, a subsidiary of the Land Authority of Puerto Rico, which is in complete management of the 11 sugar mills that will be in operation during the 1974–75 crop season. They stated that sugar production from the 1974–75 crop would not be great enough to meet their assigned quota; and that there is no necessity, therefore, to establish proportionate shares for the 1974–75 of Puerto Rican sugarcane. No other interested persons submitted testimony.

Accordingly, I hereby find and conclude that the foregoing determination will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

Effective date: January 23, 1974.

Signed at Washington, D.C. on January 16, 1974.

GLENN A. WEIR,
*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc.74–1857 Filed 1–22–74;8:45 am]

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

[Amdt. 1]

## PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES IN CALIFORNIA AND IN ALL COUNTIES IN OREGON EXCEPT MALHEUR COUNTY

### Amendment To Handling Regulation

This amended regulation, designed to promote orderly marketing of Oregon-California potatoes, relieves the U.S. No. 1 grade requirement on potatoes for export, slightly modifies safeguard procedures for certain special purpose shipments and makes inspection requirements uniform throughout the production area.

Notice of rule making with respect to a proposed amendment to be made effective under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR Part 947), regulating the handling of Irish potatoes grown in the production area was published in the FEDERAL REGISTER November 28, 1973 (38 FR 32813). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

The notice was based on recommendations and information submitted by the Oregon-California Potato Committee at its September 26, 1973, meeting and reflects its reappraisal of the 1973 crop. The committee recommended that small potatoes for export should no longer be required to meet U.S. No. 1 grade. The committee feels that these potatoes do not compete with shipments to the domestic market; also that importers are best qualified to determine which grade is needed, and no purpose is served by requiring U.S. No. 1 grade.

The committee also recommended that shipments of potatoes grown in District 5 to certain designated counties in Washington and to Malheur County, Oregon, be permitted without requiring that such potatoes be subject to safeguard provisions of the order. Under such handling, Oregon potatoes would continue to be subjected to virtually the same quality and inspection requirements now in effect but handlers would be relieved of substantial paperwork.

The committee also recommended the deletion of paragraph (i)(2) exempting from the inspection requirements potato shipments originating from points in Modoc and Siskiyou Counties in California over 40 airline miles from Merrill, Oregon. Although all such potatoes have been shipped for this season the committee has asked that this exemption be deleted now to forewarn handlers that the committee may recommend no such exemption next season.

The notice afforded interested persons an opportunity to file written data, views, or arguments pertaining thereto not later than December 10, 1973. None was filed.

*Findings.* After consideration of all relevant matters presented, including the proposal set forth in the notice, it is hereby found and determined that this amendment will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that shipments of potatoes grown in the production area are currently being marketed and the regulation should become effective at the time herein provided to maximize the benefits to producers and consumers. The Oregon-California Potato Committee, after due notice, held an open meeting September 26, 1973, to consider recommendations for amending the handling regulation, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the recommendations by the committee has been disseminated among the growers and handlers of potatoes in the production area; the amendment relieves restrictions; and compliance with this amendment will not require any special preparation of potato sorting and packing equipment on the part of handlers subject thereto which cannot be completed on or before the effective time hereof.

The amendments to § 947.332 are as follows:

1. Paragraph (b), the first sentence of paragraph (f), and paragraph (f)(4)(iii) should read as set forth below.
2. Paragraph (g) is amended as set forth below.
3. Paragraph (i)(1) is revised as set forth below.
4. Paragraph (i)(2) is deleted.
5. Paragraph (i)(3) is renumbered as paragraph (i)(2) and
6. Paragraph (i)(4) is renumbered as paragraph (i)(3).

**§ 947.332 Handling regulation.**

* * * * *

(b) *Size requirements.* All varieties—2 inches minimum diameter, or 4 ounces minimum weight: *Provided,* That potatoes for export may be 1½ inches minimum diameter.

* * * * *

(f) *Special purpose shipments.* The minimum grade, size, cleanliness, pack, maturity and inspection requirements set forth in paragraphs (a), (b), (c), (d), (e), and (i) of this section shall not be applicable to shipments of potatoes for any of the following purposes.

* * * * *

(4) * * *

(iii) Potatoes grown in District 5 may be shipped for grading and storing to points in the Counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, or to Malheur County, Oregon, without regard to the safeguard requirements of paragraph (g) of this section.

* * * * *

(g) *Safeguards.* * * *

(2) Each handler making shipments of potatoes pursuant to paragraph (f)(2), (4)(i) and (5) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments at such intervals as the committee may prescribe in its administrative rules.

(3) Each handler making shipments pursuant to paragraph (f)(7) of this section may ship such potatoes only to persons or firms designated as manufacturers of potato products by the committee, in accordance with its administrative rules.

(4) [Deleted]

* * * * *

(i) *Inspection.* (1) Except when relieved by paragraphs (f) or (h) of this section, no person shall handle potatoes without first obtaining inspection from an authorized representative of the Federal-State Inspection Service.

* * * * *

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

Dated January 17, 1974, to become effective January 24, 1974.

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

[FR Doc.74–1854 Filed 1–22–74;8:45 am]

## CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[MILK ORDER NO. 76]

## PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

### Order Terminating a Certain Provision

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER of January 2, 1974 (39 FR 13) concerning a proposed suspension or termination of a certain provision of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. None were filed in opposition.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that the following provision of the order no longer tends to effectuate the declared policy of the Act and is, therefore, terminated:

In § 1076.12(c), relating to standards for pooling a plant operated by a cooperative association, the provision "of other handlers" as it appears in the text preceding the proviso.

*Statement of consideration.* Section 1076.12(c) of the order provides pool plant status for a plant (other than a distributing plant) operated by a cooperative association if more than 50 percent of the total milk supply of producer members of such cooperative association is shipped to pool distributing plants "of other handlers" during the month, either directly from the farm or by transfer from the cooperative plant.

The provisions of § 1076.12(c) were structured to implement the economical handling of milk of a cooperative association which primarily is engaged in supplying milk directly from farms of its member-producers to pool distributing plants and disposing of the associated reserve. Recognition is given thereby to the need for a cooperative to pool reserve supply plants it operates as an adjunct to the primary function of balancing supplies to the fluid needs of the market. If a cooperative association, therefore, delivers more than half of its total member-producer milk to pool distributing plants, either directly or through its reserve supply plants, such reserve supply plants may be considered to be component parts of the cooperative's supply system for the market.

At the time that the provisions of § 1076.12(c) were incorporated into the order, Land O'Lakes largely was supplying pool distributing plants of other handlers. The provisions of § 1076.12(c), including the limitation "of other handlers" were designed to reflect this situation. A particular development in this market, however, makes the application of this limitation no longer appropriate since it tends to inhibit efficient handling methods.

A Sioux Falls pool distributing plant that serves a substantial proportion of the fluid market was acquired by Land O'Lakes, Inc., several years ago. Prior to this acquisition by the cooperative, deliveries of producer-members' milk to the Sioux Falls distributing plant (either directly from farms or by transfer from the cooperative reserve supply plants) counted towards pooling the cooperative's reserve supply plants pursuant to § 1076.12(c). The limitation "of other handlers" in § 1076.12(c) has been inactivated for the period August 1972 through December 1973 by suspension to allow such deliveries to the Sioux Falls distributing plant to be counted for qualifying shipments, thus assuring continued producer status of dairy farmers who regularly supply the fluid market.

The cooperative petitioner requests that the provision limiting qualifying shipments to deliveries only to other handlers' plants again be suspended or in the alternative, terminated.

In the circumstances in this market, there is no essential difference in the marketing function performed by the cooperative when deliveries are made to a cooperative's own pool distributing plant as compared to delivering to other handlers' pool distributing plants. The limitation effected by the provision, "of other handlers", appearing in § 1076.12(c), no longer serves a useful purpose and interferes with the orderly and efficient marketing of milk. Such provision, "of other handlers", in § 1076.12(c), accordingly should be terminated.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area since the most efficient method of handling much of the milk used to supply distributing plants is by shipment directly from producers' farms to such plants.

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this termination.

Therefore, good cause exists for making this order effective January 23, 1974, with respect to marketing of milk on and after January 1, 1974.

*It is therefore ordered,* That the aforesaid provision of the order is hereby terminated.

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

Effective date: January 23, 1974.

Signed at Washington, D.C., on: January 17, 1974.

CLAYTON YEUTTER,
*Acting Secretary.*

[FR Doc.74–1859 Filed 1–22–74;8:45 am]

## CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

### SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Reg., 1973-Crop Wheat Supplement Amdt. 1]

## PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

### Subpart—1973 Crop Loan and Purchase Program

AVAILABILITY DATE

The regulations issued by the Commodity Credit Corporation published in the FEDERAL REGISTER at 38 FR 20237 containing provisions for the loan and purchase program applicable to the 1973-crop of wheat are ameded by changing the final date for obtaining loans and delivering purchase agreements from April 30, 1974, for Idaho, Minnesota, Montana, North Dakota, Oregon, Washington, and Wyoming, and from March 31, 1974, for all other States, to January 15, 1974. This action is consistent with the acceleration of the maturity date announced by the Secretary of Agriculture on December 20, 1973, for 1973-crop wheat loans.

Section 1421.485 is amended to read as follows:

§ 1421.485 Availability.

A producer desiring to participate in the program through loans must request a loan on his 1973 crop of eligible wheat on or before January 15, 1974. To sell eligible wheat to CCC, a producer must execute and deliver to the appropriate county ASCS office on or before January 15, 1974, a purchase agreement (Form CCC–614), indicating the approximate quantity of 1973-crop wheat he will sell to CCC.

Inasmuch as loans are presently being made and there is an urgent need for notification of producers of the accelerated availability date for 1973-crop wheat loans and purchases, it is hereby found and determined that compliance with the notice of proposed rulemaking and public participation procedure is impractical and contrary to the public interest. Therefore, this amendment is being issued without following such procedure.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 107, 401, 63 Stat. 1051, 1054; 15 U.S.C. 714c, 7 U.S.C. 1441, 1421.)

Effective Date: January 23, 1974.

Signed at Washington, D.C. on January 15, 1974.

E. J. PERSON,
*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc.74–1858 Filed 1–22–74;8:45 am]

## Title 9—Animals and Animal Products

### CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

### SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

### PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN) PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA; PROHIBITED AND RESTRICTED IMPORTATIONS

#### Change in Disease Status of Switzerland

*Statement of considerations.* The purpose of these amendments is to delete Switzerland (1) from the list of countries in § 94.12(a) which are listed as free of swine vesicular disease; and (2) from the list of countries in § 94.13 which are declared to be free of swine vesicular disease in § 94.12(a) but which supplement their national meat supply by the importation of fresh, chilled, or frozen meat of swine from countries where swine vesicular disease is considered to exist; which have a common border with such countries; or which have certain trade practices that are less restrictive than are acceptable to the United States. This action to further restrict the importation of fresh, chilled, or frozen meats of swine into the United States from Switzerland is necessary to protect the livestock of the United States.

Accordingly, 9 CFR Part 94 is hereby amended as follows:

1. In § 94.12(a) the name of Switzerland is deleted.

2. In § 94.13 in the first sentence of the introductory paragraph, the name of Switzerland is deleted.

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 37 F.R. 28464, 28477; 38 F.R. 19141.)

*Effective date.* The foregoing amendments shall become effective on January 18, 1974, except with respect to intransit shipments of pork and pork products that are on board a carrier moving to the United States at the time of issuance hereof. Such intransit shipments shall upon arrival in the United States be allowed entry only under such specific requirements or be disposed of in such manner as the Administrator may determine in each specific case to be necessary and adequate to safeguard against the introduction or dissemination of swine vesicular disease into the United States.

The restrictions imposed by these amendments must be made effective immediately to protect the livestock industry of the United States against the introduction of swine vesicular disease from foreign countries. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the 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 amendments are impracticable and unnecessary, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 18th day of January 1974.

J. K. ATWELL,
*Acting Deputy Administrator, Veterinary Service, Animal and Plant Health Inspection Service.*

[FR Doc.74-1921 Filed 1-22-74;8:45 am]

## Title 10—Energy

### CHAPTER II—FEDERAL ENERGY OFFICE

### PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

#### Continuation of State Reserve Program

This amendment is designed to implement the transition from the middle distillate regulations issued under authority of the Energy Policy Office, to the mandatory allocation program for petroleum fuels issued by the Federal Energy Office on January 14, 1974.

Prior to the implementation of the new FEO regulations on January 15, 1974, Energy Policy Office Regulation No. 1, (38 FR 28660, October 16, 1973) "Allocation of Middle Distillates", was continued in effect. An important change from EPO Regulation No. 1 in the new FEO regulations is to provide for a state "set-aside" rather than a state "reserve". However, the computation of the state "set-aside" will not be possible until February 1, 1974. Therefore, § 211.17 is now amended to provide for the continuation of the state reserve program for middle distillates contained in section 6 of Energy Policy Office Regulation No. 1 until February 1, 1974 when the state set-aside program will start to operate.

Because the purpose of these amendments is to provide immediate guidance and information with respect to the mandatory petroleum allocation rules and regulations, the Federal Energy Office finds that normal rulemaking procedure is impracticable and that good cause exists for making these amendments effective in less than 30 days.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11730, 38 FR 19345; Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; E.O. 11748, 38 FR 33575; Cost of Living Council Order 47, 39 FR 24)

In consideration of the foregoing, 10 CFR Part 211 is amended as set forth below, effective immediately.

Issued in Washington, D.C. January 18, 1974.

JOHN C. SAWHILL,
*Deputy Administrator, Federal Energy Office.*

1. Chapter II of Title 10 is amended in § 211.17 by adding paragraph (h) to read as follows:

§ 211.17 State set-aside.

* * * * *

(h) Notwithstanding the provision for state "set-aside" in Subpart G of this part, there is continued in effect, through January 31, 1974, the state "reserve" for middle distillates as originally established in 32A CFR E.P.O. Reg. 1, Section 5. The state office established under § 211.15, or the state official designated under 32A CFR E.P.O. Reg. 1, Section 5 (f) of Energy Policy Office Regulation No. 1 may administer and direct the allocation of middle distillate fuels by a supplier within the state to wholesale purchasers and end-users, at levels other than those specified in § 211.123, to alleviate exceptional hardships and emergency needs in accordance with the provisions of 32A CFR E.P.O. Reg. 1, Section 5 except that permanent changes in a wholesale purchaser's total allocation will be accomplished in accordance with the provisions of § 211.123 of this part rather than 32A CFR E.P.O. Reg 1, Section 4.

[FR Doc.74-1945 Filed 1-21-74;8:45 am]

## Title 24—Housing and Urban Development

## CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-284]

## PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

### Status of Participating Communities

Section 1914.4 of 24 CFR Part 1914 is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 **Status of participating communities.**

* * * * * * *

| State | County | Location | Map No. | State map repository | Local map repository | Effective date of authorization of sale of flood insurance for area |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| Alabama | Colbert | Cherokee, City of | | | | Jan. 17, 1974. |
| Do | Marion | Guin, Town of | | | | Emergency. |
| Do | Colbert | Leighton, Town of. | | | | Do. |
| Arkansas | Pulaski | North Little Rock, City of. | | | | Do. |
| Georgia | Whitfield | Dalton, City of | | | | Do. |
| Illinois | Jersey | Grafton, City of | | | | Do. |
| Do | McHenry | McHenry, City of | | | | Do. |
| Kansas | Ellis | Hays, City of | | | | Do. |
| Maryland | Harford | Bel Air, Town of | | | | Do. |
| Mississippi | Lincoln | Brookhaven, City of. | | | | Do. |
| New York | Erie | Lakcawanna, City of. | | | | Do. |
| N. Carolina | Transylvania | Brevard, Town of | | | | Do. |
| Do | Cartaret | Newport, Town of. | | | | Do. |
| Do | Edgecombe | Rocky Mount, City of. | | | | Do. |
| Do | Cleveland | Shelby, City of | | | | Do. |
| Pennsylvania | Jefferson | Brockway, Borough of. | | | | Do. |
| Do | Dauphin | Halifax, Borough of. | | | | Do. |
| Texas | Atascosa-Bexar | Lytle, City of | | | | Do. |
| Washington | Pacific | Unincorporated Areas. | | | | Do. |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Pub. L. 91–152, Dec. 24, 1969) (42 U.S.C. 4001–4127); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: January 14, 1974.

GEORGE K. BERNSTEIN,
*Federal Insurance Administrator.*

[FR Doc.74-1765 Filed 1-22-74;8:45 am]

[Docket No. FI-285]

## PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

### List of Communities With Special Hazard Areas

The Federal Insurance Administrator finds that comment and public procedure and the use of delayed effective dates in identifying the areas of communities which have special flood or mudslide hazards, in accordance with 24 CFR Part 1915, would be contrary to the public interest. The purpose of such identifications is to guide new development away from areas threatened by flooding, a purpose which is accomplished pursuant to statute by denying subsidized flood insurance to structures thereafter built within such areas. The practice of issuing proposed identifications for comment or of delaying effective dates would tend to frustrate this purpose by permitting imprudent or unscrupulous builders to start construction within such hazardous areas before the official identification became final, thus increasing the communities' aggregate exposure to loss of life and property and the agency's financial exposure to flood losses, both of which are contrary to the statutory purposes of the program. Accordingly, the Department is not providing for public comment in issuing this amendment and it will become effective on January 23, 1974.

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

**§ 1915.3 List of communities with special hazard areas.**

| State | County | Location | Map No. | State map repository | Local map repository | Effective date of identification of areas which have special flood hazard |
|---|---|---|---|---|---|---|
| Alabama | Walker | Jasper, City of | H 01 127 1780 01 through H 01 127 1780 11 | Alabama Development Office, Office of State Planning, State Office Bldg., 501 Dexter Ave., Montgomery, Ala. 36104. Alabama Insurance Department, Room 453, Administrative Bldg., Montgomery, Ala. 36104. | Mayor, City Hall, W. 19th St., Jasper, Ala. 35501. | Jan. 18, 1974. |
| Arizona | Gila | Winkelman, Town of. | H 04 007 0000 01 | Arizona State Land Department, 1624 W. Adams, Room 400, Phoenix, Ariz. 85007. Arizona Department of Insurance, P.O. Box 7008, 718 W. Glenrosa, Phoenix, Ariz. 85011. | Town Hall, Town of Winkelman, Winkelman, Ariz. 85292. | Do. |
| Do | Maricopa | Gila Bend, Town of. | H 04 013 0189 01 | do | Mayor, City Hall, Gila Bend, Ariz. 85337. | Do. |
| Arkansas | Hempstead | Hope, City of | H 05 057 1980 01 | Division of Soil and Water Resources, State Department of Commerce, 1920 W. Capitol Ave., Little Rock, Ark. 72201. Arkansas Insurance Department, 400 University Tower Bldg., Little Rock, Ark. 72204. | City Manager, City Hall, Hope, Ark. 71801. | Do. |
| Do | Lafayette | Stamps, Town of. | H 05 073 3690 01 through H 05 073 3690 02 | do | City Council, Stamps, Ark. 71860 | Do. |
| Do | White | Searcy, City of | H 05 145 3530 01 through H 05 145 3530 04 | do | Mayor, City Hall, Searcy, Ark. 72143 | Do. |
| California | Plumas | Chester, Town of. | H 06 063 0650 01 | Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802. California Insurance Department, 107 South Broadway, Los Angeles, Calif. 90012, and 1407 Market St., San Francisco, Calif. 94103. | Chairman, Plumas County Board of supervisors, | Do. |
| Do | Santa Barbara | Lompoc, City of | H 06 083 1950 01 through H 06 083 1950 04 | do | Mayor, City Hall, 119 W. Walnut Ave., Lompoc, Calif. 93436. | Do. |
| Do | Ventura | Fillmore, City of | H 06 111 1280 01 | do | Mayor, P.O. Box 487, Fillmore, Calif. 93015. | Do. |
| Colorado | Huerfano | Walsenburg, City of. | H 08 055 2500 01 through H 08 055 2500 02 | Colorado Water Conservation Board, Room 102, 1845 Sherman St., Denver, Colo. 80203. Colorado Division of Insurance, 106 State Office Bldg., Denver, Colo. 80203. | Mayor, City Hall, Walsenburg, Colo. 81089. | Do. |
| Do | Logan | Sterling, City of | H 08 075 2370 01 through H 08 075 2370 04 | do | Chairman, Sterling City Planning Commission, Sterling, Colo. 08751. | Do. |
| Connecticut | Hartford | Avon, Town of | H 09 003 0015 01 through H 09 003 0015 08 | Department of Environmental Protection, Division of Water and Related Resources, Room 207 State Office Bldg., Hartford, Conn. 06115. Connecticut Insurance Department, State Capitol Bldg., 165 Capitol Ave., Hartford, Conn. 06115. | Avon Town Hall, 60 W. Main St., Avon, Conn. 06001. | Do. |
| Florida | Broward | Miramar, City of | H 12 011 2083 01 through H 12 011 2083 03 | Department of Community Affairs, 2571 Executive Center Circle, East, Howard Bldg., Tallahassee, Fla. 32303. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304. | City of Miramar, Miramar City Hall, Miramar, Fla. 33020. | Do. |
| Do | Franklin | Carrabelle, City of. | H 12 037 0460 01 through H 12 037 0460 02 | do | City Manager, City Hall, Carrabelle, Fla. 32322. | Do. |
| Do | Indian River | Orchid, Town of | H 12 061 2354 01 | do | Mayor, Town of Orchid, Wabasso, Fla. 32970. | Do. |
| Do | Palm Beach | Briny Breezes, Town of. | H 12 099 0364 01 | do | Mayor, P.O. Box 204, Delray Beach, Fla. 33444. | Do. |
| Do | Palm Beach | Palm Beach Gardens, City of. | H 12 099 2431 01 through H 12 099 2431 06 | do | City, 3704 Burns Ave., Palm Beach Gardens, Fla. 33403. | Do. |

| State | County | Location | Map No. | State map repository | Local map repository | Effective date of identification of areas which have special flood hazards |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| Do. | Polk | Bartow, City of | H 12 105 0160 01 through H 12 105 0160 02 | do | City Manager, City Hall, Bartow, Fla. 33830. | Do. |
| Do. | Seminole | Longwood, Town of. | H 12 117 1840 01 through H 12 117 1840 03 | do | Mayor, City Hall, Longwood, Fla. 32750. | Do. |
| Do. | do | Oviedo, Town of | H 12 117 2390 01 through H 12 117 2390 02 | do | Mayor, City Hall, Oviedo, Fla. 32765 | Do. |
| Do. | Sumter | Wildwood, Town of. | H 12 119 3230 01 | do | City Manager, City Hall, Wildwood, Fla. 32785. | Do. |
| Idaho | Bingham | Blackfoot, City of. | H 16 011 0130 01 through H 16 011 0130 03 | Department of Water Administration, State House, Annex 2, Boise, Idaho 83707. Idaho Department of Insurance, Room 206, Statehouse, Boise, Idaho 83707. | Mayor, City Hall, Blackfoot, Idaho 83221, | Do. |
| Do. | Elmore | Glenns Ferry, City of. | H 16 039 0600 01 | do | Mayor, City Hall, Glenns Ferry, Idaho 83623. | Do. |
| Do. | Shoshone | Osborn, City of | H 16 079 1305 01 | do | Mayor, Osborn, Idaho 83849. | Do. |
| Illinois | Hardin | Cave-in-Rock, Village of. | H 17 069 1480 01 | Governor's Task Force on Flood Control, Natural Resources Service Center, Thornhill Bldg., P.O. Box 475, Lisle, Ill. 60532. Illinois Insurance Department, 525 W. Jefferson St., Springfield, Ill. 62702. | Mayor, Cave-in-Rock, Ill. 62919 | Do. |
| Do. | Pope | Golconda, City of | H 17 151 3460 01 | do | Mayor, Golconda, Ill. 62938 | Do. |
| Indiana | Crawford | Alton, Town of | H 18 025 0090 01 | Division of Water, Department of Natural Resources, 608 State Office Bldg., Indianapolis, Ind. 46204. Indiana Insurance Department, 509 State Office Bldg., Indianapolis, Ind. 46204. | President, Town Board, Leavenworth, Ind. 47137. | Do. |
| Do. | Marion | Lawrence, Town of. | H 18 097 2600 01 through H 18 097 2600 05 | do | Mayor, 2501 City-County Bldg., Indianapolis, Ind. 46204. | Do. |
| Do. | Franklin | Laurel, Town of | H 18 047 2590 01 | do | Executive Secretary, Planning and Zoning Board, 1049 Main St., Brookville, Ind. 47012. | Do. |
| Do. | Montgomery | Crawfordsville, City of. | H 18 107 1060 01 through H 18 107 1060 03 | do | Mayor, City Bldg., Crawfordsville, Ind. 47933. | Do. |
| Do. | Parke | Mecca, Town of | H 18 121 2918 01 | do | Mayor, City Hall, Mecca, Ind. 47860 | Do. |
| Do. | Spencer | Grandview, Town of. | H 18 147 1860 01 | do | Spencer County Plan Commission, Courthouse, Rockport, Ind. 47635. | Do. |
| Iowa | Ida | Ida Grove, City of. | H 19 093 3990 01 through H 19 093 3990 04 | Iowa Natural Resources Council, James W. Grimes Bldg., Des Moines, Iowa 50319. Iowa Insurance Department, Lucas State Office Bldg., Des Moines, Iowa 50319. | Mayor, Ida Grove, Iowa 51445 | Do. |
| Do. | Iowa | Marengo, City of | H 19 095 5280 01 through H 19 095 5280 02 | do | Mayor, City Hall, Marengo, Iowa 52301. | Do. |
| Do. | Jasper | Colfax, City of | H 19 099 1710 01 | do | City Council, Colfax, Iowa 50054 | Do. |
| Do. | Lee | Keohuk, City of | H 19 111 4250 01 through H 19 111 4250 06 | do | Mayor City Hall, Keohuk, Iowa, 52632 | Do. |
| Do. | do | Montrose, Town of. | H 19 111 5770 01 through H 19 111 5770 02 | do | Mayor, City Hall, Montrose, Iowa 52639. | Do. |
| Do. | Marshall | Marshalltown, City of. | H 19 127 5320 01 through H 19 127 5320 08 | do | Mayor, Municipal Bldg., Marshalltown, Iowa 50158. | Do. |
| Do. | Pottawattamie | Avoca, City of | H 19 155 0510 01 | do | Mayor, Avoca, Iowa 51521 | Do. |
| Do. | Scott | Riverdale, Town of. | H 19 163 7227 01 | do | Mayor, Town Hall, Riverdale, Iowa 52722. | Do. |
| Do. | Woodbury | Anthon, Town of | H 19 193 0290 01 through H 19 193 0290 02 | do | Mayor, City Hall, Anthon, Iowa 51104. | Do. |
| Kansas | Douglas | Lecompton, City of. | H 20 045 3060 01 through H 20 045 3060 02 | Division of Water Resources, State Board of Agriculture, Topeka, Kans. 6612. Kansas Insurance Department, 1st Floor, Statehouse, Topeka, Kans. 666612. | Mayor, Lecompton, Kans. 60650 | Do. |
| Do. | Ellis | Hays, City of | H 20 015 2390 01 through H 20 051 2390 02 | do | City Manager, Box 490, Hays, Kans. 67601. | Do. |
| Do. | Marshall | Frankfort, City of | H 20 117 1850 01 | do | Mayor, City Bldg., Frankfort, Kans. 66427. | Do. |
| Do. | Miami | Osawatomie, City of. | H 20 121 4220 01 Through H 20 121 4220 02 | do | City Manager, City Office Bldg., Osawatomie, Kans. 66064. | Do. |
| Do. | Neosho | Erie, City of | H 20 133 1700 01 | do | Mayor, City Hall, Erie, Kans. 66733 | Do. |
| Kentucky | Boone | Petersburg, Town of. | H 21 015 2600 01 | Division of Water, Kentucky Department of Natural Resources, Capitol Plaza Office Tower, Frankfort, Ky. 40601. Kentucky Insurance Department, Old Capitol Annex, Frankfort, Ky. 40601. | Town Manager, Town of Petersburg, Petersburg, Ky. 41080. | Do. |

| State | County | Location | Map No. | State map repository | Local map repository | Effective date of identification of areas which have special flood hazards |
|---|---|---|---|---|---|---|
| Do | Carrol | Sanders, Town of | H 21 041 2880 01 | do | Mayor, Sanders, Ky. 41083 | Do. |
| Do | do | Worthville, Town of. | H 21 041 3700 01 | do | Mayor, Worthville, Ky. 41098 | Do. |
| Do | Floyd | Allen, Town of | H 21 071 0060 01 | do | Mayor, City Hall, Allen, Ky. 41601 | Do. |
| Do | Greenup | Greenup, Town of. | H 21 089 1350 01 | do | Mayor, City Bldg., Greenup, Ky. 41144. | Do. |
| Do | Kenton | Visalia, City of | H 21 117 3380 01 | do | Chairman, Kenton County Planning and Zoning Board, Covington, Ky. 41011. | Do. |
| Do | do | Winston Park, Town of. | H 21 117 3640 01 | do | Chairman, Kenton County Planning and Zoning Board, Town of Winston Park, Covington, Ky. 41011. | Do. |
| Do | Letcher | Whitesburg, Town of. | H 21 133 3530 01 | do | Mayor, City Hall, Whitesburg, Ky. 41858. | Do. |
| Do | Nelson | New Haven, City of. | H 21 179 2390 01 | do | Mayor, City of New Haven, New Haven, Ky. | Do. |
| Louisiana | Pointe Coupee Parish. | Livonia, Village of | H 22 077 1316 01 | State Department of Public Works, P.O. Box 44155, Capitol Station, Baton Rouge, La. 70804. Louisiana Insurance Department, Box 44214, Capitol Station, Baton Rouge, La. 70804. | Village of Livonia, Town Hall, Livonia, La. 70755. | Do. |
| Do | St. Martin Parish | Parks, Village of | H 22 099 1820 01 | do | Secretary, Village of Parks, Fire Station, Parks, La. 70582. | Do. |
| Maryland | Montgomery | Gaithersburg, City of. | H 24 031 0630 01 through H 24 031 0630 04 | Department of Water Resources, State Office, Annapolis, Md. 21401. Maryland Insurance Department, 301 W. Preston St., Baltimore, Md. 21201. | City of Gaithersburg, 31 South Summit Ave. | Do. |
| Michigan | Saginaw | Frankenmuth, City of. | H 26 145 1790 01 | Water Resources Commission, Bureau of Water Management, Stevens T. Mason Bldg., Lansing, Mich. 48913. Michigan Insurance Bureau, 111 N. Hosmer St., Lansing, Mich. 48913. | Mayor, 465 S. Main St., Frankenmuth, Mich. 48734. | Do. |
| Do | Washtenaw | Milan, City of | H 26 161 3250 01 through H 26 161 3250 02 | do | Mayor, 147 Wabash, Milan, Mich. 48160. | Do. |
| Do | do | Saline, City of | H 26 161 4430 01 through H 26 161 4430 02 | do | Mayor, Municipal Bldg., 101 W. Michigan, Saline, Mich. 48176. | Do. |
| Mississippi | Alcorn | Corinth, City of. | H 28 003 0560 01 through H 28 003 0560 04 | Mississippi Research and Development Center, P.O. Drawer 2470, Jackson, Miss. 39205. Mississippi Insurance Department, 910 Woolfolk Bldg., Jackson, Miss. 39205. | Mayor, Municipal Bldg., Corinth, Miss. 38834. | Do. |
| Do | Attala | Kosciusko, City of. | H 28 007 1250 01 through H 28 007 1250 03 | do | Mayor, Kosciusko, Miss. 39090 | Do. |
| Do | Monroe | Aberdeen, City of. | H 28 095 0010 01 through H 28 095 0010 03 | do | Mayor, Aberdeen, Miss. 39730 | Do. |
| Do | Warren | Vicksburg, City of. | H 28 149 2690 01 through H 28 149 2690 03 | do | Mayor, City Hall, Vicksburg, Miss. 39180. | Do. |
| Do | Wayne | Waynesboro, Town of. | H 28 153 2750 01 through H 28 153 2750 03 | do | Mayor, City Hall, Waynesboro, Miss. 39367. | Do. |
| Missouri | Carter | Van Buren, Town of. | H 29 035 7950 01 through H 29 035 7950 02 | Water Resources Board, P.O. Box 271, Jefferson City, Mo. 65101. Division of Insurance, P.O. Box 690. Jefferson City, Mo. 65101. | Presiding, Carter County Court, Courthouse, Van Buren, Mo. 63965. | Do. |
| Do | Clay | Claycomo, Town of. | H 29 047 1680 01 Through H 29 047 1680 02 | do | Chairman, Board of Trustees, City Hall, 111 E. 69 Highway, Kansas City, Mo. 64169. | Do. |
| Do | Cooper | Booneville, City of. | H 29 053 0900 01 Through H 29 053 0900 02 | do | Mayor, City Hall, Booneville, Mo. 65233. | Do. |
| Do | Harrison | Bethany, City of | H 29 081 0680001 | do | Mayor, City Hall, Bethany, Mo. 64424. | Do. |
| Do | St. Louis | Frontenac, City of. | H 29 189 2950 01 | do | Mayor, City Hall, 10555 Clayton Rd., Frontenac, Mo. 63131. | Do. |
| Do | do | Overland, City of | H 29 189 6000 01 Through H 29 189 600 02 | do | Mayor, City Hall, 9119 Lackland Rd., Overland, Mo. 63114. | Do. |
| Do | Texas | Houston, City of | H 29 215 3810 01 Through H 29 215 3810 02 | do | Mayor, and City Council, City Hall, Houston, Mo. 65483. | Do. |
| Montana | Custer | Miles City, City of. | H 30 017 0820 01 Through H 30 017 0820 02 | Montana Department of Natural Resources and Conservation, Water Resources Division, Sam W. Mitchell Bldg., Helena, Mont. 59601. Montana Insurance Department, Capitol Bldg., Helena, Mont. 59601. | Mayor City Hall, City of Miles City, Miles City, Mont. 59301. | Do. |
| Nebraska | Custer | Broken Bow, City of. | H 31 041 0720 01 through H 31 041 0720 02 | Nebraska Natural Resources, Commission, P.O. Box 94725, State House Station, Lincoln, Nebr. 68509. Nebraska Insurance Department, 1335 L St., Lincoln, Nebr. 68509. | Mayor, Municipal Bldg., Broken Bow, Nebr. 68822. | Do. |
| Do | Dodge | Nickerson, Town of. | H 31 053 3450 01 | do | Mayor, Nickerson, Nebr. 68044 | Do. |
| Do | Douglas | Ralston, City of | H 31 055 4060 01 through H 31 055 4060 02 | do | Mayor, Ralston, Nebr. 68061 | Do. |
| Do | Holt | O'Neill, City of | H 31 089 3630 01 through H 31 089 3630 02 | do | Mayor, O'Neill, Nebr. 68763 | Do. |

| State | County | Location | Map No. | State map repository | Local map repository | Effective date of identification of areas which have special flood hazards |
|---|---|---|---|---|---|---|
| Do | Johnson | Tecumseh, City of. | H 31 097 4800 01 through H 31 097 4800 02 | do | Mayor, City Hall, Tecumseh, Nebr. 68450. | Do. |
| Do | Madison | Norfolk, City of. | H 31 119 3480 01 through H 31 119 3480 02 | do | Mayor, Norfolk, Nebr. 68701 | Do. |
| Do | Saline | Crete, City of. | H 31 151 1250 01 through H 31 151 1250 03 | do | Mayor, City Hall, Crete, Nebr. 68333 | Do. |
| Do | Thayer | Hebron, City of. | H 31 169 2330 01 through H 31 169 2330 02 | do | Mayor, Hebron, Nebr. 68370 | Do. |
| New Jersey | Bergen | Midland Park, Borough of. | H 34 003 1930 01 through H 34 003 1930 02 | Bureau of Water Control, Department of Environmental Protection, P.O. Box 1390, Trenton, N.J. 08625. New Jersey Department of Insurance, State House Annex, Trenton, N.J. 08625. | Borough Clerk, Municipal Bldg., Midland, N.J. 07432. | Do. |
| Do | do | Park Ridge, Borough of. | H 34 003 2490 01 through H 34 003 2490 06 | do | Mayor, 55 Park Ave., Park Ridge, N.J. 07650. | Do. |
| Do | Gloucester | Greenwich, Township of. | H 34 015 1194 01 through H 34 015 1194 02 | do | Township of Greenwich, Township Clerk, Gibbstown, N.J. 08027. | Do. |
| Do | Hunterdon | Lambertville, City of. | H 34 019 1610 01 through H 34 019 1610 02 | do | Clerk's Office, Municipal Bldg., City of Lambertville, 18 York Street, Lambertville, N.J. 08530. | Do. |
| Do | Middlesex | East Brunswick, Township of. | H 34 023 0778 01 through H 34 023 0778 08 | do | Township Clerk, Municipal Bldg., Township of East Brunswick, 575 Ryders Lane, East Brunswick, N.J. 08816. | Do. |
| New York | Allegany | Angelica, Village of. | H 36 003 0200 01 | New York State Department of Environmental Conservation, Division of Resources, Management Services, Bureau of Water Management, Albany, N.Y. 12201. New York State Insurance Department, 123 William St., New York, N.Y. 10038, and 324 State St., Albany, N.Y. 12210. | Mayor, Village Office, Angelica, N.Y. 14709. | Do. |
| Do | Monroe | Greece, Town of. | H 36 055 2395 01 through H 36 055 2395 17 | do | Greece Town Hall, 2505 Ridge Rd. W., Rochester, N.Y. 14626. | Do. |
| Do | Monroe | Hamlin, Town of. | H 36 055 2498 01 through H 36 055 2498 08 | do | Hamlin Town Hall, 1658 Lake Rd., Hamlin, N.Y. 14464. | Do. |
| North Dakota | Rolette | Dunseith, City of. | H 38 079 0870 01 | State Water Commission, State Office Bldg., 900 E. Blvd., Bismarck, N. Dak. 58501. North Dakota Insurance Department, State Capitol, Bismarck, N. Dak. 58501. | Mayor, Dunseith, N. Dak. 58329. | Do. |
| Do | Walsh | Grafton, City of. | H 38 099 1270 01 through H 38 099 1270 02 | do | City Auditor, City Hall, Grafton, N. Dak. 58237. | Do. |
| Ohio | Allen | Bluffton, Village of. | H 39 003 0860 01 through H 39 003 0860 02 | Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224. Ohio Insurance Department, 115 E. Rich St., Columbus, Ohio 43215. | Mayor, City Bldg., Bluffton, Ohio 45817. | Do. |
| Do | Carroll | Malvern, Village of. | H 39 019 4640 01 | do | Mayor, Box 21, Malvern, Ohio 44644 | Do. |
| Do | Cuyahoga | Valley View, Village of. | H 39 035 8330 01 through H 39 035 8330 03 | do | Mayor, Town Hall, 6848 Hathaway, Valley View, Ohio 44131. | Do. |
| Do | Coshocton | Coshocton, City of. | H 39 031 1920 01 through H 39 031 1920 08 | do | Coshocton City Planning Commission, Municipal Bldg., Coshocton, Ohio 43812. | Do. |
| Do | Delaware | Ashley, Village of. | H 39 041 0329 01 | do | Mayor, Town Hall, Ashley, Ohio 43003. | Do. |
| Do | Hancock | Findlay, City of. | H 39 063 2610 01 through H 39 063 2610 08 | do | Mayor, City Hall, 119 Court Pl., Findlay, Ohio 45840. | Do. |
| Do | Trumbull | Girard, City of. | H 39 155 2950 01 through H 39 155 2950 02 | do | Mayor, City Hall, 100 W. Main St., Girard, Ohio 44420. | Do. |
| Oklahoma | Choctaw | Hugo, City of. | H 40 023 2340 01 through H 40 023 2340 04 | Oklahoma Water Resources Board, 2241 Northwest 40th St., Oklahoma City, Okla. 73112. Oklahoma Insurance Department, Room 408 Will Rogers Memorial Bldg., Oklahoma City, Okla. 73105. | Mayor, City Hall, Hugo, Okla. 74743. | Do. |
| Do | Custer | Clinton, City of. | H 40 039 1030 01 through H 40 039 1030 06 | do | City Manager, Box 1167, Clinton, Okla. 73601. | Do. |
| Do | McCurtain | Idabel, City of. | H 40 089 2370 01 through H 40 089 2370 04 | do | Mayor, City Hall, Idabel, Okla. 74745. | Do. |
| Do | Okmulgee | Henryetta, City of. | H 40 111 2180 01 through H 40 111 2180 03 | do | Mayor, City Hall, Henryetta, Okla. 74437. | Do. |
| Oregon | Marion | Sweet Home, City of. | H 41 043 2030 01 through H 41 043 2030 02 | Executive Department, State of Oregon, Salem, Oreg. 97310. Oregon Insurance Division, Department of Commerce, 158 12th St., N.E., Salem, Oreg. 97310. | Mayor, City Hall, Sweet Home, Oreg. 97386. | Do. |
| Do | do | Stayton, City of. | H 41 047 1980 01 | do | Mayor, City Hall, Stayton, Oreg. 97383. | Do. |
| Do | Yamhill | Dayton, City of. | H 41 071 0490 01 through H 41 071 0490 02 | do | Mayor, City Hall, Dayton, Oreg. 97114. | Do. |

| State | County | Location | Map No. | State map repository | Local map repository | Effective date of identification of areas which have special flood hazards |
|---|---|---|---|---|---|---|
| Pennsylvania | Adams | Reading, Township of. | H 42 001 6902 01 through H 42 001 6902 07 | Department of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120. | Township of Reading, Board of Supervirors, Rural Delivery No. 1, New Oxford, Pa. 17356. | Do. |
| Do | Blair | Catherine, Township of. | H 42 013 1151 01 through H 42 013 1151 06 | do | Catherine Township Board of Supervisors, 130 East 3rd St., Williamsburg, Pa. 16939. | Do. |
| Do | Columbia | Briar Creek, Township of. | H 42 037 0864 01 through H 42 037 0864 03 | do | Borough Bldg., Park Rd., Berwick, Pa. 18603. | Do. |
| Do | Delaware | Newtown, Township of. | H 42 045 5964 01 through H 42 045 5964 05 | do | Newtown Township, Municipal Bldg., Newtown Square, Pa. 19703. | Do. |
| Do | do | Upper Chichester, Township of. | H 42 045 8711 01 through H 42 045 8711 03 | do | Township of Upper Chichester, P.O. Box 575, Boothwyn, Pa. 19061. | Do. |
| Do | Lackawanna | Scranton, City of. | H 42 069 7460 01 through H 42 069 7460 08 | do | Office of the City Clerk, 340 N. Washington Ave., City Hall, Scranton, Pa. 18503. | Do. |
| Do | Lancaster | Elizabethtown, Borough of. | H 42 071 2530 01 through H 42 071 2530 02 | do | Elizabethtown Borough Office, 59 North Market St., Elizabeth, Pa. 17022. | Do. |
| Do | Lebanon | N. Londonderry, Township of. | H 42 075 6092 01 through H 42 075 6092 06 | do | Lebanon County-City Planning Department, Room 3, Municipal Bldg., 400 South 8th St., Lebanon, Pa. 17042. | Do. |
| Do | Lycoming | Piatt, Township of. | H 42 081 4498 01 through H 42 081 4498 04 | do | Piatt Township, Rural Delivery No. 3, Jersey Shore, Pa. 17740. | Do. |
| Do | do | Upper Fairfield, Township of. | H 42 081 5450 01 through H 42 081 5450 05 | do | Secretary, Upper Fairfield, Rural Delivery No. 2, Montoursville, Pa. 17754. | Do. Do. |
| Do | do | Hughesville, Borough of. | H 42 081 3790 01 | do | Borough President, 158 N. 4th St., Hughesville, Pa. 17737. | Do. |
| Do | Northcumberland | Herndon, Borough of. | H 42 097 3610 01 | do | Herndon Borough, Herndon, Pa. 17830. | Do. |
| Do | Schuylkill | Ashland, Borough of. | H 42 107 0240 01 through H 42 107 0240 04 | do | Borough Manager, Borough Office, Ashland, Pa. 17921. | Do. |
| Do | do | Auburn, Borough of. | H 42 107 0310 01 through H 42 107 0310 03 | do | Mayor, Auburn, Pa. 17922 | Do. |
| Do | Union | Mifflinburg, Borough of. | H 42 119 5180 01 | do | President, Mifflinburg Borough Council, 333 Chestnut St., Mifflinburg, Pa. 17844. | Do. |
| Do | Venango | Rouseville, Borough of. | H 42 121 7190 01 through H 42 121 7190 02 | do | Borough Council, Secretary, Borough Bldg., 8 Main St., Franklin, Pa. 16323. | Do. |
| Do | Washington | Burgettstown, Borough of. | H 42 125 1000 01 through H 42 125 1000 04 | do | Mayor, Bentleyville, Pa. 15314 | Do. |
| Do | do | Charleroi, Borough of. | H 42 125 1240 01 through H 42 125 1240 02 | do | Mayor, Charleroi, Pa. 15022 | Do. |
| Do | do | Donora, Borough of. | H 42 125 2010 01 through H 42 125 2010 04 | do | Mayor, Donora, Pa. 15033 | Do. |
| Do | do | New Eagle, Borough of. | H 42 125 5820 01 through H 42 125 5820 02 | do | Mayor, New Eagle, Pa. 15067 | Do. |
| Do | York | Sutersville, Borough of. | H 42 129 8290 01 | do | Mayor, Sutersville, Pa. 15083 | Do. |
| Do | do | York Haven, Borough of. | H 42 133 9620 01 | do | Mayor, City Hall, York, Pa. 17401 | Do. |
| Do | do | Windsor, Borough of. | H 42 133 9440 01 | do | President, Borough Office, 2 W. Main St., Windsor, Pa. 17366. | Do. |
| Tennessee | Tipton | Covington, City of. | H 47 167 0520 01 through H 47 167 0520 02 | Tennessee State Planning Office, 660 Capitol Hill Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219. | Mayor, City Hall, Covington, Tenn. 38019. | Do. |
| Texas | Atascosa | Poteet, City of | H 48 013 5490 01 | Texas Water Development Board, P.O. Box 13087, Capitol Station, Austin, Tex. 78711. Texas Insurance Department, 1110 San Jacinto St., Austin, Tex. 78701. | Mayor, City of Poteet, Poteet, Tex. 78065. | Do. |
| Do | Bexar | Kirby, City of | H 48 209 3705 01 | do | Mayor, City Hall, 112 Baumann, San Antonio, Tex. 78219. | Do. |
| Do | Bowie | Nash, City of | H 48 037 4831 01 | do | Mayor, City Hall, Nash, Tex. 75569 | Do. |
| Do | Brooks | Falfurrias, City of | H 48 047 2290 01 through H 48 047 2290 02 | do | Mayor, Drawer E, Falfurrias, Tex. 78355. | Do. |
| Do | Camp | Pittsburg, City of | H 48 063 5370 01 through H 48 063 5370 02 | do | Mayor, City Hall, Pittsburg, Tex. 75572. | Do. |
| Do | Hildalgo | Alamo, City of | H 48 215 0050 01 | do | Mayor, 840 W. Austin, Alamo, Tex. 78516. | Do. |
| Do | do | La Joya, City of | H 48 215 3795 01 | do | Mayor, City Bldg., La Joya, Tex. 78560. | Do. |
| Do | do | LaVilla, City of | H 48 215 3908 01 | do | Mayor, City Hall, LaVilla Tex. 78562 | Do. |
| Do | McLennan | Hewitt, City of | H 48 309 3153 01 through H 48 309 3153 04 | do | Mayor, P.O. Box 383, Hewitt, Tex. 76643. | Do. |
| Do | do | Woodway, City of | H 48 309 7605 01 through H 48 309 7605 02 | do | Mayor, P.O. Box 7485, City of Woodway, Waco, Tex. 76710. | Do. |
| Do | Tarrant | Forest Hill, City of. | H 48 439 2420 01 through H 48 439 2420 03 | do | Mayor, P.O. Box 15305, Forest Hill, Tex. | Do. |

| State | County | Location | Map No. | State map repository | Local map repository | Effective date of identification of areas which have special flood hazards |
|---|---|---|---|---|---|---|
| Utah | Sevier | Salina, City of | H 49 041 1690 01 through H 49 041 1690 02 | Department of Natural Resources, Division of Water Resources, State Capitol Bldg., Room 435, Salt Lake City, Utah 84114. Utah Insurance Department, 115 State Capitol, Salt Lake City, Utah 84114. | Mayor, City Hall, Salina, Utah 84654. | Do. |
| Do | Iron | Cedar City, City of. | H 49 021 0190 01 through H 49 021 0190 03 | do | Mayor, Loren Whetton, Cedar City, Utah 84720. | Do. |
| Washington | Benton | Prosser, Town of | H 53 005 1750 01 through H 53 005 1750 03 | Department of Ecology, Olympia, Wash. 98501. Washington Insurance Department, Insurance Bldg., Olympia, Wash. 98501. | City Council, City Hall, 601 7th, Prosser, Wash. 99350. | |
| Do | Thurston | Tumwater, City of. | H 53 067 2320 01 through H 53 067 2320 04 | do | Mayor, City Hall 2d and Bates, Tumwater, Wash. 98501. | Do. |
| Do | Yakima | Naches, Town of | H 53 077 1440 01 | do | Mayor, Town of Naches, Naches, Wash 98937. | Do. |
| Wisconsin | Dane and Green | Belleville, Village of | H 55 025 0410 01 | Department of Natural Resources, P.O. Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 N. Bassett St., Madison, Wis. 53703. | Village President, Belleville, Wis. 53508. | Do. |
| Do | Dodge | Kekoskee, Village of. | H 55 027 2374 01 | do | Village President of Kekoskee, Mayville, Wis. 53050. | Do. |
| Do | Portage | Nelsonville, Village of. | H 55 097 3310 01 | do | Village President, Nelsonville, Wis. 54458. | Do. |
| Wyoming | Fremont | Dubois, Town of | H 56 013 0210 01 | Wyoming Disaster and Civil Defense Agency, P.O. Box 1709, Cheyenne, Wyo. 82001. Department of Insurance, State of Wyoming, State Office Bldg., Cheyenne, Wyo. 82001. | Mayor, Dubois, Wyo. 82513. | Do. |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Pub. L. 91–152, Dec. 24, 1969) (42 U.S.C. 4001–4127); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: January 14, 1974.

GEORGE K. BERNSTEIN,
*Federal Insurance Administrator.*

[FR Doc.74–1764 Filed 1–22–74;8:45 am]

## Title 32A—National Defense, Appendix

## CHAPTER XIII—ENERGY POLICY OFFICE

[E.P.O. Regs. 1, 3, 7]

## ENERGY POLICY OFFICE REGULATIONS

### Revocation

These amendments are published to revoke certain prior regulations of the Energy Policy Office which have been superseded by the provisions of 10 CFR establishing mandatory allocation rules for crude petroleum and petroleum products. Certain provisions of Energy Policy Office Regulation No. 1, dealing with a state reserve for middle distillate fuels, have been preserved by amendment to 10 CFR Part 211, issued today.

Because the purpose of these amendments is to provide immediate guidance and information with respect to the mandatory petroleum allocation rules and regulations, the Federal Energy Office finds that normal rulemaking procedure is impracticable and that good cause exists for making these amendments effective in less than 30 days.

(Economic Stabilization Act of 1970, as amended, Pub. L. 93–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11730, 38 FR 19345; Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, E.O. 11748, 38 FR 33575; Cost of Living Council Order 47, 39 FR 24)

In consideration of the foregoing, 32A CFR Ch. XIII is amended as set forth below, effective immediately.

Issued in Washington, D.C., January 18, 1974.

JOHN C. SAWHILL,
*Deputy Administrator,*
*Federal Energy Office.*

1. Chapter XIII is amended by revoking all of Energy Policy Office Regulation No. 1, other than Sections 2 and 5.

2. Chapter XIII is amended by revoking Energy Policy Office Regulation No. 3.

3. Chapter XIII is amended by revoking Energy Policy Office Regulation No. 7.

[FR Doc.74–1946 Filed 1–21–74;8:45 am]

## Title 34—Government Management

## CHAPTER II—OFFICE OF FEDERAL MANAGEMENT POLICY, GENERAL SERVICES ADMINISTRATION

### SUBCHAPTER C—PROPERTY MANAGEMENT

[FMC 74–1]

## PART 232—FEDERAL ENERGY CONSERVATION

### Establishment of Policies and Procedures

This document establishes Federal energy conservation policies and procedures pursuant to a Federal Energy Office memorandum dated January 17, 1974, and converts Office of Management and Budget Circular A–22 into a General Services Administration Federal Management Circular (FMC 74–1, Attachment A) pursuant to Executive Order 11717 and Office of Management and Budget Bulletin 74–4, which transferred certain Office of Management and Budget responsibilities and circulars to the General Services Administration.

FMC 74–1, dated January 21, 1974, prescribes the policy and criteria for Federal motor vehicle management; Federal employee parking; heating, cooling, and lighting of buildings; and procurement of air-conditioners.

Part 232, Federal energy conservation, is added to 34 CFR Chapter II to read as set forth below.

*Effective date.* This regulation is effective January 21, 1974.

Dated: January 21, 1974.

ARTHUR F. SAMPSON,
*Administrator of General Services.*

Sec.
232.1 Purpose.
232.2 Effective date.
232.3 Supersession.
232.4 Background.
232.5 Policy intent.
232.6 Applicability and scope.
232.7 Responsibilities.
232.8 Appendices.
232.9 Inquiries.

AUTHORITY: Federal Energy Office memorandum dated January 17, 1974, and Executive Order 11717 (38 F.R. 12315, May 11, 1973)

**§ 232.1 Purpose.**

This part establishes energy conservation policies and procedures for the executive branch.

**§ 232.2 Effective date.**

This part will be effective when issued, except as otherwise directed in the appendices, and will remain in effect until canceled.

**§ 232.3 Supersession.**

Appendix A supersedes OMB Circular No. A-22, dated October 17, 1967.

**§ 232.4 Background.**

This part is issued in recognition of the need to bring about immediate and long-term savings in Federal energy consumption through formal conservation programs. It is prepared pursuant to a Federal Energy Office memorandum dated January 17, 1974; and pursuant to Executive Order 11717 of May 9, 1973, subject: Transferring Certain Functions from the Office of Management and Budget to the General Services Administration and the Department of Commerce; under authority vested in the Administrator of General Services by the Federal Property and Administrative Services Act of 1949, as amended; and OMB letter of August 24, 1973, which assigned to the General Services Administration the management responsibility for the development, coordination, and implementation of policy concerning the provision of parking facilities by executive agencies for their employees.

**§ 232.5 Policy intent.**

The intent of this part is to bring about more efficient use of energy resources through revised Federal motor vehicle management policies; Federal employee carpooling; more judicious lighting, heating, and cooling of Federal buildings; and procurement policies governing acquisition of air-conditioners.

**§ 232.6 Applicability and scope.**

The provisions of this part apply to all executive departments and establishments. The term "agency" throughout this part is synonymous with the term "departments and establishments," as defined in FMC 73-1.

**§ 232.7 Responsibilities.**

Heads of executive departments and establishments shall be responsible for promulgating such agency regulations, controls, and review actions as are necessary to comply fully with the provisions of this part and attachments thereto within 30 calendar days, or as otherwise stated herein, from the effective date of this part. Copies of all implementing documents, upon issuance, will be provided to the Administrator of General Services (A), attention: Office of Federal Management Policy (AM), and to Director, Office of Energy Conservation, Federal Energy Office.

**§ 232.8 Appendices.**

Specific energy conservation policies and procedures are set forth in the appendices, which are:

Appendix A—Federal Motor Vehicle Management
Appendix B—Federal Employee Parking
Appendix C—Heating, Cooling, and Lighting of Buildings
Appendix D—Federal Procurement of Air-conditioners

**§ 232.9 Inquiries.**

Further information concerning this part may be obtained by contacting:

General Services Administration (AMF) Washington, D.C. 20405, Telephone: IDS 183-38821, FTS 202-343-8821.

[Federal Management Circular 74-1]

APPENDIX A—FEDERAL MOTOR VEHICLE MANAGEMENT

1. *Policy intent.* The intent of this appendix is to improve Federal motor vehicle management and fuel conservation by vehicle assignment controls, reduction of vehicle size, promotion of Government vehicle pooling, and other actions to foster economical Government vehicle utilization.

2. *Definitions.* a. The terms "motor vehicle" and "vehicle" as used in this attachment mean any sedan, station wagon, truck, bus, and ambulance operated by executive departments and establishments. Vehicles of these types operated by executive departments and establishments are considered a part of the Federal fleet and are subject to the provisions of this attachment. Tactical and combat vehicles used for military purposes are excluded from this definition.

b. The term "operated" includes all vehicles available for the conduct of agency business.

c. Reference to specific types of vehicles shall correspond to descriptions and designations contained in Federal specifications issued by the General Services Administration.

(1) For purposes of this attachment, automobile sedans shall be identified according to Interim Federal Specification KKK-A-00811L (GSA-FSS), as follows:

Type IA —Subcompact
Type IB—Compact
Type II —Intermediate
Type III—Regular (standard)
Type IV—Medium
Type V —Heavy
Type VI—Limousine

(2) The terms "economy," "economy sedans," and "economy vehicles" as used in this attachment mean Types IA and IB sedans, as described in subparagraph 2c(1), above.

d. The term "leased" as used in this attachment means any vehicle leased for use by an agency in excess of 30 calendar days.

3. *Policies and procedures*—a. *General provisions.* (1) All vehicles acquired for use by executive departments and establishments shall be limited to the minimum body size, engine size, maximum fuel efficiency, and operational equipment (if any) necessary to fulfill the operational need for which that vehicle was acquired, subject to exceptions in subparagraphs 3b (1), (2), and (3).

(2) All vehicles operated by executive departments and establishments shall be used on a pooled basis to encourage the highest level of utilization, subject to exceptions in subparagraphs 3b (1), (2), and (3).

(3) Official purposes for the use of vehicles operated by executive departments and establishments are governed by Title 31, U.S.C. 638a(c)(2).

(4) The provisions of this appendix shall apply to all vehicles acquired for use by executive departments or establishments, no matter how acquired (whether by purchase, hire, lease, forfeiture, or transfer from another agency), and no matter how financed (whether through appropriations, revolving funds, trust funds, or other funds).

(5) All requirements for leased vehicles exceeding $500 shall be submitted to the appropriate regional Director, Procurement Division (FP), Federal Supply Service, General Services Administration, for approval. Such requests shall include full justification of the need for such leased vehicles and certification that other means of transportation are not available or suitable. Further, the type of vehicle requested shall be in accord with provisions of this attachment. Medium and heavy trucks leased for 90 days or less and all charter services are exempt from this provision.

(6) Beginning with the first calendar quarter of 1974, agencies shall reduce all motor vehicle mileage by 20 percent from the comparable quarter of the previous year, adjusted for changes in number of vehicles. This reduction shall be achieved for all sedans, station wagons, and trucks used by executive agencies, including owned vehicles, GSA Interagency Motor Pool vehicles, leased vehicles, and privately owned vehicles authorized for use for official travel. Federal Property Management Regulations shall be promulgated accordingly. Appeals for exceptions for vehicles used in emergencies or essential health services will be considered by the Federal Energy Office. Each appeal shall be sent to the Administrator of General Services. The appeal shall be reviewed and submitted with recommendations by the Administrator to the Federal Energy Office for final decision.

(7) All Government-owned vehicles operated by executive agencies shall display on the interior and exterior of such vehicles stickers encouraging the conservation of fuel and reminding drivers of the 50-mile-per-hour speed limit in effect for Federal vehicles. On or before February 20, 1974, agencies shall forward quantity and distribution requirements for the vehicle stickers and appropriation account numbers for use in a consolidated printing requisition to the Motor Equipment Services Division, Office of Transportation and Public Utilities, Federal Supply Service (FZO), General Services Administration.

(8) All executive agencies shall perform tuneups of agency-owned vehicles not less than once every 12,000 miles or 12 months, whichever occurs first. Federal Property Management Regulations shall be amended accordingly.

b. *Sedans.* Effective immediately, the acquisition of sedans by executive departments and establishments shall be limited to Type IA or IB economy vehicles (compacts or subcompacts) unless a larger sedan is certified to the Administrator of General Services to be absolutely essential to the agency's mission.

(1) *Large sedans and limousines.* (a) Use of Federal limousines (Type VI), and heavy (Type V) and medium (Type IV) sedans shall be eliminated within 45 days of the date of this circular. Exceptions shall be made only for the President, Vice President, and security and highly essential needs. Executive departments and agencies shall certify all exceptions to the Administrator of General Services.

(b) All Types IV, V, and VI Federal sedans shall be replaced by Type I unless Types II or III are absolutely essential to the agency's mission and certified, accordingly, to the Administrator of General Services.

(2) *Law enforcement vehicles.* Sedans exceeding Types IA and IB in size shall be certified by the head of the law enforcement agency to the Administrator of General Services as necessary for the security of law enforcement missions.

(3) *Diplomatic vehicles.* Sedans exceeding Types IA and IB in size shall be certified by the appropriate official in the Department of State to the Administrator of General Services as being necessary for the security of diplomatic officials.

c. The acquisition, assignment, and use of station wagons and trucks shall be governed by paragraph 3a and by any additional requirements issued pursuant to this appendix by the General Services Administration.

4. *Reports*—a. Agencies shall, in their January-March energy conservation performance report to the Office of Energy Conservation (FEO), describe actions taken to replace large sedans and limousines removed from service, including type of vehicle used as replacement.

b. Each agency shall report to GSA its monthly mileage on its owned, leased, and rented vehicles within 10 days from the end of the reporting period and shall furnish GSA other information as required to compute fuel savings. GSA shall forward to FEO a consolidated report of mileage and estimated savings by agencies. Fuel use and fuel savings attributable to vehicle operations being reported to GSA under this provision shall be omitted from agency quarterly performance reports to FEO.

c. Progress in the implementation of 50-mile-per-hour speed limit notices shall be reported by agencies in their quarterly performance reports to FEO.

5. Exceptions to these regulations must be approved by the Administrator of GSA with the concurrence of the Administrator, Federal Energy Office.

6. *Inquires.* Further information concerning this appendix may be obtained by contacting:

General Services Administration (AMM), Washington, D.C. 20405. Telephone: IDS 183–7461, FTS 202–343–7461.

APPENDIX B—FEDERAL EMPLOYEE PARKING

1. *Policy intent.* This appendix is intended to establish uniform policy for the assignment of parking spaces to Federal employees in such a manner as to encourage carpooling and in accordance with criteria designed to conserve energy and to improve and enhance environmental quality through a reduction of vehicle miles traveled by employees.

2. *Applicability and scope.* The provisions of this appendix apply to parking facilities in the United States, its territories, and possessions, the Commonwealth of Puerto Rico and the Canal Zone under the jurisdiction of the executive branch, excluding garages, driveways and parking spaces related to occupancy of Government-furnished quarters, and parking spaces provided for momentary use in connection with customer-type services furnished for military and civilian employees.

3. *Definitions*—a. Parking facility—any lot, garage, building, or structure, or any combination or portion thereof, in or on which motor vehicles are temporarily parked.

b. Parking space—the area allocated in a parking facility for the temporary storage of one motor vehicle.

c. Carpool—a vehicle containing two or more persons.

d. Government-owned facility—land and/or improvements, the title to which is vested in the United States Government.

e. Federal facility—land and/or improvements leased to or owned by the Federal Government and under the control of an agency of the executive branch.

4. *Agency plans and procedures*—a. On or before March 7, 1974, each agency will submit a report to the Administrator of General Services detailing its current arrangements for employee parking and its plans for meeting the policy of energy reduction through carpooling. The Administrator of General Services will review the plans and recommend their approval or disapproval to the Administrator, Federal Energy Office. Report requirements will be set forth in a Federal Property Management Regulation to be promulgated by the Administrator of General Services.

b. The agency parking arrangements will provide that, on or before March 9, 1974, not more than 10 percent of the parking spaces available for employee parking at Federal agencies may be assigned to executive personnel, severely handicapped employees, and persons who are assigned unusual hours. Where practical, the 90/10 ratio will be accomplished at each Federal facility. Assignment of the remaining parking spaces for employee parking will be based solely on the number of persons in a carpool. Each agency will give full credit, for the purpose of allocation of parking spaces for carpools, to any full time carpool member regardless of the employer, except that at least one member must be a full time employee of the agency. In those instances where there are insufficient parking facilities to meet the needs of all carpools, ties will be resolved in accordance with criteria to be published by the Administrator of General Services. Areas within parking facilities will be reserved for the use of two-wheeled vehicles with special consideration being given to bicycles. The amount of space allocated for this purpose will be reevaluated every 6 months.

c. To facilitate the formation of carpools, the Administrator of General Services, with the cooperation of the agencies involved, will provide assistance through the use of such aids as computerized carpool matching, carpool boards, etc. He will also develop reciprocal agreements with private sector employers through State or local government agencies or other organizations operating computer-aided carpool matching programs for the public and/or private sectors.

5. *Responsibilities.* All agencies will reassign parking spaces to Federal employees in accordance with the policies contained in this circular on or before March 7, 1974.

6. *Exceptions.* Exceptions to the policies set forth in this appendix must be submitted to the Administrator of GSA who will recommend approval or disapproval to the Administrator, Federal Energy Office.

7. *Inquiries.* Further information concerning this section of the circular may be obtained by contacting:

General Services Administration (AMP), Washington, DC 20405. Telephone: IDS 183–7528, FTS 202–343–7528.

APPENDIX C—HEATING, COOLING, AND LIGHTING OF BUILDINGS

1. *Policy intent.* Executive departments and agencies occupy and control approximately 2.5 billion square feet of building space. Eight percent of this space or about 200 million square feet is controlled by the Public Buildings Service, General Services Administration. The Public Buildings Service has published energy conservation measures relative to the management of the space it controls (Federal Property Management Bulletin D–101). In addition, other departments and agencies have initiated energy conservation practices covering the management of their space. The intent of this appendix is to achieve uniformity among the energy conservation practices developed by the respective departments and agencies and thereby maximize the conservation of energy in the management of all Government-owned and leased space.

2. *Applicability and scope.* The provisions of this appendix apply to the management of space in all buildings owned or leased by executive departments and agencies.

3. *Definition.* Building space means space in any building or structure that is lighted, heated, or cooled.

4. *Policies and procedures*—a. *Lighting.* Energy consumed for lighting shall be reduced by removing nonessential lamps and fixtures and by applying nonuniform lighting standards to existing lighting systems.

(1) *Working hours.* During working hours, overhead lighting will be reduced to no more than 50 foot candles at work stations, 30 foot candles in work areas and 10 foot candles in nonworking areas. These standards will be maintained in all space except where "heat of light" technology is utilized. Where the "heat of light" technology is used, the savings to be achieved by decreasing the lighting shall be compared to the costs to be incurred for increased use of heating energy before a determination regarding delamping is made.

(2) *Nonworking hours.* Off-hour and exterior lighting except that essential for safety and security purposes (e.g., exit signs) shall be eliminated.

(3) *Construction and remodeling.* To the extent that projected energy savings will offset higher acquisition and maintenance costs, preference shall be given to the installation of more efficient lighting systems when constructing or remodeling space.

b. *Cooling.* Energy consumed for cooling Government-owned and leased space shall be reduced. During the seasonably hot months, air cooling systems shall be held at not lower than 80–82°F during working hours. Necessary adjustments shall be made to cooling system controls so that the temperature in the space shall be maintained at 80–82°F with no reheat.

(1) *Humidity controls.* Humidity control on cooling systems shall be eliminated for general office space. Requirements for humidity control in special types of space or locations will be handled on a case-by-case basis by the official responsible for the operation and maintenance of the facility with the concurrence of the agency's Energy Conservation Coordinator.

(2) *Prohibition.* The use of heating energy to achieve the temperatures specified for cooling is prohibited.

c. *Heating.* During the seasonably cold months, heating temperature control devices shall be set to maintain temperatures of 65–68°F during working hours and shall be set to maintain temperatures of not more than 55°F during nonworking hours. Temperatures in warehouses and similar space during working hours shall be adjusted lower than the 65–68°F range depending on the type of occupancy and the activity in the space.

(1) *Humidity control.* Humidity control shall be eliminated for general office space. Requirements for humidity control in special type space will be handled on a case-by-case basis by the official responsible for operation and maintenance of the facility, with concurrence of the agency's Energy Conservation Coordinator.

(2) *Windows.* Window draperies, blinds, etc., shall be used to cut down heat losses by setting them to the closed position during nighttime and on cold, cloudy days, and setting them to the open position during periods of sunshine.

(3) *Prohibition.* Cooling energy shall not be used to achieve the temperatures specified for heating.

d. *Heater blowers, threshold heaters, and portable space heaters.* The operation of heater blowers, threshold heaters and portable space heaters in Government-owned or leased space is prohibited.

e. *Outside air intake.* Outside air intake during heating and cooling seasons should be reduced to the greatest extent feasible. Under most conditions a 10 percent outside air intake will be adequate for general office space. Under certain outside air temperature and humidity conditions the use of up to 100 percent outside air will be the most energy economical method of operation. Special purpose space such as laboratories or the like shall have the outside air intake reduced to the maximum extent possible consistent with the requirement of the mission.

f. *Interior or core systems.* Interior space in office buildings tend to have a heat build-up generated by lights, people, equipment, etc., and this does not usually require an added heat source during the heating season. Systems serving this type space usually utilize recirculated air mixed with some outside air for ventilation purposes. The amount of outside air should not be increased or refrigeration introduced for the sole purpose of lowering the temperature which might otherwise exceed 68° F.

g. *Perimeter zone systems.* The function of perimeter zone heating is to offset the cold inside surfaces of exterior walls and windows and usually operates independently from the interior system. The thermostats controlling heat from this system shall be set within a range of 65 to 68° F.

h. *Exceptions.* Exceptions to the policies prescribed in the foregoing subparagraphs 4a., 4b. and 4c may be necessary for the protection and operation of certain specialized equipment (e.g., computers) and for certain installations of high specialization (e.g., greenhouses, hospitals, and laboratories). Such exceptions may be granted only after consultation with appropriate technical personnel of the unit requiring the exception, and upon presentation by the unit of necessary supporting evidence. Exceptions will be granted by the official responsible for operation and maintenance of the facility, and must be concurred in by the agency's Energy Conservation Coordinator. Exceptions to the policy prescribed in subparagraph 4d may be granted for space at Canadian border stations or other special locations such as guard stations. All exceptions to subparagraph 4d must be approved on a case-by-case basis by the person responsible for operation and maintenance of the facility and must be concurred in by the agency's Energy Conservation Coordinator.

i. *Lessors.* Appropriate department and agency contracting officers shall ensure that lessors who provide building services and utilities to Government-leased space are advised that action to meet the energy conservation policies prescribed in subparagraphs 4a., 4b., 4c., and 4d. is required. Rental deductions should be negotiated to the extent that the energy conservation policies prescribed herein result in decreased lessor costs.

5. *Inquiries.* Further information concerning this circular may be obtained by contacting:

General Services Administration (AMP), Washington, DC 20405. Telephone: IDS 183-7528, FTS 202-343-7528.

APPENDIX D—FEDERAL PROCUREMENT OF AIR-CONDITIONERS

1. *Basis for procurement.* Upon promulgation of forthcoming specifications by the General Services Administration, the procurement of air-conditioners shall be upon a basis which gives maximum consideration to the energy efficiency of such air-conditioning units and which also utilizes minimum life cycle costing.

2. *Additional information.* Further information concerning these provisions may be obtained by contacting:

General Services Administration (AMC), Washington, D.C. 20405. Telephone: IDS 183-6201, FTS 202-343-6201.

[FR Doc.74-2061 Filed 1-22-74;10:19 am]

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### [ 9 CFR Parts 317 and 381 ]

### MEAT AND POULTRY PRODUCTS

### Proposed Use of Terms "All" and "Pure" on Labels

Pursuant to the authority in the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), and in the Poultry Products Inspection Act, as amended (21 U.S.C. 451 et seq.), notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553 that the Animal and Plant Health Inspection Service proposes to amend Part 317 of the meat inspection regulations (9 CFR Part 317) and Part 381 of the poultry products inspection regulations (9 CFR Part 381) to prohibit the use of terms such as "All" and "Pure" on labels in a manner that might be misleading.

*Statement of Considerations.* In view of the recent court order on the use of term "All" on frankfurter labels by the U.S. District Court for the District of Columbia, as modified by the Court of Appeals for the District of Columbia, in the case of the "Federation of Homemakers v. Earl L. Butz, et al.", the Department is proposing to apply the same policy for use of such terms as "All", "Pure", and "100%" to all meat and poultry product labels. In that case, the court held that the "All meat" and "All (species, e.g. beef)" labels in question were misleading within the meaning of section 7(d) of the Federal Meat Inspection Act (21 U.S.C. 607(d)) and therefore invalid, since, under the "ordinary meaning" of the word "all", the common understanding is that it described a substance that is "totally and entirely" meat, whereas the products in question actually contained up to 15 percent of nonmeat ingredients. As the result of the opinion in that case, the Department has revised its standards for cooked sausages pursuant to the court's order. (See 38 FR 14741).

In the past the Department has approved labels for products such as "Pure Pork Sausage," "Pure Pork Luncheon Meat," "All Beef Salami," "All White Meat Turkey Roll," and others, in which small quantities of seasoning or curing ingredients, or both, are included in the formula. This proposal would prohibit the use of the terms such as "Pure" or "All" in such product names if they contained two or more ingredients. However, the proposal would not prohibit the term "pure" in the product name "Pure Pork Lard" as this product is produced from only one ingredient—pork fat. If a chemical preservative is added to lard, the name "pure pork lard" would not be permitted by this proposed amendment.

Aware of the extensive labeling changes that would be required as a result of this rule, the Department would permit approved labels existing on the date of publication of the final notice to be used until exhausted. New stocks of the old labels could be ordered provided they will be exhausted within one year of the date of the final notice.

Therefore, it is proposed to amend § 317.8(b) of the meat inspection regulations and § 381.129(b) of the poultry products inspection regulations as set forth below:

1. Section 317.8(b) of the meat inspection regulations would be amended by adding a new subparagraph (34) to read as follows:

**§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.**

* * * * *

(b) * * *

(34) The terms "All," "Pure," "100%," and terms of similar connotation shall not be used on labels for products to identify ingredient content, unless the product is prepared solely from a single ingredient.

2. Section 381.129(b) of the poultry products inspection regulations would be amended by adding a new subparagraph (5) to read as follows:

**§ 381.129 False or misleading labeling or containers.**

* * * * *

(b) * * *

(5) The terms "All," "Pure," "100%," and terms of similar connotation shall not be used on labels for products to identify ingredient content, unless the product is prepared solely from a single ingredient.

* * * * *

Any person wishing to submit written data, views, or arguments concerning the proposed amendments may do so by filing them, in duplicate, with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, or if the material is deemed to be confidential, with the Labels and Packaging Staff, Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, by May 31, 1974.

Any person desiring opportunity for oral presentation of views should address such requests to the Staff identified in the preceding paragraph, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

All written submissions and records of oral views made pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business, unless the person makes the submission to the Staff identified in the preceding paragraph and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect such person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C., on January 17, 1974.

F. J. MULHERN,
*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc.74-1922 Filed 1-22-74;8:45 am]

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### [ 33 CFR Part 117 ]

[CGD 74-17P]

### COOPER RIVER, N.J.

### Proposed Drawbridge Operation Regulations

The Coast Guard is considering amending the regulations for the State Street bridge across the Cooper River at Camden, New Jersey, to require that the draw open on signal if at least 4 hours notice is given. The draw is presently required to open on signal. This proposal is being considered because of reduced river traffic and to have this bridge operate under the same regulations as two other nearby bridges (Penn Central railroad bridge at North River Avenue and Camden County highway bridge at Federal Street which require at least 4 hours notice).

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

The Commander, Third Coast Guard District, will forward any comments received before February 19, 1974, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding the State Street bridge in Camden, New Jersey to § 117.225(f)(17-a)(i) to read as follows:

§ 117.225 [Amended]

* * * * *

(f) * * *

(17-a) Cooper River:

(i) State Street bridge, Penn Central railroad bridge at North River Avenue and Camden County Highway bridge at Federal Street in Camden. The draws of these bridges shall open on signal if at least 4 hours notice is given.

* * * * *

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

Dated: January 14, 1974.

R. I. PRICE,
*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.*

[FR Doc.74-1657 Filed 1-22-74;8:45 am]

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## National Highway Traffic Safety Administration

## [ 49 CFR Part 571 ]

[Docket No. 69-7; Notice 31]

## OCCUPANT CRASH PROTECTION

### Proposed Alternative Interlock System

This notice proposes alternative requirements for a belt interlock system in Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*. Under the proposed alternative system, the engine could be started, but the vehicle would be prevented from moving forward under its own power if the belts were not operated.

The basic system proposed by this notice, to allow a drive train interlock instead of a starter interlock, was initially proposed in a notice published April 20, 1973 (38 FR 9830). Although the reaction of persons commenting on the proposal was generally neutral or favorable, several comments suggested the need to incorporate convenience features of the type permitted under the starter interlock system of S7.4. These features include a variety of time delays (S7.4.3), an engine compartment override (S7.4.4) and an "antibounce" delay (S7.4.5). The agency permitted these features on the starter interlock at the request of the manufacturers, who pointed out, for example, that a driver who has unbuckled his belt while driving might be placed in a hazardous situation if his car stalls in traffic and he is unable to start the engine without rebuckling. According, S7.4.3 was established to permit systems that would allow starting without buckling in such a situation. Similar considerations led to the adoption of S7.4.4 and S7.4.5. On consideration of the comments to the initial proposal, it is propoesd that the interlock requirements be revised and broadened so that the convenience features would apply to both types of interlock systems.

The agency also proposes to amend the warning system requirements of S7.3.5.4 in accordance with a suggestion of General Motors. Under the current requirement of S7.3.5.4, operation of the warning buzzer as well as the light is mandatory when the ignition is turned to the "start" position if the belts have not been operated. Under the proposed amendment, the manufacturer of a vehicle with a drive train interlock would have the option instead of a "start" position buzzer, of having the warning system operate whenever an attempt is made to engage the vehicle drive train in a forward gear before the belts are fastened.

In consideration of the foregoing, it is proposed that Motor Vehicle Safety Standard No. 208 (49 CFR 571.208) be amended as follows:

§ 571.208 [Amended]

1. In the heading of S4.1.2.3 the word "ignition" would be replaced by the word "belt".

2. S7.3.5.4 would be revised to read as follows:

S7.3.5.4 Notwithstanding the other provisions of S7.3, the warning system shall activate whenever the ignition switch is in the "start" position and the operation of the seatbelt system required by S7.4 to operate the vehicle has not been performed. However, in the case of a vehicle whose interlock mode, in accordance with S7.4.1(b), is to allow engine starting but prevent engagement of the vehicle drive train in a forward gear, this requirement shall not apply if the warning system is activated whenever an attempt is made to engage the vehicle drive train in a forward gear and the operation of the seatbelt systems required by S7.4 to operate the vehicle has not been performed.

3. S7.4, Belt interlock system, would be revised to read as follows:

S7.4 *Belt interlock system.* A passenger car manufactured in accordance with S4.1.2.3 shall be inoperable, within the meaning of S7.4.1, when either condition specified in S7.4.2 exists, unless the belt system at each occupied front outboard seating position is operated, as specified in S7.4.3 after the occupant is seated.

S7.4.1 Inoperability of a vehicle shall, at the option of the manufacturer, mean either—

(a) The vehicle's engine can not be started; or

(b) The vehicle drive train can not be engaged in a forward gear.

S.7.4.2 The conditions under which the operation of a belt system shall be a prerequisite to operation of the vehicle are—

(a) A person of at least the weight of a 5th-percentile adult female is seated at the driver's seating position, or

(b) A person of at least the weight of a 50th-percentile adult male is seated at the driver's seating position and a person of at least the weigth of a 50th-percentile 6-year-old child is seated at the right front seating position.

S7.4.3 The belt system operation that allows the vehicle to be operated shall be, at the manufacturer's option, either—

(a) The extension of the belt assembly at least 4 inches from its stowed position; or

(b) The fastening of the belt latch mechanism.

S7.4.4 The belt interlock system shall not affect the operation of the vehicle when—

(a) In the case of a system operating under S7.4.1(a), the engine is running, and;

(b) In the case of a system operating under S7.4.1(b), the vehicle drive train is engaged in a forward gear, or when the vehicle drive train is disengaged but a time interval, which may at the manufacturer's option be up to 3 minutes, has not elapsed since the drive train has been engaged in a forward gear.

S7.4.5 Notwithstanding the other provisions of S7.4, a manufacturer may at his option design his vehicle so that the belt interlock system does not interfere with the operability of the vehicle under one or more of the following conditions.

(a) The engine has stopped but the ignition has not been turned off.

(b) The engine has stopped, but a time interval, which may at the manufactuer's option be up to 3 minutes, has not elapsed since the ignition has been turned off.

(c) The engine has stopped, but the driver has not left his seated position.

(d) The engine has stopped, but a time interval, which may at the manufacturer's option be up to 3 minutes, has not elapsed since the driver has left his seated position.

(e) After each cycle of the ignition switch from "off" to "on" or "start" and back to "off," a manual switch has been operated within the engine compartment.

(f) The belt system has been operated after the occupant is seated, and the occupant has left his seated position for a time interval, which may at the manufacturer's option be up to 3 minutes, without unbuckling or retracting the belt.

(g) The belt system has been operated after the occupant is seated, and the occupant has left his seated position without opening either front door and without unbuckling or retracting the belt.

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA 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.

Comment closing date: March 11, 1974.

Proposed effective date: Date of publication of rule in the FEDERAL REGISTER.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on January 17, 1974.

ROBERT L. CARTER,
*Associate Administrator,*
*Motor Vehicle Programs.*

[FR Doc.74-1903 Filed 1-22-74;8:45 am]

## CONSUMER PRODUCT SAFETY COMMISSION

### [ 16 CFR Part 1505 ]

### ELECTRICALLY OPERATED TOYS OR ARTICLES FOR USE BY CHILDREN

### Instruction Booklets and Power Cords

The purpose of this document is to propose amendments to those portions of 16 CFR Part 1505, Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children, that pertain to labeling of instruction booklets (16 CFR 1505.3 (e)(1)) and to the type of power cord to be used for hand-held educational or hobby-type products (16 CFR 1505.5 (e)(5)).

*Background.* In the FEDERAL REGISTER of March 7, 1973 (38 FR 6138), the Food and Drug Administration issued regulations banning electrically operated toys or other electrically operated articles intended for use by children not meeting certain safety-related requirements (21 CFR 191.9a(b)(1) and 21 CFR Part 191b), effective September 3, 1973. The promulgation was pursuant to provisions of the Federal Hazardous Substances Act and covered electrical, thermal, and certain mechanical hazards.

Effective May 14, 1973, functions under the Federal Hazardous Substances Act were transferred to the Consumer Product Safety Commission by section 30(a) of the Consumer Product Safety Act (Public Law 92-573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)).

Subsequently, on September 27, 1973 (38 FR 27012), the regulations under the Federal Hazardous Substances Act were revised and transferred by the Consumer Product Safety Commission (21 CFR Parts 191 and 191b became 16 CFR Parts 1500 and 1505).

*Petitions.* Prior to the effective date (September 3, 1973) of 21 CFR Part 191b (now 16 CFR Part 1505), the Commission received petitions proposing amendments to certain provisions of these electrical toy regulations from:

1. Aurora Products Corp., 44 Cherry Valley Road, West Hampstead, N.Y. 11552.

2. Toy Manufacturers of America, Inc. (TMA), 540 Madison Avenue, New York, N.Y. 10022.

3. Hobby Industry Association of America, Inc. (HIAA), suite 1101, 200 Fifth Avenue, New York, N.Y. 10010.

The Commission has denied the petitions submitted by Aurora Products Corp. and HIAA and has denied the petition from TMA except to the extent that it pertains to labeling of instruction booklets and to the type of power cord to be used for hand-held educational or hobby-type products.

Each petition and the reasons for its denial may be seen in the Office of the Secretary, Consumer Product Safety Commission, 10th floor, 1750 K Street NW., Washington, D.C., during working hours Monday through Friday.

At present, the relevant portions of the regulations in question on labeling (16 CFR 1505.3(e)(1)) and power cords (16 CFR 1505.5(e)(5)) read as follows:

§ 1505.3 *Labeling.*

* * * * *

(e) *Precautionary statements*—(1) *General.* Electrically operated toys shall bear the statement: "CAUTION—ELECTRIC TOY." The shelf pack or package and the instructions of such toys shall bear the statement in the upper right-hand quarter of the principal display panel: "CAUTION—ELECTRIC TOY: Not recommended for children under ---- years of age. As with all electric products, precautions should be observed during handling and use to prevent electric shock." * * *

* * * * *

§ 1505.5 *Electrical design and construction.*

* * * * *

(e) *Power supply connections (cords and plugs).* * * *

(5) A flexible electrical power cord provided on a toy shall be type SP-2 (as defined in the "National Electrical Code," chapter 4, article 400, pages 184-194 (1971),[2] published by the National Fire Protection Association), or its equivalent, or a heavier general-use type, and shall not be less than 5 feet nor more than 10 feet in length when measured as the overall length of the attached cord outside the enclosure of the toy, including fittings, up to the face of the attachment-plug cap.

* * * * *

Regarding 16 CFR 1505.3(e)(1), TMA's proposed amendment would modify the regulation to require instruction booklets or sheets that accompany electrically operated toys and children's articles to contain the requisite signal words and precautionary statement as a preface to any other written materials rather than on the upper right-hand quarter of the principal display panel. TMA points out that instruction sheets or booklets do not have principal display panels.

TMA's proposed modification of 16 CFR 1505.5(e)(5) would permit hand-held educational or hobby-type products, such as woodburning tools, to utilize flexible electrical power cords of type SPT-1 as opposed to the type SP-2 now specified in the regulation. TMA states that use of the flexible SPT-1 cord would permit a toy or article to be placed on a flat surface more easily without tipping upward which might be the case if the stiffer SP-2 cord were used.

*Conclusion and proposal.* Based on the evidence presented, the Commission agrees with TMA's suggestions on these points and concludes that the regulations should be proposed to be amended as set forth below.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), (r), (s), (t), 3(e)(1) 74 Stat. 372, 374, 375, as amended 83 Stat. 187-89; 15 U.S.C. 1261, 1262) and under authority vested in the Commission by the Consumer Product Safety Act (Public Law 92-573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to amend 16 CFR Part 1505 as follows:

1. Section 1505.3(e)(1) is revised to read as follows:

§ 1505.3 **Labeling.**

* * * * *

(e) *Precautionary statements*—(1) *General.* Electrically operated toys shall bear the statement: "CAUTION—ELECTRIC TOY." The instruction booklet or sheet accompanying such toys shall bear on the front page thereof (in the type size specified in § 1500.121), as a preface to any written matter contained therein, and the shelf pack or package of such toys shall bear in the upper right-hand quarter of the principal display panel, the statement: "CAUTION—ELECTRIC TOY: Not recommended for children under ____ years of age. As with all electric products, precautions should be observed during handling and use to prevent electric shock." The blank in the preceding statement shall be filled in by the manufacturer, but in no instance shall the manufacturer indicate that the article is recommended for children under 8 years of age if it contains a heating element. In the case of other electrically operated products which may not be considered to be "toys" but are intended for use by children the term "ELECTRICALLY OPERATED PRODUCT" may be substituted for the term "ELECTRIC TOY."

* * * * *

2. Section 1505.5(e)(5) is revised to read as follows:

**§ 1505.5 Electrical design and construction.**

* * * * *

(e) *Power supply connection (cords and plugs).* * * *

(5) A flexible electrical power cord provided on a toy shall be type SP–2 (as defined in the "National Electrical Code," chapter 4, article 400, pages 184–194 (1971)[2] published by the National Fire Protection Association), or its equivalent, or a heavier general-use type, except that hand-held educational or hobby-type products, such as woodburning tools, may utilize flexible electrical power cords of type SPT–1 (as defined also in the publication cited above). The cord shall be not less than 5 feet nor more than 10 feet in length when measured as the overall length of the attached cord outside the enclosure of the toy, including fittings, up to the face of the attachment-plug cap.

* * * * *

Publication of this proposal in the FEDERAL REGISTER shall have the effect of suspending application of existing 16 CFR 1505.3(e)(1) and 1505.5(e)(5) regarding the subject labeling instruction booklets and sheets and the SP type of cord to be used with hand-held educational or hobby-type products, pending review of comments and promulgation of an order in this matter. Publication of this proposal will not affect any other portion of 16 CFR Part 1505.

Interested persons are invited to submit, on or before February 22, 1974, written comments regarding this proposal. Comments and any accompanying material should be submitted, preferably in 5 copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the Office of the Secretary, 10th floor, 1750 K Street NW., Washington, D.C., during working hours Monday through Friday.

Dated: January 18, 1974.

SADYE E. DUNN,
*Secretary,*
*Consumer Product Safety Division.*

[FR Doc.74–1863 Filed 1–22–74;8:45 am]

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[2] Copies may be obtained from: National Fire Protection Association, 60 Batterymarch Street, Boston, MA 02110.

# Notices

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

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE

#### Notice of Open Meeting

Pursuant to the provisions of section 10, Public Law 92–463, effective January 5, 1973, notice is hereby given that a regional meeting of the National Committee for Employer Support of the Guard and Reserve Advisory Council will be held on February 5, 1974 at the International Hotel, New Orleans, Louisiana. The purpose of the meeting is to develop greater activity by members of the National Advisory Council in the solicitation of employer support of the Guard and Reserve.

The transcript of the meeting will be available to anyone desiring information about the meeting.

Additional information concerning these meetings may be obtained by contacting the Assistant to the National Chairman, National Committee for Employer Support of the Guard and Reserve, Room 3A29, 400 Army-Navy Drive, Arlington, Virginia 22202.

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

JANUARY 18, 1974.

[FR Doc.74–1871 Filed 1–22–74;8:45 am]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### NEW MEXICO GRAZING DISTRICT ADVISORY BOARD

#### Notice of Meeting

Notice is hereby given that the Socorro Grazing District Advisory Board (NM–2) will meet at the Bureau of Land Management District Office, 200 Neel Avenue, NW, at 9:30 a.m., February 8, 1974, to receive, consider, and act upon protests pursuant to the board's action on grazing applications in regular meeting January 8, 1974. Notice of said meeting was published in the FEDERAL REGISTER, page 34347, December 13, 1973. However, the board announces the addition of the following items to the agenda:

1. Timing, content, and issuance of notices of meetings in the FEDERAL REGISTER as required by the National Advisory Committee Act.
2. Conversion ratio for computing animal unit months and grazing capacity of allotments for yearling cattle.
3. The National Advisory Committee Act as it pertains to the operation of grazing district advisory boards created by section 18 of the Taylor Grazing Act.
4. Discussion of projects proposed for Fiscal Year 1975 by the Bureau of Land Management for range improvement.
5. Bureau of Land Management policy pertaining to the issuance of term grazing permits.
6. Bureau of Land Management policy requiring cooperative agreements rather than section 4 permits under the Taylor Grazing Act for construction of range improvements.

ARTHUR W. ZIMMERMAN,
*State Director.*

JANUARY 16, 1974.

[FR Doc.74–1862 Filed 1–22–74;8:45 am]

### OREGON

#### Closure of Lands Within the Wild River Area of the Rogue River Component

*Correction*

In FR Doc. 73–26879 appearing on page 34901 in the issue of Thursday, December 20, 1973, in the third line from the bottom of paragraph 4., the date "February, 1974" should read "February 1, 1974".

### COLORADO

#### Competitive Lease Offer of Oil Shale Lands; Correction

In FR Doc. 74–996 appearing at page 1645 in the issue of Friday, January 11, 1974, in column 1, paragraph 3, line 5, change "1130" to read "616" and change "11,300" to read "6160."

GEORGE L. TURCOTT,
*Associate Director, Bureau of Land Management.*

[FR Doc.74–1964 Filed 1–22–74;8:45 am]

[INT FES 74–6]

### OUTER CONTINENTAL SHELF OFFSHORE LOUISIANA

#### Notice of Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental impact statement relating to a possible Outer Continental Shelf general oil and gas lease sale of 215 tracts of submerged lands on the Outer Continental Shelf in the Gulf of Mexico offshore Louisiana.

Single copies of the final environmental statement can be obtained from the Office of the Manager, Gulf of Mexico Outer Continental Shelf Office, Bureau of Land Management, Suite 3200, The Plaza Tower, 1001 Howard Avenue, New Orleans, Louisiana 70113, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240. Additional copies may be obtained by writing the National Technical Information Service, Department of Commerce, Springfield, Virginia 22151.

Copies of the final environmental statement will also be available for public review in the main public libraries in the following cities: New Orleans, Lafayette, and Baton Rouge, Louisiana.

CURT BERKLUND,
*Director, Bureau of Land Management.*

Approved: January 22, 1974.

WILLIAM A. VOGELY,
*Acting Deputy Assistant Secretary of the Interior.*

[FR Doc.74–2052 Filed 1–22–74;8:45 am]

## DEPARTMENT OF AGRICULTURE

### Forest Service

### HORESHOE MEADOW LAND USE PLAN

#### Notice of Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Horseshoe Meadow Land Use Plan, Inyo National Forest, California USDA–FS–DES (Adm) 74–66.

The environmental statement concerns a proposed land use management plan for year round recreational facilities of a moderate scale near Horseshoe Meadows, within the Cottonwood Basin of the Inyo National Forest. The plan calls for a 100 unit overnight campground, a programs interpreting the Golden Trout and its High Sierra environs, trail head facilities for the Pacific Crest Trail, a pack station, and limited development for crosscountry skiing.

This draft environmental statement was filed with CEQ on January 17, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
Inyo National Forest
2957 Birch Street
Bishop, California 93515

USDA, Forest Service
So. Agriculture Bldg., Room 3231
12th St. & Independence Ave,. SW
Washington, D.C. 20250

USDA, Forest Service
California Region
630 Sansome St., Room 531
San Francisco, CA 94111

Mt. Whitney Ranger Station
P.O. Box 8
Lone Pine, CA 93545

White Mountain Ranger Station
151 Grandview Avenue
Bishop, CA 93514

Mammoth Ranger Station
Mammoth Visitor Center
Mammoth Lakes, CA 93546

A limited number of single copies are available upon request from Forest Supervisor Everett L. Towle, Inyo National Forest, 2957 Birch Street, Bishop, California 93514.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental effect for which comments have not been specifically requested.

Comments concerning the proposed action, and requests for additional information should be addressed to Forest Supervisor Everett L. Towle, Inyo National Forest, 2957 Birch Street, Bishop, California 93514. Comments must be received by March 25, 1974 in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
*Deputy Chief, Forest Service.*

JANUARY 17, 1974.

[FR Doc.74-1917 Filed 1-22-74;8:45 am]

## SWAN LAKE PLANNING UNIT, MULTIPLE-USE PLAN

### Notice of Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the proposed Multiple-Use Plan—Swan Lake Planning Unit, Report Number USDA-FC-DES (Adm) 74-68.

The environmental statement concerns a proposed management plan for about 60,000 acres of National Forest land on the Swan Lake Ranger District of the Flathead National Forest, Lake County, Montana. The proposed plan provides the District Ranger with management direction and guidance for each of the ten management units within the total planning area.

This draft environmental statement was filed with CEQ on January 17, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3231
12th St. & Independence Ave., S.W.
Washington, D.C. 20250

USDA, Forest Service
Region 1—Northern Region
200 East Broadway
Missoula, Montana 59801

USDA, Forest Service
Flathead National Forest
290 North Main
Kalispell, Montana 59901

USDA, Forest Service
Swan Lake Ranger Station
Bigfork, Montana 59911

A limited number of single copies are available upon request to Edsel L. Corpe, Forest Supervisor, Flathead National Forest, 290 North Main, Kalispell, Montana 59901.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Edsel L. Corpe, Forest Supervisor, Flathead National Forest, 290 North Main, Kalispell, Montana 59901. Comments must be received by March 17, 1974 in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
*Deputy Chief, Forest Service.*

JANUARY 17, 1974.

[FR Doc.74-1916 Filed 1-22-74;8:45 am]

## WEYERHAEUSER CO. ROAD CONSTRUCTION PROPOSALS IN HANSEN CREEK SHARE COST AGREEMENT AREA, WASH.

### Notice of Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for Weyerhaeuser Company Road Construction Proposals in Hansen Creek Share Cost Agreement Area, King County, Washington, F.S. Report No. USDA-FS-DES(Adm) 74-67.

The environmental statement concerns the proposed construction and use of three segments of roads across Snoqualmie National Forest land in King County, Washington. This draft environmental statement was filed with CEQ on January 17, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3231
12th St. & Independence Ave., S.W.
Washington, D.C. 20250

Snoqualmie National Forest
1601 Second Avenue Building
Seattle, Washington 98101

USDA, Forest Service
Pacific Northwest Region
319 S.W. Pine Street
Portland, Oregon 97208

A limited number of single copies are available upon request to Theodore A. Schlapfer, Regional Forester, Pacific Northwest Region, 319 S.W. Pine St., Portland, Oregon 97208.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Theodore A. Schlapfer, Regional Forester, Pacific Northwest Region, 319 SW. Pine Street, Portland, Oregon 97208. Comments must be received by March 4, 1974 in order to be considered in the preparation of the final environmental statement.

BARRY R. FLAMM,
*Acting Deputy Chief, Forest Service.*

JANUARY 17, 1974.

[FR Doc.74-1918 Filed 1-22-74;8:45 am]

## DESCHUTES NATIONAL FOREST MULTIPLE USE ADVISORY COMMITTEE

### Notice of Meeting

The Deschutes National Forest Advisory Council will meet at 7 p.m. on February 7, 1974, at 1789 Stevens Road, Bend, Oregon 97701.

The purpose of this meeting is to discuss off-road vehicles, their problems and possible solutions.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor at 211 East Revere, Bend, Oregon 97701, telephone number (503) 382-6922. Written statements may be filed with the committee before or after the meeting.

Dated: January 14, 1974.

CARL NICHOLS,
*Forest Supervisor.*

[FR Doc.74-1835 Filed 1-22-74;8:45 am]

## LIBBY FACE PLANNING UNIT, MULTIPLE USE PLAN

### Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for Multiple Use Plan, Libby Face Planning Unit, USDA–FS–DES(Adm) 74–69.

The environmental statement concerns a proposed implementation of a revised multiple use plan for the Libby Face Planning Unit, Libby Ranger District, Kootenai National Forest, and located in Lincoln County, Montana. The proposal affects approximately 67,400 acres of National Forest lands which have been stratified into seven management situations or units with similar resource implications.

This draft environmental statement was filed with CEQ on January 17, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
So. Agriculture Bldg., Room 3231
12th St. & Independence Ave., SW
Washington, D.C. 20250

USDA, Forest Service
Northern Region
Federal Building
Missoula, Montana 59801

Supervisor's Office
Kootenai National Forest
418 Mineral Avenue
Libby, Montana 59923

A limited number of single copies are available upon request to Acting Forest Supervisor, Robert W. Damon, Kootenai National Forest, Box AS, Libby, MT 59923.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Acting Forest Supervisor, Robert W. Damon, Kootenai National Forest, Box AS, Libby, MT 59923. Comments must be received by March 17, 1974 in order to be considered in the preparation of the final environmental statement.

BARRY R. FLAMM,
*Acting Deputy Chief,*
*Forest Service.*

JANUARY 17, 1974.

[FR Doc.74–1855 Filed 1–22–74;8:45 am]

## SAN JUAN NATIONAL FOREST GRAZING ADVISORY BOARD, SAN JUAN SECTION

### Notice of Meeting

The San Juan National Forest Grazing Advisory Board, San Juan Section will meet at 1 p.m. February 15, 1974, at the La Plata Electric Association building south of Durango, Colorado. The purpose of this meeting is to discuss current Forest Service range management policies.

The meeting will be open to the public. Persons who wish to attend should notify Joe Hotter, Chairman, Durango, Colorado 81301, telephone 303–247–4179. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: None.

JOHN R. COOLEY,
*Acting Forest Supervisor.*

JANUARY 14, 1974.

[FR Doc.74–1834 Filed 1–22–74;8:45 am]

## SAN JUAN NATIONAL FOREST GRAZING ADVISORY BOARD, MONTEZUMA SECTION

### Notice of Meeting

The San Juan National Forest Grazing Advisory Board, Montezuma Section will meet at 1 p.m. February 14, 1974, at the Mesa Verde Savings and Loan Association building in Cortez, Colorado. The purpose of this meeting is to discuss current Forest Service range management policies.

The meeting will be open to the public. Persons who wish to attend should notify James Suckla, Chairman, Cortez, Colorado 81321, telephone 303–565–7706. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: None.

JOHN R. COOLEY,
*Acting Forest Supervisor.*

JANUARY 14, 1974.

[FR Doc.74–1833 Filed 1–22–74;8:45 am]

## THORNE ARM–CARROLL INLET 5-YEAR TIMBER HARVEST PLAN

### Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Thorne Arm-Carroll Inlet 5-Year Timber Harvest Plan, USDA–FS–DES(Adm) R–10–02.

This environmental statement deals with the management plan for part of the Thorne Arm-Carroll Inlet area, Revillagigedo Island on the Tongass National Forest. Timber, fish, wildlife, and outdoor recreation are all important resources in the area. The primary action proposed is timber harvest by clearcutting. The plan deals with protecting other resources from damage by timber harvest and associated activities to give optimum public benefits from all resources combined.

This draft environmental statement was transmitted to the CEQ on January 14, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
So. Agriculture Bldg., Room 3230
12th St. & Independence Ave., SW.
Washington, D.C. 20250

USDA, Forest Service
Alaska Region
Federal Office Building
Juneau, Alaska 99801

Area Manager, Chatham Area
Tongass National Forest
Federal Building
Sitka, Alaska 99835

Area Manager, Stikine Area
Tongass National Forest
Federal Building
Petersburg, Alaska 99833

Area Manager, Ketchikan Area
Tongass National Forest
Federal Building, Room 313
Ketchikan, Alaska 99901

A limited number of single copies are available upon request to Richard M. Wilson, Area Manager, Tongass National Forest, Ketchikan Area, Box 2278, Ketchikan, Alaska 99901.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Richard M. Wilson, Area Manager, Tongass National Forest, Ketchikan Area, Box 2278, Ketchikan, Alaska 99901. Comments must be received by March 14, 1974 in order to be considered in the preparation of the final environmental statement.

ROBERT H. TRACY,
*Acting Regional Forester,*
*Alaska Region.*

JANUARY 14, 1974.

[FR Doc.74–1847 Filed 1–22–74;8:45 am]

# DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## MARINE MAMMALS SCIENTIFIC RESEARCH

### Notice of Permit Denial

An application for a scientific research permit submitted by Dale Rice, a NOAA employee, was published in the FEDERAL REGISTER on December 10, 1974 (38 FR 34004). The Marine Mammal Commission and the Committee of Scientific Advisers have recommended that the application be approved.

The research proposed would involve a multinational effort pursuant to a concept of international decade of cetacean research proposed and adopted in June 1972 by the International Whaling Commission. The application was not processed prior to the departure of the research vessel to commence the international research expedition. In view of this, the applicant was advised to refrain from participation in the research project until his application had been approved.

After reviewing the application and the circumstances surrounding it, it is determined that the application must be denied regardless of its merit. The reason for the denial is to avoid the appearance of a prejudgment of the application in view of the fact that the applicant was a NOAA employee and to avoid setting a precedent which could in any way be interpreted as favoring the retroactive granting of permits.

Additionally, the Endangered Species Act of 1973 (P.L. 93–205), which became effective December 28, 1973, prohibits, for the first time with certain exceptions, the taking of endangered species on the high seas by persons subject to the jurisdiction of the United States. This Act also requires issuance of a permit prior to the taking of an endangered species for scientific purposes by a person subject to the jurisdiction of the United States. Since no application for a permit has been filed under that Act, granting a permit under the Marine Mammal Protection Act would allow the applicant to participate in the research on the high seas involving sperm whales, an endangered species.

The effect of this denial will be to continue to foreclose the applicant from participation in the taking of any marine mammals.

Date: January 18, 1974.

JACK W. GEHRINGER,
*Acting Director, National Marine Fisheries Service.*

[FR Doc.74–1853 Filed 1–22–74;8:45 am]

## National Technical Information Service

### GOVERNMENT-OWNED INVENTIONS

### Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the GSA Patent Licensing Regulations.

Copies of Patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22151, at the prices cited. Requests for copies of patent applications must include the PAT–APPL number and the title. Requests for licensing information should be directed to the address cited with each copy of the patent application.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
*Patent Program Coordinator, National Technical Information Service.*

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240.

Patent application 386,792: Recovery of Rhenium. 19 October 73, PC $3.00/MF $1.45.
Patent 3,634,199: Variable Orifice for Multistage Flash Evaporation or Distillation Units. Filed 20 April 70, patented 11 January 72. Not available NTIS.
Patent 3,662,583: Determining Impurities in Helium. Filed 28 April 70, patented 16 May 72. Not available NTIS.
Patent 3,724,672: Asymmetric Hollow Fiber Membranes and Method of Fabrication. Filed 27 July 70, patented 3 April 73. Not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA—Code GP–2, Washington, D.C. 20546.

Patent application 398,886: Reversed Cowl Flap Inlet Thrust Augmentor. Filed 17 September 73. PC $3.00/MF $1.45.
Patent application 393,528: A Dually Mode Locked Nd: YAG Laser. Filed 31 August 73. PC $3.00/MF $1.45.
Patent application 397,476: Structural Heat Pipe. Filed 14 September 73. PC $3.00/MF $1.45.
Patent application 397,478: Ophthalmic Liquefaction Pump. Filed 14 September 73. PC $3.00/MF $1.45.
Patent application 400,467: Dual Digital Video Switcher. Filed 25 September 73. PC $3.75/MF $1.45.
Patent application 402,866: Protection of Moisture Sensitive Optical Components. Filed 2 October 73. PC $3.00/MF $1.45.
Patent 3,262,025: Magnetic-Flux Pump. Patented 19 July 66. Not available NTIS.
Patent 3,310,699: Ultrahigh Vacuum Gauge Having Two Collector Electrodes, patented 21 March 67. Not available NTIS.
Patent 3,334,225: Quadrupole Mass Filter with Means to Generate a Noise Spectrum Exclusive of the Resonant Frequency of the Desired Ions to Deflect Stable Ions. Patented 1 August 67. Not available NTIS.
Patent 3,379,052: Soil Penetrometer. Patented 23 April 68. Not available NTIS.
Patent 3,748,722: Production of Hollow Components for Rolling Element Bearings by Diffusion Welding. Patented 31 July 73. Not available NTIS.
Patent 3,751,727: Space Suit. Patented 14 August 73. Not available NTIS.
Patent 3,751,980: Low Power Electromagnetic Flowmeter Providing Accurate Zero Set. Patented 12 November 71. Not available NTIS.
Patent 3,754,976: Peen Plating. Patented 28 August 73. Not available NTIS.
Patent 3,755,283: Novel Polymers and Method of Preparing Same. Patented 28 August 73. Not available NTIS.
Patent 3,758,112: Foot Pedal Operated Fluid Type Exercising Device. Patented 11 September 73. Not available NTIS.
Patent 3,758,877: Power Supply for Carbon Dioxide Lasers. Patented 11 September 73. Not available NTIS.
Patent 3,759,249: Respiratory Analysis System and Method. Patented 18 September 73. Not available NTIS.
Patent 3,759,443: Thermal Flux Transfer System. Patented 18 September 73. Not available NTIS.
Patent 3,759,746: Porus Electrode Comprising a Bonded Stack of Pieces of Corrugated Metal Foil. Patented 18 September 73. Not available NTIS.
Patent 3,759,787: Nuclear Fuel Elements. Patented 18 September 73. Not available NTIS.
Patent 3,760,248: Induction Motor Control System with Voltage Controlled Oscillator Circuit. Patented 18 September 73. Not available NTIS.
Patent 3,760,268: Rocket Borne Instrument to Measure Electric Fields Inside Electrified Clouds. Patented 18 September 73. Not available NTIS.
Patent 3,763,552: Method of Fabricating a Twisted Composite Superconductor. Patented 9 October 73. Not available NTIS.
Patent 3,763,740: Collapsible Pistons. Patented 9 October 73. Not available NTIS.
Patent 3,764,220: Alignment Apparatus Using a Laser Having a Gravitationally Sensitive Cavity Reflector. Patented 9 October 73. Not available NTIS.

[FR Doc.74–1806 Filed 1–22–74;8:45 am]

## Office of the Secretary

### COMMERCE TECHNICAL ADVISORY BOARD

### Notice of Meeting

A meeting of the Department of Commerce Technical Advisory Board will be held on Wednesday, January 30, 1974 from 9:30 a.m. to 4:30 p.m., and Thursday, January 31, 1974 from 9:00 a.m. to 12 Noon in Room 4830, Commerce Building, 14th Street and Constitution Avenue, NW, Washington, D.C.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community. The purpose of this meeting will be to identify and discuss technological problem areas with respect to the current energy situation and the effect on the business community. Tentative agenda items include:

1. Energy supply and demand situation.
2. DoC role in supply and demand analysis.
3. Long-range energy outlook.
4. Economic impact of the energy situation.

A limited number of seats will be available to the press and to the public. The public will be permitted to file written statements or inquiries with the Chairperson before or after the meeting.

Persons desiring to attend the meeting or obtain further information concerning the Board should contact Mrs. Florence S. Feinberg, Room 3877, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 967–5065.

BETSY ANCKER-JOHNSON,
*Assistant Secretary for Science and Technology.*

JANUARY 17, 1974.

[FR Doc.74–1829 Filed 1–22–74;8:45 am]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

[FAP 4B2968]

### B. F. GOODRICH CO.

### Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 4B2968) has been filed by The B. F. Goodrich Co., 500 South Main St., Akron, OH 44318, proposing that § 121.2566 *Antioxidants and/or stabilizers for polymers* (21 CFR 121.2566) be amended to provide for safe use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl) - *s*-triazine-2,4,6 (1*H*,3*H*,5*H*)-trione as an antioxidant in polyethylene; in polypropylene; and in ethylene-propylene-5 ethylidine-2-norbornene terpolymers intended for contact with food.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B–42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: January 14, 1974.

VIRGIL O. WODICKA,
*Director, Bureau of Foods.*

[FR Doc.74–1825 Filed 1–22–74;8:45 am]

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[FAP 4B2977]

### GOODYEAR TIRE AND RUBBER CO.

### Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 4B2977) has been filed by Goodyear Tire and Rubber Co., Akron, OH 44316, proposing that § 121.2566 *Antioxidants and/or stabilizers for polymers* (21 CFR 121.2566) be amended to provide for the safe use of hexylated p-cresol as an antioxidant and/or stabilizer in polymers that contact food.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B–42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: January 11, 1974.

VIRGIL O. WODICKA,
*Director, Bureau of Foods.*

[FR Doc.74–1826 Filed 1–22–74;8:45 am]

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[CAP 3C0105]

### LEVER BROTHERS CO.

### Notice of Filing of Petition for Color Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (d), 74 Stat. 402; 21 U.S.C. 376(d)), notice is given that a petition (CAP 3C0105) has been filed by Lever Brothers Co., 45 River Road, Edgewater, NJ 07020, proposing the issuance of a regulation (21 CFR Part 8) to provide for the safe and suitable use and certification of FD&C Red No. 40 (disodium salt of 6-hydroxy-5-[(2-methoxy - 5 - methyl-4-sulfophenyl)azo]-2-naphthalenesulfonic acid) for the purpose of coloring dentifrices that are cosmetics.

Dated: January 11, 1974.

VIRGIL O. WODICKA,
*Director, Bureau of Foods.*

[FR Doc.74–1824 Filed 1–22–74;8:45 am]

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[CAP 4C0111]

### ALLIED CHEMICAL CORP.

### Notice of Filing of Petition for Color Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (d), 74 Stat. 402; 21 U.S.C. 376(d)), notice is given that a petition (CAP 4C0111) has been filed by Allied Chemical Corp., Specialty Chemicals Division, c/o CFR Services, 2347 Paddock Lane, Reston, VA 22091, proposing the issuance of a regulation (21 CFR Part 8) to provide for the safe and suitable use and certification of FD&C Red No. 40 (disodium salt of 6-hydroxy-5-[(2-methoxy-5-methyl-4-sulfophenyl)azo]-2-naphthalenesulfonic acid) and its lakes for general use in coloring cosmetics.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B–42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: January 11, 1974.

VIRGIL O. WODICKA,
*Director, Bureau of Foods.*

[FR Doc.74–1823 Filed 1–22–74;8:45 am]

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### NEW HAMPSHIRE

### Proposed Action Plan

The New Hampshire Department of Public Works and Highways has submitted to the Federal Highway Administration of the U.S. Department of Transportation a proposed Action Plan as required by Policy and Procedure Memorandum 90–4 issued on June 1, 1973. The Action Plan outlines the organizational relationships, the assignments of responsibility, and the procedures to be used by the State to assure that economic, social and environmental effects are fully considered in developing highway projects and that final decisions on highway projects are made in the best overall public interest, taking into consideration: (1) Needs for fast, safe, and efficient transportation; (2) public services; and (3) costs of eliminating or minimizing adverse effects.

The proposed Action Plan is available for public review at the following locations:

1. Planning and Economics Division Office
   New Hampshire Department of Public Works and Highways
   John O. Morton State Office Building
   85 Loudon Road
   Concord New Hampshire 03301
2. Division One Office
   New Hampshire Department of Public Works and Highways
   U.S. Route 3 (north)
   Lancaster, New Hampshire 03584
3. Division Two Office
   New Hampshire Department of Public Works and Highways
   U.S. Route 302(west)
   Twin Mountain, New Hampshire 03595
4. Division Three Office
   New Hampshire Department of Public Works and Highways
   New Hampshire Route 11–A
   Laconia, New Hampshire 03246
5. Division Four Office
   New Hampshire Department of Public Works and Highways
   Interstate Route 89
   Interchange 16
   Lebanon, New Hampshire 03766
6. Division Five Office
   New Hampshire Department of Public Works and Highways
   Interstate Route 93
   Hooksett Toll Plaza
   Hooksett, New Hampshire 03106
7. Division Six Office
   New Hampshire Department of Public Works and Highways
   Spaulding Turnpike
   Portsmouth, New Hampshire 03801
8. Division Seven Office
   New Hampshire Department of Public Works and Highways
   Base Hill Road
   Keene, New Hampshire 03431
9. New Hampshire Division Office—FHWA
   55 Pleasant Street
   Concord, New Hampshire 03301
10. FHWA Regional Office—Region 1
    4 Normanskill Boulevard
    Delmar, New York 12054

11. U.S. Department of Transportation
Federal Highway Administration
Environmental Development Division
Nassif Building—Room 3246
400-7th Street SW.
Washington, D.C. 20590

Comments from interested groups and the public on the proposed Action Plan are invited. Comments should be sent to the FHWA Regional Office shown above before February 15, 1974.

Issued on January 17, 1974.

NORBERT T. TIEMANN,
*Federal Highway Administrator.*

[FR Doc.74-1820 Filed 1-22-74;8:45 am]

## ATOMIC ENERGY COMMISSION

[Construction Permits Nos. CPPR-77, CPPR-78]

### VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA POWER STATION, UNITS 1 AND 2)

#### Notice and Order for Prehearing Conference

Take notice, that pursuant to authority delegated by the Atomic Energy Commission, and in accordance with the Commission's rules of practice, a prehearing conference will be held on the subject proceedings on the 11th of February 1974 at 10:00 a.m. local time in the Holiday Inn South, I-95 and U.S. 1, Fredericksburg, Virginia 22401.

Further, the Board directs all parties appearing in any proceeding currently pending involving the North Anna Power Station, Units 1, 2, 3 and 4, Dockets 50-338, 50-339, 50-338 OL, 50-339 OL, 50-404, 50-405, to attend and participate in this prehearing conference. In addition to the applicant and to the AEC Regulatory Staff, said parties include: Gerald L. Baliles, Esq., on behalf of the Commonwealth of Virginia; Geraldine M. Arnold; Clarence T. Kipps, Jr., Esq., on behalf of the Culpeper League for Environmental Protection; Carroll J. Savage, Esq., on behalf of the Fauquier League for Environmental Protection; June Allen on behalf of the North Anna Environmental Coalition. As indicated at the North Anna prehearing conference on January 11, 1974 at which time all said parties appeared and participated, the Board hereby gives notice of its intention to name all said parties to this proceeding.

It is so ordered.

Issued at Washington, D.C., this 17th day of January, 1974.

ATOMIC SAFETY AND LICENSING BOARD,
JOHN B. FARMAKIDES,
*Chairman.*

[FR Doc.74-1818 Filed 1-22-74;8:45 am]

### ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

#### Notice of Meeting

JANUARY 21, 1974.

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.C.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on February 7-9, 1974, in Room 1046, 1717 H Street NW, Washington, D.C.

The following constitutes that portion of the Committee's agenda for the above meeting which will be open to the public:

(1) *Thursday, February 7 1974.* 9:30 AM-12:30 PM—The Committee will review proposed use of *General Electric Company 8x8 fuel element* as a reload fuel for boiling water reactors. The Committee will hear presentations by representatives and consultants of the AEC Regulatory Staff, the General Electric Company and several utilities with operating boiling water reactors.

The Committee will hold closed sessions during this period, if required, to discuss proprietary information related to fuel element design, fabrication and operation, including loss-of-coolant accident analysis.

(2) *Thursday, February 7, 1974.* 2:30 PM-6:30 PM: The Committee will consider the request for a construction permit for the *Grand Gulf Nuclear Power Station Units 1 and 2.* This will include presentations by representatives and consultants of the AEC Regulatory Staff and the Mississippi Power and Light Company and will include discussions with these groups.

The Committee will hold closed sessions during this period, if required, to discuss security plans for this facility and privileged information related to fuel element design, fabrication and performance, and loss-of-coolant accident analysis.

(3) *Friday, February 8, 1974.* 10:15 AM-11:45 AM—*Meeting with AEC Regulatory Staff*—Discuss matters related to current reactor operating experience and licensing activities, including:

*Indian Point Nuclear Plant Unit 2*—Failure of feedwater piping and related containment liner damage.

*Zion Station*—Neutron flux tilt, performance of diesel-generators, and control rod drive performance.

(4) *Friday, February 8, 1974.* 11:45 AM-12:45 PM-1:45 PM-3:15 PM—The Committee will consider the request for a construction permit for the *Hope Creek Generating Station Units 1 and 2.* The Committee will hear presentations by representatives and consultants of the AEC Regulatory Staff and the Public Service Electric and Gas Company, and will hold discussions with these groups.

This meeting will include closed sessions, if required, to discuss security plans for this facility and privileged information related to fuel element design, fabrication and performance, and loss-of-coolant accident analysis.

It should be noted that, in addition to the agenda items noted above, the Committee will hold other sessions not open to the public under the authority of section 10(d) of Public Law 92-463 (the Federal Advisory Committee Act), to consider the above applications and other matters. I have determined that it is necessary to close such portions of the meeting to protect the free interchange of internal views and to avoid undue interference with agency or Committee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than January 30, 1974, to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such written comments shall be based on documents related to the agenda items noted above, and related documents on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW, Washington, D.C., 20545, and as follows:

GRAND GULF NUCLEAR STATION, UNITS 1 AND 2

Deputy Chancery Clerk
Claiborne County Courthouse
Port Gibson, Mississippi 39150

HOPE CREEK GENERATING STATION, UNITS 1 AND 2

Salem Free Public Library
112 W. Broadway
Salem, New Jersey 08079

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Committee. To the extent that the time available for the meeting permits, the Committee will receive oral statements during a period of no more than 30 minutes at an appropriate time, chosen by the Chairman of the Committee.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Committee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting or portions of the meeting have been canceled or rescheduled, and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on February 6, 1974, to the Office of the Executive Secretary of the Committee (telephone: 301-973-5651) between 8:30 AM and 5:15 PM daylight saving time.

(e) Questions may be propounded only by members of the Committee and its consultants.

(f) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the

meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street NW, Washington, D.C. On request, copies of the minutes of the meeting will be made available for inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW, Washington, D.C., on or after April 10, 1974. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
*Advisory Committee Management Officer.*

[FR Doc.74-2060 Filed 1-22-74;10:17 am]

## ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON GAS COOLED FAST BREEDER REACTOR

### Notice of Meeting

JANUARY 21, 1974.

In accordance with the purposes of section 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards' Subcommittee on Gas Cooled Fast Breeder Reactor will hold a meeting on February 6, 1974, in Room 1034 at 1717 H Street NW., Washington, D.C. The Subcommittee will meet in Executive Session to discuss internal details of its continuing review of this project.

I have determined, in accordance with subsection 10(d) of Public Law 92-463, that the meeting will consist of an exchange of opinions, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). It is essential to close this meeting to protect the free interchange of internal views and to avoid undue interference with agency or Committee operation.

JOHN C. RYAN,
*Advisory Committee Management Officer.*

[FR Doc.74-2059 Filed 1-22-74;10:17 am]

[Construction Permit Nos. 81, 82]

## CONSUMERS POWER CO.

### Notice of Hearing on Order To Show Cause

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, CFR Part 2, rules of practice, notice is hereby given that a hearing will be held before an Atomic Safety and Licensing Board on the issues framed in the order to show cause issued on December 3, 1973, by the Director of Regulation to Consumers Power Company concerning quality assurance compliance in the construction of its Midland, Michigan Plant, Units 1 and 2. Additional background information concerning this matter is contained in Memorandums and Orders issued by the Commission on December 20, 1973, and January 22, 1974.

The Licensing Board will consist of Michael Glaser, Esq., Chairman, Lester Kornblith, Jr., and Dr. Emmeth A. Luebke. The hearing shall be held at a time and place to be specified by the Board.

Pursuant to 10 CFR 2.785, an Atomic Safety and Licensing Appeal Board will exercise the authority and the review function which would otherwise be exercised and performed by the Commission. Notice as to the membership of the Appeal Board will be published in the FEDERAL REGISTER at a later date.

The issues to be decided by the Board shall be (1) whether the licensee is implementing its quality assurance program in compliance with Commission regulations, and (2) whether there is a reasonable assurance that such implementation will continue throughout the construction process. Should either of these issues be decided adversely to the licensee, the Licensing Board shall determine whether the construction permits shall be modified, suspended, or revoked, or whether other action is warranted by the record.

The parties to the hearing shall be the regulatory staff, the licensee, the Sierra Club petitioners, and The Dow Chemical Company. In addition, any person whose interest may be affected by the proceeding, who wishes to participate as a party in the proceeding must file a written petition under oath or affirmation for leave to intervene in accordance with the provisions of 10 CFR 2.714. A petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have all rights of the licensee to participate fully in the conduct of the hearing, such as the examination and cross-examination of witnesses, with respect to their contentions related to the matters at issue in the proceeding.

A petition for leave to intervene must be filed with the Secretary of the Commission and others as specified below by February 11, 1974. A petition for leave to intervene which is not timely will not be granted unless the Board determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the Board has considered those factors specified in 10 CFR 2.714(a)(1)-(4) and 2.714(d).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may make an oral or written statement on the record. He does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the issues stated herein. Limited appearances will be permitted at the time of the hearing at the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, and others in the manner specified below.

Papers required to be filed in this proceeding shall be filed by mail or telegram addressed to the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and twenty (20) conformed copies of each such paper with the Commission. A copy of any petition for intervention or request for limited appearance should also be sent to the Chief Hearing Counsel, Office of the General Counsel, Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545 and to Harold F. Reis, Esq., Newman, Reis & Axelrad, 1025 Connecticut Avenue NW., Washington, D.C. 20036, attorney for the licensee; Myron M. Cherry, Esq., One IBM Plaza, Chicago, Ill. 60611, attorney for Sierra Club; and Milton R. Wessel, Kaye, Scholer, Fierman, Hays & Handler, 425 Park Avenue, New York, N.Y. 10022, attorney for The Dow Chemical Company.

A copy of the documents relevant to this proceeding is available for inspection by members of the public in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

It is so ordered.

Dated at Washington, D.C. this 21st day of January 1974.

By the Commission.

GORDON M. GRANT,
*Acting Secretary of the Commission.*

[FR Doc.74-2057 Filed 1-22-74;10:17 am]

[Docket Nos. 50-352, 50-353]

## PHILADELPHIA ELECTRIC CO.

### Order Reconvening Hearing

In the matter of Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2)

The Regulatory Staff of the Commission have indicated their readiness to present further evidence, particularly in reference to the water availability issue as considered at the last evidentiary session of hearings in the above proceeding.

The parties have been contacted and they have indicated that February 12, 1974 is a convenient date.

Wherefore, it is ordered, in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, that the evidentiary hearings in this proceeding shall convene and commence at 9:00 a.m. on Tuesday, February 12, 1974 in the Potts Room of the Holiday Inn, West King Street at Route 100, Pottstown, Pennsylvania.

Issued: January 21, 1974 Germantown, Maryland.

ATOMIC SAFETY AND LICENSING BOARD
SAMUEL W. JENSCH,
*Administrative Law Judge.*

[FR Doc.74-2058 Filed 1-22-74;10:17 am]

## COMMISSION ON REVISION OF THE FEDERAL COURT APPELLATE SYSTEM

### GEOGRAPHICAL BOUNDARY REPORT

#### Notice of Availability

"The Geographical Boundaries of the Several Judicial Circuits: Recommendations for Change", a Report of the Commission on Revision of the Federal Court Appellate System, filed December 18, 1973 pursuant to the provisions of section 6, paragraph (1), Public Law No. 489, Ninety Second Congress, is available to the public through the offices of the Commission.

A. LEO LEVIN,
*Executive Director, Commission on Revision of the Federal Court Appellate System.*

[FR Doc.74-1852 Filed 1-22-74;8:45 am]

## COST OF LIVING COUNCIL

### NONUNION CONSTRUCTION ADVISORY COMMITTEE

#### Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Nonunion Construction Advisory Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on January 29, 1974. The meeting will be open to the public on a first-come, first-served basis at 10 a.m., in Conference Room 8009, 2025 M Street NW., Washington, D.C.

The agenda will consist of a discussion and recommendations involving construction industry wage cases pending before the Cost of Living Council.

Issued in Washington, D.C., on January 22, 1974.

HENRY H. PERRITT, JR.,
*Executive Secretary, Cost of Living Council.*

[FR Doc.74-2056 Filed 1-22-74;9:58 am]

## CIVIL AERONAUTICS BOARD

[Dockets 25755, 25659, 20213 and 22012; Order 74-1-78]

### AIR MIDWEST, INC. ET AL.

#### Notice of Additions to Order

In the matter of application and petition of Air Midwest, Inc., et al. and Investigation of the Local Service Class Subsidy Rate and Application of Frontier Airlines, Inc. for temporary suspension of service at Dodge City, Great Bend and Hutchison, Kansas.

As published at 39 FR 2290, January 18, 1974, Show Cause Order 74-1-78, proposing economic assistance to Air Midwest, announced therein that appendices would be published that relate to said order. As announced, attached are said appendices.

Dated at Washington, D.C., January 18, 1974.

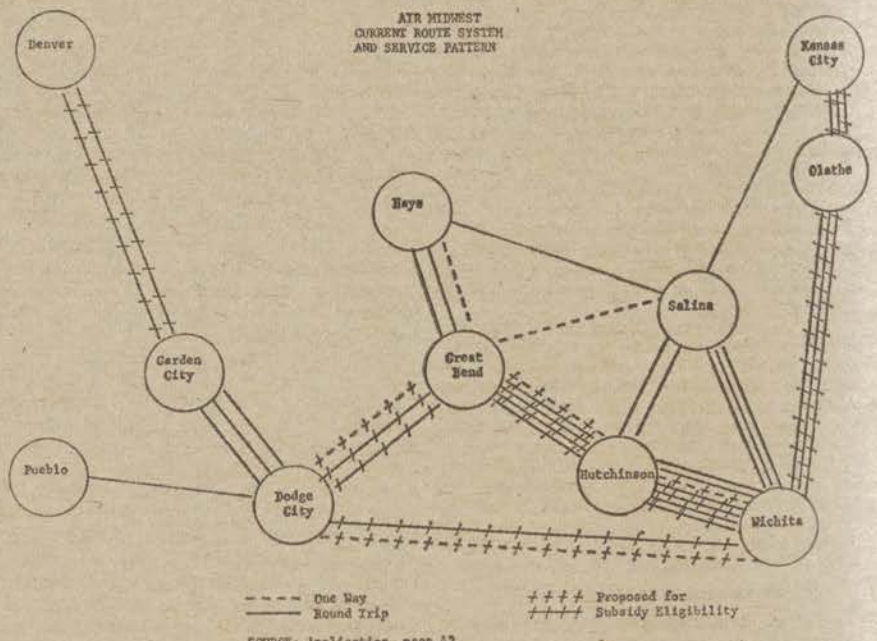
[SEAL] EDWIN Z. HOLLAND,
*Secretary.*

APPENDIX A

AIR MIDWEST
PRESENT MINIMUM REPLACEMENT SERVICE

A. *Great Bend and Hutchinson.* Three daily round trips Monday through Friday between Great Bend and Hutchinson, on the one hand, and Kansas City and Wichita, on the other hand; two daily round trips Monday through Friday between Great Bend and Hutchinson, on the one hand, and Denver, on the other hand; and one daily round trip on Saturdays, Sundays and holidays between Great Bend and Hutchinson, on the one hand, and Denver, Kansas City or Wichita, on the other hand (Order 72-1-93).

B. *Dodge City.* Three daily round trips Monday through Friday between Dodge City and Kansas City; four daily round trips Monday through Friday between Dodge City and Wichita; and one daily round trip on Saturdays and Sundays between Dodge City, on the one hand, and Kansas City and Wichita, on the other hand (Order 71-2-19).




SOURCE: Application, page 42

APPENDIX B

SUBSIDY RATE FOR FUTURE ANNUAL PERIODS

*Scheduled services.* Air Midwest's forecast of system scheduled mileage, capacity and traffic for the calendar year 1973, used as a base year, is set forth at page 10. The carrier estimates that the forecast volume of service, 1,605,891 revenue plane miles, will result in an estimated 8,366,900 revenue passenger miles and 17,849,665 available seat miles. This produces a system passenger load factor of 46.87 percent.

According to our reading of Table 12 of the carrier's petition, Air Midwest proposes subsidy-eligible operations based upon a service pattern between Denver, Colorado (DEN), Dodge City (DDC), Great Bend (GBD), Hutchinson (HUT), Wichita (ICT), Olathe, (OJC), all in Kansas, and Kansas City, Missouri (MCI), as follows:

| City pairs | One-way daily flights |
|---|---|
| DEN–DDC (via GCK)[1] | 4 |
| DDC–GBD | 5 |
| GBD–HUT | 9 |
| HUT–ICT | 9 |
| ICT–DDC | 3 |
| ICT–OJC | 6 |
| OJC–MCI | 6 |

[1] Service between DEN and DDC would be operated via Garden City, Kansas (GCK), a subsidy-ineligible point.

However, we are not in agreement with the carrier on the level of operations to be underwritten with subsidy. We believe that the volume and pattern of subsidy-eligible service that Air Midwest proposes is in excess of the reasonable requirements of Great Bend, Hutchinson, and Dodge City markets under a federal subsidy-support program. The carrier's proposed service pattern extends considerably beyond these three subsidy-eligible points to other cities on its system. This situation is most noticeable in the case of service between Wichita and Kansas City. At the present time Trans World Airlines, Inc., and Braniff International Airways, Inc., provide eight daily nonstop round trips between Wichita, Kansas and Kansas City, Missouri, using jet equipment; while Frontier Airlines, Inc., provides two daily one-stop round trips with Convair 580 aircraft. Air Midwest provides service from Wichita to Kansas City (Kansas City International Airport) via Olathe. Since the Olathe, Kansas airport is only 20 to 25 miles from downtown Kansas City, Air Midwest is in effect providing nonstop service to Kansas City proper and one-stop service to Kansas City International Airport. We believe that in the light of the present level of service provided by the certificated carriers the payment of subsidy to Air Midwest to provide parallel service is not warranted. Additionally, our examination of the volume of traffic and the level of service provided in the remaining markets indicates that in some instances the amount of service offered in these markets is excessive for subsidy purposes.

In view of the foregoing, we propose instead the following service pattern between Wichita (ICT), Hutchinson (HUT), Great Bend (GBD), Dodge City (DDC), and Denver (DEN):

| Frequency | Number of one-way flights | Itinerary | Aircraft type |
|---|---|---|---|
| Monday to Friday | 4 | ICT-HUT-GBD-DDC-DEN | Beech 99. |
| Do | 2 | ICT-HUT-GBD-DDC | Do. |
| Do | 2 | ICT-DDC | Cessna 402. |
| Saturday and Sunday | 2 | ICT-HUT-GBD-DDC-DEN | Beech 99. |

Mileage, capacity and traffic data associated with the above service pattern are shown at pages 11–12. Under this service pattern, we propose to recognize 690,321 revenue plane miles and 3,931,098 passenger miles as subsidy eligible. The subsidy-eligible passenger miles have been estimated on the basis of the latest experienced number of passengers transported between the points involved times the applicable mileages. Based on the estimated revenue aircraft miles flown in subsidy-eligible service and the number of available seats per aircraft type the estimated available seat miles are 9,192,939. This produces a revenue passenger load factor for subsidy-eligible operations of 42.76 percent.

The carrier's operations are conducted with two Beech 99 and two Cessna 402 aircraft. Based on the service pattern and traffic recognized for subsidy-eligible operations, it is estimated that such operations will reasonably require the use of 1.08 Beech 99 aircraft and 0.24 Cessna 402 aircraft.

Under all the circumstances pertaining to the carrier at this time, we find that the estimated mileages and capacity recognized for subsidy-eligible operations, as shown at pages 11–12, are reasonable and that such services are required in the public interest.

*Estimated Financial Results*

*General.* The forecast revenues and expenses used by Air Midwest in determining its breakeven need are as follows:

| | Claimed subsidy eligible | Claimed system |
|---|---|---|
| Operating revenues | $590,734 | $1,201,114 |
| Operating expenses | 978,883 | 1,306,908 |
| Breakeven need | 388,149 | 105,794 |

Details of the computations are set forth at page 10. The breakeven need which Air Midwest claims in its petition for subsidy purposes is $105,794, the lower of its forecast system and subsidy-eligible need.

*Carrier's determination of breakeven need.* Air Midwest determined the forecast system breakeven need by adding projected revenues and expenses for the second, third, and fourth quarters of calendar year 1973 to actual first-quarter data. The carrier then allocated system revenues and expenses between eligible and ineligible operations. As a result of the allocation methods it used, the carrier showed a loss from subsidy-eligible operations of $388,149 and an offsetting profit from ineligible operations of $282,355, thus resulting in a system need of $105,794.

In allocating system revenues and expenses, Air Midwest computed financial data for ineligible operations and subtracted these amounts from related system figures to obtain subsidy-eligible revenues and expenses.

According to the carrier, ineligible passenger revenue was derived by anticipated originations and destinations by market pairs, times the average fare for each market. All passenger revenue, with the exception of that revenue applicable to subsidy-eligible operations, has been counted as ineligible revenue.

Subsidy-ineligible aircraft operating expense was determined by multiplying the annual total scheduled block hours flown in ineligible service for Beech 99 and Cessna 402 aircraft by the applicable costs per block hour shown in the carrier's petition. This method was applied to all aircraft operating expenses except depreciation and insurance. The carrier treats the full amount of depreciation and insurance as subsidy eligible because these two expenses "would be incurred regardlessly because the company's equipment fleet is the minimum amount needed (two Beech 99's and two Cessna 402's) to service the route replacement points." [3] This reasoning cannot be accepted.

It appears that Air Midwest has allocated expenses to ineligible operations on an added cost basis with residual costs burdening the subsidy-eligible operations. This approach is inconsistent with the practice in subsidy determinations that expense categories should be assigned to all the services on a fully allocated basis.

The carrier includes in ineligible servicing expenses only the agent expenses, commission costs, and advertising expenditures associated with the ineligible points of Garden City, Hays, and Salina, Kansas. All other servicing expenses have been assigned to subsidy-eligible operations. No reason is given for the use of this methodology; and no effort is made to apportion any servicing expenses incurred at the other points on its system, even though these expenses are jointly applicable to eligible and ineligible operations. The effect of such a treatment is to charge subsidy-eligible operations with a disproportionately high amount of system expenses. This is accomplished by narrowly defining ineligible expenses as those expenses that benefit exclusively ineligible operations.

In general, little attempt is made to equitably apportion expenses when they relate to common operations. Instead, when ineligible expenses are deducted from system expenses to obtain subsidy-eligible amounts, those costs benefiting both types of service are assigned completely to eligible operations. For these reasons, Air Midwest's approach is unacceptable.

*Recognized breakeven need.* System breakeven need, as forecast by Air Midwest in its petition, has been adjusted to reflect actual operations for the first half of calendar year 1973. The effect of this adjustment reduces the system breakeven need claimed by Air Midwest, as shown at page 10, by $14,307. System and eligible services breakeven need, as recognized, are shown at pages 11–12.

The recognized revenues and expenses which comprise the carrier's breakeven need for the future annual period are summarized as follows:

| | Subsidy eligible | System |
|---|---|---|
| Operating revenues | $493,875 | $1,202,921 |
| Operating expenses | 587,798 | 1,294,408 |
| Breakeven need | 93,923 | 91,487 |

Several significant factors entering into the above determinations are discussed in the following sections of this Statement, with details set forth at pages 11–12.

Differences between the financial results claimed by Air Midwest for subsidy-eligible and system operations (page 10) and those which we are recognizing (pages 11–12) are the result of three major factors: (1) adoption of a subsidy-eligible service pattern different from that requested by the carrier; (2) adjustment of Air Midwest system operating results to reflect actual data; and (3) use of allocation methods different from those of the carrier. System operating data was allocated between subsidy-eligible and subsidy-ineligible operations by determining the revenues and expenses applicable to subsidy-eligible operations as recognized herein and assigning the difference between the latter amounts and adjusted system revenues and expenses to subsidy-ineligible operations.

*Operating revenues.* The recognized subsidy-eligible passenger revenues of $464,343 have been forecast on the basis of the estimated revenue passenger miles for the recommended service pattern times the yield per passenger mile. The subsidy-eligible yield per passenger mile has been estimated on the basis of the system yield experienced by the carrier, as adjusted to reflect the difference in average length of haul between subsidy-eligible and system operations. Cargo revenue and mail revenue represent 5.41 percent and 0.95 percent of passenger revenue, respectively, and are based on the carrier's experience in the markets involved. This results in total subsidy-eligible revenues of $493,875.

*Operating expenses.* We have recognized subsidy-eligible operating expenses of $587,798 as being reasonable under honest, economical, and efficient management. The details of all the adjustments and allocations between system and subsidy-eligible expenses are set forth at pages 11–12.

[3] Air Midwest petition, page 28.

Aircraft operating expenses, except an extraordinary maintenance item and aircraft rental expenses, have been estimated on the basis of applicable experienced costs per block hour for Beech 99 and Cessna 402 aircraft indicated in the carrier's petition. The aircraft operating costs per block hour reported by the carrier appear reasonable and are well within the range of similar costs experienced by local service and commuter carriers operating the same types of aircraft. The maintenance item, a $20,555 repair of a wing spar on a Beech 99 aircraft, and aircraft rental expenses of $31,491 were allocated on the basis of the percentage of Beech 99 subsidy-eligible block hours to comparable system block hours.

Reservations-tickets and promotion-sales expenses have been apportioned on the basis of the number of passengers recognized in eligible and ineligible service as a percentage of total system passengers. General and administrative expenses have been allocated on the basis of the percentage of subsidy eligible to system cash expenses other than general and administrative.

Return Element and Provision for Taxes

Air Midwest is currently in a negative equity position and therefore requests that a return element be provided for subsidy purposes on the basis of a combination of the carrier's equity position as at December 31, 1970, and its debt position as at December 31, 1972. Under normal subsidy rate-making procedures, investment reflects both equity and debt status as experienced during the base period. But, as the applicant correctly points out, the usual procedures would produce a return allowance that does not cover interest expense.

The method proposed by Air Midwest clearly violates a long-standing rate-making principle that equity, even if negative, should not be disregarded in determining investment. In addition, adoption of the carrier's proposal would burden a future rate by ignoring a condition that is reflective of losses from prior periods.

The instant case is similar to situations involving some local carriers in the 1950's and early 1960's. In an investigation of rate of return for the local service carriers (Docket 8404),[3] the Board determined that in cases where a carrier's investment amounted to less than 25 cents per aircraft mile, a floor rate of three cents a mile could be used in lieu of a differentiated return based on debt and equity. We propose to use a similar approach in developing a return element for Air Midwest.

Application of the 1960 standards relating to investment per mile and a mileage-rate floor in lieu of return on investment are not relevant to present conditions. The effective cost of debt for small local service carriers in 1960–1961 approximated four to five percent. Now, according to Air Midwest's figures, the effective rate of interest on debt is between nine and ten percent. When the 1960 standards are modified to conform to current conditions, the 1960 investment per aircraft mile of 25 cents becomes 45 cents and the floor rate per mile increases to 5.5 cents. Since Air Midwest's investment (consisting entirely of debt) falls within the revised guidelines, we propose to use 5.5 cents per aircraft mile which produces a return allowance of $37,968 for the subsidy eligible service to be provided by Air Midwest.

No provision has been made for income taxes since Air Midwest has loss carryforward tax credits sufficient to preclude any tax liability for the foreseeable future.

[3] Rate of Return, Local-Service Carriers Investigation, 31 C.A.B. 685 (1960).

The proposed return allowance of $37,968 and the recognized breakeven need of $93,923, produce a total subsidy need of $131,891 for subsidy eligible operations. We consider this amount to be the fair and reasonable annual subsidy for the future period.

Development of Payment Formula

In order to minimize the burden of administering subsidy for both the carrier and the Board, we have decided to use a relatively simple method of distributing subsidy. Operations to be subsidized are similar to those of local service carriers in their early history and to the intra-Alaska services provided by smaller carriers. Therefore, we propose to distribute the subsidy using a rate per aircraft mile applied to a base mileage as was done in individual rate cases involving local service and intra-Alaska carriers. The mileage rate will include breakeven need plus an allowance for return computed at 5.5 cents per aircraft mile.

The base mileage consists of the aircraft miles scheduled to be flown in recognized subsidy-eligible service, reduced by 12 percent.[4] This reduction is designed to assure that the effects of curtailed operations during bad weather or other transitory phenomena do not prevent the carrier from obtaining the full amount of subsidy due during any month.

Under the subsidy-eligible service pattern, Air Midwest will schedule about 740,688 aircraft miles. Application of the 12 percent reduction produces a yearly mileage base of 651,805 aircraft miles. This translates to a daily mileage base of 1,786 miles.

[4] The 88 percent represents the lowest monthly completion factor reported by Air Midwest.

The unit subsidy rate per mile consists of the total annual subsidy of $131,891, including eligible breakeven need of $93,923 and a return allowance of $37,968, divided by the annual base mileage of 651,805 miles. The result is a subsidy rate amounting to 20.23 cents per aircraft mile.

Frontier estimates that if it were required to resume service at the three points, its subsidy need would be increased by about $550,000. This figure assumes operation with Convair 580 aircraft serving the three cities as additional points on existing Frontier flights. We estimate that under the Class Rate VII formula, assuming two round trips a day to each of the three cities over the service pattern prescribed for Air Midwest, subsidy payments of $406,000 would be generated from resumption of service by Frontier.

Conclusion

On the basis of the foregoing we find that the fair and reasonable rate of compensation, for the period beginning the first day of the month subsequent to the adoption of this order by the Board, to be paid to Frontier Airlines, Inc., for air transportation services to be provided by Air Midwest, Inc., between Denver, Colorado and Wichita, Kansas via Hutchinson, Great Bend, and Dodge City, Kansas, in conjunction with the suspension of service at the latter three points by Frontier Airlines, Inc., pursuant to temporary suspension authority, is a rate of 20.23 cents applied to the number of scheduled revenue aircraft miles flown during the month, or to 1,786 miles times the number of days in the month, whichever is lower.

The scheduled revenue aircraft miles flown shall be computed on the direct airport-to-airport milage between the points actually served on each revenue trip operated over the route authorized as subsidy eligible herein.

AIR MIDWEST, INC. FORECASTED OPERATING RESULTS CALENDAR YEAR 1973

| | Subsidy eligible | Subsidy ineligible | System |
|---|---|---|---|
| Traffic data: | | | |
| Revenue plane miles | (1) | (1) | 1,605,891 |
| Number of passengers | (1) | (1) | 34,916 |
| Revenue passenger miles | (1) | (1) | 8,366,900 |
| Available seat miles | (1) | (1) | 17,849,665 |
| Yield per passenger mile-cents | (1) | (1) | 11.99 |
| Passenger load factor-percent | (1) | (1) | 46.87 |
| Revenue block hours | (1) | (1) | 9,063 |
| Revenue: | | | |
| Passenger revenue | $546,544 | $456,805 | $1,003,349 |
| Cargo revenue | 39,000 | 18,346 | 57,346 |
| Mail revenue | 5,190 | 45,000 | 50,190 |
| Charter revenue | | 36,913 | 36,913 |
| Outside maintenance | | 53,316 | 53,316 |
| Total revenue | 590,734 | 610,380 | 1,201,114 |
| Aircraft operating expense: | | | |
| Flight operations | (2) | (2) | $395,684 |
| Maintenance operations | (2) | (2) | 377,324 |
| Aircraft rental | (2) | (2) | 31,474 |
| Depreciation | (2) | (2) | 103,200 |
| Amortization | (2) | (2) | 22,608 |
| Total aircraft expense | 660,244 | 270,046 | 930,290 |
| Servicing expense: | | | |
| Reservations—tickets | (2) | (2) | 249,586 |
| Promotion—sales | (2) | (2) | 37,607 |
| General administrative | (2) | (2) | 89,425 |
| Total servicing expense | 318,639 | 57,979 | 376,618 |
| Total operating expenses | 978,883 | 328,025 | 1,306,908 |
| Net operating profit (loss) | (388,149) | 282,355 | (105,794) |
| Return on investment | N/A | N/A | 121,752 |
| Subsidy need claimed | | | 227,546 |

[1] Information not available.
[2] No detail provided.
[3] Air Midwest claims a subsidy of $227,546. This figure consists of a breakeven need of $105,794, the lower of the carrier's system and subsidy eligible breakeven need, and a claimed return on investment of $121,752. The carrier made no computation of subsidy-ineligible return on investment.

AIR MIDWEST, INC. RECOGNIZED OPERATING RESULTS PROSPECTIVE ANNUAL PERIODS

| | Subsidy eligible | Subsidy [1] ineligible | System |
|---|---|---|---|
| Traffic data: | | | |
| Revenue plane miles | 690,321 | 915,570 | 1,605,891 |
| Number of passengers | 19,545 | 15,129 | 34,674 |
| Revenue passenger miles | 3,931,008 | 4,435,802 | 8,366,900 |
| Available seat miles | 9,192,939 | 8,656,726 | 17,849,665 |
| Yield per passenger mile (cents) | 11.81 | 12.12 | 11.99 |
| Passenger load factor (percent) | 42.76 | 51.24 | 46.87 |
| Revenue block hours | 3,611 | 5,452 | 9,063 |
| Revenue: | | | |
| Passenger revenue | $464,343 | $537,833 | $1,002,176 |
| Cargo revenue | 25,121 | 31,685 | 56,806 |
| Mail revenue | 4,411 | 45,585 | 49,996 |
| Charter revenue | | 39,139 | 39,139 |
| Outside maintenance | | 54,804 | 54,804 |
| Total revenue | 493,875 | 709,046 | 1,202,921 |
| Aircraft operating expense: | | | |
| Flight operations | [2] 176,718 | 219,024 | 395,742 |
| Maintenance operations | [3] 161,320 | 202,016 | 363,336 |
| Aircraft rental | [4] 17,071 | 14,420 | 31,491 |
| Depreciation | [5] 46,851 | 56,349 | 103,200 |
| Amortization | [5] 10,397 | 12,211 | 22,608 |
| Total aircraft expense | 412,357 | 504,020 | 916,377 |
| Servicing expense: | | | |
| Reservations—tickets | [6] 118,420 | 135,075 | 253,495 |
| Promotion—sales | [6] 17,093 | 19,496 | 36,589 |
| General administrative | [7] 39,928 | 48,019 | 87,947 |
| Total servicing expense | 175,441 | 202,590 | 378,031 |
| Total operating expenses | 587,798 | 706,610 | 1,294,408 |
| Net operating profit (loss) | (93,923) | 2,436 | (91,487) |
| Return on investment @ 5.5¢ per revenue plane mile | 37,968 | 50,356 | 88,324 |
| Total need | 131,891 | 47,920 | 179,811 |

EXPLANATORY NOTES

[1] Represents services to and from Pueblo, Colorado, Garden City, Hays, and Salina, Kansas, and between Wichita, Kansas, and Kansas City, Missouri.

[2] Subsidy-eligible flight operations expense consists of crew costs, fuel and oil, insurance, landing fees, and property taxes. It is based upon the applicable costs per block hour of $51.10 for Beech 99 and $21.60 for Cessna 402 aircraft reported by the carrier.

[3] Subsidy-eligible maintenance operations expense consists of engine overhaul, airframe provision, maintenance burden, maintenance labor and a portion of the $20,555 cost of a repair to a wing spar on a Beech 99 aircraft. Except for the repair item, the maintenance expenses were determined on the basis of cost per block hour of $43.75 for Beech 99 and $22.25 for Cessna 402, reported by the carrier. The $20,555 wing spar repair was allocated on the basis of subsidy eligible to system Beech 99 block hours.

[4] Allocated on the basis of the percentage of Beech 99 subsidy-eligible block hours to comparable system block hours.

[5] Estimated on the basis of applicable costs per block hour for Beech 99 and Cessna 402 aircraft.

[6] Apportioned on the basis of the number of passengers flown in eligible and ineligible service as a percentage of total system passengers.

[7] Allocated on the basis of the percentage of subsidy eligible to system cash expenses other than general and administrative.

APPENDIX C

REPORTING REQUIREMENTS FOR AIR MIDWEST [1]

*Monthly*

System data
- Scheduled departures*
- Scheduled departures performed*
- Scheduled miles*
- Scheduled miles flown*
- Other revenue miles flown*
- Revenue miles-total*
- Revenue block hours flown*
- Available seat miles
- Revenue passenger miles
- Passengers enplaned
- Passengers originated
- Mail and cargo RTM.
- Profit and loss statement [2]
- Balance sheet [2]

Dodge City/Great Bend/Hutchinson:
- Scheduled departures by station*
- Scheduled departures performed by station*
- Passengers enplaned/deplaned by station
- Passengers originated by station

Data for entire itinerary for each trip (by trip number) serving Dodge City/Great Ben/Hutchinson
- Scheduled miles by segment*
- Scheduled miles flown by segment*
- Other revenue miles flown by segment*
- Revenue block hours flown by segment*
- Available seat miles by segment*
- Revenue passenger miles by segment*
- Passenger O&D analysis (On-flight O&D analysis)

*By type of equipment.

[1] To be filed monthly unless noted. The formats used by Air Midwest for internal purposes will be satisfactory.

[2] To be filed either monthly or quarterly.

[F.R. Doc.74-1786 Filed 1-22-74;8:45 am]

[Docket No. 23080-2; Order 74-1-89]

## PRIORITY AND NONPRIORITY DOMESTIC SERVICE MAIL RATES, PHASE 2

### Order Fixing Temporary Service Mail Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 16th day of January 1974.

On August 30, 1973, the Board issued Order 73-8-145, directing all interested persons and particularly the Postmaster General and all certificated air carrier parties to this investigation to show cause why the Board should not fix the temporary service mail rates proposed therein for sack mail and for standard and daylight container mail, container minimum charge weights, and pickup and delivery rates, to be effective from March 28, 1973, until the completion of the formal proceeding in this docket.

National Airlines, Inc. (National), and the Postmaster General are the only parties which filed objections and answers to the rate order. While The Flying Tiger Line Inc. (FTL) also filed notice of objection, in lieu of an answer it submitted a document styled "comments" which suggested a number of technical modifications [1] but declared that except for those reservations it had no objection to the temporary rates proposed. National's answer is concerned with "the creation . . . of a single class of mail . . . to be carried on a priority basis" and the possible impact of that one-class concept on other traffic, but it makes no allegation that the rates proposed are not reasonable temporary compensation for the services covered. The Postmaster General did not object to the rates proposed for loose-sack mail, but confined his objections to the rates proposed for container mail. The Postal Service, inter alia, argues that temporary container rates are unnecessary; that a multi-element rate structure is inappropriate; that the proposed rate affords only a token reduction for containerization; and that mail rates related to freight rates and contained in carrier mail rate petitions are fair and reasonable. The answer concludes that container mail rates equivalent to freight rates should be prescribed and that the Postal Service is unwilling to participate in a hearing to fix temporary rates when final rates could be established in practically the same time.[2]

Upon consideration of the answers we find that no issues are presented which would require a hearing concerning the fairness or reasonableness of the temporary rates proposed. Although we will consider FTL's comments, that carrier did not perfect its notice of objection and raises no material issue of fact requiring a hearing; National appears to challenge the conditions of service promulgated by the Postmaster General, but not the rate proposed by the Board; [3] and the Postmaster General, who suggests that both temporary container rates and hearing on temporary rates be dispensed with, has neither requested a hearing nor raised issues warranting a hearing. Questions concerning the necessity for, or the

[1] Principally clarifying and editorial changes.

[2] Other technical matters also are raised and are considered below.

[3] It would be wholly impracticable (especially in light of the fact that the PMG did not inaugurate the single-class mail system until recently) to hold a hearing for temporary rate purposes to determine the volumes of one-class mail to be tendered in each transportation market, as National suggests. National states that this is necessary in order to measure the carriers' ability to meet priority conditions, but it would not resolve the temporary rate issues. We also note that the full priority weighting formerly accorded to air mail was applied to all mail (including the portion covered by previous nonpriority mail rates, to which the priority weighting of only 0.65 has previously been applied) in developing the one-class rates proposed in the show cause order. National does not claim that the priority weighting is inadequate.

appropriateness of, establishing uniform, multielement rates involve matters more appropriate for resolution in relation to the final rate to be paid rather than factual issues going to the fairness or reasonableness of the proposed temporary rates.

We turn first to the contentions of the Postmaster General. As previously noted, he argues that the Board should not establish temporary container rates at this time. It is his view that uniform industry-wide rates are unnecessary and inappropriate, and he indicates that whatever need the Board may have perceived for such rates to assure equitable disposition of the mail among carriers has been vitiated by an open-court settlement of that issue.[4] Moreover, the PMG argues that a hearing on the temporary rates would be wasteful and, accordingly, that the Board should proceed promptly to fixing the final rates. In the interim, the Postmaster General proposes to continue to make so-called progress payments to the carriers on the basis of the rates set forth in their petitions. In any event, says the PMG, if the Board feels that temporary rates should be established, the rates should be those set forth in the carriers' petitions.

In our judgment, the position taken by the Postmaster General is not one which we could accept consistent with our obligation to assure that compensation for the carriage of mail is paid at rates established under section 406. Initially it must be emphasized that under section 406(a) the Board is required to establish the rates for the transportation of mail, and under section 406(c) the Postmaster General is required to compensate the carriers in accordance with the rates so established. There is at the present time no outstanding mail rate specifically providing compensation for containerized mail, as such, the Postal Service's containerization program having been but recently inaugurated. The outstanding mail rates relevant to the services in question are the rates for priority and nonpriority mail.[5] However, the outstanding rates are applicable to the container mail services, and these rates would provide payments in excess of those anticipated pursuant to the container rates proposed in the show cause order.[6] Nevertheless, the Postmaster General has been compensating the carriers not on the basis of the effective mail rate orders but, rather, on the basis of the rates set forth in the carriers' petitions. Whatever the legality of this practice may be under the special circumstances concerning the inauguration of the new container service,[7] we do not see how we can acquiesce in its continuance for longer than the briefest interim period.

In sum, it is clear that the mere fact that a hearing might be necessary to establish temporary rates would not legalize the continuance for an indefinite period of payments for containerized mail at unauthorized rates. In this connection, the establishment of final rates is likely to be both complex and controversial, requiring a substantial volume of evidence and an extended period. In the interim, the parties are entitled to regularized temporary rates for mail services which are predicated upon and reasonably reflect the characteristics and nature of the container services now being provided. Moreover, no party (including the Postmaster General) is pressing for a hearing on the temporary rates, and no factual questions have been raised which would warrant such a hearing under our rules of practice. Accordingly, we find that action to establish temporary rates is required if the container service is to continue on an economic and lawful basis pending determination of the final rates.

Nor can we accept the Postmaster General's contention that if temporary rates are established they should be those set forth in the carriers' petitions, which in turn are based upon freight rates.[8] If it were readily demonstrable that mail costs equalled freight rates, the PMG's position on the proper basis for temporary rates would have merit, but that is not the case. To base current mail payments, pending establishment of final mail rates, on the numerous petitions filed and counterfiled by the carries within the last nine months would produce reasonable mail rate only by happenstance. This departure from established mail rate principles is not acceptable. Multi-element mail rates, which have been used for about 20 years to provide uniform rates among competitive carriers and at the same time to give recognition to length of haul and traffic density as cost-causative factors, are appropriate in the current circumstances notwithstanding differences in container rates for freight.

The factual premises underlying the matters raised by the Postmaster General are based on the assumption that rates and charges for the carriage of freight in containers comprise a valid standard for rates for the carriage of mail. However, the Postmaster General has not provided any basis, and we have no independent basis, for surmising that the rates proposed by the petitioning carriers would provide them with compensation fair and reasonable for the transportation of mail, or even for concluding that the freight rates upon which they are based are reasonable for the freight service involved. None of the petitioned rates are supported by an adequate economic justification; indeed, most of the carrier petitions were merely a competitive reaction to the original petition of FTL for container rates intended to insure acquisition of shares of the new container traffic. Further, because of marketing considerations not relevant to mail rates, the freight rates themselves are not based on a full costing, and the lawfulness of rates for containerized freight is an issue in the Domestic Air Freight Rate Investigation, Docket 22859, raising, of course, the strong possibility that these rates and various discounts may be changed as a result of the outcome of that proceeding. Thus the Postal Service's answer does not raise material issues of fact with respect to the methodology or validity for temporary rate purposes of the container rates proposed in the show-cause order, but is instead dependent on comparisons with freight rates, without any factual basis

[4] As set forth in our show cause order, an open-court settlement was reached by several trunklines and the PMG in the District of Columbia District Court in which the PMG agreed to distribute containerized mail fairly and equitably and the carriers agreed to provide containerized service at the temporary rates set forth in their petitions filed with the Board, pending establishment of rates by the Board. Of course, only the Board can establish rates for the carriage of mail by air, and while the settlement could provide a brief respite from the dispute between the parties it did not, as we understand it, require that the petitions request the same rates for the same service nor preclude the distribution of mail on the basis of price considerations.

[5] Orders E-25610, August 28, 1967, and 70-4-9, April 2, 1970.

[6] The subject rates were originally established as final mail rates. They became subject to adjustment upon the issuance of Order 70-12-48, dated December 8, 1970, instituting the investigation of the Domestic Priority and Nonpriority Mail Rates. However, neither the issuance of that order nor the filing of petitions seeking such rates for container service affects the continued validity of the rates established in Orders E-25610 and 70-4-9. They continue in effect as temporary rates until superseded. If changing circumstances, including the introduction of new methods of handling mail, are believed to render such rates obsolescent, the remedy is a new rate and, if relief is necessary pending the establishment of a final rate, the remedy is a new temporary rate established by the Board.

[7] The question of the lawfulness of progress payments not authorized by effective mail rate orders was recently put to the Board's General Counsel. It then appeared that pending final Board action on our show-cause order (Order 73-8-145) the Postal Service intended to make progress payments on the basis of that order. The General Counsel concluded that he was not prepared to rule that either the Postal Service or the carriers would be in violation of the prior Board orders if they implemented the Postal Service's directive pending finalization of our order to show cause, but in light of the novelty and complexity of the question expressed inability to resolve the issue definitively within the required time-frame. He further concluded that any attempt at such a ruling would be inappropriate in light of the pendency of the order to show cause.

[8] We note, in passing, that there have been substantial changes in the freight rate tariffs following filing of many, if not all, of the subject petitions.

supporting the validity of the comparison.[9]

The only purported issues of fact raised which are not based on comparisons of mail rates with freight rates concern circuity and the ratio of line-haul and station costs. The circuity questions are dealt with in our order fixing final past period rates in this proceeding.[10] The ratio question relates to the use of a 65/35 percent ratio of line-haul to station costs rather than the 80/20 ratio employed in 1967 in the Domestic Service Mail Rate Invn., Order E–25610. The Postmaster General contends that there is no support for the revised ratio. However, this ratio can be definitively determined only on the basis of extensive cost studies which will be a subject for the final rate proceeding. In the interim, the 65/35 ratio represents the Board's best judgment of this question. The Postmaster General has not shown in what way he is prejudiced by the use of this ratio and, indeed, it does not appear that the ratio will materially affect the total amount of money which the Postal Service will be required to pay for container service on an industry-wide basis. Rather, the ratio affects the relationship between long-haul and short-haul costs and the relative compensation of long-haul carriers vis-a-vis short-haul carriers. No carrier has objected to the 65/35 ratio, and we find that for present purposes it is entirely reasonble.

In short, the foregoing matters are in our judgment not material to the disposition of the instant temporary rates but, to the extent necessary, can be reviewed in the final rate proceeding. In any event, the rates proposed in the show cause order are subject to retroactive adjustment when final rates are established and provide a reasonable, cost-related basis for interim payment. Accordingly, except for the technical amendments discussed below, we find the temporary rates proposed in Order 73–8–145 are fair and reasonable.

[9] For example, the PMG uses differences in container rates and bulk rates for freight as standards against which to compare savings for containerization of mail, but differences in freight rates frequently involve promotional factors, and, accordingly, do not provide a sound measure of cost variances. Moreover, the comparison made by the PMG would be unsound even if the freight container differentials were cost-based, since the freight rates and mail rates reflect dissimilar structures. In any event, even using the examples set forth in the appendix supporting the PMG's argument, the lack of any consistency and uniformity in bulk and container freight rate differentials underscores the invalidity of using them as a standard for container savings. Thus, for shipments originating in New York (A–2 containers weighing 5,000 pounds) the PMG analysis shows "savings" ranging from $126 to $277, depending on the destination. It is most unlikely that these differences can be explained in terms of terminal handling costs.

[10] Order 73–11–91, p. 4, notes 5 and 6.

REQUEST FOR TECHNICAL AMENDMENTS

The answers of the Postmaster General and FTL also propose various technical amendments to the order. First, Order 73–8–145 proposed to continue the present dual system of airmail and nonpriority rates for sack mail in effect as temporary rates until September 30, 1973, and thereafter to establish one rate for sack mail pending completion of this investigation. The Postal Service, however, did not commence tendering both nonpriority and priority mail on a priority basis until October 13, 1973. Accordingly, we have modified our order by changing the effective date for the establishment of the single rate for sack mail from October 1 to October 13, 1973, the date on which the Postal Service actually inaugurated a single class of service for this mail.

Second, in formulating and proposing these temporary rates, we did not focus our specific attention on parcel air lift (PAL) mail, a low-density class of mail transported by carriers between military installations on a space-available basis at the rate previously applicable to nonpriority mail. The answer of the Postal Service expresses its intention to continue to seek space-available transportation for PAL and requests that we reflect this fact by continuing the preceding nonpriority rate in effect for PAL during this period of temporary rates. Although the Board did not intend to prescribe separate rates for particular classes of mail, we find it reasonable to make an exception for PAL and shall modify our order to so provide. PAL will continue to move on a space-available basis and accordingly we will provide that the nonpriority rate will apply to it. To require the Postal Service to pay for the transportation of this subordinated class of mail the same rate applicable to mail with superior boarding priority could discourage completely the shipping of PAL. With this change, however, the PMG will be free to ship PAL at a rate which continues to reflect its space-available status.

Next, FTL has requested a clarification setting forth the boarding priority to be afforded standard container mail service. It should be sufficient to state that for temporary rate purposes the standard container rates were based on the sack mail costs, less savings for containerization, and that the sack mail costs reflected the air mail priority weighing of 1.0. Accordingly, FTL is correct in its assumption that the Board anticipated that air mail loading priorities would be applied to the standard container mail.

FTL objects to using 6,000 and 2,000 pounds, respectively, as minimum chargeable weights for A–2 and LD–3 type containers and suggests that there be substituted instead the 6,200- and 2,100-pound pivot weights proposed in its rate petition. The latter weights were derived by multiplying the "stacked" weighted density of mail[11] by the internal cubic capicity of each of these containers, a formula which, we are told, most nearly approximates the minimum weight methodology used for pricing air freight containers. However, the cube capacities of the containers vary among carriers, and insufficient data are available with respect to densities. Thus the FTL formula provides no basis for standard minimum weights. We shall not make the requested substitution but shall continue to use for temporary rate purposes the minimum-charge weights set forth in the show cause order, since they are more representative of the pivot weights embodied in the carriers' own rate petitions.

We agree with FTL's contention that our temporary container rates should reflect minimum chargeable weights, pick-up and delivery charges, and terms and conditions of service for type FT–B and FT–C containers which are now in use by the carrier to transport mail but were not before the Board when these rates were proposed. Accordingly, we are modifying our order to incorporate these two new container types.

We shall also adopt the Postmaster General's suggestion to base our off-airport[12] charge for pickup and delivery of LD–11 containers on the applicable freight tariff rate for the LD–5 container instead of the LD–7 container, as originally proposed. The change is necessary to reflect the fact that the LD–11 container bears a much closer resemblance to the former than the latter container in terms of both overall size and weight capacity.

On the other hand, we are not persuaded that our temporary container rates should reflect a "deficit weight rule" as also urged by FTL. We see no need for such rule since the problem—i.e., weight deficits in one or more containers in a multi-container shipment and surplusages in others—does not appear to have surfaced to any significant extent in connection with the transportation of containerized mail. If it does, then inclusion of such provision as a standard condition of container carriage can be raised and considered in connection with the establishment of final mail rates in this proceeding. Furthermore, this provision was included in only a minority of the carriers' rate petition so that its adoption now would be clearly inconsistent with our overall approach of adopting, for container services, the

[11] Estimated to be 13.95 pounds per cubic foot based on a projected traffic ratio of 72 percent nonpriority mail to 28 percent airmail in containers.

[12] The charge for pickup and delivery of containers at postal facilities other than those located on or adjacent to airports.

terms and conditions of carriage reflected in a majority of these petitions.[13]

Since we have made several changes in the tentative findings and conclusions embodied in the show cause order, we shall permit the filing of exceptions to the instant order with respect to those changes—i.e., delay of the effective date for a single temporary rate for mail tendered in sacks to October 13, 1973; establishment of a separate temporary rate for PAL; inclusion of temporary rates for FT–B and FT–C type containers; change of the temporary off-airport charge for pickup and delivery of LD–11 containers; and reduction of the limitation of liability for container mail. However, adequate opportunity has already been afforded for responses on all other matters, and hence we are issuing a final order, with exceptions to be limited to the items specified above.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a) and 406 thereof, and the regulations promulgated in 14 CFR Part 302;

*It is ordered*, That:

1. Docket 26044 be and it hereby is consolidated into Docket 23080–2.

2. The petitions filed by American Airlines, Inc., Eastern Air Lines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Seaboard World Airlines, Inc., and United Air Lines, Inc., insofar as they request the establishment of temporary container mail rates in Docket 23080–2, be and they hereby are dismissed.

3. The fair and reasonable temporary rates of compensation to be paid by the Postmaster General

(a) From March 28 through October 12, 1973, for the transportation by air of nonpriority mail (i.e., all mail other than airmail and air parcel post, which may be tendered from time to time by the Postal Service in sacks and carried on a space-available basis) other than that for which rates are elsewhere established, the facilities used and useful therefor, and the services connected therewith, to Airlift International, Inc., Alaska Airlines, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Caribbean-Atlantic Airlines, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., The Flying Tiger Line Inc., Frontier Airlines, Inc., Hughes Air Corp., National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Seaboard World Airlines, Inc., Southern Airways, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc., for operations over their routes authorized under certificates in effect on or subsequent to March 28, 1973, within the 48 contiguous States and the District of Columbia; between points in the 48 contiguous States and the District of Columbia, on the one hand, and, on the other hand, points in the State of Alaska; Hilo and Honolulu, Hawaii; San Juan, Puerto Rico; St. Croix and St. Thomas, Virgin Islands; Wake Island; Agana, Guam; Pago Pago, American Samoa; Acapulco, Guaymas, La Paz, Mazatlan, Merida, Mexico City, Monterrey, Puerto Vallarta, Tampico, and Veracruz, Mexico; and terminal points in Canada; between Honolulu, Hawaii, on the one hand, and, on the other hand, Agana, Guam; Wake Island; and Pago Pago, American Samoa; between points in Puerto Rico, on the one hand, and St. Croix and St. Thomas, Virgin Islands, on the other; between points in Puerto Rico; and between St. Croix and St. Thomas, Virgin Islands; shall be the sum of a linehaul charge of 12.63 cents per nonstop great-circle ton-mile and terminal charges of 2.61, 5.22, and 10.44 cents per pound at stations of origin classified as X, Y, and Z, respectively,[14] subject to the terms and conditions specified in Order 70–4–9, dated April 2, 1970.

(b) From March 28 through October 12, 1973, for the transportation by air of mail in sacks other than that for which rates are elsewhere established, the facilities used and useful therefor, and the services connected therewith, to

Airlift International, Inc.
Allegheny Airlines, Inc.
Eastern Air Lines, Inc.
Frontier Airlines, Inc.
Hughes Air Corp.
North Central Airlines, Inc.
Ozark Air Lines, Inc.
Piedmont Aviation, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.
United Air Lines, Inc.

for operations over their entire systems as constituted on or subsequent to March 28, 1973, and

Alaska Airlines, Inc.
American Airlines, Inc.
Braniff Airways, Inc.
Caribbean-Atlantic Airlines, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
The Flying Tiger Line Inc.
National Airlines, Inc.
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Seaboard World Airlines, Inc.
Trans World Airlines, Inc.
Western Air Lines, Inc.

for operations over their routes within the 48 contiguous States and the District of Columbia insofar as authorized under certificates for interstate air transportation; over their routes between points within the 48 contiguous States and the District of Columbia, on the one hand, and, on the other, points in the State of Alaska; Hilo and Honolulu, Hawaii; Acapulco, Merida, Mexico City, and Monterrey, Mexico; San Juan, Puerto Rico; points in the Virgin Islands; and terminal points in Canada; and between points in Puerto Rico, on the one hand, and points in the Virgin Islands, on the other; between points in Puerto Rico; and between points in the Virgin Islands; which are in effect on or subsequent to March 28, 1973, shall be the sum of a linehaul charge of 25.25 cents per nonstop great-circle ton-mile and terminal charges of 2.46, 4.92, and 9.85 cents per pound at stations or origin classified as X, Y, and Z, respectively, subject to the terms and conditions specified in Order E–25610, dated August 28, 1967.

(c) On and after October 13, 1973, for the transportation by air of mail in sacks other than that for which rates are elsewhere established, the facilities used and useful therefor, and the services connected therewith, to

Airlift International, Inc.
Allegheny Airlines, Inc.
Eastern Air Lines, Inc.
Frontier Airlines, Inc.
Hughes Air Corp.
North Central Airlines, Inc.
Ozark Air Lines, Inc.
Piedmont Aviation, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.
United Air Lines, Inc.

for operations over their entire systems as constituted on or subsequent to October 13, 1973, and

Alaska Airlines, Inc.
American Airlines, Inc.
Braniff Airways, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
The Flying Tiger Line Inc.
National Airlines, Inc.
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Seaboard World Airlines, Inc.
Trans World Airlines, Inc.
Western Air Lines, Inc.

for operations over their routes within the 48 contiguous States and the District of Columbia insofar as authorized under certificates for interstate air transportation; over their routes between points within the 48 contiguous States and the District of Columbia, on the one hand, and, on the other, points in the State of Alaska; Hilo and Honolulu, Hawaii; Acapulco, Merida, Mexico City, and Monterrey, Mexico; San Juan, Puerto Rico; points in the Virgin Islands; and terminal points in Canada; and between points in Puerto Rico, on the one hand, and points in the Virgin Islands, on the other; between points in Puerto Rico; and between points in the Virgin Islands; which are in effect on or subsequent to Octo-

[13] Our order proposed to adopt a released value provision pursuant to which carriers would be allowed to limit their liability for loss of, damage to, or destruction of, containerized mail shipments to $8.16 per pound, plus transportation charges, although all but one of the carrier petitions had proposed to limit this liability to 50 cents per pound or $50 per shipment (whichever is greater) plus such charges. Since the 50¢/$50 rule is supported by most of the carriers and appears agreeable to the Postal Service, we have determined to substitute it for the released-value provision proposed in the show cause order. Moreover, the question whether the 50¢/$50 provision should be replaced by a higher limit of liability for cargo shipments is presently pending before the Board in the Liability and Claims Rules and Practices Investigation Docket 19923, so that it would be premature at this time for us to impose this higher limit on carriers as a standard condition of service for container mail for temporary rate purposes.

[14] As defined in Order 70–4–9.

ber 13, 1973, shall be the sum of a linehaul charge of 17.32 cents per nonstop great-circle ton-mile and terminal charges of 4.48, 8.96, and 17.92 cents per pound at stations of origin classified as X, Y, and Z, respectively, subject to the terms and conditions specified in Order E–25610, dated August 28, 1967.[15]

(d) On and after October 13, 1973, for the transportation in sacks of that mail matter described in 39 U.S.C. 3401, the facilities used and useful therefor, and the services connected therewith, for the carriers and the points listed in subparagraph (c) above, the sum of a linehaul charge of 12.63 cents per nonstop great-circle ton-mile and terminal charges of 2.61, 5.22, and 10.44 cents per pound at stations of origin classified as X, Y, and Z, respectively, subject to the terms and conditions specified in Order 70–4–9, dated April 2, 1970.

(e) On and after March 28, 1973, for the transportation by air of mail in containers, the facilities used and useful therefor, and the services connected therewith, for the carriers and between the points listed in subparagraph (c) above, (1) between 9:00 p.m. and 6:00 a.m. local time, the sum of a linehaul charge of 17.32 cents per nonstop great-circle ton-mile and terminal charges of 2.17, 6.65, and 15.61 cents per pound at stations of origin classified as X, Y, and Z, respectively, and (2) between 6:01 a.m. and 8:59 p.m. local time, the sum of a linehaul charge of 9.84 cents per nonstop great-circle ton-mile and terminal charges of 2.17, 6.65, and 15.61 cents per pound at stations of origin classified as X, Y, and Z, respectively; subject to the terms and conditions set forth in Appendix A attached hereto, and subject to a minimum charge for each container equal to the product of the rate specified in (1) or (2) above, as applicable, times the minimum chargeable weight set forth below for the container in which the mail is transported:

| *Container Type* | *Minimum Charge Weight, lbs.* |
|---|---|
| A–1 | 5,600 |
| A–2 | 6,000 |
| A–3 | 6,200 |
| LD–1 | 2,200 |
| LD–3/FT–C | 2,000 |
| FT–B | 2,850 |
| LD–5 | 3,350 |
| LD–7 | 4,750 |
| LD–11 | 3,350 |
| LD–W | 800 |

(f) The mail ton-miles for each shipment shall be computed by using the nonstop great-circle ton-miles between the station of origin and station of destination for each shipment as the standard mileage between such points.

(g) On and after March 28, 1973, for the pickup and the delivery of mail in containers, for the carriers and at the points listed in subparagraph (c) above, (1) at Postal Service facilities other than the facilities mentioned in subparagraph (2) below, the charges in ATP Tariff No. 3–C, C.A.B. No. 19, applicable to the pickup and delivery of A–1, A–2, A–3, FT–B,[16] LD–1, LD–3, LD–5, LD–7, and LD–W containers in the cities listed in this tariff,[17] and (2) at Postal Service facilities located on or adjacent to airports, the charges set forth below for each of the types of containers used to transport mail:

| *Container Type* | *Charge* |
|---|---|
| A–1, A–2, A–3 and LD–7. | $40, or the applicable freight tariff rate, whichever is lower. |
| FT–B | $19. |
| LD–5 | $20. |
| LD–1, LD–3, and FT–C. | $13. |
| LD–11 | $22. |
| LD–W | $5. |

subject to the terms and conditions set forth in Appendix B attached hereto.

4. The temporary service mail rates, including both linehaul and terminal charges, container minimum charges, and pickup and delivery charges, established herein shall be paid in their entirety by the Postmaster General and shall be subject to retroactive adjustment to March 28, 1973, as may be required by the order establishing final service mail rates in Docket 23080–2.

5. Exceptions to delay of the effective date for a single temporary rate of mail tendered in sacks to October 13, 1973, establishment of a separate temporary rate for PAL, inclusion of temporary rates for FT–B and FT–C type containers, change of the temporary off-airport charge pickup and delivery of LD–11 containers, and reduction in the limitation of liability for container mail may be filed and served on or before the tenth day after service of this order. Such exceptions shall set forth specific exceptions and the bases therefor. If no exceptions are filed within said 10-day period, these matters will become final without further order of the Board. If exceptions are filed within said 10-day period, further proceedings in connection therewith shall be conducted in such manner as the Board may deem appropriate.

6. This order shall be served upon Airlift International, Inc., Alaska Airlines, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Caribbean-Atlantic Airlines, Inc., The Flying Tiger Line Inc., Frontier Airlines, Inc., Hughes Air Corp., National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Seaboard World Airlines, Inc., Southern Airways, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
*Secretary.*

APPENDIX A—TERMS AND CONDITIONS FOR CONTAINERIZED MAIL RATES

1. "Container" and the various types of containers used herein refer to the types of containers defined in Tariff ATP No. CT–4, CAB No. 131, Rule 3(B) (6), and Tariff C–CT–1, CAB No. 400, Rules 6(F), and Petition of The Flying Tiger Line Inc. for the establishment of container mail rates in Docket 23080–2, Appendix A, paragraph 35. The containers referred to herein are owned by the carrier.

2. A "pallet supporter" is a portable conveyor base placed under a container for the purpose of positioning such container for loading and unloading while in the possession of the Postal Service.

3. "Airbill" refers to a non-negotiable shipping document issued by the Postal Service or by the carrier. (See paragraph 20(A) herein.)

4. "Advance arrangement" shall mean that the Postal Service is required to contact the carrier prior to tender of a shipment in order to enable the Postal Service and the carrier to establish the time and place of tender, and to enable the Postal Service and/or the carrier to make special arrangements for the shipment.

5. "Legal holiday" shall mean any national, state or local legal holiday.

6. "Shipment" shall mean a single consignment of one or more containers from one Postal Service facility at one time at one address, receipted for in one lot and moving on the airbill, to one destination Postal Service facility.

7. Fractions shall be treated as follows:

(A) Fractions of pounds will be assessed at the charge for the next higher pound.

(B) In computing charges, fractions of less than one-half cent will be dropped and fractions of one-half cent or more will be considered as one cent.

8. Unless otherwise provided, in computing time in days, full calendar days shall be used and Sundays and legal holidays shall be included, except when the last day falls on a Sunday or legal holiday in which event the next following calendar day (other than a Sunday or legal holiday) shall be included.

9. Packing and Marking Requirements.

(A) Containers must be so prepared or packed as to insure safe transportation with ordinary care in handling. Carrier acceptance of a container shipment shall be prima facie evidence of the Postal Service's compliance with this paragraph.

(B) Each container must be legibly and durably marked with the name and address of the origination and destination Postal Service facility.

(C) The Postal Service shall load a container to distribute the container load so as not to exceed 200 lbs. per square foot of floor contact surface, *Provided, however,* That, for mail shipments in Type FT–C con-

[15] On and after October 13, 1973, the temporary rates for sack mail to and from points previously subject to the nonpriority mail rate but not included in domestic priority mail rate orders (i.e., Wake Island; Agana, Guam; Pago Pago, American Samoa; Guaymas, La Paz, Mazatlan, Puerto Vallarta, Tampico, and Veracruz, Mexico) will thus be the mail rates established by Board orders applicable to those points (i.e., Orders 68–9–9, dated September 4, 1968, and 69–10–149, dated October 30, 1969, as amended).

[16] The charges for LD–11 and FT–C containers shall be the same as the tariff rates for LD–5 and LD–3 containers, respectively.

[17] The charges for the FT–B container shall be the same as the tariff rates for pickup and delivery of Type B containers.

tainers, the Postal Service shall load such containers to distribute the container load so as not to exceed 150 lbs. per square foot of floor contact surface.

(D) The containers must be loaded and unloaded by the Postal Service at places other than the carrier's business.

(E) The Postal Service shall indicate in the airbill that the container shipment is subject to the terms and conditions of this mail rate.

10. Unless otherwise indicated, the rates and conditions referred to herein apply airport-to-airport and are applicable only to the transportation of mail wholly loaded in containers owned by the carrier. Any mail carried outside containers will be carried at applicable non-container mail rates established by the Civil Aeronautics Board.

11. For points at which pick-up and delivery service is provided, the rates, terms, and conditions set forth in Appendix B herein will apply.

12. (A) The Standard Container rates described herein are applicable to container mail shipments on flights departing between the hours of 9 p.m. and 6 a.m. local time.

(B) The Daylight Container rates described herein are applicable to container mail shipments on flights departing between the hours of 6:01 a.m. and 8:59 p.m. local time.

13. Container mail rates will apply only to shipments of mail in the containerized mail category as defined by the Postal Service.

14. The following will be acceptable for carriage only upon advance arrangement:

(A) Shipments liable to impregnate or otherwise damage equipment or other shipments.

(B) Shipments requiring special attention, protection, or care.

15. The carrier will reject a container prior to the performance of any transportation by air from the airport of origin when it reasonably appears to the carrier that such container is:

(A) Improperly packed or packaged, damaged, or structurally impaired;

(B) Not accompanied by proper documentation and necessary information as required by the terms and conditions herein;

(C) Subject to advance arrangements unless such arrangements have been satisfactorily completed;

(D) Packed so as to exceed the following pounds in gross weights:

| *Container type* | *Pounds* |
|---|---|
| A–1/A–3 | 10,000 |
| A–2 | 12,500 |
| LD–7 | 10,200 |
| LD–11 | 7,000 |
| LD–5/FT–B/FT–C | 5,000 |
| LD–3/LD–1 | 3,500 |
| LD–W | 1,200 |

16. (A) Subject to advance arrangements and the availability of a container, the carrier will furnish such container(s) (including pallet supporter) for the carriage of a shipment. The charge for the use of such container(s) (including pallet supporter) is included in the rates and charges established herein.

(B) (1) An empty container delivered to the Postal Service for loading must be tendered loaded to the carrier within 36 hours after receipt by the Postal Service.

(2) After transportation has been provided to destination, a loaded container delivered to the Postal Service for unloading must be returned empty to the carrier within 36 hours after receipt by the Postal Service.

(3) In the event such container(s) (including pallet supporter) is not so tendered to the carrier as provided in (B)(1) above, or returned to the carrier as provided in (B)(2) above, a rental charge of $10.00 for each container (including pallet supporter) shall be assessed for each 24-hour period or fraction thereof, in excess of 36 hours, computed (1) from the time of delivery of the empty container to the Postal Service to the time of the return of the loaded container to the carrier, or (2) from the time of delivery of the loaded container to the Postal Service to the time of the return of the empty container to the carrier.

(C) In computing time in hours as provided in (B)(1), (2) and (3) above, Saturdays, Sundays, and legal holidays shall be excluded, except that when an empty container is delivered to the Postal Service for loading or a loaded container is delivered to the Postal Service for unloading on a Saturday, Sunday or legal holiday, computation of time will commence upon receipt of the container by the Postal Service for the balance of that day and then commence again on the next following calendar day other than Saturday, Sunday or legal holiday.

17. When the carrier furnishes a container (including pallet supporter) the Postal Service shall be liable to the carrier for loss of or damage to such container (including pallet supporter), occurring at any time or place other than when in the possession of the carrier.

18. Rates to and from Boston, Massachusetts, Milwaukee, Wisconsin, and Philadelphia, Pennsylvania, apply also when the carrier performs motor truck transportation in lieu of transportation by aircraft for that part of the transportation between:

Boston, Massachusetts, and New York, New York, or Newark, New Jersey.
Milwaukee, Wisconsin, and Chicago, Illinois,
Philadelphia, Pennsylvania, and New York, New York, or Newark, New Jersey.

19. All containers shall be subject to inspection by the carrier, but the carrier shall not be obligated to perform such inspection.

20. (A) The Postal Service shall prepare an airbill or other non-negotiable shipping document indicating the number of containers in each shipment tendered, and the weight and condition of each container. If the Postal Service fails to present such an airbill, the carrier will prepare a non-negotiable airbill subject to these terms and conditions.

(B) The airbill shall apply at all times when the shipment is being handled by or for the carrier, including pick-up and delivery and other ground services rendered by or for the carrier in connection with the shipment.

21. All container mail shipments shall contain mail conforming to the postal regulations applicable thereto. The carrier shall not be liable to the Postal Service for loss or expense due to the Postal Service's failure to conform to its own regulations. No liability shall attach to the carrier if the carrier in good faith determines that what it understands to be the applicable law, postal regulation, demand, order or requirement provides that it refuse and it does refuse a shipment.

22. (A) Except as provided in subparagraphs (B), (C), (D) and (E) below, the carrier shall be liable for damage sustained in the event of loss of or damage to any shipment of mail loaded and sealed in containers by the Postal Service, pursuant to the terms and conditions established herein only in the event of either

(1) the total loss of a container; or

(2) damage or destruction of the contents of a container if, and only if, the structural integrity of the container itself is visibly impaired and the damage or destruction of the contents is directly related to such structural impairment and if in addition the occurrence which caused the destruction, loss or damage so sustained took place during the transportation covered by the airbill.

(B) The carrier shall not be liable for shortage of or damage, other than concealed damage, to articles loaded and sealed in containers by the Postal Service, provided the seal is unbroken at the time of delivery and the container retains its basic integrity.

(C) The carrier shall not be liable if it proves that it and its agents have taken all necessary measures to avoid the loss or damage or that it was impossible for the carrier or its agents to take such measures.

(D) The carrier shall not be liable for loss or damage caused by the act or default of the Postal Service.

(E) The carrier shall not be liable for any consequential or special damages whether or not the carrier had knowledge that such damages might be incurred.

(F) Receipt of the container shipment by the Postal Service without a notation on the airbill of loss or damage shall be prima facie evidence that the same has been delivered in good condition and in accordance with the airbill.

(G) The Postal Service shall be responsible for the correctness of the particulars and statements relating to the shipment which it inserts in the airbill and shall be liable for all damages suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

(H) The statements in the airbill relating to the weight of the mail shipments shall be prima facie evidence of the facts stated; those relating to the number of containers in the shipment and the condition thereof shall not constitute evidence against the carrier except as far as they have been, and are stated in the airbill to have been, checked by the carrier in the presence of the Postal Service or related to the apparent conditions of the shipment.

23. (A) By tendering the container(s) to the carrier for transportation, the Postal Service agrees to the limitations set forth in these rules and regulations and affirms the description of the shipment as recited on the airbill, and the fact that the container and its contents are not of a nature unsuitable for the carriage by air or hazardous thereto.

(B) In consideration of the carrier's rate for the transportation of any container shipment, which rate, in part, is dependent upon the value of the shipment as determined below, the Postal Service agrees that the value of the shipment shall be determined in accordance with the provisions stated below and that the total liability of the carrier shall in no event exceed:

(1) 50 cents per pound multiplied by the chargeable weight of the entire shipment which may have been lost, damaged or destroyed, but not less than $50 per shipment, plus the amount of any transportation charges for which the carrier may be liable or

(2) the actual value of the shipment, plus the amount of any transportation charges for which the carrier may be liable; or

(3) the amount of any damages actually sustained, whichever is the least amount.

24. The Postal Service shall be liable to pay or indemnify the carrier for all claims, fines, penalties, damages, costs or other sums which may be incurred, suffered or disbursed by the carrier by reason of any violation of any of the terms contained herein or any other default of the Postal Service with respect to a mail shipment.

25. The Postal Service shall be liable for all unpaid charges payable on account of a shipment including, but not confined to, sums advanced or disbursed by the carrier on account of such shipment.

26. Except as otherwise provided herein the carrier will promptly notify the Postal Service of the arrival of a mail container shipment except when delivery is to be provided by the carrier. Where the Postal Service fails to pick up mail container shipment within 24 hours of notification or where delivery by the carrier is impossible due to a work stoppage at the destination post office, or due to any other reason outside the carrier's control, the mail container shall be stored by the carrier at the expense of the Postal Service. Such shipment will be held subject to a charge of 50 cents per day per 100 pounds or any fraction thereof.

27. The carrier, in the exercise of due diligence and in order to protect all containerized mail accepted for transportation, will determine the routing of any shipment. With respect to the carrier's routing of any shipment pursuant to this paragraph and unless the Postal Service specifies to the contrary at the time the carrier accepts the shipment, the carrier shall choose the most expeditious routing available via the carrier's flights.

28. Except as otherwise provided herein, the carrier has no obligation to commence or complete transportation within a certain time or according to any specific schedule, or for error in any statement of times of arrival or departure.

(A) The carrier undertakes to transport, consistent with its capacity to carry, all containerized mail accepted for transportation on flights to which such containers are tendered within the time periods established herein. All shipments are subject to the availability of equipment of the kind and type capable of handling the shipment. Nothing in this paragraph shall be construed as relieving the carrier with respect to Standard Container service of liability for fines or penalties authorized by 49 U.S.C. 1471 and 39 U.S.C. 5401(b).

(B) With respect to the Daylight containerized mail service proposed herein, such traffic will be subject to the availability of space and will be boarded after the accommodation of passengers and their baggage; and after shipments of airmail and express. The carrier will determine on a reasonable and not unjustly discriminatory basis the boarding priority of Daylight containerized mail shipments and air freight shipments. The carrier will determine which such shipments shall not be carried on a particular flight and which shall be removed at any time or place whatsoever and when a flight shall proceed without all or any part of such a shipment. Nothing in this paragraph shall be construed as relieving the carrier of liability for negligent delay.

(C) Any shipment will be subject to refusal, delay or embargo by the carrier if such mail container shipment cannot be transported with reasonable dispatch by reason of any governmental rules, regulations, or orders or because of unavailability of equipment of the kind or type capable of handling the shipment, or for other conditions beyond the control of the carrier.

29. Charges will be paid pursuant to procedures established for the payment of charges for the transportation of priority mail and nonpriority mail outside of containers.

30. (A) All claims, except for overcharges, must be made in writing to the carrier within a period of nine months and nine days after the date of acceptance of the shipment by the carrier. Claims for overcharges must be made in writing to the carrier within two years after the date of acceptance of the shipment by the carrier. In computing the time periods under this paragraph, the first day of the period shall be the day after acceptance of the shipment by the carrier.

(B) (1) Damage and/or loss discovered by the Postal Service after delivery and after a clear receipt has been given to the carrier must be reported in writing to the carrier at destination within fifteen days after delivery of the shipment. If more than fifteen days pass between date of delivery of shipment by carrier, and date of report of loss or damage and request for inspection by the Postal Service, it shall be incumbent upon the Postal Service to offer reasonable evidence to the carrier when inspection is made that loss or damage was not incurred by the Postal Service after delivery of shipment by the carrier. While awaiting inspection by the carrier, the Postal Service must hold the shipping container and its contents in the same condition they were in when damage was discovered insofar as it is possible to do so.

(2) No claim with respect to a shipment, any part of which is received by the Postal Service, will be entertained until all transportation charges have been paid. The amount of the claim may not be deducted from the transportation charges. When the Postal Service does not receive any part of a shipment, a claim with respect to such shipment will be entertained even though transportation charges thereon are unpaid.

31. (A) The carrier shall not be liable in any action brought to enforce a claim, except for overcharges, unless the applicable provisions of paragraph 30 have been complied with by the claimant, and unless such action is brought within two years after the date written notice is given to the claimant that the carrier has disallowed the claim in whole or in part.

(B) For recovery of overcharges, action at law shall be begun within two years from delivery or tender of delivery of shipment by the carrier, and not after, except that if claim for overcharge has been presented in writing to the carrier within such two-year period, that period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant for disallowance of the claim, or any part or parts thereof specified in the notice.

32. No employee, agent, or representative of the carrier has the authority to alter, modify, amend or waive any provisions of the rates, terms or conditions contained herein.

APPENDIX B—TERMS AND CONDITIONS FOR PICK-UP AND DELIVERY OF CONTAINERIZED MAIL

1. The definition set forth in paragraphs 1–6 of Appendix A apply herein and in addition the following:

(A) The term "pick-up service" as used herein refers to the transportation of outbound shipments from point of pick-up to carrier's airport terminal.

(B) The term "delivery service" as used herein refers to the transportation of inbound shipments from the carrier's airport terminal to destination Postal Service facility.

(C) The term "airport terminal" as used herein refers to the carrier's facilities maintained at airports.

(D) The term "airport mail facility" shall mean the Postal Service's facility on or adjacent to airports.

2. (A) Pick-up and delivery services are governed by the same rules and regulations which govern the airport-to-airport transportation of containerized mail shipments (see Appendix A herein).

(B) Pick-up and delivery services will be provided, unless otherwise indicated, to and from the carrier's airport terminal and Postal Service facilities within pick-up and delivery area A (as defined in Tariff ATP No. 3–C, CAB No. 19, Section I) of the airport cities named at the rates and charges indicated herein.

3. Except as otherwise indicated, pick-up and delivery service will be subject to the following provisions:

(A) Pick-up service will be provided upon request of the Postal Service.

(B) Delivery service will be provided for all shipments unless contrary instructions have been given by the Postal Service (on the airbill or other shipping document). Such contrary instructions must be received by the carrier prior to removal of the shipment from carrier's airport terminal at destination.

(C) Pick-up and delivery service will not be provided (1) when, because of conditions beyond the carrier's control, it is impractical to operate vehicles, or (2) to and from any address not directly accessible to vehicles.

(D) Pick-up and delivery service will not be provided for containers unless advance arrangements have been made, including, where required, the furnishing of additional men and equipment by and at the risk of the Postal Service.

(E) Shipments of containers in excess of any of the following dimensions will not be accepted in pick-up and delivery service:

| *Dimensions* | *Inches* |
|---|---|
| Length | 125 |
| Width: | |
| Top | 88 |
| Bottom | 88 |
| Height | 87 |

4. A container which, through no fault of the carrier, cannot be delivered on the first tender of delivery to the Postal Service will be returned to the carrier's terminal and the Postal Service will be notified. Re-delivery will be made only upon request of the Postal Service, and will be performed in accordance with instructions from the Postal Service. An additional delivery charge will be made for each subsequent delivery or tender of delivery of such shipment.

5. Charges herein apply solely for the pick-up and delivery of mail shipments in containers and are subject to the following conditions:

(A) Pick-up and delivery services will be provided from or to facilities having a loading dock which is at least 44 inches and not more than 52 inches above street level. When services are provided to or from facilities not having such loading docks, the Postal Service shall be responsible for providing needed equipment for moving the container on or off the truck.

(B) Pick-up and delivery services will be performed by a truck and one driver. The Postal Service shall be responsible for providing needed manpower and/or equipment to assist the driver in moving the container on or off the truck.

(C) No charge will be assessed for the pick-up or delivery of an empty container when a loaded container is delivered or picked up at the same time at the same address, provided that the driver is not required to wait more than 30 minutes from the time the loaded container is delivered or picked up at such address. When the waiting time exceeds 30 minutes a charge of $4.00 will be made for each additional 15 minutes or fraction thereof, except in Los Angeles where the provisions of paragraph 6(B) herein will apply.

(D) When pick-up and delivery service is provided for empty containers under circumstances other than provided for in subparagraph (C) above, the charge for containers will be 50% of the regular applicable charge.

(E) Container supporters for use within the Postal Service's premises will be furnished by the air carrier subject to advance arrangements.

6. (A) (Not applicable to Los Angeles, California.) When vehicles are held for loading and/or unloading, a charge of $3.50 per hour, per vehicle, will be made for all time in excess of 45 minutes.

(B) (Applicable to Los Angeles, California only.) This rule applies whenever the carrier

providing pick-up and/or delivery service is delayed or detained by the Postal Service beyond the free time defined herein.

(1) Free Time, for the purpose of this paragraph, will mean that time allowed for the pick-up or delivery carrier to perform the following functions at the regular pickup and delivery charges.

(a) Notifying the Postal Service that the vehicle is available for loading and/or unloading shipment(s).

(b) Positioning carrier vehicle on Postal Service's premises.

(c) Obtaining shipping documents from Postal Service.

(d) Inspecting shipment(s) for count, condition and suitability for shipment.

(e) Loading or unloading shipment(s), on or off carrier vehicle.

(f) Obtaining delivery receipt(s) or a written notice of refusal, and releasing carrier vehicle.

(2) Detention of Vehicle Time, for the purpose of this paragraph is the time the vehicle must remain on Postal Service's premises in excess of the free time allowance shown in the table below.

(3) Detention on vehicle charges will be assessed for all time in excess of the free time allowance shown in table below, and are in addition to all other charges applicable to the shipment(s).

(4) Detention charges will be determined by applying the Rate shown in Column C below, to the minutes the vehicle is detained in excess of the free time shown in Column B below, in conjunction with the weights or types of containers named in Column A below.

| A | B | | | | C |
|---|---|---|---|---|---|
| Container type | Free time allowance first container (minutes) | | Free time allowance each additional container (minutes) | | Detention of vehicle rate (per 15 minutes or fraction thereof) |
| | Loaded | Empty | Loaded | Empty | |
| A | 30 | 15 | 15 | 5 | U.S. $3.50 |

[FR Doc.74-1865 Filed 1-22-74;8:45 am]

## CIVIL SERVICE COMMISSION

### MANPOWER SHORTAGE

#### Notice of Listing

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission has found effective December 19, 1973, that there is a manpower shortage for the single position of Chief, Actuarial Branch, Internal Revenue Service, Department of the Treasury. The appointee may be paid for the expense of travel and transportation to his first post of duty.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1912 Filed 1-22-74;8:45 am]

### DEPARTMENT OF THE INTERIOR

#### Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Associate Solicitor for Energy and Resources, Office of the Solicitor.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1908 Filed 1-22-74;8:45 am]

### DEPARTMENT OF THE INTERIOR

#### Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Associate Solicitor (Conservation and Wildlife), Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1909 Filed 1-22-74;8:45 am]

### DEPARTMENT OF THE INTERIOR

#### Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Associate Solicitor (Parks and Recreation), Office of the Solicitor.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1910 Filed 1-22-74;8:45 am]

### DEPARTMENT OF THE INTERIOR

#### Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Associate Solicitor (Public Lands), Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1911 Filed 1-22-74;8:45 am]

### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

#### Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Commissioner, Community Services Administration, Social and Rehabilitation Service.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1817 Filed 1-22-74;8:45 am]

### DEPARTMENT OF THE INTERIOR

#### Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Assistant Commissioner—Resource Planning, Office of the Commissioner, Bureau of Reclamation.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1814 Filed 1-22-74;8:45 am]

### FEDERAL TRADE COMMISSION

#### Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Federal Trade Commission to fill by noncareer executive assignment in the excepted service the position of Assistant to the Chairman, Office of the Chairman.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1816 Filed 1-22-74;8:45 am]

### FEDERAL TRADE COMMISSION

#### Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Serv-

ice Commission authorizes the Federal Trade Commission to fill by noncareer executive assignment in the excepted service the position of Director, Bureau of Consumer Protection.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.74-1815 Filed 1-22-74;8:45 am]

## ENVIRONMENTAL PROTECTION AGENCY

### PESTICIDE REGISTRATION

#### Receipt of Applications

On November 19, 1973, the Environmental Protection Agency published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 979), and its procedures for implementation. This policy provides that EPA will, upon receipt of every application, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-37, East Tower, 401 M Street, SW., Washington, D.C. 20460.

On or before March 25, 1974, any person who (a) is or has been an applicant, (b) desires to assert a claim for compensation under section 3(c)(1)(D) against another applicant proposing to use supportive data previously submitted and approved, and (c) wishes to preserve his opportunity for determination of reasonable compensation by the Administrator must notify the Administrator and the applicant named in the FEDERAL REGISTER of his claim by certified mail. Every such claimant must include, at a minimum, the information listed in this interim policy published on November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy in regard to usage of existing supportive data for registration will be processed in accordance with existing procedures. Applications submitted under 2(c) will be held for the 60-day period before commencing processing. If claims are not received, the application will be processed in normal procedure. However, if claims are received within 60 days, the applicants against whom the particular claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after this 60-day period.

APPLICATIONS RECEIVED

EPA File Symbol 464-LNN. Dow Chemical U.S.A., P.O. Box 1706, Midland, Michigan 48640. XD-8259 Antimicrobial. Active ingredients: 2,2-Dibromo-3-nitrilopropionamide 10 percent. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 230-TL. FMC Corporation, 633 Third Ave., New York, N.Y. 10017. CDB Clearon Wash and Surface Sanitizer. Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate (provides 19.1 percent available chlorine) 34 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 230-TA. FMC Corporation, 633 Third Ave., New York, N.Y. 10017. CDB Clearon Sanitizer. Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate (provides 14 percent available chlorine) 25 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 230-TE. FMC Corporation, 633 Third Ave., New York, N.Y. 10017. CDB Clearon Wash Sanitizer. Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate (provides 15.8 percent available chlorine) 28 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 230-TG. FMC Corporation, 633 Third Ave., New York, N.Y. 10017. CDB Clearon Detergent Sanitizer. Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate (provides 3.2 percent available chlorine) 5.6 percent; Linear Alkylaryl Sodium Sulfonate 5.0 percent; Sodium Metasilicate, anhydrous 5.0 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 230-TU. FMC Corporation, 633 Third Ave., New York, N.Y. 10017. CDB Clearon Fabric and Diaper Sanitizer. Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate (provides 10.1 percent available chlorine) 18 percent; Linear Alkylaryl Sodium Sulfonate 3 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 2724-ELG. Thuron Industries, Inc., 12200 Denton Drive, Dallas, Texas 75234. Tick Killing Collar for Dogs. Active Ingredients: o-Isopropoxphenyl methylcarbamate 9.4 percent. Method of Support: Application proceeds under 2(b) of interim policy.

Dated: January 16, 1974.

JOHN B. RITCH, Jr.,
*Director, Registration Division.*

[FR Doc.74-1845 Filed 1-22-74;8:45 am]

### CERTAIN PESTICIDES

#### Notice of Intent To Cancel Registration

*Correction*

In FR Doc. 74-803, appearing on page 1665 of the issue for Friday, January 11, 1974, make the following changes in the 3d column:

1. Under the entry for Catonex Cat Repellant, the number reading "8-13", should read "8-813".

2. The heading for the entry "Cornell Chlordane E-S", should read "Cornell Chlordane E-8".

## FEDERAL COMMUNICATIONS COMMISSION

### COMMERCIAL TELEVISION STATIONS

#### Annual Programming Report

JANUARY 15, 1974.

This is a reminder that the first Annual Programming Report for commercial television stations (FCC Form 303-A) is to be filed with the Commission on or before March 1, 1974. The composite week to be used in preparing this report is:

| Day | Month | Date | Year |
|---|---|---|---|
| Sunday | April | 8 | 1973 |
| Monday | December | 4 | 1972 |
| Tuesday | March | 27 | 1973 |
| Wednesday | August | 9 | 1972 |
| Thursday | May | 31 | 1973 |
| Friday | October | 13 | 1972 |
| Saturday | January | 6 | 1973 |

The programming report form FCC 303-A is being mailed to commercial television licensees at the end of January 1974. Licensees are requested to file promptly, but no later than March 1, 1974.

The annual report is required by the new rules adopted on October 3, 1973 relating to the renewal of broadcast licenses. Renewal of Broadcast Licenses (Docket No. 19153), 28 FR 28762 (October 16, 1973).

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
*Secretary.*

[FR Doc.74-1868 Filed 1-22-74;8:45 am]

### PRIME TIME ACCESS RULE

#### Top 50 Markets

JANUARY 14, 1974.

For the purpose of the prime time access rule (Section 73.658(k)), the top 50 markets are determined on the basis of the most recent rankings (prime time households) by the American Research Bureau prior to September 1 of each year. The American Research Bureau issued its 1973 Television Market Analysis on November 20, 1973, and advises us that no new rankings will be published until after September 1, 1974. The following are the top 50 markets in alphabetical order, for the year from October 1, 1974 through September 30, 1975:

Albany-Schenectady-Troy
Atlanta
Baltimore
Birmingham
Boston
Buffalo
Charleston-Huntington
Charlotte, N.C.
Chicago
Cincinnati
Cleveland
Columbus, Ohio
Dallas-Ft. Worth
Dayton
Denver
Detroit
Grand Rapids-Kalamazoo-Battle Creek
Greensboro-Winston Salem-High Point
Greenville-Spartanburg-Asheville
Hartford-New Haven-New Britain-Waterbury
Houston
Indianapolis
Kansas City
Los Angeles
Louisville
Memphis
Miami
Milwaukee
Minneapolis-St. Paul
Nashville
New Orleans
New York
Norfolk-Portsmouth-Newport News-Hampton

Oklahoma City
Orlando-Daytona Beach
Philadelphia
Phoenix
Pittsburgh
Portland, Oregon
Providence
Sacramento-Stockton
Salt Lake City
San Antonio
San Diego
San Francisco
Seattle-Tacoma
St. Louis
Tampa-St. Petersburg
Washington, D.C.
Wilkes Barre-Scranton

It is pointed out that § 73.658(k) applies to all network-owned or basically network-affiliated stations in these markets. In a few cases, this includes four, rather than the usual three, affiliated stations. The communities of license of all stations subject to the rule are indicated in the listing above.

This listing is the same as that for the 1973–74 broadcast year, except that Syracuse and Toledo have dropped out, and Orlando-Daytona Beach and Salt Lake City (both in the top 50 in earlier years but not in 1973–74) have been added.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
*Secretary.*

[FR Doc.74-1869 Filed 1-22-74;8:45 am]

## FEDERAL MARITIME COMMISSION

### EURO PACIFIC, ET AL.

### Notice of Agreements Filed

Notice is hereby given that the following agreements have 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 agreements at the Washington office of the Federal Maritime Commission, 1405 I Street, NW., Room 1015; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before February 12, 1974. Any person desiring a hearing on the proposed agreements 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 of 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.

EURO PACIFIC AGREEMENT

MODIFICATION OF AGREEMENT

Notice of agreement filed by:
Mr. Carl C. Bland
Director, Senior Vice President
Balfour, Guthrie & Co., Limited
One Maritime Plaza
P.O. Box 7913
San Francisco, California 94119

Agreement No. 9902–2, among the members of the above-named agreement, extends the effective period for an additional five years.

By order of the Federal Maritime Commission.

Dated: January 18, 1974.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY AND PITTSTON STEVEDORING CORPORATION

Notice of agreement filed by:
Mr. Francis A. Mulhern
Deputy General Counsel
The Port Authority of New York and New Jersey
One World Trade Center
New York, New York 10048

Agreement No. T–2882, as amended by T–2882–1, between The Port Authority of New York and New Jersey (Port) and Pittston Stevedoring Corporation (Pittston), provides for the lease to Pittston of certain marine terminal facilities at the Brooklyn-Port Authority Marine Terminal, New York, New York, for use by Pittston as a marine terminal facility. As compensation Pittston shall pay Port a fixed monthly rental based on revenue tonnage with set minimum and maximum payments. The provisions of this lease, as relates to certain premises and rights-of-way, grants, and privileges at the facility in connection with railway operations thereon, are subject to the terms of a certain agreement of lease made between the Port and New York Dock Railway; also, Pittston is restricted from operating a cold storage facility on the premises. In addition, all vessels berthing at the facilities require the Port's approval and Pittston is subject to all Port rules and regulations, including tariffs.

By order of the Federal Maritime Commission.

Dated: January 16, 1974.

FRANCIS C. HURNEY,
*Secretary.*

[FR Doc.74-1902 Filed 1-22-74;8:45 am]

### INDEPENDENT OCEAN FREIGHT FORWARDER LICENSE

### List of Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Luis L. Salinas d/b/a Salinas Forwarding Co., 1314 Texas Avenue, Houston, Texas 77002.

Richard James Peck d/b/a Ocean Freight Agency, 6801 N.W. 74th Avenue, Miami, Florida 33166.

Almont Shipping Company, U.S. Highway 421 North, P.O. Box 1726, Wilmington, North Carolina 28401.

OFFICERS & DIRECTORS

W. S. R. Beane, President/Director.
L. B. Finberg, Director.
Estell C. Lee, Secretary/Treasurer/Director.

By the Federal Maritime Commission.

Dated: January 16, 1974.

FRANCIS C. HURNEY,
*Secretary.*

[FR Doc.74-1899 Filed 1-22-74;8:45 am]

[Docket No. 74-3]

### MATSON NAVIGATION CO.

### Order of Investigation and Suspension

Effective January 17, 1974, Matson Navigation Company (Matson) proposes to cancel Rule 50(b) of its Westbound Container Freight Tariff No. 14–C (FMC–F No. 150). This cancellation would allow a shipper who elects to use Matson's Westbound "store-door" service [1] an unlimited amount of time for loading containers at the shipper's premises. The rule currently provides that a shipper shall have 24 hours of free time to perform such loading, beginning with the first midnight after the placement of the equipment at shipper's premises. When containers are detained beyond the free time, varying detention charges are assessed, depending on how many days the container is retained and whether it is a temperature controlled, or other container.

In Docket No. 1217, Investigation of Free Time Practices—Port of San Diego, 9 FMC 525 (1966), we held that the granting of excessive free time was an unreasonable practice, in violation of sections 16 First and 17 of the Shipping Act, 1916. The subject proposal of Matson to provide unlimited free time for containers in its store-door service would appear to be contrary to the principles established in that case.

In addition to its store-door container service, Matson offers westbound shippers container-yard to container-yard service wherein the shipper arranges for his own inland transportation. If the shipper elects that service, Matson's tariff provides for specific free time and detention charges, which are not sought to be cancelled by the subject filing. Matson has informed the staff that detention charges are never assessed under these rules relating to westbound container yard service since all containers moving in that service are subject to an equipment interchange agreement which

[1] Under the provisions of this service, Matson's drayage agent places a container at the shipper's premises and picks up the container after it has been loaded.

supersedes the tariff. Assuming the truth of that assertion, it is still possible that charges levied under the provisions of the trailer interchange agreement may subject the container yard shipper to undue prejudice or disadvantage vis a vis the store door shipper.

Upon consideration of the above facts, the Commission is of the opinion that the proposed cancellation should be made the subject of a public investigation and hearing to determine whether it is unjust, unreasonable, or otherwise unlawful under sections 16 First and 18(a) of the Shipping Act, 1916 and/or sections 2, 3 and 4 of the Intercoastal Shipping Act, 1933, and good cause appearing:

*Therefore, it is ordered*, That, pursuant to the authority of section 22 of the Shipping Act, 1916 and sections 3 and 4 of the Intercoastal Shipping Act, 1933, an investigation is hereby instituted into the lawfulness of the proposed cancellation for the purpose of making such findings and orders as the facts and circumstances warrant. In the event that the tariff matter hereby placed under investigation is further changed, amended or reissued, such changes are hereby ordered to be made a part of this investigation.

*It is further ordered*, That pursuant to section 3 of the Intercoastal Shipping Act, 1933, second revised page 24 of Matson Navigation Company's tariff FMC–F No. 150, is hereby suspended and the use thereof deferred to and including May 16, 1974, unless otherwise ordered by the Commission.

*It is further ordered*, That there shall be filed immediately by Matson Navigation Company a consecutively numbered supplement to its aforesaid tariff, which supplement shall bear no effective date, shall reproduce the portion of this order wherein the suspended matter is described, and shall state that the aforesaid matter is suspended and may not be used until May 17, 1974, and that the rules and charges heretofore in effect and which were to be changed by the suspended matter shall remain in effect during the period of suspension and neither the matter suspended nor the matter continued in effect as a result of suspension may be changed until this proceeding has been disposed of or until the period of suspension has expired, whichever comes first, unless otherwise ordered by the Commission.

*It is further ordered*, That pursuant to section 18(a) of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, a determination shall be made as to whether the proposed tariff matter is just and reasonable.

*It is further ordered*, That pursuant to section 2 of the Intercoastal Shipping Act, 1933, a determination shall be made as to whether Matson Navigation Company is proposing, by the cancellation of the subject free time and detention provisions, to extend a privilege or facility to any person which is not in accordance with its tariff schedules.

*It is further ordered*, That pursuant to section 16 First of the Shipping Act, 1916, a determination shall be made as to whether Matson's proposal to grant unlimited free time to all westbound store door shippers is likely to give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage.

*It is further ordered*, That Matson Navigation Company be named as respondent in this proceeding.

*It is further ordered*, That copies of this order shall be filed with the appropriate tariff schedules in the Bureau of Compliance of the Federal Maritime Commission.

*It is further ordered*, That the provisions of Rule 12 of the Commission's rules of practice and procdeure which require leave of the Commission to take testimony by deposition or by written interrogatory if notice thereof is served within 20 days of the commencement of the proceeding, are hereby waived for this proceeding inasmuch as the expeditious conduct of business so requires. The provision of Rule 12(h) which requires leave of the Commission to request admissions of fact and genuineness of documents if notice thereof is served within 10 days of commencement of the proceeding, is similarly waived.

*It is further ordered*, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge.

*It is further ordered*, That (I) a copy of this order be forthwith served upon the respondent and upon the Commission's Bureau of Hearing Counsel, and published in the FEDERAL REGISTER; and (II) the respondent and Hearing Counsel be duly served with notice of time and place of the hearing.

All persons (including individuals, corporations, associations, firms, partnerships and public bodies) having an interest in this proceeding and desiring to intervene herein should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with rule 5(l) of the Commissions' rules of practice and procedure (46 CFR 502.72) with a copy to all parties to this proceeding.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
*Secretary.*

[FR Doc.74–1900 Filed 1–22–74;8:45 am]

## TRANS-PACIFIC FREIGHT CONFERENCE AND NEW YORK FREIGHT BUREAU

### Notice of Agreements Filed

Notice is hereby given that the following agreements have 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 agreements at the Washington office of the Federal Maritime Commission, 1405 I Street, N.W., room 1015; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, February 4, 1974. Any person desiring a hearing on the proposed agreements 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.

TRANS-PACIFIC FREIGHT CONFERENCE (HONG KONG)

Orient Overseas Line
Orient Overseas Container Line
Pacific Far East Line, Inc.
Zim Container Line, Inc.

Notice of agreement filed by:

Charles F. Warren, Esq.
1100 Connecticut Avenue, NW.
Washington, D.C. 20036

Agreement No. 10107, between the member lines of the above named conference, as one party only, and the four mentioned independent steamship lines operating in the trade between ports in Hong Kong, Taiwan and ports on the West Coast of the United States, covers an arrangement whereby the said parties may confer, discuss and agree upon the matters of rates, charges, classifications, practices and related tariff matters, to be charged or observed by them in said trade, but with the reservation of the right by each of them to alter for itself any rate, charge, classification, practice, or related tariff matter thus agreed upon or theretofore in force upon first giving the other parties at least forty-eight (48) hours advance notice thereof. The arrangement also authorizes the joint study for the introduction of fair and unreasonable charges and regulations for positioning, use and inland carriage of containers and related equipment, terminal handling, storage and other accessorial services for containerized and unitized cargo, under terms and conditions set forth in the agreement.

NEW YORK FREIGHT BUREAU (HONG KONG)

American Export Line
Orient Overseas Line
Orient Overseas Container Line
Zim Container Line, Inc.

Notice of agreement filed by:

Charles F. Warren, Esq.
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Agreement No. 10108, between the number lines of the above named conference, as one party only, and the four mentioned independent steamship lines operating in the trade between ports in Hong Kong, Taiwan and ports on the Gulf of Mexico and East Coast of the United States, covers an arrangement whereby the said parties may confer, discuss and agree upon the matters of rates, charges, classifications, practices and related tariff matters, to be charged or observed by them in said trade, but with the reservation of the right by each of them to alter for itself any rate, charge, classification, practice, or related tariff matter thus agreed upon or theretofore in force upon first giving the other parties at least forty-eight (48) hours advance notice thereof. The arrangement also authorizes the joint study for the introduction of fair and reasonable charges and regulations for positioning, use and inland carriage of containers and related equipment, terminal handling, storage and other accessorial services for containerized and unitized cargo, under terms and conditions set forth in the agreement.

By Order of the Federal Maritime Commission.

Dated: January 17, 1974.

FRANCIS C. HURNEY,
*Secretary.*

[FR Doc.74-1901 Filed 1-22-74;8:45 am]

## FEDERAL POWER COMMISSION

### CALIFORNIA

### Lands Withdrawn in Project No. 337; Order Partially Vacating Land Withdrawal Under Section 24 of the Federal Power Act

JANUARY 17, 1974.

The lands described in the attached land list, aggregating approximately 4,630.35 acres, are among those withdrawn pursuant to the filing on August 5, 1922, by P. B. Cross of Oakland, California, of an application for preliminary permit for Project No. 337 for which notice of land withdrawal was sent to the General Land Office (now Bureau of Land Management) by letter dated October 17, 1922.

The lands lie within the Lassen National Forest and are located along Deer Creek, an east side tributary of the Sacramento River, which drains an area of about 220 square miles lying in the divide between the Sierra Nevada and Cascade Ranges near the town of Red Bluff.

Project No. 337 contemplated the construction of a diversion dam across Deer Creek in the SE¼ of sec. 5, T. 26 N, R. 3 E., Mount Diablo Meridian, a conduit about 11.5 miles long, and a powerhouse on Deer Creek in sec. 5, T. 25 N., R. 2 E., with an installed capacity of about 20,000 horsepower. An 18-month preliminary permit for the project expired on November 19, 1924, and an application for license was not filed.

Current plans for conventional hydroelectric development in the Deer Creek Basin contemplate the diversion of water from Mill Creek at Morgan Springs to the proposed Deer Creek Meadows reservoir site on Deer Creek and the use of long conduits or tunnels along Deer Creek to develop the available head. A smaller potential reservoir site on Deer Creek, near Sugarloaf Mountain, could be developed in connection with a possible pumped storage project at Flatiron Mountain. Other possible dam sites have been identified at Moak Cove on lower Deer Creek and at an alternate site 3½ miles downstream.

The subject lands lie beyond the limits of all nonconduit facilities currently proposed. A few subdivisions could be used for conduit location; however, such location is flexible for each of several alternative routes proposed.

The Commission finds:

The withdrawal for Project No. 337 no longer serves a useful purpose insofar as it pertains to the lands described in the attached Land List and should be vacated to that extent.

The Commissions orders:

The withdrawal for Project No. 337 is hereby vacated insofar as it pertains to the lands described in the attached Land List.

By the Commission.

[SEAL] KENNETH F. PLUMB,
*Secretary.*

LAND LIST

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 25 N., R. 2 E.,
Sec. 2, all (fractional);
Sec. 4, lots 1, 2, 3, 4, SE¼SW¼, S½SE¼.
T. 26 N., R. 2 E.,
Sec. 26, N½S½;
Sec. 34, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 36, S½NE¼, S½.
T. 26 N., R. 3 E.,
Sec. 4, SW¼;
Sec. 5, SE¼;
Sec. 8, NW¼, NE¼SE¼, S½SE¼;
Sec. 9, NE¼NW¼, S½NW¼;
Sec. 17, all;
Sec. 18, E½;
Sec. 19, W½NE¼, E½SW¼;
Sec. 20, E½NW¼, SW¼;
Sec. 29, W½;
Sec. 30, lots 7, 8, 11, 12, SE¼NE¼, SE¼;
Sec. 31, W½.

(Approximately 4,630.35 acres.)

[FR Doc.74-1876 Filed 1-22-74;8:45 am]

[Project No. 2107]

### PACIFIC GAS AND ELECTRIC CO.

### California; Notice of Additional Land Withdrawal

JAUNARY 17, 1974.

Pacific Gas and Electric Company, on April 27, 1965, filed an application for approval of map Exhibit K-2A (FPC No. 2107-7) to reflect modifications of the project boundary made during the construction of Project No. 2107. On January 31, 1972, the above licensee filed for approval map Exhibits J, K-1 and K-2 (FPC Nos. 2107-8, -9 and -10, respectively) in accordance with Article 5 of its major license to show the project boundary as finally located upon completion of the project. Both of these filings modified the project boundary to embrace additional United States lands.

Therefore, in accordance with the provisions of Section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the lands hereinafter described insofar as title thereto remains in the United States, are from the dates of filing of said applications, reserved from entry, location or other disposal under the laws of the United States until otherwise directed by this Commission or by Congress.

MOUNT DIABLO MERIDIAN

Those portions of the following described subdivisions lying within the project boundary as delimited upon revised map Exhibit K-2A (FPC No. 2107-7) filed April 27, 1965, and revised map Exhibit K-1 (FPC No. 2107-9) filed January 31, 1972.

T. 22 N., R. 5 E.,
Sec. 5, W½NE¼, SE¼NW¼, E½SW¼, NE¼SE¼;
Sec. 7, SE¼SE¼;
Sec. 8, NW¼, W½SW¼;
Sec. 18, NE¼, NE¼NW¼, W½SE¼;
Sec. 19, W½E½, SE¼SW¼;
Sec. 30, NW¼NE¼, E½NW¼, SW¼.
T. 23 N., R. 5 E.,
Sec. 32, NE¼NE¼, S½NE¼, Unpatented portion of the SE¼.

The total area of United States lands reserved by this notice is approximately 88.34 acres, all of which have previously been withdrawn for power purposes in connection with Power Site Classification No. 179 or Project Nos. 737, 1297, 1258, or 1352. All of these lands are located within the Plumas National Forest.

Copies of the aforementioned project map exhibits have been transmitted to the Geological Survey, Bureau of Land Management, Forest Service and the Fish and Wildlife Service.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1898 Filed 1-22-74;8:45 am]

[Docket No. CI74-359]

### APEXCO, INC.

### Notice of Application

JANUARY 16, 1974.

Take notice that on December 21, 1973, Apexco, Inc. (Applicant), P.O. Box 2299, Tulsa, Oklahoma 74101, filed in Docket No. CI74-359 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company from the South Carlsbad Field, Eddy County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 30,000 Mcf of gas per month for

one year at 55.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment, within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70).

Any person desiring to be heard or to make any protest with reference to said application should on or before February 11, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1893 Filed 1-22-74;8:45 am]

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[Docket No. RP74-56]

## CASCADE NATURAL GAS CORP.

### Notice of Extension of Time and Postponement of Hearing

(JANUARY 15, 1974.)

On January 9, 1974, Cascade Natural Gas Corporation filed a motion for an extension of the procedural dates fixed by order issued December 27, 1973, in the above-designated matter. The motion states that the staff has no objection to the motion.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Direct Evidence by Cascade, February 15, 1974.
Service of Evidence by Staff, March 11, 1974.
Hearing, March 21, 1974 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1886 Filed 1-22-74;8:45 am]

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[Docket No. CP74-185]

## CITIES SERVICE GAS CO.

### Notice of Application

JANUARY 17, 1974.

Take notice that on January 9, 1974, Cities Service Gas Company (Applicant), P.O. Box 25128 filed in Docket No. CP74-185 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of substitute natural gas (SNG) produced from coal and purchased from Transwestern Coal Gasification Company (Transwestern Coal) in a commingled stream of natural gas in interstate commerce and the sale for resale in interstate commerce of this SNG mixed with natural gas as part of its normal system sales, all as more fully set forth in the application which is on file with the Commission and open to public inspectional.

Applicant states that it has contracted to buy, on an average annual basis pursuant to an agreement dated November 14, 1973, 62,500 Mcf of SNG per day from Transwestern Coal's share of SNG produced from a coal gasification plant located 28 miles southwest of Farmington, New Mexico.[1] This agreement extends for a term of 20 years beginning December 31, 1977, or the date of initial delivery of SNG if earlier or later. Applicant states that it will purchase this SNG for a price equal to Transwestern Coal's total cost of service for such gas, including charges paid to Western Gasification Company with respect to the operation of the gasification and related pipeline and appurtenant facilities, and transportation fees paid to Transwestern Pipeline Company (Transwestern Pipeline).

The application indicates that this SNG will be transported from the aforesaid plant 67 miles and delivered into Transwestern Pipeline's transmission system near Gallup, New Mexico, for further transportation for delivery to receive approximately 25,000 Mcf of SNG per day from Transwestern Pipeline at existing points of delivery in Harper and Beaver Counties, Oklahoma, and receive the remaining 37,500 Mcf of SNG per day at an existing point of delivery in Hemphill County, Texas. At such points Applicant proposes to mix this SNG with its natural gas stream. Pursuant to an agreement dated November 14, 1973, between Applicant and Transwestern Pipeline, the 25,000 Mcf to be delivered in Harper and Beaver Counties is to be credited towards the 100,000 Mcf of gas per day which Transwestern Pipeline is prescribed to deliver under its Rate Schedule CD-2 and the 37,500 Mcf to be delivered in Hemphill County is to be credited towards the 150,000 Mcf of gas per day which Transwestern Pipeline is prescribe to deliver under its Rate Schedule No. CDQ-3. This agreement between Transwestern Pipeline and Applicant sets forth the basis for determining the rate to be charged for this transportation.

Applicant states that Transwestern Pipeline, a major supplier of Applicant, anticipates that it will be unable in the near future to supply presently certificated contract demand volumes to existing customers and that Transwestern Pipeline hopes to fulfill partially its contractual commitments through SNG. Applicant intends to use this SNG as part of its long-term gas supply and asserts that this gas is essential in order to maintain adequate service to its markets for both the short and long term.

Applicant requests, also, to include, without suspension, the total amount of all payments made for SNG purchased from Transwestern Coal in its purchased gas cost rate adjustment (PGA) provision in its FPC Gas Tariff. Applicant notes that § 154.38(d)(4) of the Commission's regulations under the Natural Gas Act (18 CFR 154.38(d)(4)) provides that gas from coal gasification shall not be reflected in a PGA clause without prior Commission approval and contends that since this SNG is to be substituted for contractually committed natural gas to existing customers and will become part of its long-term gas supply, it is appropriate to include these payments in its PGA provision. Applicant estimates that the increase in its average unit cost of gas resulting from this purchase will amount to approximately 4.08 cents per Mcf.

Transwestern Pipeline has an application pending in Docket No. CP73-211 pursuant to section 7(c) of the Natural Gas Act for authorization for construction and operation of connecting facilities for the receipt of SNG into its pipeline system from the aforesaid plant and for the transportation of SNG commingled with natural gas.

Applicant proposes no new sales of gas nor any new facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 11, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further

[1] In Commission Opinion No. 663, *El Paso Natural Gas Company, et al.*, Docket No. CP73-131, *et al.*, issued September 4, 1973 (50 FPC ----), the Commission found the construction and operation of this plant and the sale of SNG therefrom were non-jurisdictional.

notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1879 Filed 1-22-74;8:45 am]

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[Docket No. RP74-4]

## CITIES SERVICE GAS CO.

### Notice of Extension of Time

JANUARY 16, 1974.

On January 14, 1974, staff counsel filed a motion to reset the service and hearing dates fixed by notice issued November 28, 1973, in the above designated matter.

Upon consideration notice is hereby given that the time for filing testimony and exhibits by the staff is extended to and including February 1, 1974. The other procedural dates will be modified accordingly by further notice.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1888 Filed 1-22-74;8:45 am]

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[Docket No. CP73-301]

## CITIES SERVICE GAS CO.

### Order Granting Interventions, Scheduling Hearing, and Establishing Procedures

JANUARY 18, 1974.

On May 8, 1973, Cities Service Gas Company (Applicant) filed in Docket No. CP73-301 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and sale of pipeline quality synthetic gas (SG) in a commingled stream in interstate commerce, all as more fully set forth in the application.

Applicant states that it intends to buy from Cities Service S-G, Inc. (Cities S-G) for a period of ten years beginning October 1, 1975, on a cost-of-service basis 125,000 Mcf of SG per day for 350 days per year. The SG is to be produced by a naphtha gasification plant to be constructed and operated by Cities S-G near the City of Diamond in Newton County, Missouri and the large majority will be delivered in Newton County into Applicant's 16-inch pipeline where it will be transported west to Applicant's Saginaw Compressor Station (Saginaw Station) and commingled with natural gas. Small volumes of SG would be introduced into Applicant's Neosho line for service to customers on that line. By letter of the Secretary dated August 21, 1973, it was requested that Cities indicate the manner in which it proposed to provide service to attached and future customers on the Neosho line should it be utilized solely for the transportation of synthetic gas. In the first supplement to the application, filed September 19, 1973, the Applicant stated "that there will be occasions during which commingled SG and natural gas or pure natural gas will be transported in the Neosho line."

The Applicant further states that it proposes to apply under section 7(c) of the Natural Gas Act to construct in 1974 approximately 6.16 miles of 20-inch pipeline and appurtenant facilities to parallel the existing Springfield 16-inch pipeline beginning at the discharge of the Saginaw Station and extending to the Diamond Plant Site. The Diamond Plant Site is located between the Saginaw Station to the west and Springfield to the east. Presently gas flows in the 16-inch line from the Saginaw Station east to Springfield. The Applicant proposes to use that portion of the 16-inch line between the Diamond Plant Site and the Saginaw Station to flow SG west to the Saginaw Station to be commingled with natural gas, compressed and transported east to Springfield. In order to accomplish this flow arrangement the Applicant's 20-inch line will be required to maintain the eastward flow from the Saginaw Station to Springfield.

On May 15, 1973, Cities S-G filed in Docket No. CP73-304 a petition for a disclaimer of jurisdiction over its proposed construction and operation of a gas synthesis plant near Diamond, Newton County, Missouri, over the manufacture and sale of synthetic gas from said plant, and over all aspects of the acquisition and the transportation of naphtha for said plant; and in the alternative, an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of said plant and sale for resale in interstate commerce of synthetic gas to Cities, its parent company. We found in our order of August 28, 1973, that the jurisdictional question is controlled by our Opinion No. 637, "Algonquin SNG, Inc., et al.", issued December 7, 1972, in Docket No. CP72-35, et al., and our Opinion No. 637-A issued February 6, 1973, in said docket, holding that naphtha-fed synthetic gas plants are not subject to the Commission's jurisdiction; and, as a matter of law, synthetic gas is not natural gas within the meaning of the Natural Gas Act. We granted the petition for disclaimer.

The stated purpose of the proposed sale is to help alleviate the gas shortage alleged by Applicant and enhance its ability to maintain adequate service to its customers. The applicant states that, effective March 7, 1972, it did discontinue approving requests from its resale customers for gas supplied for new large volume (3,000 Mcf or more of gas per month) commercial and industrial consumers as permitted by its FPC Gas Tariff. Applicant states that total actual curtailments of service on Cities' system, exclusive of LVS-2 excess demands, was approximately 17,900 MMcf during the 1971-72 heating season and 43,100 MMcf for the 1972-73 heating season. The Applicant states that the introduction of approximately 125,000 Mcf per day would reduce Cities' annual curtailments by 11,375 MMcf in 1975 and 43,750 MMcf in 1976 and thereafter. The Applicant further states that it has been unable to contract for sufficient volumes of long-term natural gas supplies to augment its currently available natural gas supply sources so as to assure maintenance of adequate service on its system.

The Applicant seeks further authority to include, without suspension, the total cost of purchased SG in its purchased gas adjustment provision in its FPC Gas Tariff. Applicant states that the SG purchases will be rolled-in with its existing supplies. The allocated cost-of-service for the year 1976 will thereby reflect the average unit cost of rates as 47.32¢ per Mcf compared to 38.45¢ per Mcf without SG supplies.

Timely petitions to intervene were filed by the Midwest Industrial and Commercial Gas Users Association and Armco Steel Corporation. These petitioners together purchase about 60 percent of the natural gas sold by Cities under its C and I rate schedules.

Petitions to intervene were filed out of time by the Gas Service Company (Gas Service) and Southern Natural Gas Company (Southern). Gas Service purchases approximately 80 percent of the jurisdictional gas sold by Cities. Southern states that it has an interest in these proceedings, because of its pending application in Docket No. CP73-154 for the construction of its liquid extraction and liquid conversion units.

As stated in our order issued June 6, 1973, in "Tecon Gasification Company, et al.," "our jurisdiction attaches to synthetic gas once it becomes mixed with natural gas flowing in interstate commerce . . . and all matters related to the transportation and sale for resale of such gas in interstate commerce are subject to our regulatory control." We stated that in order to show that a proposal is in the public interest there must be a "showing, inter alia, of the reliability of the synthetic gas supply, which in this case is a function of feedstock supply and plant reliability, the economic feasibility of the total synthetic gas project, the availability of a market for the gas it proposes to transport and sell, the reasonableness of the rate treatment it proposes, overall financiability, the availability of [Cities] to perform the service proposed, the availability of facilities with capacity to perform, and other matters as specified in our regulations under section 7 of the Natural Gas Act." Similarly, Cities must here establish through the presentation of direct evidence on the above issues that its proposal in Docket No. CP73-301 is required by the present or future public convenience and necessity, as well as establishing under section 4 through the presentation of direct evidence, the justness and reasonableness of its request to flow through the cost of SNG pur-

chases through its Purchased Gas Adjustment Clause.

The Commission finds:

(1) The participation of the aforementioned petitioners in this proceeding may be in the public interest.

(2) Good cause exists for setting this proceeding for formal hearing and for establishing the procedures for that hearing, all as hereinafter ordered.

The Commission orders:

(A) The above-named petitioners, who have petitioned to intervene in the proceedings herein, are permitted to intervene in this proceeding 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 petitions for leave to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The direct case of the Applicant and all intervenors in support thereof shall be filed and served on all parties on or before February 4, 1974. The Presiding Administrative Law Judge shall fix dates for the filing of answering testimony after completion of cross-examination on direct testimony.

(C) Pursuant to the provisions of sections 4, 5, 7, and 15 of the Natural Gas Act, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act, a formal hearing shall be convened in this proceeding in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, on February 26, 1974, at 10:00 a.m. (EST). Such hearing shall consider testimony on the issues listed above and any other issues which may be relevant to this proceeding. The Chief Administrative Law Judge will designate an appropriate officer of the Commission to preside at the formal hearing of these matters, pursuant to the Commission's rules of practice and procedure.

By the Commission.

[SEAL] KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1875 Filed 1-22-74;8:45 am]

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[Docket No. RP73-93]

## COLORADO INTERSTATE GAS CO.

### Notice of Motion To Approve Settlement Agreement

JANUARY 16, 1974.

Take notice that on January 9, 1974 Colorado Interstate Gas Company (CIG) filed a motion for approval of a proposed stipulation and agreement pertaining to the issues in this docket, filed January 7, 1974.

CIG states that the proposed agreement reserved for decision by the Presiding Administrative Law Judge in this docket the issues of rate differential between CIG FPC Rate Schedules G-1 and P-1 and the propriety of the inclusion of coal and water option payments by CIG in the company's cost of service. CIG states that all other outstanding issues in this docket would be resolved by the proposed agreement.

The major features of the agreement are provisions on refunds, a moratorium on future rate increases by CIG, retention of flow-through accounting on liberalized depreciation, advance payment adjustments, and conjunctive billing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 8, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1896 Filed 1-22-74;8:45 am]

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[Project No. 2548]

## GEORGIA-PACIFIC CORP.

### Notice of Application for Major License for Constructed Project

JANUARY 16, 1974.

Public notice is hereby given that application for major license filed September 2, 1965, supplemented May 15, 1968, September 30, 1968, February 11, 1972, February 5, 1973, and December 26, 1973, under the Federal Power Act (16 U.S.C. 791a-825r), by the Lyons Falls Division, Georgia-Pacific Corporation, (Correspondence to: Mr. Everett P. Ingalls, Jr., Resident Manager, Georgia-Pacific Corporation, Lyons Falls Division, Lyons Falls, New York 13368) for the constructed Lyons Falls Project No. 2548, affecting navigable waters of the United States on the Moose and Black Rivers in Lewis County, New York, near the Village of Lyons Falls.

The Lyons Falls Project with an installed hydroelectric generating capacity of 8300 kW and an additional unconnected installed turbine rated at 130 HP consists of:

A. Lyons Falls, Mill 3 Development located at the confluence of the Moose and Black Rivers consisting of (1) a concrete gravity dam about 362 feet long and 10 feet high surmounted by 32 inch flashboards; (2) a gated spillway section 69.5 feet long; (3) a gated intake section; (4) a small pond with normal pond elevation at 806.5 feet (M.S.L.); (5) an 8 foot diameter steel penstock 125 feet long extending to a 1040 kW generation unit; (6) a 12-foot diameter steel penstock extending 250 feet to a brick powerhouse containing 900 kW, 960 kW, 1200 kW and 1150 kW generating units; (7) an unused 6-foot diameter penstock; and (8) appurtenant facilities.

B. Kosterville, Mill B Development on the Moose River at mile 1.3 consists of: (1) a timber crib dam 6 feet high and 314 feet long integral with a concrete spillway section 600 feet long controlled by three 10 feet wide vertical lift gate sections; (2) a small pond at normal pond elevation 889.5 feet (M.S.L.); (3) a small forebay leading to the intake section; (4) a concrete powerhouse containing 500 kW and 550 kW generating units plus an unconnected 130 HP turbine; (5) a 2.3 kV transmission line extending 1320 feet to the Gouldtown plant; and (6) appurtenant facilities.

C. Gouldtown, Mill 5 Development on the Moose River at mile 1.0 consists of: (1) a timber crib dam 60 feet long and 8 feet high surmounted by 32 inch flashboards on the east side of an island and a concrete dam 96 feet long and 8 feet high west of the island controlled by twelve 7 feet wide vertical lift gate sections; (2) a small pond at normal pond elevation 853 feet (M.S.L.); (3) a concrete intake structure; (4) a 10-foot diameter penstock 105 feet long; (5) a concrete powerhouse containing one 2000 kW generating unit; (6) a 23 kV transmission line extending about one mile to Lyons Falls; and (7) appurtenant facilities.

Applicant does not provide any recreational facilities at this project. However, free public access across project lands is permitted for fishing. Applicant is willing to provide future facilities, if needed, where the topography lends itself to recreational use.

Project power and project water are utilized in Applicant's paper manufacturing mill at Lyons Falls, New York.

Any person desiring to be heard or to make protest with reference to said application should on or before March 25, 1974 file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or participate as a party in any hearing herein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1887 Filed 1-22-74;8:45 am]

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[Docket No. E-8554]

## INTERSTATE POWER CO.

### Notice of Filing of Electric Service Agreement

JANUARY 16, 1974.

Take notice that on December 14, 1973, Interstate Power Company (Company)

tendered for filing two copies of an Electric Service Agreement dated November 27, 1973, between Company and the Spring Valley Public Utilities Commission of the Village of Spring Valley, Minnesota. Company states that this renewal service agreement supersedes and cancels Interstate Power Company Rate Schedule FPC No. 92.

According to Company, the optional categories of electric service available to the community under this agreement are the same as those contained in agreements designated Interstate Power Company Rate Schedule FPC Nos. 101, 103, 104, 105, 106, 107, and 108. Sections 8.2 and 9.2 of the agreement are revised, Company states, and Section 8.2 also includes the currently effective energy rate approved as Interstate Power Company Rate Schedule FPC No. 102, according to Company. Company has requested an effective date for this document of December 21, 1973.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 31, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1891 Filed 1-22-74;8:45 am]

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[Docket No. RI74-127]

## DONALD W. JACKSON

### Notice of Petition for Special Relief

JANUARY 17, 1974.

Take notice that on January 4, 1974, Donald W. Jackson (Petitioner) P.O. Box 188, Borger, Texas 79007, filed a petition for special relief in Docket No. RI74-127, pursuant to Order No. 481 with respect to sales to Northern Natural Gas Company in the Hugoton-Anadarko Area. Petitioner request that it be granted special relief with respect to certain wells located in Texas County, Oklahoma, and Seward County, Kansas.

Petitioner states that it is necessary to install water lifting equipment on each well in order to prevent abandonment of said wells and seeks a rate increase to 25 cents per Mcf, with a provision for an escalation of 1 cent for each succeeding year. Petitioner estimates that there are sufficient additional recoverable reserves of natural gas to justify the installation of the equipment necessary to continue the production of said reserves at the proposed rate. Petitioner further states that the current production of 180,000 Mcf per year for all wells involved can be maintained for an additional 8 to 10 years under its proposal.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 30, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1881 Filed 1-22-74;8:45 am]

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[Docket No. RP74-11]

## KANSAS-NEBRASKA NATURAL GAS COMPANY, INC.

### Notice of Extension of Time and Postponement of Prehearing Conference and Hearing

JANUARY 18, 1974.

Motions for changes in the procedural dates fixed by order issued October 16, 1973, in the above-designated matter were filed as follows:

December 3, 1973—Nebraska-Colorado Jurisdictional Interveners.
December 19, 1973—Kansas-Nebraska Natural Gas Company.
December 21, 1973—Staff Counsel.

Answers were filed to Staff's motion on January 2, 1974, and January 3, 1974, respectively, by the Nebraska-Colorado interveners and Central Kansas Power Company requesting that the date for the prehearing conference be changed from May 7, 1974, to March 7, 1974, but otherwise supporting the motion.

Upon consideration, notice is hereby given that the procdeural dates are modified as follows:

Service of Testimony and Exhibits by Staff, February 26, 1974.
Prehearing Conference, March 7, 1974 (10 a.m., e.d.t.).
Service of Testimony and Exhibits by Interveners, April 2, 1974.
Service of Rebuttal Evidence, April 30, 1974.
Hearing, May 7, 1974 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1878 Filed 1-22-74;8:45 am]

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[Docket No. RP73-23]

## LAWRENCEBURG GAS TRANSMISSION CORP.

### Notice of Filing of Revised Gas Tariff Sheets

JANUARY 16, 1974.

Take notice that on January 3, 1974, Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing two gas tariff sheets to its Federal Power Commission Gas Tariff, Original Volume No. 1. The sheets are designated Third Revised Sheet No. 3-A (superseding Second Revised Sheet No. 3-A) and Third Revised Sheet No. 18-B (superseding Second Revised Sheet No. 18-B).

Lawrenceburg states that the sheets are being filed to reflect changes in the cost of gas purchased from Texas Gas Transmission Corporation (Texas Gas) pursuant to the provisions of the Purchase Gas Adjustment Clause in FPC Gas Tariff, Original Volume No. 1. According to Lawrenceburg, Texas Gas has requested an effective date of February 1, 1974, for its increase in rates; and therefore Lawrenceburg has also requested an effective date of February 1, 1974, for its tariff sheets and requests waiver of the Commission's notice requirements under Section 154.51 of the Commission's Regulations under the Natural Gas Act. Lawrenceburg states that it has mailed copies of this filing to its two wholesale customers, Lawrenceburg Gas Company and The Cincinnati Gas & Electric Company, and has also sent copies to the Public Service Commission of Indiana and The Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said notice should file a petition to intervene or protest with the Federal Power Commission, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1974. Protests will be considered by the Commission in determining the appropriate action to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1890 Filed 1-22-74;8:45 am]

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[Docket No. RI74-112]

## MESSMAN-RINEHART OIL COMPANY (OPERATOR), ET AL.

### Notice of Petition for Special Relief

JANUARY 15, 1974.

Take notice that on January 7, 1974, Messman-Rinehart Oil Company (Operator), et al. (Petitioner), 320 Page Court, Wichita, Kansas 67202, filed a petition for special relief in Docket No. RI74-112, pursuant to Section 2.76 of the Commission's General Policy and Interpretations for sales of natural gas to Panhandle Eastern Pipe Line Company from the Lerado Mississippi Gas Unit in Reno County, Kansas, seeking a rate of 23.0¢ per Mcf with additional one cent per Mcf escalations on April 1 of each year thereafter. Petitioner claims that its operations under the subject contract are economically marginal, and that, in the absence of a price increase, it will be necessary to abandon its operations even though 3 to 4 Bcf of additional reserves remain in the reservoir involved here.

Any person desiring to be heard or to make any protest with reference to said

petition should on or before January 30, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1885 Filed 1-22-74;8:45 am]

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[Docket No. E-8584]

## MINNESOTA POWER AND LIGHT CO.

### Notice of Filing of Rate Schedule

JANUARY 15, 1974.

Take notice that on January 7, 1974, Minnesota Power and Light Company (Company) tendered for filing an Electric Service Agreement between Company and the Village of McKinley, Minnesota. Company states that the Agreement replaces Federal Power Commission Rate Schedule No. 75 which has expired and asserts that the Agreement will have no anticipated effect upon revenue.

According to Company, service upon the Village of McKinley has been made in accordance with § 35.2(d) of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 25, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1884 Filed 1-22-74;8:45 am]

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[Dockets No. E-8534, E-8535]

## NORTHERN INDIANA PUBLIC SERVICE COMPANY AND PUBLIC SERVICE COMPANY OF INDIANA

### Notice of Interconnection Agreement and Certificate of Concurrence

JANUARY 17, 1974.

Take notice that on December 3, 1973, Northern Indiana Public Service Company (Applicant) filed with the Federal Power Commission, pursuant to § 35.13 of the Commission's regulations, and Interconnection Agreement, dated January 1, 1974, between Applicant and Public Service Company of Indiana (Public Service). On the same date Public Service filed with the Commission a certificate of concurrence with the filing of the Applicant, adopting the statements contained therein.

This Agreement will replace the Interconnection Agreement between Indiana and Michigan Electric Company, Public Service and Applicant, dated June 29, 1945. The original Agreement designated as Applicant's FPC Rate Schedule No. 6-B, has been filed for termination to be effective on December 31, 1973.

The new Agreement has been made for an initial term expiring December 31, 1983, and thereafter for successive periods of one year unless and until terminated by either party at the expiration of any of said periods on thirty month's prior written notice. Applicant requests that the Commission accept the instant Agreement for filing as a rate schedule effective January 1, 1974.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become a party to a proceeding or to participate as a party in any hearing therein, must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1883 Filed 1-22-74;8:45 am]

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[Docket No. E-8555]

## NORTHERN STATES POWER CO.

### Notice of Supplement No. 12 to the Interconnection and Interchange Agreement

JANUARY 16, 1974.

Take notice that Northern States Power Company, on December 14, 1973, tendered for filing, Supplement No. 12 to the Interconnection and Interchange Agreement between Dairyland Power Cooperative, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin).

Supplement No. 12 provides a Twelfth Revised Exhibit A, a Twelfth Revised Page B-1, adding the Loyal, Colfax, and Barron Interconnections to the terms of the Agreement.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of; the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before February 4, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commisison and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1892 Filed 1-22-74;8:45 am]

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[Docket No. CI74-362]

## W. C. PERRYMAN AND J. A. WALLENDER

### Notice of Application

JANUARY 17, 1974.

Take notice that on December 27, 1972, W. C. Perryman, P.O. Drawer A, Athens, Texas 75751, and J. A. Wallender, P.O. Box 3553, Tyler, Texas 75701, Applicants, filed in Docket No. CI74-362 an application pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's General Policy and Interpretations (18 CFR 2.75) for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Southern Natural Gas Company (Southern) from wells commenced after April 6, 1972, in the Joaquin Field, Shelby County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose under the optional gas pricing procedure to sell to Southern gas produced from Applicants' interest in the Joaquin Field at an initial price of 48.198 per Mcf at 14.65 psia, pursuant to a gas purchase contract presently on file with the Commission as Atlantic Richfield Company FPC Gas Rate Schedule No. 308, with Southern dated January 1, 1949, as ratified and amended on September 8, 1971, August 10, 1972, and June 28, 1973. The application states that said contract provides for reimbursement to Applicants by Southern of 50 percent of all taxes in excess of 5.2 percent of value which presently equals 0.554 cent per Mcf, as well as annual price escalations of 0.975 cent per Mcf of gas.

Applicants assert that there is a serious shortage of natural gas existing at this time and allege that the granting of a certificate at the price applied for would encourage the drilling of additional wells, thereby increasing the supply of gas for consumer use.

The application states that estimated sale volumes are unknown.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 11, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All pro-

tests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1897 Filed 1-22-74;8:45 am]

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[Docket No. E-7658]

## POTOMAC EDISON CO., ET AL.

### Notice of Filing of Settlement Agreement

JANUARY 16, 1974.

In the matter of Potomac Edison Company, Potomac Edison Company of West Virginia, Potomac Edison Company of Pennsylvania and Potomac Edison Company of Virginia.

Take notice that on January 10, 1974, a settlement offer was tendered for filing in this docket by the above listed parties. The parties state that the agreement is proposed to resolve all outstanding issues in this docket.

According to the parties, the major element of the agreement is that 8 percent is the appropriate rate of return to be used in determining capacity charges. An 8.67 percent rate of return was contained in the original filing. The parties state, that should the Commission approve the proposed settlement, the companies would file tariff sheets revising their rates accordingly.

Any person wishing to do so may file comments concerning the proposed settlement agreement with the Commission on or before February 4, 1974.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1894 Filed 1-22-74;8:45 am]

[Docket No. E-8587]

## PUBLIC SERVICE COMPANY OF INDIANA, INC.

### Notice of Tariff Change

JANUARY 16, 1974.

Take notice that public Service Company of Indiana, Inc. (Company), on January 8, 1974, tendered for filing proposed changes in its RPC Electric Tariff Original Volume No. 1 (2nd Revision), FPC Electric Tariff Original Volume No. 2, and Exhibit I to Rate Schedule Nos. 211, 212, 215, 223 and 224. The Company states that the proposed changes would increase revenues from jurisdictional sales and service by $4,737,034 based on the 12 month period ending May 31, 1975. According to the Company, the proposed effective date for the change is May 15, 1974. Copies of the filing were served upon the public utility's jurisdictional customers and on the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 27, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1889 Filed 1-22-74;8:45 am]

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[Docket No. CP74-7]

## SOUTHERN NATURAL GAS CO.

### Notice of Extension of Time and Postponement of Hearing

JANUARY 16, 1974.

On January 11, 1974, Atlanta Gas Light Company filed a motion for an extension of time of the procedural dates fixed by order issued December 27, 1973. The motion states that neither Southern Natural Gas Company nor Carolina Pipeline Company objects to the requested extension.

Upon consideration, notice is hereby given that the procedural dates are modified as follows:

Service of Testimony and Exhibits by Southern and Atlanta, February 5, 1974.
Hearing, February 20, 1974.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1895 Filed 1-22-74;8:45 am]

[Docket Nos. CP74-138, CP74-139, and CP74-140]

## TRUNKLINE LNG CO. AND TRUNKLINE GAS CO.

### Order Consolidating Proceedings, Granting Interventions and Scheduling Formal Hearing

JANUARY 18, 1974.

On November 15, 1973, Trunkline LNG Company (Trunkline LNG) and Trunkline Gas Company (Trunkline) filed in Docket Nos. CP74-138, CP74-139, and CP74-140 related applications pursuant to section 3 and section 7(c) of the Natural Gas Act for an order of the Commission authorizing Trunkline LNG to import liquefied natural gas (LNG) from Algeria and for certificates of public convenience and necessity authorizing Trunkline LNG to construct and operate facilities related to said importation of LNG and for its revaporization and sale in interstate commerce to Trunkline for resale, and authorizing Trunkline to construct and operate facilities required for the receipt, transportation and sale of said revaporized LNG in interstate commerce for resale, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Trunkline LNG filed in Docket No. CP-74-139 an application pursuant to section 3 of the Natural Gas Act for an order of the Commission authorizing it to import liquefied natural gas (LNG) from Algeria. Under an agreement between Panhandle Eastern Pipe Line Company (Panhandle) and Societe National Sonatrach (Sonatrach), the Algerian natural oil and gas company, dated August 17, 1973, Trunkline LNG, as assignee of Panhandle, proposes to purchase at least 187,571,428,000,000 Btu of LNG annually[1] beginning in 1979. Said agreement provides for natural gas to be liquefied by Sonatrach and sold to Trunkline LNG under a contract providing for a 20-year primary term from the date of first regular delivery, which is presently estimated to occur in the first quarter of 1979.

The application in Docket No. CP74-139 states that Sonatrach is not limited to any particular field or fields for satisfaction of its obligations under the agreement. Trunkline LNG states that the volumes of reserves presently available to Sonatrach or which may reasonably be anticipated to be discovered by Sonatrach during the term of the contract are more than adequate to meet all of Sonatrach's existing contractual commitments

[1] Applicant states that the proposed import volumes will yield approximately 420,000 Mcf of natural gas per day at 14.73 psia and 60° after allowance for transport, fuel, cargo weathering, and plant losses. Applicant proposes to import at least 3,571,428,571,000,000 Btu of LNG over the 20-year primary term of the contract.

and the projected internal needs of Algeria throughout the term of the contract.

Trunkline LNG states that Sonatrach will cause gas to be transported, liquefied, and delivered FOB the Algerian coast into cryogenic tankers, at which point title to the subject LNG will vest in Trunkline LNG.[2] The application states that Trunkline LNG will arrange for transportation of the LNG from Algeria to Trunkline LNG's proposed unloading, storage, and gasification facilities to be located in Calcasieu Parish, Louisiana, subject to Sonatrach's option under the instant contract to furnish 50 percent of such required transportation capacity.

To effect the agreement with Sonatrach, Trunkline LNG filed an application in Docket No. CP74–138 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate a marine terminal, three 600,000 barrel capacity cryogenic storage tanks, seven submerged combustion vaporizers, and miscellaneous ancillary facilities necessary for the receipt storage, and revaporization of the LNG to be imported from Algeria, and the sale in interstate commerce of the revaporized LNG to Trunkline for resale. The application states that the proposed facilities are to be located approxmiately 12 miles south of Lake Charles, Calcasieu Parish, Louisiana, on a canal and turning basin which is to be constructed by the U.S. Army Corps of Engineers, and which will connect to the Gulf of Mexico through the Calcasieu Ship Channel. Trunkline LNG estimates that the total cost of these proposed facilities is $114,057,000. The application states that this construction cost will be financed initially with short term notes with other proposed financing to consist of a proposed sale of $105,000,000 of debentures and $20,000,000 in common equity. Provisions of the debentures to be issued are dependent on market conditions at the time the proposed securities are sold.

The application in Docket No. CP74–138 further states that based on the most current information available, Trunkline LNG estimates that the base cost of LNG delivered will be approximately $1.30 million Btu or $1.38 per Mcf for the first year of operation. Trunkline LNG states that this price is based on the present estimated shipping cost of 60 cents per million Btu of LNG and the presently estimated LNG purchase price from Sonatrach of 62.0466 cents per million Btu in 1979. The application states that the cost of delivered LNG may increase or decrease in response to adjustments in these two cost factors. Trunkline LNG, a wholly-owned subsidiary of Trunkline, proposes to sell all such LNG imported under its agreement with Sonatrach to Trunkline on a cost of service basis which will be comprised of the purchase cost of LNG, the cost of transportation, costs of operation, return and taxes. Trunkline has agreed to pay Applicants total cost of service from inception. Although payment will not be made on a unit basis, unit cost of service for the first year is estimated to be $1.63 per Mcf.

Trunkline has filed an application in Docket No. CP74–140 pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Trunkline to construct and operate facilities for the receipt, transportation, and sale in interstate commerce of approximately 420,000 Mcf per day of revaporized LNG imported by and purchased from Trunkline LNG pursuant to a Gas Sales and Purchase Agreement dated November 14, 1973.

Trunkline proposes to construct and operate approximately 45.8 miles of 30-inch pipeline to carry the revaporized LNG from the point of purchase at the outlet of Trunkline LNG's vaporization facility approximately 12 miles south of Lake Charles to Trunkline's mainline facilities at Longville, Louisiana. Trunkline states that the proposed route of the line will use approximately 36 miles of existing rights-of-way and cost approximately $17,640,000. The application states said construction will be financed by a combination of short-term borrowings and by funds internally generated.

The application in Docket No. CP74–140 states that Trunkline will use such volumes of gas purchased from Trunkline LNG to supply the existing needs of its present customers under a cost of service tariff through which Trunkline LNG will recover its total cost of service from the inception of deliveries. Trunkline proposes that payments to Trunkline LNG be considered as a part of Trunkline's cost of Purchased Gas Cost Rate Adjustment (PGA) contained in Section 18 of the General Terms and Conditions of Trunkline's FPC Gas Tariff, Original Volume No. 1; and in this regard Trunkline requests a waiver of § 154.38(d)(4) of the regulations under the Natural Gas Act [18 CFR 154.38 (d)(4)] and such other sections as may be appropriate in connection therewith. Trunkline estimates the total impact of the cost of purchased gas on a rolled-in basis will be an increase of 33.82 cents per Mcf for the first year which is assumed to be 1979.

Trunkline states it is presently curtailing its deliveries of approximately one-third of its firm contractual obligations and will continue to be required to curtail deliveries after inception of the deliveries of revaporized LNG. Estimated daily deficiencies of gas for firm sales are 539,501 Mcf in 1974 and 111,986 in 1979. The gas to be acquired from Trunkline LNG is said to be required to supply existing firm needs of existing firm customers.

The Commission notes that there exists an interrelationship between the three above-entitled dockets numbers, and concludes that their ultimate disposition would best be accomplished in a consolidated proceeding. The Commission therefore, shall consolidate Docket Nos. CP74–138, CP74–139, and CP74–140 for hearing and disposition of all issues.

Timely petitions to intervene were filed by the following parties:

The City of Indianapolis, Southern California Gas Company, El Paso Algeria Corporation, Consumers Power Company, Natural Gas Pipeline Company of America, Laclede Gas Company, United Gas Pipe Line Company, Central Illinois Public Service Company, Michigan Gas Utilities Company, Southern Natural Gas Company, Southern Energy Company, Central Illinois Light Company, Illinois Power Company.

Having reviewed the petitions to intervene, we are convinced that the petitioners have all shown sufficient interest in their respective dockets to warrant intervention. Accordingly, we shall grant intervention to all those who have so filed.

The City of Indianapolis, who receives gas indirectly from Trunkline through Panhandle Eastern Pipeline Company, states that it opposes the project but does not request a hearing. Laclede Gas Company, which purchases its entire supply from Mississippi River Transmission Corporation who in turn is a major customer of Trunkline, requests a formal hearing and raises the issue of the recovery of all costs by utilizing Trunkline's Purchased Gas Adjustment Clause.

We believe that significant questions presented by these applications, as well as those raised by some petitioners require a formal public hearing at which time all issues bearing upon the public interest can be fully developed on the evidentiary record under both sections 3 and 7 of the Natural Gas Act. Among the issues which we deem relevant for consideration are reliability of service of the foreign supply, the dependence of certain distributors on foreign LNG to meet residential and commercial markets, environmental impact of any proposed facilities, the proper method of pricing of the LNG supply, shipping costs, overall economic feasibility of the project, end-use allocation of the proposed LNG supply, availability of alternative fuels for the markets to be served by the project, engineering feasibility of the project, overall project safety, and any such other issues as may be pertinent and appropriate. Furthermore, in keeping with recent Commission policy, we shall, in Ordering Paragraph (C) below, direct Trunkline to submit detailed market data sufficient to reflect end-use allocation of gas on its system, both with and without the proposed supplemental LNG. In order to provide Staff with sufficient time to evaluate such data prior to formal hearing, such end-use information is to be submitted at the same time as the Applicants' direct case.

Additionally, the environmental procedure to be followed appears to be somewhat unsettled. The Greene County decision[3] and Commission Order No. 415–C require that the Staff Environmental Statement, together with any comments

[2] Deliveries are to be made at one or more of the Algerian coast cities of Arzew, Dellys, and Skikda.

[3] "Greene County Planning Board, et al., v. F.P.C.," 455 F.2d 412 (2nd Cir., 1972), cert. denied 409 U.S. 849 (1972).

received thereon, be presented at any hearing in a proposal. In keeping with this requirement, while still assuring that the Staff is afforded adequate time to prepare a thorough and meaningful environmental statement, we shall direct that, should hearing of all issues other than environmental be completed prior to the finalization of Staff's statement the record shall remain open for purposes of receiving such environmental testimony in evidence and further trial of the issues involved therein. No decision by the Presiding Administrative Law Judge assigned to the case shall be issued prior to the completion of such testimony and subsequent closing of the record.

The Commission finds:

(1) It is necessary and appropriate that the proceedings, in Docket Nos. CP74–138 and CP74–139 and CP74–140 be consolidated for hearing and decision.

(2) It is desirable and in the public interest to allow the aforementioned parties who have formally petitioned to intervene in the above consolidated dockets to so 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.

(3) It is necessary in the public interest that the consolidated proceedings involving the above-named Applicants be set for hearing.

The Commission orders:

(A) Docket Nos. CP74–138, CP74–139 and CP74–140 are consolidated for purposes of hearing and disposition.

(B) The above-named petitioners, who have petitioned to intervene in the proceedings consolidated by Ordering Paragraph (A) herein, are permitted to intervene in such consolidated proceeding subject to the Rules and Regulations of the Commission: Provided, however, that the participation of such intervenors shall be liimted to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *Provided, further*, That the admission of such intervenors shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) Applicants shall submit detailed end-use market data, as specified at page 5 above, on or before February 4, 1974.

(D) The direct case of the Applicants and all intervenors in support thereof shall be filed and served on all parties on or before February 4, 1974. The Presiding Administrative Law Judge shall fix dates for the filing of answering testimony after completion of cross-examination on direct testimony.

(E) A formal hearing shall be convened in these proceedings in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C., on February 26, 1974, at 10:00 a.m. (e.t.). Such hearing shall consider testimony on the issues listed above and any other issues which may be relevant to the proceedings and shall remain open until the submission of the Commission Staff's final environmental statement. Furthermore, no initial decisions shall be issued prior to the submission of such environmental testimony. The Chief Administrative Law Judge will designate an appropriate officer of the Commission to preside at the formal hearing of these matters pursuant to the Commission's rules of practice and procedure.

By the Commission.

[SEAL] KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74–1874 Filed 1–22–74;8:45 am]

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[Docket No. E–8581]

## WASHINGTON WATER POWER CO.

### Notice of Proposed Change in Rates

JANUARY 17, 1974.

Take notice that The Washington Water Power Company of Spokane, Washington (Water Power), on January 3, 1974, tendered for filing a change in rates applicable to electric service rendered to its wholesale customers whose contracts have expired or will expire prior to the effective date of the change in rates. The change in rates is proposed to become effective as of February 4, 1974.

Water Power states that the proposed rate change is submitted for the purpose of compensating Water Power for increases in its cost of capital, labor, materials and supplies and taxes and, in further support, that its current wholesale contract rates are deficient by some $203,000 annually based on sales volumes set forth in the statements accompanying its notice of change in rates.

Copies of the filing have been served upon the four Water Power wholesale customers affected by the filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Water Power's proposed tariff and rate filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74–1877 Filed 1–22–74;8:45 am]

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[Docket Nos. E–7174 and E–7555]

## WISCONSIN MICHIGAN POWER CO.

### Notice of Extension of Time and Postponement of Hearing

JANUARY 17, 1974.

On January 9, 1974, Counsel for Cities of Clintonville, New London, Oconto Falls and Shawano and the Town of Florence filed a motion for an extension of the procedural dates fixed by order issued October 15, 1973, in the above-designated matter. The motion states that Staff Counsel and intervener, Oconto Electric Cooperative concur in the motion.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Evidence by Staff and Interveners, February 12, 1974.

Service of Rebuttal Evidence, February 28, 1974.

Hearings, March 12, 1974.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74–1880 Filed 1–22–74;8:45 am]

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[Rate Schedule Nos. 14, et al.]

## GETTY OIL COMPANY, ET AL.

### Notice of Rate Change Filings Pursuant to Commission's Opinion No. 639

JANUARY 17, 1974.

Take notice that the producers listed in the Appendix attached hereto have filed proposed increased rates to the applicable area new gas ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 639, issued December 12, 1972.

The information relevant to each of these sales is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filings should on or before January 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Secretary.*

APPENDIX

| Filing date | Producer | Rate schedule No. | Buyer | Area |
|---|---|---|---|---|
| Dec. 20, 1973 | Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001. | 14 | Transcontinental Gas Pipe Line Corp. | Texas Gulf. |
| Do | do | 16 | do | Do. |
| Dec. 27, 1973 | Champlin Petroleum, Co., P.O. Box 9365, Fort Worth, Tex. 76107. | 8 | Tennessee Gas Pipeline Co. | Do. |
| Jan. 2, 1974 | Sohio Petroleum Co., 1100 Penn Tower, Oklahoma City, Okla. 73118. | 3 | do | Do. |
| Jan. 7, 1974 | Shell Oil Co., 1 Shell Plaza, P.O. Box 2463, Houston, Tex. 77001. | 188 | do | Do. |
| Do | do | 211 | United Gas Pipe Line Co. | South Louisiana. |
| Do | Gulf Oil Corp., P.O. Box 1589, Tulsa, Okla. 74102. | 161 | do | Do. |

[FR Doc.74-1882 Filed 1-22-74;8:45 am]

[Docket Nos. CI74-137, CI74-138 and CI74-139]

## DIAMOND SHAMROCK CORP.

### Notice of Extension of Time

JANUARY 18, 1974.

On January 16, 1974, Diamond Shamrock Corporation filed a motion for an extension of the procedural dates fixed by order issued January 10, 1974. The motion states all parties including Staff Counsel are agreeable to the proposed extension.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Evidence by Applicant and Supporting Interveners, January 28, 1974.
Service of Evidence by Staff and Opposing Interveners, February 18, 1974.
Service of All Rebuttal Evidence, February 26, 1974.
Hearing (unchanged), February 26, 1974 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1920 Filed 1-22-74;8:45 am]

## TEXAS EASTERN TRANSMISSION CORP.

[Docket No. CP74-181]

### Notice of Application

JANUARY 18, 1974.

Take notice that on January 3, 1974, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP74-181 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas to the City of Cairo, Illinois (Cairo), pursuant to Applicant's Rate Schedule GS-B in lieu of deliveries under its existing Rate Schedule SBS-B, in order to avoid Cairo's incurring overrun penalties on peak days under the Rate Schedule SGS-B, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that Cairo is presently receiving natural gas service under Applicant's SGS-B Rate Schedule which provides for a contract maximum daily quantity of 5,000 Mcf. Applicant states that Cairo has historically taken gas in excess of the 5,000 Mcf per day limit during the winter months relying on Paragraph 5 of Applicant's FPC Tariff, Rate Schedule SGS-B, which allowed SGS customers to take over-run quantities of gas without paying a $10.00 per Mcf penalty charge.

Applicant states that said Paragraph 5 was eliminated from Applicant's tariff pursuant to a settlement in Docket No. RP72-98 on November 1, 1973, and as a result thereof customers who have been overrunning their contract quantities are allowed either to install peak shaving equipment and/or convert from the SGS Rate Schedule to the GS Rate Schedule. Cairo has elected to convert to the GS Rate Schedule.

Applicant requests authorization for the sale and delivery of natural gas to Cairo under the GS-B Rate Schedule which provides for a contract maximum daily quantity of 6,759 Mcf of gas. The application states that the annual contract quantity under the proposed GS-B Rate Schedule will be 1,825,000 Mcf, which represents no change from the annual contract quantity provided for in the existing SGS-B Rate Schedule.

Applicant states that Cairo is in need of receiving quantities of gas herein requested and that continuation of service to Cairo under the SGS-B Rate Schedule would damage Cairo's financial integrity due to the imposition of the $10.00 per Mcf penalty charge or would require Cairo to curtail deliveries to residential and small commercial customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.74-1919 Filed 1-22-74;8:45 am]

# FEDERAL RESERVE SYSTEM

## ALABAMA FINANCIAL GROUP, INC.

### Acquisition of Bank

The Alabama Financial Group, Inc., Birmingham, Alabama, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of the successor by merger to Coosa Valley Bank, Rainbow City, Alabama. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 10, 1974.

Board of Governors of the Federal Reserve System, January 14, 1974.

[SEAL] THEODORE E. ALLISON,
*Assistant Secretary of the Board.*

[FR Doc.74-1841 Filed 1-22-74;8:45 am]

## BHCO, INC.

### Order Denying Formation of Bank Holding Co.

BHCo, Inc., Hardin, Montana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through the acquisition of 97.8 percent of the voting shares of Big Horn County State Bank, Hardin, Montana ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all com-

ments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, a nonoperating company with no subsidiaries, was organized for the purpose of becoming a bank holding company through the acquisition of Bank, with deposits of $16.3 million. (All banking data are as of June 30, 1973.) Bank is the larger of two banks in its relevant banking market,[1] controlling approximately 66 percent of the total commercial bank deposits therein. Upon acquisition of Bank, Applicant would become the 18th largest banking organization in Montana and hold 0.7 per cent of total commercial deposits in the State.

The purpose of the proposed transaction is to effect a transfer of the ownership of Bank from individuals to a corporation owned by the same individuals with no change in Bank's management or operations. The individuals who presently control Bank and who also organized Applicant are members of the same family.

The principals involved in this case together with other members of the same family also own 97 per cent of STS Corporation,[2] Billings, Montana, a one-bank holding company which owns 99.8 per cent of Security Trust and Savings Bank, Billings, Montana ("Billings Bank"). Billings Bank (deposits of $124 million) is the largest bank in Montana, controlling 5.6 per cent of total commercial bank deposits in the State, and operates in a separate but adjacent banking market approximately 47 miles west of Bank. In addition, these principals also control Bank of Commerce, Sheridan, Wyoming (deposits of $32 million), located approximately 88 miles south of Bank, which holds 2.8 per cent of total commercial bank deposits in Wyoming.

As indicated above, the proposed acquisition represents a change in form of ownership of Bank, and there are no significant proposed changes in the operations or services of Bank. Therefore, considerations relating to the convenience and needs of the community to be served lend no weight toward approval of the proposal. However, as discussed below, the financial condition of Applicant could impair Bank's ability to continue to serve the banking needs of the relevant market.

Under the Bank Holding Company Act, the Board is required to take into consideration the financial and managerial resources and future prospects of the proposed holding company and the bank to be acquired. In the exercise of that responsibility, the Board finds that considerations relating to the financial resources of Applicant warrant denial of the application. Applicant's earning prospects are entirely dependent upon the earnings of Bank; Applicant expects to service a $1.5 million debt over a 12-year period through Bank dividends averaging 45 percent of Bank's projected net income and through savings realized by the holding company from filing consolidated income tax returns. The projected earnings for Bank do not, in the Board's view, provide Applicant with the necessary financial flexibility to meet its annual debt servicing requirements as well as any unexpected problems that might arise at Bank. Furthermore, if Bank's projected rate of growth is realized, Bank's total capital funds as related to its total assets would become insufficient because of Applicant's inability to augment Bank's capital due to its substantial debt servicing requirements. The above factors strongly suggest that these financial requirements could place an undue strain on Bank and thus impair Bank's ability to be a viable banking organization in meeting the banking needs of the community which it serves. Such considerations lend weight toward denial of the application.

The Board notes that the principals of Applicant already control (through a one-bank holding company) Billings Bank, a bank with a capital ratio which has been declining under the policy of its present management. This precedent lends support to the view that the financial plan in the instant case may not generate sufficient income from the earnings of Bank to service its acquisition debt and to maintain Bank's capital under a financially sound program.[3] With respect to questions of acquisition debt and debt equity ratios, the Board has been relatively liberal in the standards it has applied in cases when current or prospective owner-chief executive is establishing, or has established, a one-bank holding company to hold the direct equity interest in his bank. Such relative liberality is regarded as in the public interest in order to facilitate management succession on the community level at the nation's many smaller independent banks. In situations where this special consideration does not pertain, the Board believes it is prudent to apply somewhat more restrictive standards, as is regularly done in analyzing multi-bank holding companies.

Under the above circumstances, in addition to other facts of record, considerations relating to the financial condition and prospects of Applicant lend weight for denial of the application. While the Board recognizes that denial of the application would not necessarily affect immediately the control of Bank, the Board cannot sanction the use of a holding company structure that, because of limited financial resources, could impair the financial condition of the bank to be acquired, nor would the public interest be served by such Board action.

On the basis of all the facts in the record, and in light of the factors set forth in section 3(c) of the Act, it is the Board's judgment that the proposed acquisition would result in a bank holding company with financial resources inadequate to service its debt while maintaining Bank's capital account, and that such condition could impair the ability of Bank to meet the needs of the community which it serves. Accordingly, the Board concludes that consummation of the proposal would not be in the public interest, and that the application should be denied.

By order of the Board of Governors,[4] effective January 15, 1974.

[SEAL] CHESTER B. FELDBERG,
*Secretary of the Board.*

[FR Doc.74-1844 Filed 1-22-74;8:45 am]

[1] The relevant banking market is approximated by the northern two-thirds of Big Horn County.

[2] STS Corporation received Board approval to become a bank holding company by Order dated November 15, 1971 (1971 Federal Reserve Bulletin 1024).

[3] In a letter of comment received by the Board from the Director of the Department of Business Regulation, State of Montana, it was noted that Applicant's projection of earnings appeared optimistic and it was recommended that the debt of the proposed holding company should be substantially reduced before approval of the subject application would be appropriate.

[4] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher and Holland. Absent and not voting: Chairman Burns and Governor Daane.

## FROSTBANK CORP.

### Acquisition of Bank

FrostBank Corporation, San Antonio, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Peoples National Bank, San Antonio, Texas, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than February 12, 1974.

Board of Governors of the Federal Reserve System, January 16, 1974.

[SEAL] THEODORE E. ALLISON,
*Assistant Secretary of the Board.*

[FR Doc.74-1839 Filed 1-22-74;8:45 am]

## GENERAL FINANCIAL SYSTEMS, INC.

### Acquisition of Bank

General Financial Systems, Inc., Riviera Beach, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 98.5 percent of the voting shares of Marine National Bank of West Jacksonville, Jacksonville, Florida, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

General Financial Systems is also engaged in the following nonbank activities: development and management of rental apartments; home building; leas-

ing of capital goods under full pay-out leases; operation of a general insurance agency; operation of an insurance brokerage agency; and data processing. Pending determination of whether applicant's efforts to divest these activities are effective, the Board, in addition to the factors considered under section 3 of the Act (banking factors), will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than February 12, 1974.

Board of Governors of the Federal Reserve System, January 16, 1974.

[SEAL] THEODORE E. ALLISON,
*Assistant Secretary of the Board.*

[FR Doc.74-1840 Filed 1-22-74;8:45 am]

## UNITED PENN CORP.

### Order Approving Acquisition of Valley Consumer Discount Co.

United Penn Corporation, Wilkes-Barre, Pennsylvania, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire all of the voting shares of Valley Consumer Discount Company, Exeter, Pennsylvania ("Valley"), a company that engages in the activities of making, acquiring, and servicing loans to individuals, and also acting as agent for the sale of credit life, accident and health, and disability insurance directly related to the loans made. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1) and (9)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (38 FR 24687). The time for filing comments and views has expired, and the Board has considered all comments received in the light of the public interest factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1843(c)).

Applicant controls one bank, United Penn Bank ("Bank"), with deposits of about $319 million, representing less than 1 per cent of the deposits in commercial banks in the State of Pennsylvania. (All data are as of December 31, 1972.) Bank is located in the Wilkes-Barre banking market, which is approximated by an area bounded on the north by the Susquehanna River near Laceyville, east, by Wayne County, south, by Mocanaqua Township, and west, by Sullivan County. In that market, Bank controls approximately 15 percent of the total amount of consumer loans outstanding,[1] and ranks third among banks operating in the market.

Valley also operates in the Wilkes-Barre market. Valley operates one office and has total outstanding loans of about $1 million. Thirty-six other organizations which hold consumer discount company licenses also operate in the Wilkes-Barre market, and, in the aggregate, these finance companies have about $29 million in loans outstanding.

Bank and Valley compete directly in the Wilkes-Barre market. However, in view of Valley's small size, it does not appear that a material amount of competition would be eliminated by consummation of the proposal. Moreover, Bank is not dominant and this proposal does not appear to entrench Bank in the area, or raise the barriers to entry. Particularly in view of the fact that there are 35 other finance companies located in the Wilkes-Barre market, 16 other commercial banks, and 10 credit unions which make small consumer installment loans, it does not appear that consummation of the proposal would significantly reduce the number of sources of loanable funds. Based on the record, the Board is of the opinion that Applicant's acquisition of Valley would not have a significant effect on existing competition in the small consumer installment loan market.

Valley acts as agent for the sale of credit insurance related to loans it originates, but because of the size and scope of Valley's business, it appears that Applicant's acquisition of Valley would not appear to have significantly adverse effect on competition in this product line.

There is no evidence in the record to indicate consummation of the proposal would result in any undue concentration of resources, unfair competition, conflicts of interest, or unsound banking practices. The present management of Valley is nearing retirement, and Applicant proposes, upon approval of the application, to supply management personnel who will have the ability to allow Valley to continue as a viable credit source in the Wilkes-Barre consumer loan market. Applicant proposes to establish offices of Valley outside its present market area and such expansion will provide greater availability of credit and increased competition to the benefit of those persons outside the Wilkes-Barre market. Moreover, Applicant proposes, upon approval, to continue Valley's policy of offering loan rates below the maximum allowable under Pennsylvania law, and continuance of such a policy would benefit the public in the Wilkes-Barre market as well as those markets which Applicant chooses to enter in the future. These and other considerations favor approval of this application.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Philadelphia.

By order of the Board of Governors,[2] effective January 15, 1974.

[SEAL] CHESTER B. FELDBERG,
*Secretary of the Board.*

[FR Doc.74-1843 Filed 1-22-74;8:45 am]

[1] This includes consumer loans made by banks, finance companies, and credit unions.

## VALLEY OF VIRGINIA BANKSHARES, INC.

### Acquisition of Bank

Valley of Virginia Bankshares, Inc., Harrisonburg, Virginia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of the successor by merger to The Farmers Bank of Edinburg, Incorporated, Edinburg, Virginia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 12, 1974.

Board of Governors of the Federal Reserve System, January 14, 1974.

[SEAL] THEODORE E. ALLISON,
*Assistant Secretary of the Board.*

[FR Doc.74-1842 Filed 1-22-74;8:45 am]

## BYERS STATE BANKSHARES, INC.

### Formation of Bank Holding Co.

Byers State Bankshares, Inc., Byers, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 per cent of the voting shares of Byers State Bank, Byers, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views

[2] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns and Governor Daane.

in writing to the Reserve Bank, to be received not later than February 12, 1974.

Board of Governors of the Federal Reserve System, January 16, 1974.

[SEAL] THEODORE E. ALLISON,
*Assistant Secretary of the Board.*

[FR Doc.74-1838 Filed 1-22-74;8:45 am]

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### SEVEN V BANCO, INC.

#### Formation of Bank Holding Company

Seven V Banco, Inc., Callaway, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 per cent of the voting shares of Seven Valleys State Bank, Callaway, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Seven V Banco, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire the assets of Johnson Insurance Agency, Callaway, Nebraska. Notice of the application was published on December 5, 1973, in the Callaway Courier, a newspaper circulated in Callaway, Nebraska.

Applicant states that the proposed subsidiary would engage in the activities of a general insurance agency in a community of less than 5,000 people. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competitions, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 11, 1974.

Board of Governors of the Federal Reserve System, January 15, 1974.

[SEAL] THEODORE E. ALLISON,
*Assistant Secretary of the Board.*

[FR Doc.74-1837 Filed 1-22-74;8:45 am]

## INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

### HAWLEY COAL MINING CORP. ET AL.

#### Notice of Opportunity for Public Hearing

Applications for Initial Permits for Noncompliance with the Electric Face Equipment Standard have been received for items of equipment in the underground coal mines listed below.

(1) ICP Docket No. 4132-000, HAWLEY COAL MINING CORPORATION, Bottom Creek #1 Mines, Mine ID No. 46 00709 0, Keystone, West Virginia.
(2) ICP Docket No. 4139-000, WHITE COAL COMPANY, White Diamond Slope Mine, Mine ID No. 36 02286 0, Ashland, Pennsylvania.
(3) ICP Docket No. 4140-000, JAMES HARVEY COAL COMPANY, Mine No. 4A, Mine ID No. 15 04634 0, Coalgood, Kentucky.
(4) ICP Docket No. 4141-000, HITE PREPARATION COMPANY, Mine No. G-64, Mine ID No. 15 04642 0, Hite, Kentucky.
(5) ICP Docket No. 4142-000, ELLA RUTH EVANS COAL COMPANY, Mine No. I-129, Mine ID No. 15 04000 0, Teaberry, Kentucky.
(6) ICP Docket No. 4143-000, JOSEPH BROS. COAL COMPANY, Mine No. 14, Mine ID No. 15 02789 0, Premium, Kentucky.
(7) ICP Docket No. 4144-000, EXPORT COAL MINING COMPANY, Mine No. G-15, Mine ID No. 15 00451 0, Martin, Kentucky.
(8) ICP Docket No. 4145-000, SOVEREIGN COAL CORPORATION, Jamboree 1-A Mine, Mine ID No. 15 02121 0, Phelps, Kentucky.
(9) ICP Docket No. 4146-000, UNITED COAL COMPANY, Mine No. I-1, Mine ID No. 15 00497 0, Ligon, Kentucky.
(10) ICP Docket No. 4148-000, B & S COAL COMPANY, INC., Mine No. 18, Mine ID No. 15 02367 0, Vicco, Kentucky.

In accordance with the provisions of section 305(a)(2) (30 U.S.C. 865(a)(2)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for an initial permit may be filed by February 7, 1974. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 Fed. Reg. 11296, July 15, 1970), as amended, copies of which may be obtained from the Panel upon request.

A copy of each application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
*Chairman,*
*Interim Compliance Panel.*

JANUARY 17, 1974.

[FR Doc.74-1828 Filed 1-22-74;8:45 am]

## NATIONAL SCIENCE FOUNDATION

### ADVISORY PANEL FOR REGULATORY BIOLOGY

#### Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Advisory Panel for Regulatory Biology to be held at 9 a.m. on February 14 and 15, 1974, in Room 321 at 1800 G Street NW., Washington, D.C. 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.

This meeting is concerned with matters which are within the exemptions of 5 U.S.C. 552(b) and will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated December 17, 1973, pursuant to the provisions of section 10(d) of Pub. L. 92-463.

For further information concerning this Panel, contact Dr. James W. Campbell, Program Director, Regulatory Biology Program, Room 323, 1800 G Street NW., Washington, D.C. 20550.

ELDON D. TAYLOR,
*Acting Assistant Director*
*for Administration.*

JANUARY 14, 1974.

[FR Doc.74-1849 Filed 1-22-74;8:45 am]

## INTERSTATE COMMERCE COMMISSION

[Notice 429]

### ASSIGNMENT OF HEARINGS

JANUARY 18, 1974.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after January 23, 1974.

MC 43867 Sub-25, A. Leander McAlister Trucking Company, now assigned February 6, 1974, at Dallas, Tex., is cancelled and transferred to Modified Procedure.
MC-27356 Sub 6, M-F Express, Inc., now assigned February 11, 1974, at Greenville, Miss., is postponed indefinitely.
MC 133168 Sub 2, Delta Express, Inc., now assigned February 11, 1974, at New Orleans, La., is postponed indefinitely.
MC 93393 Sub 18, Nightway Transportation Co., Inc., now being assigned hearing February 7, 1974 (2 days), at Chicago, Ill., in Room 705, 610 South Canal Street.
MC 30530 Sub 11, North Eastern Motor Freight, Inc., now assigned February 11, 1974, at Cheyenne, Wyoming, will be held in Court Room No. 2, U.S. Post Office & Courthouse, 2120 Capitol Avenue.
I&S No. 8911, Freight Forwarder Class Rates, Between Florida & Various States, now being assigned hearing February 26, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.
I&S M 27472, General Increase, January 1974, Between Central & Southern States, now

being assigned hearing March 18, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-135537 Sub 8, Metro Heavy Hauling, Inc., now being assigned hearing March 11, 1974 (1 week), at Olympia, Washington, in a hearing room to be later designated.

MC 130186, Vergil M. Webb, Marian H. Webb and Larry H. Webb, D.b.a. Holiday World Tours, now being assigned hearing February 19, 1974 (4 days), at Salt Lake City, Utah, in a hearing room to be later designated.

MC 115331 Sub 342, Truck Transport, Inc., now assigned February 19, 1974; MC 115331 Sub-347 & 348, Truck Transport, Inc., now assigned February 21, 1974; MC-F-11899, Georgia Highway Express, Inc.—Purchase—Goode Transfer, Inc., now assigned February 25, 1974; and MC-C-8089, Interstate Motor Freight System, A Corporation—Investigation and Revocation of Certificates—now assigned February 28, 1974, will be held in Court Room No. 2, 5th Floor, 1114 Market St., St. Louis, Mo.

MC-C-8186, Allen S. Kraft D.B.A. Universal Travel Service-V-World Travel Service (Arthur A. Johnson, Owner), now assigned February 19, 1974, will be held in Room 609, Federal Office Bldg., 911 Walnut Street, Kansas City, Mo.

MC-134229 Sub 5, Richmond Transfer, Inc., now assigned hearing February 20, 1974, will be held in Room 609, Federal Office Bldg., 911 Walnut St., Kansas City, Mo.

[SEAL] ROBERT L. OSWALD,
*Secretary.*

[FR Doc.74-1926 Filed 1-22-74;8:45 am]

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[Rule 19, 13th Rev. Exemption 43, Ex Parte 241]

## ATCHISON, TOPEKA, AND SANTA FE RAILWAY CO. ET AL.

### Exemption Under Mandatory Car Service Rules

To: The Atchison, Topeka and Santa Fe Railway Company, Burlington Northern Inc., Chicago and North Western Transportation Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago, Rock Island and Pacific Railroad Company, Illinois Central Gulf Railroad Company, Missouri Pacific Railroad Company, St. Louis-San Francisco Railway Company, Soo Line Railroad Company, and Union Pacific Railroad Company.

It appearing, that there are massive movements of grain, including rice and soybeans, in progress in the states of Arkansas, Iowa, Kansas, Minnesota, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, and South Dakota; and of cotton in certain of the aforementioned states; that present supplies of plain boxcars owned by the railroads serving these states are inadequate to move the newly harvested grain and cotton to terminal facilities for safe storage; that use of available plain boxcars owned by other carriers for movements of this grain and cotton will substantially augment the car supplies of the railroads named herein.

*It is ordered,* That pursuant to the authority vested in me by Car Service Rule 19, the railroads named herein, and their short line connections, are hereby authorized to use and to accept from shippers shipments of grain and cotton originating at stations located in Arkansas, Iowa, Kansas, Minnesota, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, and South Dakota, when loaded into plain 40-ft. narrow-door boxcars of various ownerships without regard to the requirements of Car Service Rule 2.

EXCEPTION. This exemption shall not apply to plain boxcars subject to Association of American Railroads' Car Relocation Directive No. 44.

Effective 11:59 p.m., January 15, 1974.

Expires 11:59 p.m., February 15, 1974.

Issued at Washington, D.C., January 10, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[FR Doc.74-1929 Filed 1-22-74;8:45 am]

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[I.C.C. Order 114; Rev. S. O. 994]

## CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO. AND NATIONAL RAILROAD PASSENGER CORP. (AMTRAK)

### Rerouting or Diversion of Traffic

Upon application of the National Railroad Passenger Corporation (Amtrak) and it being the opinion of R. D. Pfahler, Agent, to whom the matter has been delegated, that an emergency precludes operation of Amtrak's trains between Ft. Worth, Texas, and Oklahoma City, Oklahoma, over its customary route via the lines of The Atchison, Topeka and Santa Fe Railway Company, (ATSF), because of track damage in the vicinity of Ardmore, Oklahoma, and to facilitate operations by Amtrak in such emergency that are necessary to the passengers sought to be served.

*It is ordered,* That:

(a) *Rerouting traffic.* Amtrak, being unable to operate its trains between Ft. Worth, Texas and Oklahoma City, Oklahoma over its customary route via the lines of the ATSF, because of track damage in the vicinity of Ardmore, Oklahoma, is hereby authorized to reroute its trains between Ft. Worth and Oklahoma City via the lines of the Chicago, Rock Island and Pacific Railroad Company.

(b) The Chicago, Rock Island and Pacific Railroad Company be, and it is hereby ordered to accept from connections and to transport promptly Amtrak trains between Ft. Worth, Texas, and Oklahoma City, Oklahoma.

(c) 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 compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, that which is voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers, in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(d) *Effective date.* This order shall become effective at 4:30 p.m., e.s.t., January 14, 1974.

(e) *Expiration date.* This order shall expire at 11:59 p.m., January 16, 1974, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 14, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[FR Doc.74-1930 Filed 1-22-74;8:45 am]

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[Notice 2]

## MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JANUARY 18, 1974.

The following letter-notices of proposals (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), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Passengers, 1969 (49 CFR 1042.2 (c)(9) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC-36524 (Deviation No. 1), MISSOURI TRANSIT LINES, INC., 104 N. Clark Street, Moberly, Missouri 65270, filed January 3, 1974. Carrier's representative: Elvin S. Douglas, Jr., P.O. Box 280, Harrisonville, Missouri 64701. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *passengers and their baggage,* and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Cedar Rapids, Iowa, over Interstate Highway 380 to junction Interstate

Highway 80, thence over Interstate Highway 80 to Iowa City, Iowa, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Cedar Rapids, Iowa, over U.S. Highway 218 to Iowa City, Iowa, and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74-1928 Filed 1-22-74;8:45 am]

[Notice 10]

## 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 on or before February 18, 1974. Pursuant to section 17(g) 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-74859. By order of January 16, 1974, the Motor Carrier Board approved the transfer to Everyman Tours, Inc., Valley Stream, N.Y., of License No. MC-12758 issued May 7, 1964, to Valley Travel Tours, Valley Stream, N.Y., authorizing the holder to engage in operations as a broker in connection with the transportation of passengers and their baggage beginning and ending at points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia. Mr. Robert H. Troescher, Attorney for transferee, 33 Abrams Place, Lynbrook, N.Y.; Mr. William D. Traub, Registered Practitioner for transferor, 10 East 40th Street, New York, N.Y. 10016.

No. MC-FC-74868. By order of January 16, 1974, the Motor Carrier Board approved the transfer to Robert Jekel and David Jekel, d.b.a. Jekel Moving & Storage Co., 405 36th St., Grand Rapids, Mich. 49508 of Certificate of Registration No. MC-98391 (Sub No. 1) issued to Elmer Jekel, in the above trade name, at the above address, evidencing the right of the holder thereof to engage in interstate or foreign commerce solely within specified points in Michigan.

No. MC-FC-74887. By order of January 17, 1974, the Motor Carrier Board approved the transfer to Goodman Transportation Inc., Salt Lake City, Utah, of Permits No. MC-134278 (Sub No. 2), and (Sub No. 4) issued to Charles R. Goodman, d.b.a. C. R. Goodman Trucking Co., Murray, Utah, authorizing the transportation of: Sporting goods and chemicals, between points in California, Washington, Oregon, Nevada, and Utah. Miss Irene Warr, Attorney, 430 Judge Bldg., Salt Lake City, Utah 84111.

No. MC-FC-74892. By order of January 17, 1974, the Motor Carrier Board approved the transfer to Marvin Rosendahl, Mason City, Iowa, of Certificate No. MC-64893 issued to J. R. Dawson, Mason City, Iowa, authorizing the transportation of: Groceries, clay products, brick, and tile, etc., between specified points in Iowa and Minnesota. Clayton L. Wornson, Attorney, 824 Brick & Tile Bldg., Mason City, Iowa 50401.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74-1925 Filed 1-22-74;8:45 am]

[Rule 19, Corrected Exemption 59, Ex Parte No. 241]

## WIDE-DOOR BOXCARS

### Exemption Under Mandatory Car Service Rules

It appearing, that there are substantial movements of lumber and other commodities moving in plain, forty-foot, wide-door boxcars or in plain fifty-foot boxcars, originating at points in northern California and southern Oregon; that railroads serving southern California and Arizona frequently develop surpluses of these cars; that loadings in the directions of the car owners are often not available on the lines having such cars available in surplus quantities; that return of these surplus cars to owners results in excessive empty car miles and loss of effective car utilization; that the carriers serving northern California and southern Oregon have regular needs for such cars for eastbound loading; and that such loadings will relocate such cars in areas on or close to car owners' lines with a minimum of empty car mileage, thereby increasing car utilization.

*It is ordered,* That, pursuant to the authority vested in me by Car Service Rule 19, except as otherwise provided herein, railroads serving the States of California and Arizona may interchange empty plain boxcars described in the Official Railway Equipment Register, I.C.C. R.E.R. No. 389, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation XM, with inside length 44 ft. 6 in. or less and equipped with doors 9 feet or wider, or with inside length in excess of 44 ft. 6 in. regardless of door width without regard to the provisions of Car Service Rule 2(c), 2(d), or 2(e).

*It is further ordered,* That the final carrier receiving such cars empty from another carrier in the States of California or Arizona, under authority of this exemption, shall be subject to the requirements of Car Service Rules 1 or 2 in its subsequent movements of such cars.

*It is further ordered,* That the billing on all such empty cars requiring movement over an intermediate carrier shall clearly show the name of the carrier to which such cars are being sent for loading; and that all waybills authorizing the movements of such empty cars shall carry a reference to this exemption.

EXCEPTION: This exemption shall not apply to empty cars subject to Car Service Rule 1; to empty cars subject to an applicable service order of this Commission requiring specific handling of designated cars; to cars subject to car relocation directives issued by the Car Service Division of the Association of American Railroads; nor to cars of Canadian or Mexican ownership.

Effective January 3, 1974.

Expires December 31, 1974.

Issued at Washington, D.C., December 28, 1973.

INTERSTATE COMMERCE COMMISSION,

[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.74-1931 Filed 1-22-74;8:45 am]

[Notice 5]

## MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JANUARY 18, 1974.

The following publications (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 the new Special Rule 1100.247 of the Commission's Rules of Practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable by the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 42177 (NOTICE OF FILING OF PETITION TO AMEND, MODIFY AND CLARIFY A CERTIFICATE), filed December 27, 1973. Petitioner: HAYES EXPRESS, 224 Union Street, Lodi, N.J. 07644. Petitioner's representative: Herman B. J. Weckstein, 60 Park Place, Newark, N.J. 07102. Petitioner presently holds a motor *common carrier* certificate in No. MC 42177 issued November 3, 1959, authorizing transportation, as pertinent, over irregular routes, of *garments*

*and materials for the manufacture thereof*, between Passaic, Garfield, and Lodi, N.J., on the one hand, and, on the other, New York, N.Y. (except Queens County, N.Y.). By the instant petition, petitioner seeks to amend its territorial description to read, "Between Passaic, Garfield, and Lodi, N.J., on the one hand, and, on the other, points in New York, in that part of the New York, N.Y., Commercial Zone as defined by the Commission in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Act (the "exempt zone"), and points in that part of New Jersey within five miles of New York, N.Y., and all of any municipality in New Jersey, any part of which is within five miles of New York, N.Y." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition on or before February 22, 1974.

No. MC 65626 (Sub-No. 7) (NOTICE OF FILING OF PETITION TO ELIMINATE A VEHICLE RESTRICTION), filed January 2, 1974. Petitioner: FREDONIA EXPRESS, INC., 320 Eagle Street, P.O. Box 222, Fredonia, N.Y. 14063. Petitioner's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. Petitioner presently holds a motor *common carrier* certificate in No. MC-65626 (Sub-No. 7) issued January 18, 1973, authorizing transportation, over irregular routes, of *food and foodstuffs* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft Foods Division of Kraftco Corporation at or near Fogelsville, Pa., to points in Delaware, Maryland, New York, and Ohio, restricted to traffic originating at the named origin points and destined to the named destination points. By the instant petition, petitioner seeks to eliminate the vehicle restriction "in vehicles equipped with mechanical refrigeration." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition on or before February 22, 1974.

No. MC 125120 and (Sub-Nos. 2 and 3) (NOTICE OF FILING OF PETITION TO ADD A CONTRACTING SHIPPER), filed January 8, 1974. Petitioner: TWIN STATE SAND & GRAVEL CO., INC., Elm Street, West Lebanon, N.H. 03766. Petitioner's representative: E. Stephen Heisley, 666 Eleventh Street NW., Washington, D.C. 20001. Petitioner presently holds a motor *contract carrier* permit in No. MC 125120 and (Sub-Nos. 2 and 3) issued December 8, 1965, June 16, 1967 and March 16, 1971, respectively, authorizing transportation, over irregular routes, of *road surfacing salt*, in the lead certificate (1) from Lebanon, N.H., to points in Vermont; and (2) from Sharon, Vt., to points in that part of New Hampshire on and north of New Hampshire Highway 9, under a continuing contract or contracts with International Salt Company, of Clarks Summit, Pa.; in Sub-No. 2, (3) from Littleton, N.H., to points in Vermont; and (4) from Montpelier, Vt., to points in New Hampshire, under a continuing contract or contracts with International Salt Company, of Summit, Pa., subject to the following restrictions: (a) carrier shall conduct separately its for hire carrier operations and its other business activities; (b) carrier shall maintain separate accounts and records therefor and (c) carrier shall not transport property as both a private and for-hire carrier in the same vehicle and at the same time; and in Sub-No. 3, (5) from Chester, Vt., to points in New Hampshire; and (6) from Burlington, New Haven, and Bennington, Vt., to points in New York, under contract with the same shipper as (3) and (4) above, and subject to the same restrictions as (3) and (4) above. By the instant petition, petitioner seeks to add Cargill, Incorporated of Minneapolis, Minn., as an additional contracting shipper to the authority described above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of the petition on or before February 22, 1974.

No. MC 135033 (NOTICE OF FILING OF PETITION TO ADD A CONTRACTING SHIPPER), filed December 20, 1973. Petitioner: SILVEY & COMPANY, a Corporation, Highway 275 and Gifford Road, Council Bluffs, Iowa 51501. Petitioner's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Petitioner presently holds a motor *contract carrier* permit in No. MC 135033, issued November 19, 1971, authorizing transportation, over irregular routes, of *such commodities* as are dealt in by retail department stores (except foodstuffs), from points in Alabama, Connecticut, Kentucky (except Louisville and points in its commercial zone as defined by the Commission), Maryland, Massachusetts, New Jersey, New York, Tennessee, Virginia, West Virginia, and Ohio (except Cincinnati, Cleveland, Columbus, and Toledo, and points in their respective commercial zones as defined by the Commission), to Omaha, Nebr., under a continuing contract or contracts with J. L. Brandeis & Sons, Inc., and Richman Gordman Stores, Inc. RESTRICTION: Said operations are restricted to the transportation of shipments destined to the facilities of J. L. Brandeis & Sons, Inc., both at Omaha, Nebr. The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of section 210 of the Act. By the instant petition, petitioner seeks to add G. McNew Division of McCrory Corporation as a contracting shipper to the authority described above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition on or before February 22, 1974.

No. MC 135034 (Sub-No. 1) (NOTICE OF FILING OF PETITION TO MODIFY A TERRITORIAL DESCRIPTION), filed January 2, 1974. Petitioner: KAPE EXPRESS, INC., Bldg. #50, P.O. Box 486, Port Clifton, Ohio 43452. Petitioner's representative: William L. Thorne, 88 East Broad Street, Columbus, Ohio 43215. Petitioner presently holds a motor *contract carrier* permit in No. MC 135034 (Sub-No. 1), issued April 6, 1972, authorizing transportation, over irregular routes, of (1) *expanded polystyrene products and plastic products* (except commodities in bulk), from Erie Industrial Park, Erie Township (Ottawa County), Ohio, to points in the United States (except Ohio, Alaska and Hawaii); and (2) *Matetrials, supplies, and equipment* (except commodities in bulk) used in the manufacture of expanded polystyrene products and plastic products, from points in the United States (except Ohio, Alaska, and Hawaii), to Erie Industrial Park, Erie Township (Ottawa County), Ohio, under a continuing contract or contracts with Snark Products, Inc. by the instant petition, petitioner seeks to add Virginia Beach, Va., as an additional origin point in (1) above, and as an additional destination point in (2) above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition on or before February 22, 1974.

## Applications Under Sections 5 and 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240.)

### Motor Carriers of Property

No. MC 1122 (Sub-No. 6), filed December 21, 1973. Applicant: WHEELER-DART EXPRESS CO., a Corporation, 32 Chesterton Street, Boston, Mass. 02119. Applicant's representative: Kenneth B. Williams, 111 State Street, Boston, Mass. 02109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusal value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Massachusetts.

NOTE.—Applicant states that the requested authority can be tacked with the authority applicant seeks to acquire in MC-F-12073 at Boston, Mass., and points on U.S. Highway 1 and 1A between Boston and the Massachu-

setts-Rhode Island State Boundary line to provide service between points in Massachusetts and the Providence, R.I., area. The purpose of the instant application is to convert the Certificate of Registration issued to the applicant in Sub-No. 4 to a Certificate of Public Convenience and Necessity. This is a matter directly related to the Section 5 purchase proceeding in MC–F–12073 published in the FEDERAL REGISTER issue of January 9, 1974. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 7920 (Sub-No. 11), filed December 28, 1973. Applicant: HERRIOTT TRUCKING COMPANY, INC., Alice and Sumner Streets, East Palestine, Ohio 44413. Applicant's representative: A. Charles Tell, 100 East Board Street, Columbus, Ohio 43215. 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 Summitville, Ohio, on the one hand, and, on the other, points in Ohio.

NOTE.—Applicant states that the requested authority can be tacked at Summitville, Ohio, to provide service between points in Ohio, on the one hand, and, on the other, points in New York, Pennsylvania, West Virginia, Indiana, and Illinois. The purpose of this application is to convert a portion of the Certificate of Registration issued under MC 85561 (Sub-No. 8) to a Certificate of Public Convenience and Necessity. This is a matter directly related to the section 5 purchase proceeding in MC–F–12088 published in the FEDERAL REGISTER issue of January 16, 1974. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 22987 (Sub-No. 6), filed December 20, 1973. Applicant: PACIFIC TRANSPORTATION AND WAREHOUSE CO., INC., 760 Warehouse Street, Los Angeles, Calif. 90021. Applicant's representative: Martin J. Rosen, 140 Montgomery Street, San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods, livestock, commodities of unusual value, and those which because of size or weight require the use of special equipment), between points in the Los Angeles Basin Territory described as follows: LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along 94104. Authority sought to operate as a corporate boundary of the City of Redlands; westerly and northerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U.S. Highway No. 60; southwesterly along U.S. Highways Nos. 60 and 395 to the county road approximately one mile north of Ferris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Company; southwesterly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersecting U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway No. 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of the instant application is to convert the Certificate of Registration issued to the applicant in Sub-No. 5 to a Certificate of Public Convenience and Necessity. This is a matter directly related to the Section 5 purchase proceeding in MC–F–12086 published in the FEDERAL REGISTER issue of January 16, 1974. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 68917 (Sub-No. 8), filed December 27, 1973. Applicant: H. P. WELCH CO., 7401 Newman Boulevard, LaSalle 660, P.Q., Canada. Applicant's representative: William D. Traub, 10 East 40th Street, New York, N.Y. 10016. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, between points in Massachusetts.

NOTE.—Common control may be involved. Applicant states that the requested authority can be tacked with its existing and pending regular route authorities at points in Massachusetts to provide through service between points in Massachusetts and points in New York, New Jersey, Massachusetts, New Hampshire, and Vermont. The purpose of this application is to convert the Certificate of Registration issued under MC 96691 (Sub-No. 1) to a Certificate of Public Convenience and Necessity. This is a matter directly related to a section 5 purchase proceeding in MC–F–12087 published in the FEDERAL REGISTER issue of January 16, 1974. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 112713 (Sub-No. 159), filed December 21, 1973. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Avenue, Shawnee Mission, Kans. 66207. Applicant's representative: David Axelrod, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: (A) *General commodities* (except household goods as defined by the Commission, automobiles, trucks or buses, livestock, logs, commodities requiring special equipment, and commodities in bulk), Between points in California, serving all intermediate points as follows: (1) From Santa Ana over U.S. Highway 101 to San Luis Obispo, and return over the same route; (2) From Newport Beach over U.S. Highway 101 Alternate to Ventura, and return over the same route; (3) From Newport Beach over California Highway 55 to Santa Ana, and return over the same route; (4) From the junction of U.S. Highway 101 in or near Los Angeles over U.S. Highway 6, Alameda Street, Long Beach Boulevard or California Highway 15 to the junction of U.S. Highway 101 Alternate in or near Long Beach, and return over the same routes; (5) From Los Angeles over U.S. Highway 66, California Highway 26 or Washington Boulevard to Santa Monica, and return over the same routes; (6) From San Fernando over California Highway 118 to junction of U.S. Highway 101 near Ventura, and return over the same route; (7) From Castaic Junction over California Highway 126 to Ventura and return over the same route; (8) From Santa Paula over California Highway 150 to its junction with California Highway 192 (formerly California Highway 150) thence over California Highway 192 to its junction with California Highway 154, thence over California Highway 154 to its junction with California Highway 246, thence over California Highway 246 to Buellton, and return over the same route; (9) From Las Cruces over California Highway 1 to Orcutt, and return over the same route; (10) From Los Angeles over California Highway 99 (formerly U.S. Highway 99) to Bakersfield, and return over the same route; (11) From Bakersfield over California Highway 99 (formerly U.S. Highway 466) to its junction with California Highway 46 (formerly U.S. Highway 466), thence over California Highway 46 to Blackwells Corner, and return over the same route;

(12) From Mettler Station over California Highway 33 to Mendota, and return over the same route; (13) From Mettler Station over California Highway 166 to Santa Maria, and return over the same route; (14) From Greenfield over California Highway 119 (formerly U.S. Highway 399) to its junction with California Highway 33 (formerly U.S. Highway 399) thence over California Highway 33 to Ventura, and return over the same route; (15) From Bakersfield over California Highway 58 (formerly California Highway 178) to McKittrick, and return over the same route; (16) From Devils Den over unnumbered highway to its junction with California Highway 41 near Kettleman City, thence over California Highway 41 to its junction with California Highway 198, thence over California Highway 198 to Oilfields, and return over the same route; and (17) From Castaic over unnumbered highway via Sandbergs to Gorman, and return over the same route, (1) through (17) serving all intermediate points and the off-route points in the following counties: Kings, Los Angeles, Orange, Santa Barbara, Ventura, Fresno (on, west and south of a line beginning at the San Joaquin River over California Highway 145 to Five Points, thence easterly over unnumbered highway to junction California Highway 41, thence over California Highway 41 to the Fresno, Kings County boundary), San Luis Obispo (on, west and south of a line beginning at the San Luis Obispo, Kern County boundary over California Highway 58 to junction with U.S. Highway 101, thence over U.S. Highway 101 to San Luis Obispo), Kern (on, west and south of a line beginning at the Kern, Tulare County boundary over California Highway 99 to junction with California Highway 155, thence over California Highway 155 to the boundary of the Sierra National Forest, thence in a southwesterly direction along the boundary of the Sierra National Forest to junction with California Highway 178, thence over California Highway 178 to East Bakersfield, thence over California Highway 58 to junction with California Highway 14, thence over California Highway 14 to the Kern, Los Angeles County boundary); and (B) *Oilfield equipment and supplies*, Between Los Angeles, Calif., and Bakersfield, Calif.: From Los Angeles over California Highway 14 (formerly U.S. Highway 6) to Mojave, Calif., thence over California Highway 58 (formerly U.S. Highway 466) to Bakersfield, Calif., and return over the same route, serving all intermediate points and the off-route points in Kern and Los Angeles Counties on, north and east of California Highway 99.

NOTE.—Common control may be involved. The purpose of this application is to convert the Certificate of Registration issued under MC 96860 (Sub-No. 1) to a Certificate of Public Convenience and Necessity. This is a matter directly related to the section 5 purchase proceeding in MC–F–12078 published in the FR issue of January 16, 1974. If a hearing is deemed necessary, applicant requests it be held at Los Angeles or San Francisco, Calif.

No. MC–F–11899. (Correction) (GEORGIA HIGHWAY EXPRESS, INC.—PURCHASE—GOODE TRANSFER, INC.), published in the June 13, 1973, issue of the FEDERAL REGISTER on page 15571. Prior notice should have included that vendee is authorized to operate in Illinois, and is operating under temporary authority in Indiana, Ohio, Kentucky, Missouri.

No. MC–F–12040. (Second Correction) (SCHWERMAN TRUCKING CO.—MERGER—LES JOHNSON CARTAGE CO.), published in the November 21, 1973, and republished in the December 13, 1973, issue of the FEDERAL REGISTER. *Petroleum products*, in bulk, in tank trucks, from Green Bay, Wis., to points in Michigan located in an area bounded by a line beginning at Menominee, Mich., located in an area bounded by a line beginning at Lake Mich., to the Delta-Schoolcraft County line, thence along the Delta-Schoolcraft County line to junction U.S. Highway 2, thence east along U.S. Highway 2 to junction Michigan Highway 77, thence along Michigan Highway 77 to junction Michigan 28, thence west along Michigan Highway 28 to junction U.S. Highway 141, thence south along U.S. Highway 141 to the Michigan-Wisconsin State line, thence along the Michigan-Wisconsin State line to point of beginning including points on U.S. Highway 2 between Crystal Falls, and Iron River, Mich., inclusive; *rejected shipments of petroleum products*, from the above-specified destination points to Green Bay, Wis.; *petroleum and petroleum products* (except residual fuel oils), as described in Appendix XIII to the report Description in Motor Carrier Certificates, 61 MCC 209, in bulk, in tank vehicles, from Escanaba, Mich., and points within 15 miles thereof, to points in Wisconsin restricted against service from Croos, Mich.; *jet fuel*, in bulk, in tank vehicles, from the terminal facilities of the Amoco Oil Company at or near Elk Grove Village, Ill., to points in the Upper Peninsula of Michigan; *empty containers*, used in transporting cement, from points in the Upper Peninsula of Michigan to Manitowoc and Green Bay, Wis.

No. MC–F–12091. Authority sought for purchase by TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009, of the operating rights and property of BOULEVARD TRANSPORTATION COMPANY, P.O. Box 3473. Terminal Annex, Los Angeles, CA 90054, Applicants' attorneys: Wentworth E. Griffin, 1221 Baltimore Ave., Kansas City, MO 64105, and Arthur H. Glanz, P.O. Box 368, Rancho Santa Fe, CA 92067. Operating rights sought to be transferred: *General commodities*, with exceptions, as a *common carrier* over irregular routes, between Los Angeles Harbor and Long Beach, Calif., on the one hand, and, on the other, points and places in the Los Angeles, Calif., Commercial Zone except for specifically named points; *Powdered milk*, from Fresno and Chowchilla, Calif., to Oakland, Calif.; *such articles*, which require special handling or rigging because of their size or weight, between Los on the one hand, and, on the other, Los Angeles Harbor and Long Beach, Calif., on the one hand, and on the other, Los Angeles and Vernon, Calif.; and under a certificate of registration in Docket No. MC–58323 (Sub-No. 3), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of California. Vendee is authorized to operate as a *common carrier* in Alabama, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

NOTE.—MC–110325 (Sub-No. 57), is a matter directly related.

No. MC–F–12092. Authority sought for purchase by LINCOLN MOVING AND STORAGE COMPANY, INC., 1924 Fourth Avenue South, Seattle, Washington, 98134, of the operating rights of HUNT TRANSFER CO., INC., 1025 Sixth Avenue South, Seattle Washington, 98134, and for acquisition by LOOMIS CORPORATION, 55 Battery St., Seattle, Washington, 98121, of control of such rights through the purchase. Applicants' attorney: GEORGE H. HART, 1100 IBM Bldg., Seattle WA 98101. Operating rights sought to be transferred: *Household goods*, as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, as a *common carrier* over irregular routes, between points and places in Washington, on the one hand, and, on the other, points and places in Oregon and Idaho, between points in Washington. Vendee is authorized to operate as a *common carrier* in Washington, Oregon, and California. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12093. Authority sought for purchase by CROUCH BROS., INC., Highway 36 West, St. Joseph, Missouri, 64502, of a portion of the operating rights and property of BESTWAY FREIGHT LINES, INC., P.O. Box 45583, Dallas TX 75235, and for acquisition by ROCOR INTERNATIONAL, 2800 West Bayshore Road, Palo Alto, CA 94303, of control of such rights through the purchase. Applicants' attorneys: ROLAND RICE, 1111 "E" Street NW., Perpetual Bldg., Suite 618, Washington, D.C. 20004, and MARTIN J. ROSEN, 140 Montgomery Street, San Francisco, CA 94104. Operating rights sought to be transferred: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, as a *common carrier* over regular routes between Dallas, Tex., and Lawton, Okla., serving the intermediate points of Fort Worth and Wichita Falls,

Tex., and Fort Sill, Anadarko, Weatherford, Clinton, Elk City, Gayre, Mangun, Altus, and Snyder, Okla., and the off-route points of Clinton-Sherman Air Force Base and Altus Ar Force Base, Okla., between Wichita Falls, Tex., and Clinton, Okla., serving the intermediate points of Frederick, Snyder, Hobart, and Cordell, Okla., with restrictions. Vendee is authorized to operate as a *common carrier* in Arizona, Arkansas, California, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12094. Authority sought for purchase by ACE DORAN HAYLING & RIGGING CO., 1601 Blue Rock St., Cincinnati, OH 45223, of a portion of the operating rights of TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801, and for acquisition by R. J. DORAN, R. E. DORAN, and C. M. DORAN, all of Cincinnati, OH 45223, of control of such rights through the purchase. Applicants' attorney and representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, and A. N. Jacobs, P.O. Box 113, Joplin, MO 64801. Operating rights sought to be transferred: *Commodities*, the transportation of which because of size or weight, require the use of special equipment or special handling, as a *common carrier* over irregular routes, from points in Michigan and Ohio, to points in California, Nevada, and Utah, with restriction; *self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, equipment, tools, parts, and supplies* moving in connection therewith (restricted to self-propelled articles which are transported on trailers), from points in Michigan and Ohio, to points in California, Nevada, and Utah. Vendee is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

No. MC–F–12095. Authority sought for purchase by GRAHAM SHIP BY TRUCK COMPANY, 1428 W. 9th St., Kansas City, MO 64101, of the operating rights of DIFFLEY TRUCK LINE, INC., 2400 N.E. Grantville Rd., Topeka, KS 66608, and for acquisition by RICHARD R. ARNOLD, also of Kansas City, MO 64101, of control of such rights through the purchase. Applicants' attorney and representative: John P. Williams, 2480 Pershing Rd., Kansas City, MO 64108, and Richard R. Arnold of Kansas City, MO 64101. Operating rights sought to be transferred: *General commodities*, with specified exceptions, as a *common carrier* over irregular routes, between Topeka, and Manhattan, Kans., serving all intermediate points, and the off-route point of Louisville, Ky. Vendee is authorized to operate as a *common carrier* in Missouri and Kansas. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12096. Authority sought for purchase by VAN'S AUTO & AIR EXPRESS INC., P.O. Box 609, Kingston, New York, 12401, of the operating rights and property of LEZETTE EXPRESS, INC., Route 3, Box 86 A, Saugerties, New York, 12477, and for acquisition by CHARLES H. TALLEUR, C.P.O. Box 191 Albany Ave., Ext., Kingston, New York, of control of such rights and property through the purchase. Applicants' attorney. ARTHUR J. PIKEN, 1 Lefrak City Plaza, Flushing, New York, 11368. Operating sought to be transferred: *General Commodities*, except those of unusual value, Classes A and B Explosives, household goods as defined by the Commission, commodities, bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, as a *common carrier* over regular routes, between Kingston, N.Y., and Margaretville, N.Y., serving all intermediate points, and the off-route points of Chichester, Oliverea, Halcott Center, Lanesville, Saugerties, Woodstock, Lake Hill, Bearville, and Willow, N.Y., from Kingston over New York Highway 28 to Margaretville, and return over the same route. Vendee is authorized to operate as a *common carrier* in New York. Application has not been filed for temporary authority under section 210a(b).

NOTE.—MC–99938 Sub 4 is a directly related matter.

No. MC–F–12097. Authority sought for purchase by WILLS TRUCKING, INC., 5755 Granger Rd., Suite 615, Cleveland, OH 44131, of a portion of the operating rights of DRY BULK TRANSPORT, INC., R.D. #4, Marietta, OH 45750, and for acquisition by PAUL W. WILLS, 2535 Center St., Cleveland, OH 44113, of control of such rights through the purchase. Applicants' attorney: Paul F. Beery, 88 East Broad St., Columbus, OH 43215. Operating rights sought to be transferred: *Such commodities* as are usually handled by dump truck and which can be unloaded by dumping, as a *common carrier* over irregular routes, between points in Ohio, Pennsylvania, and West Virginia within 50 miles of Weirton, W. Va. Vendee is authorized to operate as a *common carrier* in Michigan, Ohio, Indiana, Iowa, Illinois, Kentucky, Missouri, New York, Pennsylvania, Wisconsin, West Virginia, Maryland, Delaware, New Jersey, Virgina, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12098. Authority sought for purchase by TRUCK TRANSPORT, INCORPORATED, 29 Clayton Hills Lane, St. Louis, MO 63131, of a portion of the operating rights of D & L TRANSPORT, INC., 3800 S. Laramie Ave., Cicero, IL 60650, and for acquisition by ROBERT B. SCHILLI, also of St. Louis, MO 63131, of control of such rights through the purchase. Applicants' attorney: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. Operating rights sought to be transferred: *Dry plastics*, in bulk, in tank or hopper type vehicle, as a *common carrier* over irregular routes, from the plant site of Chemplex Company at or near Clinton, Iowa, to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New York, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin, with restriction. Vendee is authorized to operate as a *common carrier* in all of the States in the United States. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–12099. Authority sought for purchase by W. J. CASEY TRUCKING & RIGGING CO., INC., 184 Doremus Ave., Newark, NJ 07105, of the operating rights of JOHN BRENNAN AND ROBERT KANE, doing business as B. K. TRUCKING CO., 42 Mase Ave., Dover, NJ 07801, and for acquisition by NICHOLAS J. BIONDI, 81 Glenside Ave., Scotch Plaine, NJ 07076, and JAMES P. BIONDI, 2625 Far View Drive, Scotch Plains, NJ 07076, of control of such rights through the purchase. Applicants' attorney: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Operating rights sought to be transferred: *Pumps* and *pump supplies*, as a *common carrier* over irregular routes, from Rockaway, N.J., to points in Virginia, Maryland, Rhode Island, New Jersey, Ohio, and West Virginia, between Rockaway, N.J., on the one hand, and, on the other, points in Connecticut, Delaware, Massachusetts, New York, and Pennsylvania; *box machines*, between Rockaway, N.J., on the one hand, and, on the other, points in New York, N.Y., Commercial Zone, as defined by the Commission; *steel products*, between Rockaway, N.J., on the one hand, and, on the other, points in the New York, N.Y., Commercial Zone, as defined by the Commission, those on Long Island, N.Y., and Bethlehem, Pa. Vendee is authorized to operate as a *common carrier* in Connecticut, Delaware, Maryland, New Jersey, New York, and Maryland. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12100. Authority sought for purchase by TRANSERVICE CORP., 2155 Ridgewood Road, Akron, OH 44313, of a portion of the operating rights of MILLER'S MOTOR FREIGHT, INC., 1060 Zinn's Quarry Rd., York, PA 17406, and for acquisition by JACK A. RODGERS, also of Akron, OH 44313, of control of such rights through the purchase. Applicants' attorneys: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, and S. Harrison Kahn, Suite 733, Investment Bldg., Washington, DC 20005. Operating rights sought to be transferred: *Commodities* which because of size or weight require the use of special

equipment, as a *common carrier* over irregular routes, from points within 10 airline miles of York, Pa., including York, to points in the United States (except Alaska, Hawaii, Connecticut, Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, points in that part of Virginia on and north of U.S. Highway 60, and on and east of U.S. Highway 11, points in that part of West Virginia on and north of U.S. Highway 50, and the District of Columbia), with restriction. Vendee holds no authority from this Commission. However, it is affiliated with BELLEVUE TRUCKING COMPANY, P.O. Box 247, Deepwater, NJ 08023, which is authorized to operate as a *common carrier* in New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Maine, Delaware, and Maryland. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12101. Authority sought for merger by E. K. MOTOR, INC., 2005 North Broadway, Joliet, Illinois 60435, of the operating rights and property of E. K. MOTOR SERVICE, INC. (Mo.), 2005 North Broadway, Joliet, Illinois 60435, and for acquisition by RONALD RUDEN, 2005 N. Broadway, Joliet, Ill. 60435, of control of such rights through the merge. Applicants' attorney: TOM B. KRETSINGER, Suite 910, Fairfax Bldg., 101 W. Eleventh St., Kansas City, MO 64105. Operating rights sought to be merged. *Roofing and Building Materials,* and *Supplies* used in the installation thereof; and *Materials, Equipment,* and *Supplies* used in the manufacture or shipping of roofing and building materials, for the account of Building and Industrial Products Division of GAF Corporation as a *contract carrier* over irregular routes between Kansas City, Mo., on the one hand, and, on the other, points in Brown, Pottawatomie, Atchison, Leavenworth, Wabaunsee, Osage, Johnson, Franklin, Coffey, Linn, Doniphan, Jackson, Jefferson, Wyandotte, Shawnee, Douglas, Lyon, Miami, and Anderson Counties, Kans. Vendee is authorized as a *contract carrier* in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–12102. Authority sought for purchase by WALLACE-COLVILLE MOTOR FREIGHT INC., N. 404 Sycamore Spokane, WA 99206, of a portion of the operating and property of RINGSBY-PACIFIC, LTD., Littleton, CO 80120, and for acquisition by O. H. WILLIAMS, S. 3421 Altamont, Spokane, WA 99203, of control of such rights and property through the purchase. Applicants' attorneys: HUGH A. DRESSEL, 1202 O.N.B. Bldg., Spokane, WA 99201, and ALVIN J. MEIKLEJOHN, JR., 1660 Lincoln St., Denver, CO 80203. Operating rights sought to be transferred: *General Commodities,* with exceptions as a *common carrier* over regular routes between Spokane, WA, and Fortine, MT, serving various intermediate points, between Sandpoint and Bonners Ferry, Idaho, with restrictions, serving points in Lincoln County, MT, as off-route points in connection with carrier's authorized regular route operations herein between Spokane, WA, and Fortine, MT, and between Libby, MT, and Fortine, MT, between Coeur d'Alene, Idaho, and Sandpoint, Idaho, serving all intermediate points, between Spokane, Washington, and Garwood, Idaho, serving no intermediate points, between Libby, MT, and Fortine, MT, serving all intermediate points, serving various intermediate and off-route points. Vendee is authorized to operate as a *common carrier* in Washington and Idaho. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–12103. Authority sought for control by O.N.C. FREIGHT SYSTEMS, 2800 W. Bayshore Rd., Palo Alto, CA 94303, of HARP TRANSPORTATION LINE, INC., 1287 Market St., Meeker, CO 81641, and for acquisition by ROCOR INTERNATIONAL, also of Palo Alto, CA 94303, of control of HARP TRANSPORTATION LINE, INC., through the asquisition by O.N.C. FREIGHT SYSTEMS. Applicants' attorneys: Roland Rice, 1111 E St. NW., Washington, DC 20004, Martin Rosen, 140 Montgomery St., San Francisco, CA 94104, and John H. Lewis, The 1650 Grant St. Bldg., Denver, CO 80203. Operating rights sought to be controlled: Under a certificate of registration, in Docket No. MC–67121 (Sub-No. 6), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Colorado, and *General commodities,* excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between Craig and Grant Junction, Colo., serving all intermediate points lying north of Rifle, Colo., on Colorado Highways 13 and 64. O.N.C. FREIGHT SYSTEMS, is authorized to operate as a *common carrier* in California, Arizona, New Mexico, Texas, Oregon, Washington, and Nevada. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC–67121 (Sub-No. 8), is a matter directly related.

No. MC–F–12104. Authority sought for purchase by ILLINOIS-CALIFORNIA EXPRESS, INC., 510 E. 51st Ave., Denver, CO 80216, of a portion of the operating rights of BESTWAY FREIGHT LINES, INC., 500 South Western, Oklahoma City, OK 73126, and for acquisition by FRONTIER, INC., ICX INDUSTRIES, INC., also of Denver, CO 80216, and CERRO MOTOR EXPRESS CORPORATION, and CERRO CORPORATION, both of 300 Park Ave., New York, NY 10022, of control of such rights through the purchase. Applicants' attorney: Jack Goodman, 39 S. LaSalle St., Chicago, IL 60603. Operating rights sought to be transferred: *General commodities,* excepting among others, dangerous explosives, household goods, and commodities in bulk, as a common carrier over regular routes, serving various intermediate and off-route points, between Burkburnett, Tex., and Waurika, Okla., serving all intermediate points, between Oklahoma City, Okla., and junction Oklahoma Highway 76 and U.S. Highway 70 south of Healdton, Okla., serving various intermediate and off-route points; government-owned compressed gas trailers, empty or loaded with compressed gases other than liquefied petroleum gas, between Oklahoma City, and Waurika, Okla., between Burkburnett, Tex., and Waurika, Okla., serving no intermediate points, between Burkburnett, Tex., and Waurika, Okla., serving all intermediate points, between Chickasha, and Pauls Valley, Okla., between Oklahoma City, and Lawton, Okla., serving no intermediate points, between junction U.S. Highway 277 and Oklahoma Highway 37 south of Oklahoma City, Okla., and junction U.S. Highway 277 and unnumbered highway approximately five miles east of Chickasha, Okla., serving no intermediate points, between Waurika, and Ardmore, Okla., serving various intermediate and off-route points, between Oklahoma City, Okla., and junction Oklahoma Highway 76 and U.S. Highway 70 south of Healdton, Okla., serving various intermediate and off-route points, between junction U.S. Highway 277 and U.S. Highway 81 south of Chickasha, and Waurika, Okla., serving no intermediate points; *government-owned compressed gas trailers,* empty or loaded with compressed gases other than liquefied petroleum gas, over irregular routes, between points in Oklahoma on and south of U.S. Highway 66, on and west of U.S. Highway 281, and on and east of U.S. Highway 283, except Lawton and Fort Sill, on the one hand, and, on the other, points in Oklahoma, except Lawton and Fort Sill, those in that part of Kansas on and south of U.S. Highway 54 and on and west of U.S. Highway 77, and those in that part of Texas on and west of U.S. Highway 81, and on and north of a line beginning at Ringgold, Tex., and extending along U.S. Highway 82 to Wichita Falls, Tex., and thence along U.S. Highway 70 to Paducah, Tex., and on and east of U.S. Highway 83, between points in Kiowa and Washita Counties, Okla., on the one hand, and, on the other, points in Texas on and north of U.S. Highway 70, between points in Kiowa and Washita Counties, Okla., on the one hand, and, on the other, Fort Worth and Dallas, Tex. Vendee is authorized to operate as a *common carrier* in Illinois, California, Wyoming, Colorado, Arizona, New Mexico, Iowa, Kansas, Nebraska, Missouri, Texas, and Utah. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12105. Authority sought for purchase by A. A. A. TRUCKING CORPORATION, P.O. Box 418, Trenton, NJ 08619, of a portion of the operating rights of MILLER'S MOTOR FREIGHT, INC., P.O. Box 345, York, PA 17405, and for acquisition by BONSCO, INC., also of Trenton, NJ 08619, of control of such rights through the purchase. Applicants' attorneys: Herbert Burstein, One World Trade Center, New York, NY 10048, and S. Harrison Kahn, 733 Investment Bldg.,

Washington, DC 20005. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over irregular routes, from York, Pa., and points in Pennsylvania within 35 miles thereof, to New York, N.Y., and points in New Jersey on and north of New Jersey Highway 33, from New York, N.Y., and points in New Jersey on and north of New Jersey Highway 33 to points in Pennsylvania on and east of U.S. Highway 11. Vendee is authorized to operate as a *common carrier* in New York, Pennsylvania, Delaware, New Jersey, Connecticut, Maryland, Massachusetts, Rhode Island, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-FC-74846. Authority sought by transferee, Arrowhead Charter, Inc., 1306 Cloquet Ave., Cloquet, Minn. 55720, to acquire operating rights of transferor, John J. Byers, doing business as Arrowhead Charter Bus Service, 1320 Minnesota Ave., Duluth, Minn. 55802. Applicant's representative: James J. Bang, 400-1st American National Bank Building, Duluth, Minn. 55802. Operating rights in Certificate No. MC-118853, issued January 30, 1964, sought to be transferred: Passengers and their baggage, in round-trip charter and special operations, beginning and ending at points in Saint Louis County, Minn., and extending to points in Michigan, North Dakota, South Dakota, and Wisconsin.

The above-entitled transfer application under Section 212(b) of the Interstate Commerce Act is to be assigned for hearing at a time and place to be fixed on a consolidated record with the proceeding in No. MC-C-4914 (Sub-No. 1), for the purpose of determining, among other things, whether transferor has been conducting operations under the involved rights. Interested parties have 30 days from the date of this publication in which to file petitions for leave to intervene. Such petitions should state the reason or reasons for the intervention, where the petitioner wishes the hearing to be held, the number of witnesses to be presented, and the estimated time required for the presentation of evidence. The Bureau of Enforcement has been directed to participate as a party in the proceeding for the purpose of presenting evidence and otherwise developing the record.

By the Commission.

[SEAL] ROBERT L. OSWALD,
*Secretary.*

[FR Doc.74-1927 Filed 1-22-74;8:45 am]

# CUMULATIVE LIST OF PARTS AFFECTED—JANUARY

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PART II

# COST OF LIVING COUNCIL

■

## HEALTH CARE

## Final Phase IV Regulations

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—PHASE IV PRICE REGULATIONS

PART 152—PHASE IV PAY REGULATIONS

## Final Phase IV Health Care Regulations

The purpose of these amendments to Parts 150 and 152 of the Cost of Living Council Regulations is to add Subpart R—Health Care to 6 CFR Part 150, and to issue several other amendments which primarily affect health care providers. Subpart M of Part 150 is being amended to clarify that Health Maintenance Organizations are covered under Subpart R; to require quarterly reports of certain insurers whether or not a rate increase was put into effect during the preceding year; and to provide specific authorization regarding monitoring of medical practitioners by third party payors.

Subpart D is being amended to continue the nonapplicability of the small business exemption in § 150.60 for those health care providers which are covered under Phase IV, and to exempt certain identified health care providers from Part 150. As a complementary action to the exemption from price controls of these providers of health care, the Cost of Living Council has also exempted pay adjustments affecting employees engaged on a regular and continuing basis in the operation of those firms exempted from price controls in § 150.57. The exemption is set forth in new § 152.40b. The exemption is inapplicable to pay adjustments of employees of a firm which would otherwise be exempt but which is controlled or operated by an acute care hospital, a long term care institution, a health maintenance organization, or a medical practitioner or medical laboratory, or which is doing business at the location of any such provider of health care. In cases of uncertainty of application, inquiries concerning the scope of coverage of the exemption should be addressed to the Administrator, Office of Wage Stabilization, P.O. Box 472, Washington, D.C. 20044.

The title of Subpart I and §§ 152.91 and 152.92 are amended by redesignating "providers of health services" as "providers of health care." The applicable characterizations within the health industry pay regulations are being redesignated to conform with the new designations contained in the price regulations. Section 152.91 also contains a new provision stating that "providers of health care" includes acute care hospitals, medical practitioners and medical laboratories, health maintenance organizations, and long term care institutions, and indicating that the definitions of such health care providers as set forth in Subpart R of Part 150 apply as well to the health industry pay regulations.

Self-employed registered, practical, and trained nurses continue to be exempted from Part 150 by reason of § 150.503 but remain subject to Part 152.

On November 5, 1973, the Cost of Living Council issued a notice of proposed rulemaking, 38 FR 30850 (November 7, 1973) setting out proposed Phase IV health care regulations, and inviting interested persons to submit written data, views or arguments.

The Council stated in the notice of proposed rulemaking that all comments received before December 1, 1973, would be considered by the Council before taking final action on the proposed regulations.

Copies of each comment on the proposed regulations were received by the attorneys, policy, and operations personnel who were responsible for preparing the proposed Phase IV health care regulations. These officials of the Council conducted an intensive re-examination of the regulations, independently as well as in light of the comments, to assure the maximum degree of clarity and consistency of the policy decisions that were made and of the regulations written to reflect these decisions. As a result of these efforts, Subpart R as published herein contains numerous changes from the proposals that were published in proposed form on November 7, 1973. A major change is the publication of the Phase IV health care regulations as a new subpart, rather than as an amendment to Subpart O.

### Subpart R—Health Care

Subpart R sets forth the rules applicable to health care providers. The classification of providers as "institutional" and "noninstitutional" is eliminated. Instead, Subpart R is divided as follows: §§ 150.701 through 150.722 apply to acute care hospitals; §§ 150.730 through 150.743 apply to medical practitioners and medical laboratories; §§ 150.748 through 150.763 apply to Health Maintenance Organizations and Health Maintenance Organization providers of health care; and §§ 150.769 through 150.787 apply to long term care institutions. In addition to § 150.503, Subpart O continues in effect as indicated in §§ 150.701, 150.702, 150.730, 150.731, 150.748, 150.749, 150.769, and 150.770.

### Acute Care Hospitals

More than 700 comments were received on the proposed regulations for acute care hospitals, from various individuals, attorneys, accounting firms, hospitals and associations. The comments have been very helpful in resolving many issues involved in the formulation of these regulations. As a result, a number of significant changes have been made.

The rules provide several options in § 150.701 for effective dates for acute care hospitals. Phase III rules apply to hospitals whose fiscal years commence on or after August 15, 1973, and before January 1, 1974, unless the hospital elects to be governed by Subpart R. Conversely, acute care hospitals may elect to be governed by Subpart O in effect on December 31, 1973, if their fiscal years commence on or after January 1, 1974, but before April 1, 1974. To be effective, written notice of the election must be filed with or mailed to the Council postmarked no later than March 31, 1974. A hospital need not notify the Council that it has decided to remain with the prescribed rules rather than elect the optional rules. Of course, each acute care hospital whose fiscal year commences on or after April 1, 1974, shall be governed by Subpart R.

Paragraph (c) of § 150.701 is the same as the proposed § 150.501(b)(2), except that "gross inpatient operating charges" has been substituted for "gross inpatient operating revenues". This change makes the language consistent with that used in the definition of Health Maintenance Organization providers of health care, § 150.761.

Section 150.702 provides for the continued applicability of Subpart O to each acute care hospital during the current fiscal year, if that fiscal year begins prior to January 1, 1974, unless the hospital elects otherwise as provided in § 150.701.

Section 150.703 provides the definitions that pertain to acute care hospitals. The definition of acute care hospital references American Hospital Association requirements for registration as a general or special hospital, and in response to comments, adds a requirement that the average length of stay for all patients be under 30 days or that over 50 percent of all patients be admitted to units with average lengths of stay under 30 days.

A number of comments were received on the definition of "Admission", and the treatment of births and departmental transfers within a hospital. The definition has been adopted essentially as proposed.

The final regulations clarify that "admissions" includes the acceptance of "free care" patients, which is subsequently defined as health care rendered without billings to patient and third party payor. A sentence has been added in the final regulations allowing a hospital to treat births or transfers between departments as admissions if such treatment is consistent with the hospital's general administrative practice.

The regulations incorporate a definition of "capital expenditure" by reference to the regulations (42 CFR Part 100) implementing section 1122 of the Social Security Act. The expenditures currently covered by this definition are, in general terms, capital expenditures which exceed $100,000 or which change a facility's bed capacity or substantially change its services.

A number of comments indicated that a definition of "Cost reimbursement arrangement" would be useful. The regulations adopted include a definition of this term, which means a formula provided by contract or legislation to calculate the amount payable to a hospital for health services furnished on the basis of costs (but not costs of a prior year) rather than charges.

The definition of "New facility" is essentially adopted as proposed. The 70 percent test is applied to book value of the property, plant and equipment in service net of accumulated depreciation. Provision has been made under the term "phased construction" for the hospital whose departments are brought into operation over a period of time.

"New market" is defined as a location more than 50 miles from the previous site, or less if approved by the Council.

The definition of "New service" has not been changed from that proposed.

A definition of "Prospective rates" has been included in the final regulations. The term is defined as a schedule of payments for third party payors established in advance, without provision for retrospective adjustment based on actual charges or costs incurred.

The definition of "Total inpatient operating charges" remains as proposed, except that charges not collected as a result of free care are excluded, and instead of using the term "billed charges", which the comments indicated was not generally understood, "gross charges" has been substituted.

Over 100 comments were received on the definition of "total inpatient operating expenses". The definition has been changed to provide that the sum of all operating expenses must be determined in accordance with generally accepted accounting principles for hospitals as reflected in the AICPA Hospital Audit Guide, or by accounting principles approved for use by Blue Cross, Medicare, or a State Uniform Hospital Accounting System; and allocated to inpatient services in accordance with one of the latter three accounting systems. The hospital must apply its selection of accounting principles consistently in all relevant Economic Stabilization Program calculations unless the Council approves a change.

Under the regulations as adopted "Total inpatient reimbursed expenses" is a significant term, and is thus defined as the total inpatient operating expenses paid under cost reimbursement arrangements.

The "Prior commitments" section has been expanded for greater clarity. It states that prospective decisions, interpretations, and prospective exceptions authorizing a dollar increase issued prior to January 17, 1974, are continued in effect. The effect of a charge increase in effect on December 31, 1973, and allowed under Subpart O, may be annualized to determine allowances under Subpart R.

The basic limitation (§ 150.516 of the proposed rulemaking) is contained in § 150.705. With respect to total inpatient operating charges per admission, the limitation is adopted as proposed. On the expense side several changes have been made. The expense limitations have been redefined to limit total inpatient reimbursed expenses per admission, but only if the increase in total inpatient operating expenses per admission exceeds the preceding year's total by more than 7.5 percent (or as adjusted for volume changes). This is consistent with the program as a whole and places the limitation only upon expenses for which the hospital may be reimbursed and not upon expenses which it may incur. A paragraph (b) has been added to clarify that prospective rate revenues shall be treated not as costs but as charges to which they can be more readily assimilated.

Section 150.706 provides for the "Volume adjustment for changes in inpatient admissions". Paragraphs (a) through (c) are essentially as proposed, except as modified to conform with the changes made in the expense limitations of § 150.705. There were many comments indicating that the proposed definition of small hospitals was too restrictive. To meet this point, the level for allowing application of paragraph (d) has been raised to include a hospital having "either less than $2,500,000 total inpatient operating charges or fewer than 4,000 admissions in its preceding fiscal year * * *".

The provision in the proposed rules for a one year waiver of the volume adjustment for increases in licensed bed complement of 10 percent or more was deleted in light of the special pricing rules applicable to approved capital expenditures (§ 150.709), the definition of which includes certain expenditures which change a hospital's bed capacity.

Paragraph (e), covering new facilities, is as proposed.

A number of changes were made in § 150.707, in response to comments relating to the limitations on charge increases for outpatient services. In place of the language "separately identified outpatient charge", the following has been substituted: "the charge for each outpatient service which differs from the inpatient charge for the same service". This avoids the distinction on charges separately identified to facilitate cost accounting, and places within the outpatient limitations those charges which differ from the inpatient charges.

Paragraph (b) of § 150.707 is essentially the same as the proposed language allowing an election for control of outpatient charges on a unit charge or an aggregate weighted charge system. To assist in calculating the aggregate weighted charge, an appropriate formula is set forth. Since the regulation makes reference to charges in effect on the last day of the preceding fiscal year, language has been added to cover the situation where during the preceding fiscal year a lawful or authorized charge had been lowered temporarily to effect a restitution of overcharges to assure compliance.

The "Cumulative increase" section, (§ 150.708) allows accumulation (without compounding) of increases authorized but not implemented in the preceding year.

Numerous comments were received on the "Special pricing rules", as a result of which they were considerably expanded upon in the new § 150.709. Paragraph (a) provides that charges for a new outpatient service or property or for a service or property for inpatient or outpatient care provided by a new facility or by an acute care hospital serving a new market, or resulting from a capital expenditure which has been approved under § 150.713 or § 150.714(c), may be determined by any one of three described methods, and without regard to the limitations prescribed in §§ 150.705 through 150.707. All of the methods allow debt service and depreciation costs to be reflected in the charges.

The first method authorizes the hospital to establish a charge enabling it to sustain without financial loss the provision of the inpatient service or property based on an occupancy rate of 65 percent for staffed beds in the hospital or new facility (as appropriate under the circumstances), or based on the projected utilization rate of the outpatient clinic for a new outpatient service or property.

The second method authorizes use of the prevailing charge received in a substantial number of current transactions by a substantial number of other acute care hospitals.

The third method authorizes any charging practice commonly used by a substantial number of acute care hospitals. Special provision is made in paragraph (b) for new facilities in phased construction (i.e. the construction of a new facility in stages as part of a single and entire project). The key factor is whether the phased construction represents discrete stages of a single project. If discrete stages of a new facility under construction are opened for service over a period longer than one year and if the costs of the discrete stages can be segregated, then new charges may be established for each stage; otherwise charges will be established initially for the entire new facility.

Under paragraph (c), the new charges authorized pursuant to this section shall become effective no earlier than the first day of the fiscal year during which the services were made available. However, with respect to capital expenditures, if the approval required by § 150.713 is not obtained, or an exception request under § 150.714(c) is not filed before the close of the fiscal year, then the effective date of the new charges shall be no earlier than the first day of the fiscal year in which the approval is obtained or the request filed.

Paragraph (e) clarifies that charges or expenses for a new inpatient service which are not included as part of the charges or expenses of a new facility or an acute care hospital serving a new market, or in the charges or expenses resulting from an approved capital expenditure under § 150.713 or § 150.714 (c) shall be included in the computations under §§ 150.705 and 150.706.

The "Price schedules" section (§ 150.710) is adopted as proposed except that the requirement that hospitals furnish a copy of the schedule to the public upon request is eliminated to avoid the administrative burden that could be excessive. Hospitals are only required to make the schedule available for public inspection and to furnish a copy promptly upon request to the representatives of third party payors or the Cost of Living Council.

A new section has been added to the final regulations (§ 150.712), "Adjustment for significant changes in patient mix." It is anticipated that this section, by providing a self-executing adjustment in authorized allowances for significant changes in patient mix, will eliminate a substantial and often uncontrollable

factor that may force a hospital out of compliance. The hospital must use one of two systems set out in § 150.712(b) to allocate admissions and the methodology provided in paragraph (c) to adjust charges and expenses. Provision has been made for approval of other systems or methodologies. Hospitals are encouraged to seek early approval, since compliance review will occur after the year is ended and could therefore delay final settlements with cost reimbursers.

Adjustments in excess of 25 percent of the allowances in §§ 150.705 and 150.706 require 30-day prenotification to the Council pursuant to § 150.712(f). If the adjustment is calculated on the basis of budgeted or projected data, the hospital may not implement the adjustment until 30 days from the day on which notice and substantiating documentation were filed. If the adjustment is calculated on the basis of actual data, the 30-day waiting period applies only to that portion of the adjustment exceeding 25 percent of the allowances. The Council may modify, suspend, disapprove or defer the adjustment if the adjustment is erroneous, implemented in bad faith, or does not conform to the rules.

Section 150.713 *Approval of capital expenditures by a State's planning agency*, provides that when certain listed criteria have been met with respect to capital expenditures and directly related operating expenses, an acute care hospital may establish new prices for services resulting from the capital expenditure in accordance with § 150.709, and adjust its total inpatient operating charges and reimbursed expenses in accordance with Form CLC–61. Special provision is made for capital expenditures incurred prior to January 1, 1974.

The capital expenditure must be approved, on the basis of a clear demonstration of community need, by the planning agency designated pursuant to section 1122 of the Social Security Act. If no such agency is available to take action on a request, paragraph (b) makes provision for alternative State agencies to consider the requests.

The capital expenditure, directly related operating expenses, and prices to be charged must be approved by the section 1122 agency or, if no such agency is available to take action, by the same agency which granted an approval under paragraph (b) or another agency designated by the governor of a State to perform that function. The charges and expenses attributable to the capital expenditure must be evaluated by the agency.

The chief executive officer of the hospital is required to notify the Council in writing within 60 days of the approval, attaching a copy of the approval, a statement of approved charges and expenses, and a statement signed by the chairman of the hospital governing board certifying that funds legally available from restricted reserves have or will be applied to the capital expenditure in accordance with the approval.

The "Exceptions" section (§ 150.714) has been completely revised to take into account issues raised in the many comments received on this important section.

No acute care hospital may exceed the limitations of §§ 150.705, 150.706, 150.707 except as may be authorized pursuant to this subpart. Requests for exception must meet the specific requirements of this section and the general provisions relating to exceptions prescribed by Part 155, and must be submitted with the recommendation of, and forwarded by, the State advisory agency referred to in § 150.715, unless the said agency fails to act within 30 days.

Paragraph (b) provides for provisional approval of prospective exception requests after 60 days if certain conditions are met. If after implementation of an increase pursuant to such provisional approval the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the increase. In such an instance, if the exception request had been submitted in good faith, the acute care hospital shall not be required to refund any monies received, or to reduce reimbursements otherwise allowable in the period prior to the Council's determination of the request or be subject to any criminal fine or civil penalty on account of the increase implemented on the basis of the provisional approval of this section.

With regard to retrospective exceptions, since they are not subject to provisional approval, the Council will attempt to accelerate their consideration.

Paragraph (c) provides that an acute care hospital may request an exception from the Council for adjustment in the charge and expense limitations set forth in §§ 150.705 and 150.706 by reason of capital expenditures when the State approval procedures authorized by § 150.713 are not available to the acute care hospital. Supporting documentation must indicate why the approval procedures were not available and permit the Council to evaluate certain factors enumerated in § 150.714(c).

Paragraph (d) provides for exceptions (without cost justification) for experimentation in hospital reimbursement methodologies. Depending on the nature of the request, the Council may grant a prospective exception to a single hospital or to a group of hospitals as members of a class, geographic or otherwise. The Council may consult with representatives of the Department of Health, Education, and Welfare prior to making its determination.

Paragraph (e) provides for an exception when a serious hardship or gross inequity has been caused by any of the occurences set forth in paragraph (e)(1). Each request shall be evaluated on the basis of cost justification. In reviewing the cost justification submitted, the Council shall consider evidence of cost containment initiatives, prudent management practices and consistent application of accepted accounting principles by the hospital. Paragraph (e)(2) lists financial factors that will be considered in deciding on exceptions. To a large extent these elements have been drawn from experience during Phase III.

Paragraph (f) lists additional financial factors that will be considered on an exception request for any reason causing a serious hardship or gross inequity.

A provision has been added to § 150.715 requiring the State agency to review exception requests under § 150.714(a) and setting forth general criteria.

Section 150.716 has been amplified in several respects since the November proposal. A major change is that there is no longer a requirement that the State control program be authorized under State law. It must, however, be either a State program or the program of an agency designated by the governor or the mayor, for the District of Columbia.

The State agency must submit a comprehensive description of its plan and of existing or proposed rules, and an evaluation of the program by covered acute care hospitals or their associations.

Where the governor or mayor designates an agency to coordinate a health care price control program, the regulations provide that he may assign to a nongovernmental organization the responsibility for administering the program. Such a program must meet all the requirements of this section.

Another change in the final regulations is that ten criteria have been added which State control programs must meet before the Council will issue a certificate of compliance.

Paragraph (i) has been added to assure that any acute care hospital not subject to a State program is subject to Subpart R.

The reporting procedures are unchanged; however, a new section (§ 150.718) has been added to encourage hospitals to monitor their own compliance during the year. Use of the Form CLC–61 for this purpose will further the objectives of the Economic Stabilization Program and will assist acute care hospitals in avoiding problems under the regulations. The Council proposes to issue a hospital guide to enhance voluntary compliance by hospitals.

A prohibition section has been added (§ 150.719) to prohibit changes in various practices to avoid compliance with the Economic Stabilization regulations.

A number of comments pointed to the need for a section providing for the action to be taken where a hospital is found to be out of compliance. Section 150.720 provides that in addition to any remedies provided in Part 155, if the charge or reimbursed expense limitations contained in §§ 150.705, 150.706, or 150.707 have been exceeded, and no exception has been granted, the Council may order the reduction of charges to compensate for charges made in excess of the limitations; or the reduction of charges to assure that total charges will not exceed the limitations contained in § 150.705, § 150.706, or § 150.707; or the refund to all charge payors of an amount equal to that portion of the excess allocable to charge paying patients (the amount to be

refunded or credited to an account shall be allocated on a pro rata basis); or any other action which is reasonable and appropriate to cause the remission of such excess revenues; or any combination of the above actions.

If the limitations on total inpatient reimbursed expenses contained in §§ 150.705 and 150.706 have been exceeded, and the total inpatient operating expenses per admission have increased over the preceding fiscal year's total inpatient operating expenses per admission by a percentage greater than the percentage increase allowable for charges and reimbursements, the Council may order the amount of the excess of total inpatient reimbursed expenses to be credited to settlements with cost reimbursers on a pro rata basis; or any other action which is reasonable and appropriate to cause the restitution of such excess reimbursed expenses.

If an acute care hospital determines that it has exceeded the limitations under §§ 150.705, 150.706, or 150.707, the hospital shall submit a plan for achieving compliance with these sections to the Office of Health (Compliance), Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508. Such a compliance plan may provide for a reduction of charges, a stipulation of no charge increases for a certain period of time, the refund of revenues, or any other action which is reasonable and appropriate to cause the remission of such excess charges or reimbursements, or a combination of any of the foregoing. The Cost of Living Council may approve such a plan, order certain changes, or order a different plan of its own design.

Section 150.721 advises that all notices and requests made to the Council under this subpart should be addressed to the Office of Health, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

Section 150.722 has been included to assure the continued application of the Economic Stabilization Program under Subpart O, in the event Subpart R rules applicable to acute care hospitals were held invalid. If the application of any provision of the regulations applicable to acute care hospitals were held invalid, the remainder of the subpart would continue in effect.

The Council has determined to publish an economic study entitled "Control of Hospital Costs Under the Economic Stabilization Program" as an appendix to Subpart R. The study is offered as a useful guide to some economic considerations on which the Council relied, at least in part, in formulating its Phase IV health policy for acute care hospitals and in preparing the regulations governing these hospitals. It is not presented as an exhaustive presentation of the Council's official position, nor as a description of the economic basis of its policies with respect to medical practitioners, medical laboratories, Health Maintenance Organizations, or long term care institutions.

MEDICAL PRACTITIONERS AND MEDICAL LABORATORIES

Approximately 60 comments were received on the proposed regulations for medical practitioners, §§ 150.508 through 150.514, from various individuals, medical practitioners, and associations.

The comments have been very helpful in resolving the many issues involved in the formulation of this final rule. They covered a broad range from general opposition to total agreement with the proposed rules.

In order to facilitate discussion of §§ 150.730 through 150.743 as adopted herein, each provision of the rules is considered separately in the light of the comments received.

There were many comments indicating that it was not clear when the sections relating to medical practitioners were to become effective. The rules, as adopted, clearly state in § 150.730(a) that §§ 150.730 through 150.743 apply to all medical practitioners effective January 1, 1974.

A number of commentators indicated confusion as to how to compute base period revenue margin, i.e., what years are included in the term "base period". It is customary practice that the general definitions of regulations apply to all sections of those regulations unless otherwise specifically redefined. The Council's intent was to accomplish this objective by a reference to the term "base period" as defined in § 150.31. However, to accommodate these comments, the Council has restated the definition of "base period" again in § 150.732 for a consolidation of definitions used in the medical practitioner rules.

Several comments were received regarding the definitions of "base period revenue margin" and "revenue margin" appearing in proposed § 150.502. One commentator indicated that the language "medical practitioner's customary accounting practices consistently applied" was unclear and that it should be changed to read "in accordance with generally accepted accounting principles consistently applied". The Council accepted that recommendation and has revised its definition. The same commentator also indicated that not all medical practitioners will be able to exclude revenues and expenses derived from the provision of medical care under a contract with a Health Maintenance Organization. The Council agrees to make this exclusion optional in the calculation of the base period revenue margin and revenue margin but it must be done on a consistent basis.

The Council, after careful deliberation, has excluded optometrists, chiropractors and clinical psychologists from the definition of "medical practitioner" in § 150.502, and consequently, from the limitations of the sections applicable to medical practitioners. Clinical psychologists, for example, are mainly employed by others. The number of self-employed individuals is relatively small and constitutes a very small segment of the health industry.

After reviewing several commentators suggestions, the Council has redefined the term "new market" in § 150.732. It was felt that a better basis for the determination of a "new market" could be made by relating it to the term "Medicare locality" under 30 CFR 405.505 than a physical distance of 50 miles as proposed. This reference to a "Medicare locality" allows for the differences in prevailing prices in a particular location and recognizes demographic and economic features instead of distances.

The definition of "new service" appearing in § 150.732 remains basically the same. The Council indicates in this definition that certification by a medical specialty board does not constitute a new service for repricing purposes. For these purposes, the Council is more concerned with the actual training rather than with recognition accorded by one's peers to the attainment of educational status represented in speciality certification. There is a one calendar year limit on establishing or raising prices for new services.

In response to comments received, clarification is made in the definition of "price" in § 150.732 stating that a price is a fee or charge for a service or property and not the actual amount of the fee or charge paid or reimbursed. This also serves to clarify the necessity of posting prices on schedules by class of purchasers under § 150.738.

Significant changes appear in § 150.734 relating to the price increase limitations. Rounding to the nearest quarter dollar has been provided for in § 150.734(a)(2) to accommodate customary pricing practices and avoid the necessity of odd-cent charges. After reviewing several commentators' suggestions, the Council has revised proposed § 150.508(a)(1) by eliminating the term aggregate weighted price and replacing it with some additional clarifying language in § 150.734 (a)(1).

In determining price increases on an aggregate weighted basis, a formula was proposed in § 150.508(d) to aid in computing these increases. The Council has adopted the term "customary price" in both § 150.734(a)(1) and (d) to clarify its intent that the price to be used in these calculations is not the exceptional or extraordinary charge but rather the one which was or would be customarily charged for a service or property.

A number of comments received indicated to the Council that the formula, as proposed, was not feasible for all medical practitioners in that their accounting records do not always have the weighting or gross billings for each service or property for which a price is to be increased. Therefore, the practitioner is unable to determine whether he is in compliance with the 4 percent limitation on price increases, computed on an aggregate weighted basis. The Council has adopted in § 150.734(d)(2) and (d)(3), two alternatives to the basic formula provided in § 150.734(d)(1). A medical practitioner may use a unit price increase system and not have to determine the weights for each service or property

whose price is increased. If a practitioner has the ability to determine his gross billings for a group of similar or related services or property, he may increase prices under the second procedure.

Another aspect of the proposed § 150.508 discussed by numerous commentators related to the 4 percent limitation under paragraph (a)(1) of that section. Some comments received supported this percentage, others stated it was too high or too low .The Cost of Living Council carefully considered this issue and concluded that no change should be made at this time. The percentage limitation was based upon projected cost increases, wage increases, and productivity for medical practitioners.

The Council is also not persuaded to change the 10 percent limitation on increases in prices charged for any service or property under § 150.734(a)(2). Should there be a significant imbalance between costs and a price charged for a specific service or property, the Council will review the case on an exception basis as set forth in § 150.739(a)(2), as adopted.

The reference to fixed dollar amount contracts under proposed § 150.508(b) has been limited to those type of contracts with other health care providers. Several comments brought to the attention of the Council that fixed dollar amount contracts existed with patients and third party payors which the Council had not intended to incorporate into this section. The Council has not been persuaded to change the 6.2 percent limitation on these contracts. This percentage is derived by considering a higher utilization and intensity of services where volume or productivity are not directly compensated for as on a fee-for-service basis. Although considered a price and not a wage limitation, it parallels to some extent the wage guidelines.

A number of comments from dentists recommended that an increase in the cost of silver be allowed on a dollar-for-dollar pass through similar to gold under proposed § 150.508(e).

Since silver is used by dentists as well as gold and since that metal is also volatile in costs fluctuations, the Council has added silver to § 150.734(e), as adopted.

Several comments received concerning proposed § 150.509, revenue margin limitation, centered on the effect on the revenue margin of the salaries of medical practitioner employees in a professional partnership. The Council has adopted § 150.735(c) to resolve this issue and to make sure that the determinations of the revenue margins are consistent and equitable for purposes of this limitation. In addition, a provision has been adopted in § 150.737(b) to indicate that the revenue and base period revenue margins when one medical practitioner joins or forms a group shall be combined and reconciled consistent with generally accepted accounting principles.

The Council has not been persuaded to remove the revenue margin limitation in light of the higher percentage increase in the price limitation set forth in § 150.734, as adopted, and the dropping of the cost justification requirement for such price increases.

With regard to proposed § 150.511, the 40 percent figure in transactions for determining the price when one medical practitioner joins or forms a group with another medical practitioner or practitioners has been adjusted to 25 percent in adopted § 150.737(a). This was changed as a result of several recommendations so that the regulations will not be unduly restrictive in the formation of groups.

Some commentators recommended that price schedules need not be required and that § 150.512, as proposed, should be eliminated. The Council had considered this prior to issuance of the proposed section. The Council believes that a price schedule is appropriate so that consumers and third party payors can review the prices of individual medical practitioners to determine how actively each practitioner is participating in the stabilization of prices within this industry. The schedule will also aid in monitoring and determining compliance. However, the Council has revised proposed § 150.521 to accomodate some comments that will retain the above objectives of the Council but alleviate some administrative burdens on the medical practitioners with regard to availability of the price schedule. As adopted, § 150.738 requires copies of the price schedule need only be furnished or mailed to representatives of third party payors or of the Cost of Living Council upon request, although the price schedule is to be made available to any person for inspection. The prices in effect on December 28, 1973, as opposed to October 31, 1973, are required on the schedule since that date is the end of the last 365-day annual period used in determining increases under 6 CFR 300.19 and a more significant date to use for purposes of monitoring and determining compliance with the adopted regulations for medical practitioners.

The section also has been revised to implement the changes in § 150.734 relating to the weights used in determining price increases computed on an aggregate weighted basis. The weights need only be listed for those services or property or groups of related services or property whose prices are increased.

In response to comments received, § 150.513 relating to exceptions has been reorganized to help clarify the criteria used in reviewing requests for exceptions to these regulations. Several exception criteria have been added that will be given consideration by the Council such as a significant imbalance between costs and a price charged for a specific service or property, or a move contemplated by a medical practitioner to an underserved area where medical care is badly needed. As explicitly stated in this adopted section, these criteria are presented as guidelines for medical practitioners in the preparation of requests for exceptions and not intended to be exhaustive. None of these criteria is presumptive in the sense of constituting automatic final approval of a request for an exception. The Council shall consider all relevant factors in reviewing an exception request for the purpose of preventing or correcting a serious hardship or gross inequity from the Economic Stabilization Program.

Provision has been made, however, for provisional approval of requests for prospective exceptions 60 days after filing of the request. The Council will attempt to accelerate consideration of retrospective exceptions since they do not benefit from the rule on provisional approval.

In order to be responsive to medical practitioners who request exceptions, the Council has accepted several recommendations and has implemented a rule under § 150.739 stating that unless the person is otherwise notified by the Cost of Living Council, a prospective exception has provisional approval 60 days after the date of the filing.

A number of comments pointed to the need for a section defining noncompliance with these regulations and providing for the action to be taken where a medical practitioner is found to be out of compliance. Section 150.741 has been added to provide, in accordance with Subpart E of Part 150, general guidelines to put a medical practitioner back into compliance should he exceed any of the limitations of §§ 150.730 through 150.743.

The §§ 150.730 through 150.743 as adopted herein, contain various other changes which are primarily editorial in nature and are not intended to change substantively or significantly the proposed rules.

Proposed §§ 150.508 through 150.513 were developed primarily for medical practitioners. The Council has determined that §§ 150.730 through 150.743 should also apply to medical laboratories except where specifically provided otherwise in § 150.730(a). Thus, under Phase IV, medical laboratories continue as under Phase III to be governed by the same rules applicable to medical practitioners.

Medical laboratories shall be allowed a 4 percent annual aggregate weighted price increase. Price increases for individual services over $10.00 shall be limited to 10 percent annually. There is also the requirement for posting a sign stating the availability and location of a price schedule.

Medical laboratories provide professional medical services and are primarily owned by medical practitioners. The Council feels medical laboratories should continue to be subject to price controls in that many outpatient laboratory services remain covered by health insurance and more medical laboratories are now billing patients directly rather than through acute care hospitals, or medical practitioners, or long term care institutions.

HEALTH MAINTENANCE ORGANIZATIONS AND HEALTH MAINTENANCE ORGANIZATION PROVIDERS OF HEALTH CARE

A few comments were received on the proposed regulations for Health Maintenance Organizations (HMO) and Health Maintenance Organization pro-

viders of health care, §§ 156.536 through 150.545, from various individuals and associations.

The comments have been very helpful in resolving the many issues involved in the formulation of this final rule.

The majority of the comments received dealt with the following features of the proposed regulations:

1. Definition of Health Maintenance Organization.
2. Limitations on new Health Maintenance Organizations.
3. Reporting requirements for new Health Maintenance Organizations.
4. Revenues derived from non-rate services or property provided by an HMO and revenues derived from services or property not provided by an HMO provider of health care under a contract with an HMO.
5. Health Maintenance Organizations in a loss position.
6. Limitations on the provision of outpatient hospital care.
7. Limitations on the provision of health care by a medical practitioner.

In order to facilitate discussion of §§ 150.748 through 150.763 as adopted herein, each of the above subject areas on which comments were received will be considered separately as it relates to the various sections of the regulations.

Several commentators indicated that the definition of "Health Maintenance Organization" appearing in § 150.503, as proposed, was too restrictive in that an HMO provider of health care had to share in the financial risk of the health plan. An HMO provider of health care is defined as an acute care hospital, medical practitioner, or long term care institution that derives at least 75 percent of its revenues from services rendered to HMO members. Since an HMO may have only participating acute care hospitals or medical practitioners that provide services to many persons who are not HMO members and thus are not HMO providers of health care, the Council has changed the definition of "Health Maintenance Organization" to incorporate this recommendation. With this change, the Council feels that the definition of "Health Maintenance Organization" is fairly consistent with the health industry interpretation of what constitutes an HMO. It was suggested that the proposed definition in Public Law 93-222 be adopted. Although the legislation as proposed became law on December 29, 1973, the Council did not accept this suggestion formally at this time since subsequent implementing actions on the part of the Secretary of Health, Education, and Welfare are still required. A definition in this state would not provide the required precision, clarity, and certainty.

One comment was submitted stating that proposed § 150.536(c) did not fully implement the intent of the regulations to encourage the successful operations of newly formed HMOs because new HMOs were exempted only from the provisions of § 150.536(a)(5). The Council, therefore, consistent with this comment, has adjusted § 150.752(c) to read that a new HMO is not subject to any of the limitations set forth in § 150.752, as adopted herein. It has been determined that the definition of a new HMO as one that has been in operation less than four years and has less than 35,000 HMO members shall remain the same.

There was another recommendation from the same commentator that if new HMOs are exempted from the provisions of proposed § 150.536, then they should also be exempted from the reporting requirements of proposed § 150.544. The Cost of Living Council requires an HMO to file an annual report on its operation, similar to an insurance firm, in order to monitor the various rate increases in the industry. The Council continues to believe that annual reports from new HMOs will supply essential information for this monitoring program for purposes of the Economic Stabilization Program.

A number of comments pointed out that it was not clear whether an increase in a charge by an HMO for services or property not covered by a rate was subject to any limitations. In response to these comments, the Council has indicated in § 150.752(b) that increases in charges by an HMO for services and property not covered by a rate are not subject to any limitations as long as the anticipated revenues from such sources are offset against the rates that otherwise would be permissible. Similarly, it was not clear whether an increase in a fee charged by an HMO provider of health care for services or property not covered by a contract with an HMO was subject to any limitations. In response to these comments, § 150.761(d) provides that increases in charges by an HMO provider of health care for services and property not paid for by an HMO are not subject to any limitations as long as the anticipated revenues from such sources are offset against the limitations of § 150.761 (a), (b), or (c).

One comment recommended that a provision be made for HMOs in loss positions allowing them to increase rates in order to put the HMO on a break-even basis for the year, amortize accumulated losses over a number of years, and produce net revenues up to a level of approximately 3 percent. In view of the limited number of HMOs and the possibility of widely divergent circumstances among different HMOs, the Council believes that a general rule should not be established and that any required specific adjustment could best be resolved by requesting an exception to the limitations of these sections.

Another aspect of the proposed rules discussed by various associations related to the limitation on outpatient health care services under proposed §§ 150.536 (a)(5)(ii) and 150.545(a)(1). The 6 percent limitation is stated as a limitation per procedure. It was indicated that many HMOs do not establish rates or contract for outpatient hospital care on a fee per procedure basis but do so on a per capita or other basis. To accommodate this situation, the Council has adopted §§ 150.752 (a)(5)(ii) and 150.761(a)(1) to read that if the contract between an HMO and an acute care hospital for the provision of outpatient services is on a fixed dollar amount or per capita basis, the increases are limited to 9 percent a year. This additional clause is similar to the percentage limitation in the provision of inpatient care by an acute care hospital, and reflects a limitation allowing for an increased intensity of services and utilization that may be provided in a per capita payment system.

One comment also urged that the 6.2 percent limitation under proposed §§ 150.536(a)(5)(iii) and 150.545(b)(2) relating to the provision of health services by a medical practitioner on a fixed dollar amount or per capita contract should be increased to 7.7 percent. The Council believes the 6.2 percent limitation is equitable. This limitation was increased to a higher percentage than the 4 percent limitation provided under the proposed § 150.508(a) for medical practitioners to allow for a higher utilization and intensity of services by a medical practitioner under a fixed dollar amount or per capita contract where increases in volume or productivity are not directly compensated for as in a fee-for-service contract with an HMO. This limitation is consistent with adopted §150.734(b) and more closely related to the wage guidelines.

Sections 150.748 through 150.763 as adopted herein contain various other changes which are primarily editorial in nature and are not intended to change substantively or significantly the proposed rules.

### Long Term Care Institutions

The regulations governing long term care institutions are promulgated under unique circumstances. From December 5, 1973, until January 11, 1974, the Council had been prohibited by order of a Federal District Court from enforcing the rules of the Economic Stabilization Program under Subpart O of Part 150 with respect to nursing homes. On January 11, 1974, the Temporary Emergency Court of Appeals granted the Council a stay of the lower court's injunction, effectively permitting the Council to enforce Phase II/III rules with respect to nursing homes. Final disposition of the applicability of Subpart O to nursing homes awaits the outcome of further proceedings before the District Court and, perhaps, before the Temporary Emergency Court of Appeals.

The Council has determined that the Phase IV regulations with respect to long term care institutions, which include nursing homes, should be issued and made effective as of January 1, 1974. The Phase IV regulations shall be enforced as promulgated. The Council will take such future action, if any, as may be appropriate under the eventual court orders.

Approximately 130 comments were received on the proposed regulations for long term care institutions, §§ 150.528 through 150.536, from private persons, nursing homes, and associations.

The comments, which covered a very broad range from opposition to agreement with the proposed rules, have been very helpful in resolving the many issues involved in the formulation of this final

rule. In order to facilitate discussion of §§ 150.769 through 150.787, each provision of the rules is considered separately in the light of the comments received.

A significant number of commentators were concerned about the effective date of the regulations, that is, the first fiscal year commencing on or after January 1, 1974. In response to these comments, the Council has provided that an institution may elect to apply these sections to its fiscal year beginning on or after August 15, 1973, or to remain under the current rules, if its fiscal year commences on or after January 1, 1974, but before April 1, 1974. To be effective, notice of this election must be furnished or mailed to the Council postmarked no later than March 31, 1974. Failing this election, an institution shall remain under the current rules until its first fiscal year commencing on or after January 1, 1974. This modification allows a long term care institution to adjust to these new rules with more flexibility. Of course, each acute care hospital whose fiscal year commences on or after April 1, 1974, shall be governed by Subpart R.

After reviewing several recommendations relating to the average realized revenues per diem limitation by class of purchasers the Council was not persuaded to modify this rule. The Council is concerned that elimination of the class of purchasers concept would remove any assurance that no single class of patient would pay a disproportionate amount of an institution's total costs of operations.

The Council was also not persuaded, at this time, to adopt a Medicaid exemption for those States that reimburse on a prospective basis. It was decided that this recommendation will best be handled by exception in administering § 150.776.

Several comments received regarded revenue adjustments from retroactive cost reimbursement settlements for completed fiscal years and the effect on the determination of average realized revenues per diem. This clarification is made in the definition of "realized revenues" appearing in § 150.771. Consistent with generally accepted accounting principles for institutions on a cash basis of accounting, such revenue adjustments are considered in the fiscal year received. For institutions on an accrual basis of accounting, revenues not accrued in the prior period shall be considered in the fiscal year received unless otherwise allowed by generally accepted accounting principles. In addition to this change, "realized revenues" for an institution on an accrual basis of accounting is now considered as the total charges less discounts, contractual allowances, bad debts, and charity allowances.

In determining "average realized revenues per diem" in proposed § 150.502, several commentators suggested that the number of patient days for which revenues were not realized be excluded. The Council has adopted this suggestion in the definition of this term in § 150.771.

In response to a comment received, a clarification is made in § 150.773 by adding the language "by level of care for each class of purchasers" to the limitation on average realized revenues per diem.

Numerous commentators recommended that the long term care institution be afforded the 107.5 percent limitation for acute care hospitals in proposed § 150.516. The Council has not changed the 106.5 percent limitation. Acute care hospitals are subject to a charge per admission control system as opposed to a revenue per diem control system. These two types of control systems are different and consequently the percentage limitations are not comparable. The 106.5 percent limitation was determined after careful deliberation. The Council is convinced that this limitation is adequate to allow the long term care institution improvements in addition to the same quality of care currently being provided.

Several comments were received regarding proposed § 150.530 on Medicaid reimbursement rates. As the proposed rule was stated, it was not clear whether a State agency could request a certification on a regional as well as a State-wide level of Medicaid reimbursement. The Council agrees with these comments and has added the appropriate language to § 150.776. In addition to this change, the word "minimum" has been deleted from proposed § 150.530(a)(3), as superfluous.

One commentator pointed out that it was not clear in proposed § 150.531(b) whether a new level of care, a new facility, or a new market was subject to the limitations of proposed § 150.528. The Council has added the appropriate language in § 150.778 to clarify the situation.

Several long term care institutions indicated that the effect on their more elderly patients would not be good if the institutions were required to post a sign in their facilities pursuant to proposed § 150.532. The Council has accommodated these comments by giving an institution the options of posting a sign in each facility stating the availability and location of the price schedule or of affixing a legend to all billing statements stating the availability and location of the schedule (§ 150.779).

In order to be responsive to long term care institutions that request exceptions to these sections, the Council has accepted several commentators' recommendations and has implemented a rule under § 150.782 stating that unless the institution is otherwise notified by the Cost of Living Council, price increases sought under a prospective exception requested may go into effect after 60 days of the filing. The Council will attempt to give accelerated treatment to retrospective exceptions since they are not subject to provisional approval.

Section 150.786 has been added to provide general guidelines to put a long term care institution back into compliance should it exceed any of the limitations of these sections.

The Council agrees to a recommendation set forth by an association and has added § 150.777 regarding the Economic Stabilization standards for patients' personal funds and the charges thereto when an institution manages such funds.

Sections 150.769 through 150.787 contain various other changes which are primarily editorial in nature and are not intended to change substantively or significantly the proposed rules.

A large number of comments received from individual long term care institutions and associations expressed the opinion that the nursing home industry should be decontrolled. In response to these comments, the Council notes that the intent of the Economic Stabilization Program is to achieve the national goal of restraining the rate of inflation. Suggestions to decontrol were considered at great length and carefully reviewed. The decision to include long term care institutions in the Phase IV health control program stems from the basic premise that decontrol at this time of these institutions which in the aggregate constitute a significant portion of the health care industry, as employer as well as provider, would be contrary to the stated goals of the Program. The provision for exceptions under § 150.776 also meets a number of the points raised in favor of decontrol. The Council will continue to review the control system in order to determine whether there is justification for a future exemption of long term care institutions from the Program.

In consideration of the foregoing, Parts 150 and 152 of Title 6 of the Code of Federal Regulations are amended as set forth below, effective January 1, 1974.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

Issued in Washington, D.C., on January 16, 1974.

JOHN T. DUNLOP,
*Director,*
*Cost of Living Council.*

1. In 6 CFR Part 150, the table of sections is amended by adding the following items:

**Subpart D—Exemptions**

Sec.

150.57 Certain providers of health care.

* * * * *

**Subpart R—Health Care**

ACUTE CARE HOSPITALS

150.701 Scope and applicability.
150.702 Continued applicability of existing regulations.
150.703 Definitions.
150.704 Prior commitments.
150.705 Limitation on charge and expense increases per inpatient admission.
150.706 Volume adjustment for change in inpatient admissions.
150.707 Limitation on charge increases for outpatient services.
150.708 Cumulative increases.
150.709 Special pricing rules.
150.710 Price schedules.
150.711 [Reserved]
150.712 Adjustment for significant changes in patient mix.
150.713 Approval of capital expenditures by a State's planning agency.
150.714 Exceptions.
150.715 Advisory State actions.
150.716 State control program.
150.717 Reporting procedures.
150.718 Self-monitoring.

2. Subpart D is amended by adding a new § 150.57 to read as follows:

**§ 150.57 Certain providers of health care.**

(a) The following health care providers and categories of health care providers are exempt from the coverage of this part:

(1) Bloodbanks and blood donor stations.

(2) Chiropractors.

(3) Clinical psychologists.

(4) Clinics and dispensaries not owned or operated by an acute care hospital, long term care institution, medical practitioner, Health Maintenance Organization or HMO provider of health care services as defined in Subpart R of this part.

(5) Christian Science practitioners.

(6) Community mental health centers.

(7) Contact lens technicians.

(8) Curative baths or spas.

(9) Dental laboratories.

(10) Dieticians.

(11) Drug and alcohol abuse centers.

(12) Family planning clinics.

(13) Health camps and resorts.

(14) Homemaker and home health aide agencies (including a home health agency or services operated by a hospital when the hospital maintains separate financial accounts for the agency or services).

(15) Housing for the elderly not included in the definition of "long term care institution" of § 150.771.

(16) Institutions for the mentally retarded.

(17) Medical photography.

(18) Midwives.

(19) Migrant health clinics.

(20) Naturopaths.

(21) Neighborhood health centers.

(22) Nutritionists.

(23) Occupational therapists.

(24) Opticians.

(25) Optometrists.

(26) Oxygen tent service.

(27) Psysiotherapists who are not licensed physicians.

(28) Psychiatric social workers.

(29) Rehabilitation centers (therapy and treatment).

(30) Tuberculosis and other sanatoria operated separately from acute care hospitals or long term care institutions.

(31) Visiting nurse associations.

(32) Vocational rehabilitation institutions.

**§ 150.60 [Amended]**

3. In § 150.60 paragraphs (a)(2)(ii) and (b)(2)(ii) are amended by changing the semicolon to a comma at the end of each paragraph and adding the following clause after the comma at the end of each paragraph: "or a firm which on January 1, 1974, was an acute care hospital, a medical practitioner or medical laboratory, a Health Maintenance Organization or Health Maintenance Organization provider of health care, or a long term care institution, as defined in Subpart R."

4. Section 150.401(a) of Subpart M is amended to read as follows:

**§ 150.401 Applicability.**

(a) This subpart applies to each insurance rate increase to be placed in effect after August 12, 1973 (other than rate increases by Health Maintenance Organizations which are subject to subpart R of this part), which would increase the rate above the level in effect on that date, whether or not the increase is approved by a regulatory agency.

* * * * *

**§ 150.412 [Amended]**

5. Section 150.412 is amended by deleting, in the first sentence of the introductory paragraph, the words "during the calendar year preceding any rate increase" and substituting therefor the words "during the preceding calendar year."

6. Section 150.415 is amended to read as follows:

**§ 150.415 Monitoring by health insurers.**

(a) Each health insurer is authorized and encouraged to monitor and report to health care providers any price increases by those providers that involve significant deviation from the provisions that apply to those providers and any increases in use of services or benefits that significantly exceeds its experience with that provider. Upon the receipt of such a report, the provider and the insurer shall make a good faith effort to determine whether any violation of this part has occurred and to take any steps to remedy such violation.

(b) Each health insurer is authorized and encouraged in connection with its customary claims practices to review a percentage of the claims it processes which involve medical practitioners' fees to determine their compliance with the limitations on increases in individual fees in § 150.734. The percentage of claims selected for review must be acceptable to the Cost of Living Council. The claims selected for review shall consist of (1) selected claims in which the practitioner's fee exceeds the fee determined by the insurer to be the prevailing fee for the geographic area or varies significantly from the practitioner's usual fee and (2) a random selection from all other claims payable by the carrier. Claims selected for review need not include claims under all coverages. For each claim reviewed, the insurer may request from the medical practitioner involved the price schedule required by § 150.738. Each insurer shall report to the Council on a form prescribed by the Council all instances of apparent non-compliance for possible investigation by the Council to determine whether there has been a violation of Subpart R of this part. In addition, each insurer shall report to the Council on a form prescribed by the Council a 10 percent random sample of all other claims it reviews under this paragraph. The insurer shall include in each report to the Council any price schedule received from the medical practitioner concerned.

(c) Each health insurer shall file semiannual reports not later than 45 days after the end of its second and fourth quarters, on its monitoring activities under paragraph (b) of this section with the Cost of Living Council on a form prescribed by the Council.

7. Part 150 is amended by the addition of a new Subpart R to read as follows:

## Subpart R—Health Care

ACUTE CARE HOSPITALS

**§ 150.701 Scope and applicability.**

(a) Sections 150.701 through 150.722 apply to each acute care hospital whose

fiscal year commences on or after January 1, 1974. However, an acute care hospital may make an irrevocable election:

(1) To be governed by this subpart if its current fiscal year commenced on or after August 15, 1973, but before January 1, 1974; or

(2) To be governed by Subpart O of this part in effect on December 31, 1973, if its fiscal year commences on or after January 1, 1974, but before April 1, 1974. In no event may an acute care hospital elect to be governed by Subpart O if its fiscal year commences on or after April 1, 1974.

(b) No election made under paragraph (a)(1) or (2) of this section by any acute care hospital is valid unless the hospital files with or mails to the Cost of Living Council written notice of its specific election. The written notice must be filed with the Council not later than March 31, 1974, or mailed to the Council by certified or registered mail (return receipt requested) postmarked no later than March 31, 1974. No notice is required if the acute care hospital does not make an election referred to in paragraph (a)(1) or (2) of this section.

(c) Notwithstanding paragraph (a) of this section, an acute care hospital which is owned or operated by or is under contract to a Health Maintenance Organization and which derives at least 75 percent of its gross inpatient operating charges from services rendered to enrolled participants, is subject to §§ 150.748 through 150.763 governing Health Maintenance Organizations.

(d) Long term care provided as a distinct unit of an acute care hospital and for which separate financial accounts are maintained by the hospital is subject to §§ 150.769 through 150.787.

**§ 150.702 Continued applicability of existing regulations.**

Except as otherwise provided in § 150.701, each acute care hospital whose current fiscal year begins prior to January 1, 1974 is subject until the completion of its current fiscal year to Subpart O of this part in effect on December 31, 1973.

**§ 150.703 Definitions.**

For purposes of this subpart and in addition to the definitions in § 150.31:

"Acute care hospital" means any hospital that meets the requirements of the American Hospital Association for registration as a general or special hospital (see "Classification of Health Care Institutions," 1968 edition, American Hospital Association, 840 North Lake Shore Drive, Chicago, IL 60611) and in which the average length of stay for all patients is less than 30 days or over 50 percent of all patients are admitted to units where the average length of stay is less than 30 days.

"Admissions" means the number of patients (including free care patients) accepted for inpatient service in beds licensed for hospital care. For the purpose of this definition, births or transfers between departments may be treated as admissions if the hospital has by consistent administrative practice treated transfers or births as admissions.

"Capital expenditure" means an expenditure defined as a capital expenditure in the regulations (42 CFR Part 100) implementing section 1122 of the Social Security Act as added by section 221(a) of the Social Security Amendments of 1972 (Pub. L. 92-603, 86 Stat. 1386-89 (42 U.S.C. 1320a-1)).

"Cost reimbursement arrangement" means any formula provided by contract or legislation to calculate the final amount payable for health services furnished by an acute care hospital on the basis of cost rather than charges. Arrangements pursuant to which the amount to be reimbursed for one year is calculated on the basis of costs occurring in any other year are not cost reimbursement arrangements.

"Free care" means health care services and property furnished to patients who are not billed and for whose care third party payors are not billed.

"New facility" means an acute care hospital which:

(1) Commences operation for the first time, or which has not operated for at least one year prior to its current date of operation; or

(2) Undergoes physical replacement; or

(3) Undergoes major renovation, remodeling or expansion that costs a dollar amount equal to at least 70 percent of the book value (net of accumulated depreciation) of the property, plant and equipment in service at the end of the fiscal year preceding the fiscal year in which the hospital was committed to construction by firm authorization of the hospital's governing board, or $100,000, whichever is greater.

When a facility meeting the criteria of item (1), (2) or (3) (hereinafter referred to as a new facility involving phased construction) is constructed in stages so that the departments or units are brought into operation on successive dates, the facility shall be considered a new facility if the construction of the various stages of the facility, taken together, was undertaken as a single project resulting directly from a binding contract or firm authorization approved by the governing board of the acute care hospital.

For purposes of this definition, the mere acquisition of a hospital or of the person that controls the hospital by another person does not result in the creation of a new facility.

"New market" means a location more than 50 miles from the site where health care services were previously provided or, with the prior approval of the Council, a location 50 miles or less from such site.

"New service" means a service or property which the hospital did not sell or lease in the same or substantially similar form at any time during the one-year period immediately preceding the first date on which it is offered for sale or lease. For the purposes of this definition, a change in appearance or arrangement, or a change in the method or technology of providing a service, does not create a new service or property.

"Prospective rates" means a schedule of payments applicable to third party payors established in advance for health care services, without provision for retrospective adjustment based on actual charges or costs incurred during the year in which the services were rendered.

"Total inpatient operating charges" means the sum of gross charges for all services performed on an inpatient basis in any fiscal year, computed by taking the sum of all inpatient service charges for the year concerned, including—

(1) Charges for daily patient services (routine services);

(2) Charges for other nursing services (operating room, central services and supplies, and similar services);

(3) Charges for other professional services (ancillary-laboratory, radiology, anesthesiology, and similar services); and

(4) All other inpatient service charges not covered above;

but excluding those charges not collected as a result of free care.

"Total inpatient operating expenses" means the sum of all operating expenses determined in accordance with generally accepted accounting principles for hospitals as reflected in the AICPA Hospital Audit Guide (1972 edition, American Institute of Certified Public Accountants, Inc., 666 Fifth Avenue, New York, New York 10019), or by a system of accounting principles approved for use by Blue Cross (as defined in the principal Blue Cross plan in the community served by the hospital), Medicare, or a State Uniform Hospital Accounting System (as defined in the relevant state statutes and implementing regulations); and allocated to inpatient services in accordance with one of the latter three accounting systems. Once a selection of accounting principles has been made by an acute care hospital from among the systems identified above, the hospital may not thereafter adopt a different system without prior written approval by the Council, but must consistently apply the principles in all relevant calculations required by the Economic Stabilization Program.

"Total inpatient reimbursed expenses" means the total inpatient operating expenses paid or accrued under cost reimbursement arrangements.

**§ 150.704 Prior commitments.**

(a) Notwithstanding any other provision of this subpart, all prospective decisions, interpretations, and prospective exceptions authorizing a dollar increase issued under the Economic Stabilization Act prior to January 17, 1974, to acute care hospitals covered under this subpart remain in force.

(b) Each acute care hospital may annualize the charge increases allowable under Subpart O of this part in effect on December 31, 1973, for purposes of calculating the base on which allowances are authorized under this subpart.

**§ 150.705 Limitation on charge and expense increases per inpatient admission.**

(a) Except as otherwise provided in these regulations, an acute care hospital's total inpatient operating charges per admission and total inpatient reimbursed expenses per admission during any fiscal year may not exceed 107.5 percent of their respective levels for the preceding fiscal year. This limitation on total inpatient reimbursed expenses per admission does not apply if the total inpatient operating expenses per admission do not exceed 107.5 percent of the total inpatient operating expenses per admission for the preceding year.

(b) The total prospective rate revenues may not exceed the total charges for those patients whose health care is paid on the basis of prospective rates.

**§ 150.706 Volume adjustment for change in inpatient admissions.**

(a) If during any fiscal year an acute care hospital has more admissions than in its preceding fiscal year, for each admission exceeding 102 percent of the admissions during the preceding fiscal year, total inpatient operating charges and total inpatient reimbursed expenses per admission may not exceed 43 percent of their respective levels for the preceding fiscal year. This limitation on total inpatient reimbursed expenses per admission does not apply if, for each admission exceeding 102 percent of the admissions during the preceding fiscal year, the total inpatient operating expenses per admission do not exceed 43 percent of the preceding fiscal year's total inpatient operating expenses per admission. However, this paragraph does not require that the overall increase in total inpatient operating charges and total inpatient reimbursed expenses per admission permitted by § 150.705, this paragraph, and § 150.708 be limited to less than 103 percent of their respective levels for the preceding fiscal year.

(b) If during any fiscal year a hospital's admissions are less than 100 percent but not less than 95 percent of its admissions during the preceding fiscal year, its total inpatient operating charges and total inpatient reimbursed expenses for that fiscal year may not exceed 107.5 percent of their respective levels for the preceding fiscal year. This limitation on total inpatient reimbursed expenses per admission does not apply if the total inpatient operating expenses per admission do not exceed 107.5 percent of the latter's corresponding level for the preceding year.

(c) If during any fiscal year, a hospital has fewer admissions than in its preceding fiscal year, for each admission less than 95 percent of the admissions during the preceding year, the hospital shall deduct an amount from total inpatient operating charges and total inpatient reimbursed expenses per admission equal to 43 percent of their respective levels for the preceding fiscal year. This limitation on total inpatient reimbursed expenses does not apply if, for each admission less than 95 percent of the admissions during the preceding fiscal year, the total inpatient operating expenses per admission do not exceed 43 percent of the preceding fiscal year's total inpatient operating expenses per admission. However, the overall increase in total inpatient operating charges and total inpatient reimbursed expenses per admission authorized by § 150.705, this paragraph, and § 150.708 shall not exceed 120 percent of their respective levels for the preceding fiscal year.

(d) In the case of a hospital which has either less than $2,500,000 total inpatient operating charges or fewer than 4,000 admissions in its preceding fiscal year, the limitations on total inpatient operating charges and total inpatient reimbursed expenses per admission contained in paragraphs (a) and (c) of this section do not apply unless its admissions increase above 104 percent or fall below 90 percent of the admissions for the preceding fiscal year.

(e) In the case of a new facility or an acute care hospital serving a new market, the limitations on total inpatient operating charges and total inpatient reimbursed expenses per admission contained in paragraphs (a) and (c) of this section shall not apply until the third full fiscal year of operation.

**§ 150.707 Limitation on charge increases for outpatient services.**

(a) This section applies to—

(1) the charges in each revenue department and cost center, as determined by the hospital's customary accounting practice, in which at least 70 percent of the gross charges of that revenue department or cost center are attributable to the provision of outpatient services; and

(2) the charge for each outpatient service which differs from the inpatient charge for the same service.

(b) Whether or not charges for outpatient services are required to be controlled under this section, all charges attributable to the provision of inpatient services shall be included in the computations made under §§ 150.705 and 150.706.

(c) An acute care hospital may elect to control its charges for outpatient services under this section on the basis of either a unit charge system or an aggregate weighted charge system.

(1) If the hospital elects the unit charge system, it may not increase its charge (rounded to the nearest quarter dollar) for any outpatient service beyond 106 percent of the charge lawfully in effect for that service on the last day of the preceding fiscal year.

(2) If the hospital elects the aggregate weighted charge system:

(i) the aggregate weighted charges for all of its outpatient services may not exceed 106 percent of the aggregate weighted charges for all such services lawfully in effect during the preceding fiscal year; and

(ii) the charge for any outpatient service may not be more than 110 percent of the charge lawfully in effect for that service on the last day of the preceding fiscal year (however this paragraph does not require that charge increases be limited to amounts less than $1.00).

(iii) the formula for determining charge increases computed on an aggregate weighted basis under this paragraph (c)(2), herein referred to as *%AWPI*, is as follows:

$$\%AWPI=\sum\frac{C_2-C_1}{C_1}\times\frac{B_1}{B_2}\times 100$$

where,

$C_1$ = The charge lawfully in effect on the last day of the immediately preceding fiscal year for a service or property.

$C_2$ = The highest charge made or to be made during the current fiscal year for that service or property.

$B_1$ = The actual gross charges during the immediately preceding fiscal year for that service or property.

$B_2$ = The total gross charges during the immediately preceding fiscal year for all services or property.

$\Sigma$ = The sum of.

(3) If actual gross charges for every service or property whose charge is to be increased cannot be reasonably determined, the formula for determining %AWPI in paragraph (b)(2) of this section may be adjusted as follows:

$$\%AWPI=\sum\%I\times\frac{G_1}{B_2}$$

where,

$\%I$ = The highest percentage charge increase for any service or property within a group of similar or related services or property.

$G_1$ = The actual gross charges during the immediately preceding fiscal year for that group of similar or related services or property.

(4) If the charges in effect on the last day of the preceding fiscal year had been temporarily lowered to effect a restitution of overcharges to assure compliance by the end of that year, then such charges may be adjusted to the legally authorized level.

**§ 150.708 Cumulative increases.**

In the application of §§ 150.705, 150.706, and 150.707 charge or expense increases permitted in one year but not fully implemented may be accumulated, but not compounded, and may be implemented only in the fiscal year following the year in which the full allowable increase was not implemented.

**§ 150.709 Special pricing rules.**

(a) The charge for a service or property for inpatient or outpatient health care provided by a new facility, for a service or property provided by an acute care hospital serving a new market, or resulting from a capital expenditure which has been approved under § 150.713 or § 150.714(c), or for a new outpatient service or property, may be determined by any one of the following methods without regard to the limitations prescribed in §§ 150.705, 150.706, and 150.707:

(1) An acute care hospital may establish a charge capable of sustaining without financial loss the provision of the in-

patient service or property by the hospital based on an occupancy rate of 65 percent for staffed beds in the hospital or new facility (as appropriate under the circumstances); or capable of sustaining without financial loss the provision of the new outpatient service or property by the hospital based on the projected utilization rate of the new outpatient service or property. The charges so determined may reflect an incremental charge attributable to debt service and depreciation costs.

(2) An acute care hospital may establish a charge for a service or property which is not unreasonably inconsistent with the prevailing charges of a substantial number of current transactions for a similar service or property by a substantial number of other acute care hospitals. The charges so determined may reflect an incremental charge for debt service and depreciation costs.

(3) An acute care hospital may establish its charges by using any charging practice commonly used by a substantial number of acute care hospitals. The charges so determined may reflect an incremental charge for debt service and depreciation costs.

(b) Notwithstanding the provisions of paragraph (a) of this section, charges for a new facility involving phased construction approved as an entire project under § 150.713 or 150.714(c) shall be established initially for the entire new facility, except that if discrete stages of the new facility are opened for service over a period longer than one year and the costs of the discrete stages can be segregated, new charges may be established for services or property provided from each stage as they are successively brought into service.

(c) New charges authorized pursuant to this section shall become effective no earlier than the first day of the fiscal year in which the services or property shall be made available to patients. However, if the approval required by § 150.713 is not obtained, or a request for exception under § 150.714(c) is not filed with the Council before the close of the fiscal year, then the new charges shall become effective no earlier than the first day of the fiscal year in which the approval is obtained or the request is filed.

(d) An acute care hospital may use the special pricing rules of this section at any time within twelve months after the service or property described in paragraph (a) of this section was first made available to patients. Except as authorized under §§ 150.713 and 150.714(c), a hospital may not raise its charges for such a service or property when more than twelve months have elapsed since the service or property is first made available to patients.

(e) Charges or expenses for a new inpatient service that are not included in the total charges or expenses for inpatient services provided by a new facility or by an acute care hospital serving a new market, or in the total charges or expenses for inpatient services or property resulting from an approved capital expenditure under § 150.713 or § 150.714(c) shall be included among the total charges or expenses of those services of the acute care hospital subject to the limitations of §§ 150.705 and 150.706.

(f) In the case of a new facility or an acute care hospital serving a new market, the limitations set forth in § 150.705 shall not apply until the second full fiscal year of operation.

(g) The Council may modify, defer, suspend, or disapprove any charges or expenses implemented pursuant to this section if the Council finds that such charges or expenses are inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program.

### § 150.710 Price schedules.

Each acute care hospital shall maintain at each of its facilities a schedule showing its charges for all services on the last day of the preceding fiscal year, and each subsequent change in those charges and the date each change was made. The schedule shall be made available for public inspection, and a copy shall be furnished or mailed promptly to third party payors or to the Cost of Living Council upon request. Each hospital shall post an easily readable sign stating the availability and location of the schedule. The sign must be posted conspicuously in each location where payment for services is accepted. No charge may be increased before the sign is posted and the schedule is made available.

### § 150.711 [Reserved]

### § 150.712 Adjustment for significant changes in patient mix.

(a) If an acute care hospital experiences significant changes in patient mix, and if the hospital uses either of the systems described in paragraph (b) of this section and the methodology set forth in paragraph (c) of this section to allocate its admissions and to adjust its charges and expenses, the hospital may increase its applicable fiscal year allowances in total inpatient operating charges and total inpatient reimbursed expenses per admission prescribed in §§ 150.705 and 150.706 in accordance with the provisions of this section.

(b) Standard Patient Allocation Systems. An acute care hospital shall use either of the following two standard patient allocation systems to allocate admissions:

*System A.* An acute care hospital may classify admissions among the following categories:

Medical
Surgical
Pediatric
Obstetric
Psychiatric

*System B.* An acute care hospital may use the Hospital Adaptation—International Classification of Diseases Adapted For Use in the United States (H–ICDA, 1968 edition, Commission on Professional and Hospital Activities, 1968 Green Road, Ann Arbor, Michigan 48105) in such a way as to include at least 85 percent of its admissions. The balance of the admissions must be included as "other."

(c) Standard Methodology for Adjustment of Charges and Expenses.

*Step 1.* Determine the basic patient categories according to either standard System A or B described in paragraph (b) of this section, or another allocation system.

*Step 2.* Determine the current year distribution of patients using the categories selected in Step 1.

*Step 3.* Calculate last year's total admissions, and apply the current year's distribution (Step 2) to them, i.e. restate last year's admissions in terms of this year's patient distribution.

*Step 4.* Determine on a reliable and valid sample basis last year's gross charges per admission in each of the categories selected in Step 1.

*Step 5.* Apply last year's gross charges per admission for each category (Step 4) to the number of "restated" admissions in each category (Step 3) to obtain the "restated" total charges for last year.

*Step 6.* Divide the restated total charges (Step 5) by the actual admissions last year (Step 3) to obtain the "restated" charge per admission.

*Step 7.* Divide last year's "restated" charge per admission by last year's actual charge per admission, and subtract the numeral 1 from the quotient and multiply the result by 100%, to obtain a "patient mix factor".

*Step 8.* Adjust the limitations on the total inpatient operating charges and total inpatient reimbursed expenses of §§ 150.705 and 150.706 by adding to the limitations set forth in such sections the patient mix factor obtained in Step 7. The supporting calculations must be included with Form CLC–61 submitted to the Cost of Living Council and to third party payors.

(d) Notwithstanding the provisions of paragraphs (a) through (c) of this section, at any time during a fiscal year, an acute care hospital may request approval from the Cost of Living Council of a patient classification system different from those set forth in paragraph (b) of this section to document the effects of patient mix changes. The acute care hospital may also request approval of a methodology differing from that set forth in paragraph (c) of this section to adjust charges and expenses. The acute care hospital must demonstrate in documentation accompanying the request for approval of a differing methodology, the validity and reliability of its data and the proposed method to identify the effects of change in patient mix. Once the alternative system or methodology has been approved, the acute care hospital may use it to adjust increases in total inpatient operating charges and total inpatient reimbursed expenses per admission.

(e) Once an acute care hospital has received approval from the Council to document patient mix changes on the basis of an alternative system, any further change in system can be made only with the prior written approval of the Council. The Council will not approve changes to less sophisticated systems.

(f) (1) If the adjustment authorized by this section exceeds 25 percent of the allowances specified in §§ 150.705 and 150.706 and is calculated on the basis of budgeted or projected data, the hospital shall notify the Council in writing of the magnitude of the percentage and dollar amount of the adjustment. The hospital may not implement the adjustment until the notice of the proposed adjustment,

and substantiating documentation, have been filed with the Council and 30 days have elapsed from the day on which the notice and substantiating documentation were filed. The Council shall notify the hospital in writing of the date of filing. If the notice and documentation are incomplete or inadequate, the Council shall not accept the filing and shall so notify the hospital.

(2) If the adjustment authorized by this section exceeds 25 percent of the allowances specified in §§ 150.705 and 150.706 but it is calculated on the basis of actual data, the hospital may immediately implement the adjustment up to a maximum adjustment of 25 percent of the allowances specified for total inpatient operating charges and total inpatient reimbursed expenses but may not implement that portion of the total adjustment exceeding 25 percent until after thirty days have elapsed following the filing of the annual report required by § 150.717 together with its request for permission to implement the adjustment in full. The Council shall notify the hospital in writing of the date of filing. If the annual report is incomplete or inadequate with respect to the adjustment the Council shall not accept the filing for purposes of the adjustment and shall so notify the hospital.

(3) During this 30 day period, the Council may issue an order disapproving, modifying, suspending or deferring the proposed adjustment in whole or in part, if it finds that the proposed adjustment does not conform to the rules of this part.

(4) The Council may issue a notice temporarily suspending the running of the 30 day period if it finds additional information is necessary. The 30 day period shall resume running when the Council notifies the hospital in writing that the additional information has been received and accepted.

(5) If the Council does not act on the proposed adjustment within the 30 day period specified in this paragraph, the hospital may implement the proposed adjustment immediately upon expiration of the 30 day period. Failure of the Council to act upon the proposed adjustment within the 30 day period does not constitute approval of the adjustment and nothing in this section shall be construed to limit the authority of the Council to modify, suspend, disapprove or defer in whole or in part any adjustment implemented pursuant to this section if the Council finds that the adjustment is based on erroneous calculations, has been implemented in bad faith, or does not conform to the rules of this part.

**§ 150.713 Approval of capital expenditures by a State's planning agency.**

(a) When an acute care hospital has obtained the approval of a State's planning agency for a capital expenditure in accordance with the provisions of this section, the hospital may establish new charges for the services or property resulting from the capital expenditure in accordance with § 150.709, and adjust its total inpatient operating charges and reimbursed expenses for such services or property in accordance with Form CLC–61. However, when a capital expenditure incurred prior to January 1, 1974, was approved on the merits by a planning agency listed in paragraph (b) of this section, the hospital shall not be subject to the provisions of paragraphs (b) through (e) of this section, and may establish new charges in accordance with § 150.709, and adjust its charges and expenses as provided in this paragraph.

(b) A capital expenditure under consideration by the acute care hospital must be approved on the merits, based upon a clear demonstration of community need, by the appropriate planning agency specified in this paragraph. The acute care hospital must request approval from the planning agency designated pursuant to section 1122 of the Social Security Act. (Pub. L. 92–603, 86 Stat. 1386–89 (42 U.S.C. 1320a–1)). If a State is not participating in the program under section 1122, then the approval must be obtained from the State agency administering a certificate of need program for acute care hospitals. If a State is not participating in a program under section 1122 and has no State agency administering a certificate of need program, then the approval must be obtained from an agency designated under section 314(b) of the Public Health Service Act (Pub. L. 92–585, 86 Stat. 1292 (42 U.S.C. 246(b)); otherwise, approval must be obtained from a State agency designated pursuant to section 314(a) of the Public Health Service Act (Pub. L. 92–585, 86 Stat. 1292 (42 U.S.C. 246(a)).

(c) The capital expenditure, directly related operating expenses, and the prices to be charged for the services proposed in the project must be approved on the merits by either the same agency which granted an approval under paragraph (b) of this section or another agency (such as a rate-setting commission or hospital commission) designated by the Governor of the State or the Mayor of the District of Columbia to perform this specific function. However, if a State is participating in the program under section 1122, the agency designated pursuant to section 1122 must be the approving agency.

(d) An agency which reviews a request for approval of a capital expenditure and directly related operating expenses by an acute care hospital under paragraph (c) of this section must evaluate the following:

(1) All expenses attributable to the capital expenditure and directly related operating expenses, calculated without regard to the annual allowances authorized by this subpart.

(2) Charge increases, calculated in accordance with § 150.709, required to finance the proposed project taking into consideration cash legally available from restricted reserves for both capital expenditures and operating expenses.

(e) Within sixty (60) days after the date of the approval, the chief executive officer of the acute care hospital shall so notify the Cost of Living Council in writing. The written notice shall be accompanied by a copy of the approval, a complete statement of approved charges and expenses, and a written statement signed by the chairman of the governing board of the hospital certifying that funds legally available from restricted reserves have or will be applied to the capital expenditure or its directly related operating expenses in accordance with the approval.

**§ 150.714 Exceptions.**

(a) No acute care hospital may exceed the limitations set forth in §§ 150.705, 150.706, and 150.707 except as may be authorized pursuant to this subpart. Each acute care hospital making a request for exception shall, in addition to meeting the specific requirements of this section, prepare any request for exception to be submitted to the Council in conformity with the general provisions relating to exceptions prescribed by Part 155 of this title and shall obtain the recommendation of the State advisory agency referred to in § 150.715 on the request for exception. The State advisory agency shall forward the hospital's request for exception, together with its recommendation, directly to the Council. The requirement for the recommendation shall not apply if the State advisory agency fails to act within thirty (30) days unless the agency shall have requested corrected or additional information in which case the thirty (30) day period shall be suspended from the date of the request until the agency informs the hospital that the information has been received. The 30 day period shall then resume running.

(b) Requests for exception submitted under this section by an acute care hospital are considered to be provisionally approved 60 days after the date of filing of the request with the Council. The Council shall inform the acute care hospital promptly by written notice of the date of filing and the docket number of the request for exception.

During the 60 day period, the Council may issue a suspense notice which shall have the effect of preventing the unexpired portion of the 60 day period from continuing to run, if the documents submitted by the hospital are incomplete, erroneous or do not meet the criteria set forth in this section. In any case in which the Council issues a suspense notice and requests additional or corrected information from the hospital, the 60 day period shall resume running only after the Council has informed the hospital that the information has been received and accepted. The charge or expense increases made under the authority of this section shall be applied only to services or property provided to patients by the hospital after the 60-day period has expired. If after implementation of an increase following the expiration of the 60-day period, the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the increase. In such an instance, if the exception request had been submitted in good faith, the acute care hospital shall not be required to refund any monies received,

or to reduce reimbursements otherwise allowable from the date of expiration of the 60-day period until the Council's determination of the request or be subject to any criminal fine or civil penalty on account of the increase implemented on the basis of the provisional approval of this section.

(c) (1) An acute care hospital may request from the Council an exception for adjustment, to be calculated in accordance with § 150.709 and Form CLC-61, in the charge and expense limitations set forth in § 150.705, § 150.706, or § 150.707, by reason of capital expenditures when the State approval procedures authorized by § 150.713 are or were not available to the acute care hospital. The request for exception must be accompanied by supporting documentation, indicating the reason why the approval procedures were not available, and permitting the Council to evaluate the following:

(i) Whether there exists a community need for the proposed project adequate to assure financial support without causing localized shortages of labor or serious hospital market disruptions susceptible of requiring other exceptions by the Council;

(ii) Whether the project will foster cost containment initiatives or improved efficiency and productivity in the acute care hospital;

(iii) All charges and directly related operating expenses attributable to the capital expenditure calculated without regard to the annual allowances authorized by this subpart;

(iv) Charge increases, calculated in accordance with § 150.709, required to finance the proposed project taking into consideration funds legally available from restricted reserves for both capital expenditures and directly related operating expenses.

(2) The request must be submitted to the Council within twelve months following the date that the services and property furnished by reason of the capital expenditure were first made available to patients.

(3) Each request shall be signed by the chief executive officer of the hospital. The request also shall be accompanied by a written statement signed by the chairman of the governing board of the hospital certifying that funds legally available from restricted reserves have been or shall be applied to the capital expenditure or its directly related operating expenses as stated in the request for exception.

(d) An acute care hospital may request an exception for experimentation in hospital reimbursement methodologies. The Council may grant a prospective exception to a single hospital or to a group of hospitals as members of a class, geographic or otherwise. The Council may consult with the Department of Health, Education and Welfare prior to making its determination. Requests submitted pursuant to this paragraph need not be cost justified.

(e) (1) An acute care hospital may request an exception as provided in this paragraph when a serious hardship or gross inequity has been caused by any of the following occurrences:

(i) A demonstrable increase in bad debts experience that causes the hospital's gross charges not to reflect accurately actual collections;

(ii) Increased expenses resulting from requirements imposed by law or government regulation; and

(iii) Increased expenses incurred by reason of wage and salary increases that are exempt under the provisions of § 152.-32 of this chapter, or are below minimum wage rates imposed by Federal or State statutes of general application.

(2) Each request for an exception will be evaluated on the basis of cost justification. In reviewing evidence of the cost justification submitted by the hospital, the Council will also consider evidence of cost containment initiatives, prudent management practices and evidence of consistent application of accepted accounting principles demonstrated by the hospital. As part of its evaluation, the Council will review the following financial factors:

(i) All allowable operating expenses, including depreciation, and special reserve accounts that are required to be replenished by reason of contractual agreement or consistent historical application of a governing board resolution;

(ii) Working capital needs; and

(iii) All revenues from patient services, and revenues from other operating activities.

(f) An acute care hospital may request an exception for any reason causing a serious hardship or gross inequity. Each request submitted pursuant to this paragraph shall be evaluated on the basis of cost justification. In reviewing the cost justification submitted by the hospital, the Council shall also consider evidence of cost containment initiatives, prudent management practices and consistent application of accepted accounting principles demonstrated by the hospital. As part of its evaluation, the Council shall review the following financial factors:

(1) All allowable operating expenses, including depreciation, and special reserve accounts that are required to be replenished by reason of contractual agreement or consistent historical application of a governing board resolution;

(2) Working capital needs;

(3) All legally available funds from revenues from patient services, revenues from other operating activities; and revenues from non-operating sources such as unrestricted gifts received during the fiscal year being reviewed or unrestricted income from unrestricted and restricted reserves;

(4) Changes in any charges or directly related operating expenses resulting from capital expenditures previously authorized under this subpart or resulting from services or property authorized under Cost of Living Council Notice No. 73-2 (38 FR 30798); and

(5) Evidence of cost behavior that is unanticipated and significantly different from that on which the hospital has budgeted.

### § 150.715 Advisory State actions.

The governor of each State and the mayor of the District of Columbia are each requested to designate an agency to advise the Council on requests for exceptions to these regulations or on any other matters that the Council may from time to time specify. Each agency shall review the requests for exception filed with it under § 150.714(a) pursuant to the applicable guidelines set forth in this subpart and whenever it considers that the granting of an exception is essential to the provision of adequate health services and consistent with the Economic Stabilization Program shall recommend to the Administrator of the Office of Health, Cost of Living Council that an exception be granted by the Council.

### § 150.716 State control program.

(a) Any State or the District of Columbia, or within such jurisdiction, an agency designated by the governor or mayor of the District of Columbia that has a health care price control program may apply to the Cost of Living Council for authorization to administer the control program within the State in lieu of the controls set forth in §§ 150.701 through 150.729 and administered by the Cost of Living Council. The State agency shall submit to the Cost of Living Council a comprehensive description of its proposed stabilization plan and of its existing or proposed rules for use by the agency in considering requests for price increases for the acute care hospitals under its jurisdiction. The submission to the Council must include an evaluation by the acute care hospitals or associations of acute care hospitals to be covered by the control program.

(b) The governor of a State or the mayor of the District of Columbia may designate an agency to coordinate a health care price control program and assign to a nongovernmental organization the responsibility for administering the program.

(c) To qualify for authorization under this section, a control program must—

(1) Have as its objective the substantial limitation of the rising price of health care, and there must be reasonable basis for determination that the objective can be met;

(2) Include rules and regulations that are fair and equitable;

(3) Contain adequate and assured funds for staffing, commencement of program and operations for a minimum of one year;

(4) Provide for participation in policy development by provider groups, acute care hospitals and consumers;

(5) Be coextensive in coverage with the Economic Stabilization Program controls for acute care hospitals, or it must be demonstrated that the State program will have substantial impact on health care charges and expenses;

(6) Include objective standards by which to measure overall performance;

(7) Include uniform standards for measuring individual provider performance;

(8) Include procedures for consideration of requests for exception and for review of original decisions denying such requests;

(9) Include provisions to assure compliance. (Such provisions may provide for the agency to order refunds, rollbacks, or such other remedies that are reasonable and appropriate to achieve compliance.); and

(10) Include a provision for price posting similar to that required in § 150.710.

(d) If the Cost of Living Council approves the proposed stabilization program and rules of an agency, it will notify the agency that when those proposed rules are finally adopted and put into effect by the agency, the Cost of Living Council will issue a certificate of compliance to that agency. If the Cost of Living Council approves existing rules of an agency, it will issue a certificate of compliance to that agency.

(e) An acute care hospital may place in effect, in accordance with the rules of an agency to which a certificate of compliance has been issued, any price increase authorized or allowed to go into effect under that State program.

(f) Except as provided in paragraphs (g) and (h) of this section, actions taken under the program of an agency to which a certificate of compliance has been issued under paragraph (d) of this section are not subject to review by the Cost of Living Council.

(g) Each agency to which a certificate of compliance has been issued under paragraph (d) of this section shall also agree to furnish periodically to the Cost of Living Council such information as the Council may prescribe for the Council's use in determining whether the agency is following its adopted rules and whether the purposes of the Economic Stabilization Program are being served.

(h) The Cost of Living Council may revoke a certificate of compliance issued under paragraph (d) of this section at any time, or take such other action with respect to the certificate as it considers appropriate, if it determines that the rules to which the certificate applies are not being followed or are not serving the purposes of the Economic Stabilization Program. Price increases approved under the State program prior to such revocation or other action shall in no way be affected by such revocation or other action.

(i) Any acute care hospital not subject to a control program certified under this section is subject to this subpart.

### § 150.717 Reporting procedures.

Each acute care hospital shall, within 120 days after the end of each fiscal year, submit a completed Form CLC-61 to the Office of Health (Compliance), Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508.

### § 150.718 Self-monitoring.

Acute care hospitals are urged to monitor their own compliance with the regulations of this subpart by the quarterly preparation and review of Form CLC-61, and in accordance with any guidelines promulgated by the Council for the purposes of enhancing initiatives of self-compliance.

### § 150.719 Prohibition.

No acute care hospital subject to this subpart may adopt any change in charging practices, reduction in quality or quantity of services, or any other practice that has the effect of avoiding compliance with any provision of this Title.

### § 150.720 Remedies for Non-Compliance.

(a) In addition to any remedies provided in Part 155, if the Council determines that:

(1) The limitations on charges contained in § 150.705, § 150.706, or § 150.707 have been exceeded, and no exception has been granted, the Council may order—

(i) The reducton of charges to compensate for those charges made in excess of the limitations; or

(ii) The reduction of charges to assure that total charges will not exceed the limitations contained in § 150.705, § 150.706, or § 150.707; or

(iii) The refund to all charge payors of an amount equal to that portion of the excess allocable to charge paying patients (the amount to be refunded or credited to an account shall be allocated on a pro rata basis—each charge multiplied by the percent of excess over total charges); or

(iv) Any other action which is reasonable and appropriate to cause the remission of such excess charges, or

(v) Any combination of actions under this paragraph (a)(1);

(2) The limitations on total inpatient reimbursed expenses contained in §§ 150.705 and 150.706 have been exceeded, and the total inpatient operating expenses per admission have increased over the preceding fiscal year's total inpatient operating expenses per admission by a percentage greater than the percentage increase allowable for charges and reimbursements, the Council may order—

(i) The amount of the excess of total inpatient reimbursed expenses to be credited to settlements with cost reimbursers on a pro rata basis; or

(ii) Any other action which is reasonable and appropriate to cause the restitution of such excess reimbursed expenses.

(b) Except as otherwise provided in this subpart, if an acute care hospital determines that it has exceeded the applicable limitations of § 150.705, § 150.706, or § 150.707, the hospital shall submit a plan for achieving compliance with these sections to the Office of Health (Compliance), Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508. Such a compliance plan may provide for a reduction of charges or reimbursed expenses, a stipulation of no charge or reimbursed expense increases for a certain period of time, refunds, or any other action which is reasonable and appropriate to cause the remission of such excess charges or reimbursed expenses, or a combination of any of the foregoing. The Cost of Living Council may approve such a plan, order certain changes, or order a different plan of its own design.

### § 150.721 Communications with the Cost of Living Council.

Acute care hospitals should address all notices and requests made to the Council under this subpart to the Office of Health, Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508.

### § 150.722 Savings and severability.

(a) If this subpart is held invalid with respect to any acute care hospital, Subpart O of this part in effect on December 31, 1973 shall govern the acute care hospital.

(b) If any provision of §§ 150.701 through 150.722 applicable to acute care hospitals is held invalid, the other provisions of those sections shall remain in full force and effect.

## Medical Practitioners and Medical Laboratories

### § 150.730 Scope and applicability.

(a) Effective January 1, 1974, §§ 150.730 through 150.743 apply to each medical practitioner and, except for §§ 150.734(e), 150.735, and 150.737, to each medical laboratory.

(b) A medical practitioner who is under contract to one or more Health Maintenance Organizations and who derives at least 75 percent of his aggregate annual revenues from services rendered to Health Maintenance Organization members pursuant to a contract, is subject to the rules and regulations applicable to Health Maintenance Organizations and Health Maintenance Organization providers of health care.

### § 150.731 Continued applicability of existing regulations.

Except as otherwise provided in § 150.730, each medical practitioner and each medical laboratory is subject to Subpart O of this Part through December 31, 1973.

### § 150.732 Definitions.

For purposes of this subpart and in addition to the definitions in § 150.31:

"Aggregate annual revenues" means the total revenues for the fiscal year concerned derived from the provision of all medical services and properties, including—

(1) Revenues from daily patient services (surgery, laboratory and X-ray, office visits, home and hospital calls, and similar services);

(2) Revenues from the sale of medicines and drugs; and

(3) Revenues from other services, sales, and activities directly related to the provision of health care.

"Base period" means, at the option of the medical practitioner, any two of that practitioner's fiscal years ending after August 15, 1968, and prior to a fiscal year for which compliance is being measured. However, a practitioner who was authorized under the provisions of § 130.110 of this chapter in effect on August 12, 1973, to include in its base period a fiscal year which ended before August 15, 1968,

may continue to include that fiscal year in its base period.

"Base period revenue margin" means the ratio that the base period net revenues (aggregate annual revenues less total operating expenses directly related to the provision of health care) bears to the base period aggregate annual revenues, computed in accordance with generally accepted accounting principles consistently applied. For the purpose of this definition, revenues and operating expenses derived from the provision of health care under a contract with a Health Maintenance Organization may be excluded in the computation of base period revenue margin.

"Class of purchasers" means a category or a group of purchasers to which a medical practitioner or medical laboratory has charged a comparable price for a comparable service or property pursuant to a customary price differential among those groups or categories of purchasers.

"Customary price" means the price which was or would be charged in a substantial number of transactions to a class of purchasers for a service or property.

"Medical laboratory" means a firm or that part of the firm primarily engaged in providing professional analytic or diagnostic services to a person subject to this subpart or to a patient on prescription of a medical practitioner. The term does not include a dental laboratory.

"Medical practitioner" means a physician, surgeon, osteopathic physician, dentist, dental surgeon, or podiatrist. A medical practitioner may be an individual practicing alone, or a group of individuals practicing together in the form of a professional partnership, association, or corporation.

"New market" means a location in a Medicare locality, as determined under 30 CFR 405.505, other than the Medicare locality in which a medical practitioner or medical laboratory had been providing health care services or property, or, with the prior approval of the Council by exception, a different location within the same Medicare locality.

"New service or property" means a service or property which the medical practitioner or medical laboratory did not sell or lease in the same or substantially similar form at any time during the one-year period immediately preceding the first date on which it is offered for sale or lease. For the purposes of this definition, a change in appearance, arrangement, combination, method of technology of providing a service, or certification by a medical specialty board, does not create a new service or property.

"Price" means any fee or charge for the sale or lease of any service or property, regardless of form and regardless of the amount of the fee or charge paid or reimbursed.

"Revenue margin" means the ratio that net revenues (aggregate annual revenues less total operating expenses directly related to the provision of health care) bears to aggregate annual revenues for a fiscal year, computed in accordance with generally accepted accounting principles consistently applied. For the purpose of this definition, revenues and operating expenses derived from the provision of health care under a contract with an HMO may be excluded in the computation of revenue margin.

**§ 150.733 Prior commitments.**

(a) Notwithstanding any other provision of this subpart, all prospective decisions, interpretations, and prospective exceptions authorizing a minimum dollar increase issued prior to January 17, 1974, to a specific medical practitioner or medical laboratory covered under this subpart remain in force.

(b) For purposes of calculating the first year's allowances authorized under this subpart, each medical practitioner and medical laboratory shall use no more than the unused portion of the maximum authorized allowable percentage price increase available on December 28, 1973, for the two control years under the non-institutional providers of health services sections of Subpart O of this Part. The maximum authorized allowable percentage price increase for purposes of this paragraph is 5 percent.

**§ 150.734 Price increase limitations.**

(a) Except as provided in paragraph (b) of this section with respect to a fixed dollar amount charged under a contract with another health care provider and except for prices charged under a contract with a new HMO, a medical practitioner and medical laboratory may not increase any of their prices in excess of the following limitations:

(1) The customary prices for all services and property may not exceed 104 percent, computed on an aggregate weighted basis using the immediately preceding calendar year's billings, of the customary prices for all services and property lawfully in effect on the last day of the immediately preceding calendar year; and

(2) The price charged, rounded to the nearest quarter dollar, for any service or property may not exceed 110 percent of the customary price lawfully in effect for that service or property on the last day of the immediately preceding calendar year. However, price increases need not be limited to amounts less than $1.00.

(3) For purposes of paragraph (a) of this section, a "price" in a percentage of gross or net revenue contract with another health care provider is the amount determined by multiplying the percentage specified therein times the appropriate unit price, i.e. gross or net revenue price, of each service performed or product provided.

(b) The fixed dollar amount specified in a contract with another health care provider for a service or property, other than on a fee-for-service basis but including a maximum or minimum guarantee, may not exceed 106.2 percent of the dollar amount specified in the contract for the same service or property in the preceding contract year.

(c) Notwithstanding the limitation of paragraph (a)(1) of this section, any unused price increases computed on an aggregate weighted basis to which a medical practitioner or medical laboratory is lawfully entitled (including those accruing prior to the effective date of this regulation) may be accumulated for more than one calendar year and carried forward for use in a subsequent year, but not compounded.

(d)(1) The formula for determining price increases computed on an aggregate weighted basis under paragraph (a)(1) of this section, herein referred to as *%AWPI*, is as follows:

$$\%AWPI=\sum\frac{P_2-P_1}{P_1}\times\frac{B_1}{B_2}\times 100$$

where,

$P_1$=The customary price lawfully in effect on the last day of the immediately preceding calendar year for a service or property.

$P_2$=The highest customary price charged or to be charged during the current calendar year for that service or property.

$B_1$=The actual gross billings during the immediately preceding calendar year for that service or property.

$B_2$=The total gross billings during the immediately preceding calendar year for all services or property.

$\Sigma$=The sum of.

(2) If a medical practitioner or medical laboratory elects not to increase a price for any service or property, rounded to the nearest quarter dollar, over the price lawfully in effect for that service or property on the last day of the immediately preceding calendar year in excess of that percentage increase authorized under paragraphs (a)(1) and (c) of this section, the price increases may be implemented without regard to the computation of %AWPI in paragraph (d)(1) of this section.

(3) If actual gross billings for every service or property whose price is to be increased cannot be determined with reasonable accuracy, the formula for determining %AWPI in paragraph (d)(1) of this section may be adjusted as follows:

$$\%AWPI=\sum\%I\times\frac{G_1}{B_2}$$

where,

$\%I$—The highest percentage price increase for any service or property within a group of similar or related services or property.

$G_1$—The actual gross billings during the immediately preceding calendar year for that group of similar or related services or property.

(e) A dentist may increase the price of a dental item in which gold or silver is used, without regard to paragraphs (a)(1) and (a)(2) of this section, to reflect the actual increase since November 14, 1971, in the cost of gold or silver used in that item on a dollar-for-dollar basis, without rounding off. Any actual decrease in the cost of gold or silver used in that item shall likewise be reflected, dollar-for-dollar in the price of that item.

**§ 150.735 Revenue margin limitation.**

(a) In addition to the limitations set forth in § 150.734 if a medical practitioner increases any price, except for a price charged under a contract with a Health Maintenance Organization, as defined in § 150.750, over the price lawfully in effect on the last day of the immediately preceding fiscal year, his revenue margin may not exceed his base period revenue margin during—

(1) That fiscal year, if the price is increased during the first fiscal quarter, or

(2) That fiscal year and the succeeding fiscal year, if the price is increased subsequent to the first fiscal quarter.

(b) If a medical practitioner has incorporated during or subsequent to the base period, the medical practitioner shall determine its revenue margin and base period revenue margin under paragraph (a) of this section by excluding from operating expenses all amounts of salary and the amount of deferred compensation in excess of the amount permitted to be deferred under the self-employed retirement plan (the Keogh Plan), authorized by 26 U.S.C. 401, for any individual medical practitioner who is an owner-employee as defined at 26 U.S.C. 401(c)(3).

(c) If a medical practitioner is a professional partnership, the partnership shall determine its revenue margin and base period revenue margin under paragraph (a) of this section by excluding from operating expenses any salaries paid to employees who are medical practitioners. For purposes of this paragraph employees who are medical practitioners shall include only those earning more than 50 percent of their medical practice income from the partnership.

**§ 150.736 New services or property.**

(a) The price for a new service or property or for a service or property being provided in a new market shall be determined as follows:

(1) The price of the service or property shall be the customary price charged by a substantial number of other comparable medical practitioners or medical laboratories providing a comparable health care service or property in the same marketing area; or

(2) If comparable health care services or property are not provided by other comparable medical practitioners or medical laboratories, then the medical practitioner or medical laboratory may use any other pricing practice commonly used by other comparable medical practitioners or medical laboratories engaged in comparable medical practice in the same marketing area.

(b) A medical practitioner or medical laboratory may use the special pricing rules of this section at any time within twelve months after the service or property described in paragraph (a) of this section was first made available to patients. A medical practitioner or medical laboratory may not raise its charges for such a service or property when more than twelve months have elapsed since the service or property was first made available to patients.

(c) The Council may modify, defer, suspend or disapprove any charges or expenses implemented pursuant to this section if the Council finds that such charges or expenses are inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program.

**§ 150.737 Group practice.**

(a) The price with respect to the furnishing of a service or property when one medical practitioner joins or forms a group with another medical practitioner or practitioners shall be—

(1) The price previously in effect for each of the medical practitioners; or

(2) The highest price at or above which all medical practitioners to be in the group charged for the service or property in at least 25 percent of their transactions within the same market with the same class of purchasers during the immediately preceding calendar year.

(b) The revenue margin and base period revenue margin, when one medical practitioner joins or forms a group with another medical practitioner or practictioners, shall be combined and reconciled consistent with generally accepted accounting principles.

**§ 150.738 Price schedules.**

Each medical practitioner and medical laboratory shall maintain at each facility a schedule showing the customary prices in effect on December 28, 1973, for each class of purchasers for services or property which comprise 90 percent of aggregate annual revenues, each subsequent change in the price of these services or property, and the date the change of price was made. If price increases are implemented on an aggregate weighted basis under § 150.734(d)(1) or (3), the weights for each service or property or group of related services or property whose prices are increased shall also be shown on the schedule. The schedule shall be made available for public inspection, and a copy shall promptly be furnished or mailed to any third party payor or Cost of Living Council representative upon request. Each practitioner and medical laboratory shall post a conspicuous and easily readable sign in each facility stating the availability and location of the schedule. This requirement applies to each medical practitioner and medical laboratory regardless of whether prices have been increased. No price may be increased before the sign is posted and the schedule is made available for public inspection.

**§ 150.739 Exceptions.**

(a) Unless a medical practitioner or medical laboratory has requested and received an exception from the Cost of Living Council for the purpose of preventing or correcting a serious hardship or gross inequity, the medical practitioner or medical laboratory shall not implement a price increase in excess of the limitations set forth in these sections and the medical practitioner shall not exceed the revenue margin limitation set forth in § 150.735. Subject to the general requirements relating to exceptions imposed by Part 155 of this chapter, the Council shall consider all relevant factors in reviewing an exception request such as:

(1) For the revenue margin limitation—

(i) Whether the base period is substantially unrepresentative of the petitioner's current practice;

(ii) Whether a demonstrably significant increase in the amount of medical care has been delivered (including as one measurement, the additional total hours worked); or

(iii) Whether effective cost containment initiatives have been undertaken by the medical practitioner.

(2) For the price increase limitations—

(i) Whether the prices lawfully in effect prior to the effective date of these regulations are substantially unrepresentative of the petitioner's current practice;

(ii) Whether a significant imbalance exists between the costs and a price charged for a specific service or property;

(iii) Whether the medical practitioner is contemplating a move to an underserved area where medical care is badly needed.

(b) In the absence of the factors enumerated in paragraph (a)(2) of this section, it shall be presumed that the petitioner's revenue margin must not be increasing before factors such as the following are considered for an exception request for the price increase limitations:

(1) Substantial government mandated cost increases;

(2) Cost increases related to substantial and significant improvements in the quality of service or property already provided;

(3) Current operating revenues inadequate to meet current operating expenses;

(4) Significant change in amount of bad debts; or

(5) Increased expenses incurred by reason of wage and salary increases that are exempt under the provisions of § 152.32 of this chapter, or below minimum wage rates imposed by Federal or State statutes of general application.

(c) Requests for exception submitted by a medical practitioner or medical laboratory may be considered to have been provisionally approved sixty days after the date of filing of the request with the Council. The Council shall inform the medical practitioner or medical laboratory promptly by written notice of the date of filing and the docket number of the request for exception. During the 60-day period, the Council may issue a suspense notice which shall have the effect of preventing the unexpired portion of the 60-day period from continuing to run if the documents submitted by the medical practitioner or medical laboratory are incomplete or erroneous. In any case in which the Cost of Living Council issues a suspense notice and requests additional or corrected information from the medical practitioner or medical laboratory, the 60-day period shall resume running only after the Council has informed the medical practioner or medi-

cal laboratory that the information has been received and accepted. The price increases made under the authority of this section shall be applied only to services or property provided to patients by the medical practitioner or medical laboratory after the 60-day period has expired. If after implementation of an increase pursuant to the expiration of the 60-day period the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the increase. In such an instance, if the exception request had been submitted in good faith, the medical practitioner or medical laboratory shall not be required to refund any monies received, or to reduce reimbursements otherwise allowable from the last day of the 60-day period through the date of the Council's determination of the request; nor shall the medical practitioner or medical laboratory be subject to any criminal fine or civil penalty on account of the increase implemented on the basis of provisional approval granted pursuant to the operation of this section.

**§ 150.740 Prohibition.**

No medical practitioner or medical laboratory subject to this subpart may adopt any change in charging practices, reduction in quality or quantity of services, or any other practice that has the effect of avoiding compliance with any provision of this Title.

**§ 150.741 Remedies for non-compliance.**

(a) In accordance with Subpart E of Part 155 of this chapter, and in addition to any remedies provided therein, if the Council determines that either the revenue margin limitation contained in § 150.735 or the price increase limitations contained in § 150.734 have been exceeded, and no exception has been granted, the Council may order—

(1) The reduction of prices to compensate for the amount by which the limitations were exceeded; or

(2) The reduction of prices to assure that the medical practitioner is in compliance; or

(3) The refund of an aggregate amount equal to the amount by which the limitations were exceeded (the amount to be refunded or credited to an account shall be allocated on a pro rata basis); or

(4) Any other action which is reasonable and appropriate to cause the remission of such excess prices; or

(5) Any combination of actions under paragraphs (a)(1), (2), (3), or (4) of this section.

(b) If a medical practitioner has exceeded the revenue margin limitation under § 150.735 or a medical practitioner or medical laboratory has exceeded any price increase limitation under § 150.734, the medical practitioner or medical laboratory shall submit a plan for achieving compliance with these sections to the Office of Health (Compliance), Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508. Such a compliance plan may provide for a reduction of prices, a stipulation of no price increases for a certain period of time, the refund of revenues, or any other action which is reasonable and appropriate to cause the remission of such excess prices, or a combination of any of the foregoing. The Cost of Living Council may approve such a plan, order certain changes, or order a different plan of its own design.

**§ 150.742 Communications with the Cost of Living Council.**

Medical practitioners and medical laboratories should address all notices and requests made to the Council under this subpart to the Office of Health, Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508.

**§ 150.743 Savings and severability.**

(a) If this subpart is held invalid with respect to any medical practitioner or medical laboratory, Subpart O of this part in effect prior to the effective date of Subpart R shall govern the medical practitioner or medical laboratory.

(b) If any provision of §§ 150.730 through 150.743 applicable to medical practitioners and medical laboratories is held invalid, the other provisions of those sections shall remain in full force and effect.

**HEALTH MAINTENANCE ORGANIZATIONS (HMOs) AND HEALTH MAINTENANCE ORGANIZATION PROVIDERS OF HEALTH CARE**

**§ 150.748 Scope and applicability.**

Sections 150.748 through 150.763 apply to each Health Maintenance Organization (HMO) beginning with its first fiscal year commencing on or after January 1, 1974, and to each HMO provider of health care beginning with the effective date of these rules for such providers.

**§ 150.749 Continued applicability of existing regulations.**

Except as otherwise provided in § 150.748, each HMO and each HMO provider of health care whose current fiscal year begins prior to January 1, 1974 is subject to Subpart O of this Part in effect on December 31, 1973, until the completion of its current fiscal year.

**§ 150.750 Definitions.**

For purposes of this subpart and in addition to the definitions in § 150.31:

"Health maintenance organization" (HMO) means a private or public organization which provides, either directly or indirectly through arrangements with others, reasonably comprehensive health care services to HMO members primarily on a per capita prepayment basis, and which requires that a medical practitioner or group of medical practitioners who are under contract with an HMO share in the financial risk for the provision of health care services, and that members served are broadly representative of the general population. If an HMO operates in more than one geographical region, then for the purposes of this definition, the HMO may elect to treat each region as a separate HMO.

"HMO member" means a person entitled to the provision of health care by virtue of a prepaid contract or for stipulated consideration with an HMO.

"HMO provider of health care" means:

(1) An acute care hospital which owns or operates an HMO or which is owned or operated by or is under contract to an HMO, and which derives at least 75 percent of its total inpatient operating charges from services rendered to HMO members;

(2) A medical practitioner who is under contract to an HMO and who derives at least 75 percent of his aggregate annual revenues from services rendered to HMO members; or

(3) A long term care institution which owns or operates an HMO or which is owned or operated by or under contract to an HMO and which derives at least 75 percent of its realized revenues from services rendered to HMO members.

"New HMO" means an HMO that has been providing health care pursuant to a contract for prepaid services for less than four years and has fewer than 35,000 HMO members at the end of the last completed fiscal year.

"Prenotifier" means an HMO that had more than 60,000 HMO members at any time during the calendar year preceding the effective date of a proposed rate increase.

"Rate" means a unit charge which produces a premium amount to be charged or paid for the providing of health care through an HMO, calculated in accordance with a rate-making practice or formula, or developed under a classification system.

"Rate increase" means any increase in the premium or co-payments, a restriction in coverage, an increase in a deductible level, or any similar reduction in benefits to HMO members without a corresponding reduction in rates.

"State regulatory agency" means any commission, board or other legal instrumentality of the State or District of Columbia that has jurisdiction over rates or practices of HMOs in the State or the District of Columbia.

**§ 150.751 Prior commitments.**

(a) Notwithstanding any other provision of these regulations, all prospective decisions and prospective exceptions authorizing a rate or dollar increase issued under the Economic Stabilization Act prior to January 17, 1974, to Health Maintenance Organizations or HMO providers of health care covered under this subpart remain in force.

(b) Each HMO provider of health care may annualize the increases allowable under Subpart O of this part in effect on December 31, 1973, for purposes of determining allowances authorized under this subpart.

**§ 150.752 Criteria for rate increases.**

(a) Except as provided in paragraphs (b) and (c) of this section, each rate increase put into effect by an HMO after December 31, 1973, which would increase the rate above the level in effect on that

date, must be consistent with the following criteria:

(1) Actual costs may be used in the customary manner in the ratemaking process.

(2) Factors in the ratemaking process or in the actual determination of the final rate that relate to or reflect changes in claim frequency, occurrence or utilization, or similar changed conditions of risk may be used in accordance with customary practice provided such factors are supported statistically.

(3) Administrative expenses may be loaded on an actual cost basis, if statistically supported. If factors for administrative expenses are loaded as a percentage of the rate, they must be limited to a maximum of a 5 percent increase in the dollar amount represented by the loading.

(4) Any profit portion of the rate, whether loaded as a percentage of the rate or a dollar amount per contract, must be limited to a 2.5 percent increase in the dollar amount represented by the loading for the profit that was used in the prior rate. For purposes of this section, any portion of the rate which is classified as a contribution to reserve, contingency reserve or similar element where a profit as such is not a part of the ratemaking process, shall be treated as the profit provision.

(5) Factors in the ratemaking process anticipating costs or price increases may be used, if statistically supported, in accordance with the customary practice in the ratemaking process, subject to the following restrictions:

(i) For that portion of the factor that represents the provision of inpatient care in an acute care hospital, if the contract between the HMO and the acute care hospital is on a percentage of charge or fixed charge per admission basis, the increase is limited to 7.5 percent per admission per year; if the contract is on a per diem or charge basis, it shall be recomputed on a per admission basis and subject to the per admission contract limitation; if the contract is on a fixed dollar amount or per capita basis, the increase is limited to 9 percent per fixed dollar amount or per capita per year; or if the acute care hospital owns or operates an HMO or is owned or operated by the HMO, the increase is limited to 9 percent of its inpatient operating expenses per year.

(ii) For that portion of the factor that represents the provision of outpatient hospital care, if the contract is on a charge per procedure basis, the increase is limited to 6 percent per procedure per year; or if the contract is on a fixed dollar amount or per capita basis, the increase is limited to 9 percent per year.

(iii) For that portion of the factor that represents the provision of health care by a medical practitioner, if the contract is on a fee-for-service basis the increase is limited to 4 percent per charge per year; or if the contract is on a fixed dollar amount or per capita basis, the increase is limited to 6.2 percent per year.

(iv) For that portion of the factor that represents the provision of inpatient care by a long term care institution, the increase is limited to 6.5 percent in average realized revenues per diem per year.

(b) Increases in charges by an HMO for services and property not covered by a rate are not subject to any limitations as long as the anticipated revenues from such sources are offset against the rate that otherwise would be permissible.

(c) A new HMO is not subject to the limitations set forth in this section.

### § 150.753 Change in ratemaking formula.

No HMO may change a ratemaking formula, procedure or technique, or other element in the ratemaking process unless—

(a) The change will not result in an overall rate increase; or

(b) The change is necessitated by legislation or regulation promulgated in a particular jurisdiction; or

(c) Written approval has been granted by the Cost of Living Council.

### § 150.754 Prenotification.

Each prenotifier shall file a written notice with the Cost of Living Council and the appropriate State regulatory agency of the State to which the rate increase is applicable or the State regulatory agency of the HMO's domicile when a rate increase is proposed for use in more than one State, of each proposed rate increase in excess of 5 percent which affects $500,000 or more of its annual revenues under the existing rate. Each HMO submitting a notice under this section shall certify to the Cost of Living Council and the State regulatory agency that the proposed rate increase conforms to the requirements of §§ 150.752 and 150.753. The certification must be signed by the chief executive officer of the prenotifier or by an individual to whom he has delegated that authority. A copy of the delegation must be filed with the Cost of Living Council.

### § 150.755 Certification by State regulatory agency.

A State regulatory agency may agree, in writing, with the Cost of Living Council to certify that the rate increases of which it has received prenotification under § 150.754 are or are not in compliance with §§ 150.752 and 150.753. Each agency entering into such agreement with the Cost of Living Council shall furnish its certification to the Council (with a copy to the HMO) within 20 days after it receives the notice. A certification by an agency under this section is prima facie evidence that the proposed rate increase is or is not in compliance with §§ 150.752 and 150.753.

### § 150.756 Self-certification.

Whenever a prenotifier cannot obtain a certification of a rate increase from a State regulatory agency in accordance with § 150.755 because:

(a) There is no State regulatory agency;

(b) The State regulatory agency concerned has not agreed to furnish certification under that section; or

(c) The State regulatory agency did not act upon the filing within the period required under § 150.755, the prenotifier shall immediately notify the Cost of Living Council that it cannot obtain the certification and may request the Council to act upon the certification filed with it under § 150.754.

### § 150.757 Federal Employees Health Benefits Law.

The Cost of Living Council designates the U.S. Civil Service Commission to act as certifying agent for contracts of HMO's under the Federal Employees Health Benefits Law (5 U.S.C., Chapter 89). Each prenotifier that proposes to increase rates under a Federal Employees Health Benefits contract by more than 5 percent shall file notice thereof with the Cost of Living Council that the increase is or is not in compliance with § 150.752 and that certification is prima facie evidence of compliance or noncompliance. A rate certified by the Civil Service Commission as being in compliance may go into effect on any date, specified by that Commission, that is at least 10 days after the date of the certification, and at least 30 days after the date of prenotification.

### § 150.758 Cost of Living Council actions.

(a) With respect to any rate increase certified by a State regulatory agency under § 150.755, or self-certified by a prenotifier, the Cost of Living Council may, within 30 days after the State regulatory agency received the prenotification, or within 30 days after the Cost of Living Council receives the prenotification under § 150.754, take one or more of the following actions:

(1) Require the HMO to furnish additional information regarding the increase.

(2) Delay the effective date of the increase pending further Council action.

(3) Suspend all or part of the effect of the increase, pending further action by the Cost of Living Council or by the State regulatory agency.

(4) Limit, refuse, rescind, reduce, or modify the increase.

(b) If the Cost of Living Council does not act upon a request under this section before the end of the thirtieth day as described above, the increase may go into effect. However, in any case in which that period would otherwise end on a Saturday, Sunday, or Federal holiday, it will end at the close of the next succeeding workday. However, if after implementation of the rate increase the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the rate increase. A rate increase prenotified to a State regulatory agency which has been certified by that agency as being not in compliance with §§ 150.752 and 150.753 may not be placed into effect unless the written approval of the Cost of Living Council has been granted.

**§ 150.759 HMO rates subject to State laws.**

Approval of an HMO rate increase or rating formula under these sections does not authorize the use of a rate or formula in contravention of any applicable State law.

**§ 155.760 Reporting.**

Each HMO shall file an annual report with the Cost of Living Council with a copy to the appropriate State regulatory agency at the time it normally releases its annual reports, but in any event no later than 120 days after the end of the fiscal year. This report shall include information specified by the Cost of Living Council on a form to be prescribed by the Council.

**§ 150.761 HMO providers of health care.**

(a) An HMO provider of health care that is an acute care hospital is limited to:

(1) In the provision of outpatient care—

(i) An increase of 6 percent per year in its charges, computed on an aggregate weighted basis, if the contract between the HMO and the acute care hospital is on a charge per procedure basis; or

(ii) An increase in its charges of 9 percent per year, if the contract is on a fixed dollar amount or on a per capita basis.

(2) In the provision of inpatient care—

(i) An increase in its charges of 7.5 percent per admission per year, if the contract is on a percentage of charge or fixed charge per admission basis, or any contract on a per diem or charge basis shall be recomputed to a per admission basis and subject to the per admissions limitation; or

(ii) An increase in its charges of 9 percent per capita per year, if the contract is on a per capita basis; or

(iii) An increase in its inpatient operating expenses of 9 percent per capita per year if that acute care hospital owns or operates the HMO or is owned or operated by the HMO.

(b) An HMO provider of health care that is a medical practitioner is limited to:

(1) An increase of 4 percent per year in his prices, computed on an aggregate weighted basis using the preceding calendar year's billings, for all services and property, if the contract between the HMO and the practitioner is on a fee-for-service basis; or

(2) An increase in its charges of 6.2 percent per year if renumeration under the contract is on a fixed dollar amount or on a per capita basis.

(c) An HMO provider of health care that is a long term care institution is limited to:

(1) In the provision of outpatient care—

(i) An increase of 6 percent per year in its charges, computed on an aggregate weighted basis, if the contract between the HMO and the long term institution is on a charge per procedure basis; or

(ii) An increase in its charges of 9 percent per year, if the contract is on a fixed dollar amount or on a per capita basis.

(2) In the provision of inpatient care, an increase of 6.5 percent per year in its average realized revenues per diem.

(d) Increases in charges by an HMO provider of health care for services and property not paid for by an HMO are not subject to any limitations as long as the anticipated revenues from such sources are offset against the limitations of paragraphs (a), (b), and (c) of this section.

(e) Except as provided in the other paragraphs of this section and §§ 150.736, 150.709, and 150.778, an HMO provider of health care is excluded from the limitations and requirements of those sections relating to medical practitioners, acute care hospitals, or long term care institutions.

(f) An HMO provider of health care is excluded from the limitations of paragraphs (a), (b), and (c) of this section if it is providing health care to a new HMO.

**§ 150.762 Prohibition.**

No Health Maintenance Organization or HMO provider of health care subject to this subpart may adopt any change in charging practices, reduction in quality or quantity of services, or any other practice that has the effect of avoiding compliance with any provision of this Title.

**§ 150.763 Savings and severability.**

(a) If this subpart is held invalid with respect to any HMO or HMO provider of health care, Subpart M or Subpart O of this part in effect on December 31, 1973 shall govern the HMO or HMO provider of health care.

(b) If any provision of §§ 150.769 through 150.787 of this subpart applicable to HMOs and HMO providers of health care is held invalid, the other provisions of these sections shall remain in full force and effect.

LONG TERM CARE INSTITUTIONS

**§ 150.769 Scope and applicability.**

(a) Sections 150.769 through 150.787 apply to each long term care institution whose fiscal year commences on or after January 1, 1974. However, any long term care institution may make an irrevocable election:

(1) To be governed by this subpart if its current fiscal year commenced on or after August 15, 1973, but before January 1, 1974; or

(2) To be governed by Subpart O of this part in effect on December 31, 1973, if its fiscal year commences on or after January 1, 1974, but before April 1, 1974. In no event may a long term care institution elect to be governed by Subpart O if its fiscal year commences on or after April 1, 1974.

(b) No election made under paragraph (a)(1) or (2) of this section by any long term care institution is valid unless the institution files with or mails to the Cost of Living Council written notice of its specific election. The written notice must be filed with the Council not later than March 31, 1974, or mailed to the Council by certified or registered mail (return receipt requested) postmarked no later than March 31, 1974. No notice is required if the long term care institution does not make an election referred to in paragraph (a)(1) or (2) of this section.

(c) Notwithstanding paragraph (a) of this section, a long term care institution which is owned or operated by or under contract to a Health Maintenance Organization and which derives at least 75 percent of its gross inpatient operating revenues from services rendered to enrolled participants, is subject to §§ 150.748 through 150.763 governing Health Maintenance Organizations.

**§ 150.770 Continued applicability of existing regulations.**

Except as otherwise provided in § 150.769, each long term care institution whose current fiscal year begins prior to January 1, 1974 is subject until the completion of its current fiscal year to Subpart O of this Part in effect on December 31, 1973.

**§ 150.771 Definitions.**

For purposes of this subpart and in addition to the definitions in § 150.31:

"Average realized revenues per diem" means the realized revenues for each long term care institution's class of purchasers for each level of care divided by the number of patient days of care provided for the same level of care for the same class of purchasers. However, the number of patient days for which revenues were not realized may be excluded in determining the average realized revenues per diem.

"Capital expenditure" means an expenditure defined as a capital expenditure in the regulations (42 CFR Part 100) implementing section 1122 of the Social Security Act as added by section 221(a) of the Social Security Amendments of 1972 (Pub. L. 92-603, 86 Stat. 1386-89 (42 U.S.C. 1320a-1)).

"Levels of care" means the following:

(1) For Medicare patients—skilled nursing care and hospital care.

(2) For Medicaid patients—those categorizations of care specified by each State Title XIX (42 USC 1395aa) agency for reimbursement purposes.

(3) For all other patients—existing classifications of levels of care for patients, specifically identified in the accounting practices of the institution during the preceding fiscal year, including acute care.

"Long term care institution" means:

(1) A licensed hospital that is not an acute care hospital as defined in § 150.703.

(2) An institution that is certified for participation in Medicare as a skilled nursing facility.

(3) An institution that participates in Medicaid as a skilled nursing facility or intermediate care facility.

(4) Other skilled nursing and intermediate care facilities.

(5) The distinct unit of an acute care hospital, for which the hospital maintains separate financial accounts, that provides health care services similar to these specified in items (1) through (4).

For the purposes of this definition, if any housing for the elderly includes as part of its facility a distinct part licensed or certified for the provision of skilled nursing or intermediate care, only such distinct part is included in this definition. As used herein, "housing for the elderly" includes purely residential shelter, and personal and sheltered care institutions that provide health related services as part of a general program of supervision and personal care to residents not in need of substantial, continuous nursing services or medical care. The availability of 24-hour nursing service does not preclude the inclusion of an institution in the definition of "housing for the elderly", unless the primary purpose of the institution, or of a distinct part of the institution, is to provide nursing care on a continuous basis.

"New facility" means a long term care institution which:

(1) Commences operation for the first time, or which has not operated for at least one year prior to its current date of operation; or

(2) Undergoes physical replacement; or

(3) Undergoes major renovation, remodeling or expansion that costs a dollar amount equal to at least 70 percent of the book value (net of accumulated depreciation) of the property, plant and equipment in service at the end of the fiscal year preceding the fiscal year in which the institution was committed to construction by firm authorization of the institution's governing board, or $100,000, whichever is greater.

When a facility meeting the criteria of item (1), (2) or (3) (hereinafter referred to as a new facility involving phased construction) is constructed in stages so that the departments or units are brought into operation on successive dates, the facility shall be considered a new facility if the construction of the various stages of the facility, taken together, was undertaken as a single project resulting directly from a binding contract or firm authorization approved by the governing board of the long term care institution.

For purposes of this definition, the mere acquisition of an institution or of the person that controls the institution by another person does not result in the creation of a new facility.

"New level of care" means a new separate category of services recognized by accepted third party payors or approved by the Cost of Living Council. For purposes of this definition, the new category of services must entail distinct costs which are significantly different from the costs associated with the levels of care previously provided. The new level of care must furnish significantly different kinds or intensity of services from those already prevailing within the institution.

"New market" means a location more than 50 miles from the site where health care services were previously provided or, with the prior approval of the Council, a location 50 miles or less from such site.

"New service or property" means a service or property which the long term care institution did not sell or lease in the same or substantially similar form at any time during the one-year period immediately preceding the first date on which it is offered for sale or lease. For the purposes of this definition, a change in appearance, or arrangement, or a change in the method or technology of providing a service, does not create a new service or property.

"Realized revenues" means:

(1) For institutions on a cash basis of accounting, the total cash received for patient services. Revenue adjustments from retroactive cost reimbursement settlements shall be considered in the fiscal year received unless other treatment is consistent with generally accepted accounting principles; and

(2) For institutions on an accrual basis of accounting, the total charges less discounts, contractual allowances, bad debts, and charity allowances accrued for patient services rendered during the same fiscal year. Revenue adjustments from retroactive cost reimbursement settlements that were not accrued in the prior period shall be considered in the fiscal year received unless other treatment is consistent with generally accepted accounting principles.

### § 150.772 Prior commitments.

(a) Notwithstanding any other provision of this subpart, all prospective decisions, interpretations, and prospective exceptions authorizing a dollar increase issued under the Economic Stabilization Act prior to January 17, 1974, to long term care institutions covered under this subpart remain in force.

(b) Each long term care institution may annualize the price increases allowable under Subpart O of this part in effect on December 31, 1973, for purposes of calculating the base on which allowances are authorized under this subpart.

### § 150.773 Limitations on average realized revenues per diem.

A long term care institution's average realized revenues per diem by level of care for each class of purchasers during any fiscal year may not be more than 106.5 percent of its average realized revenues per diem by level of care for each class of purchasers during the preceding fiscal year.

### § 150.774 Application of limitations.

For purposes of § 150.773—

(a) In determining the levels of care provided and the amount of average realized revenues, an institution shall follow generally accepted accounting principles consistently applied. However, no institution shall change the criteria used during the preceding fiscal year for determining the respective levels of care for its patients.

(b) The unused portion of authorized revenue increases permitted for any level of care of any class of purchasers in any fiscal year may not be applied in that year to any other level of care of any class of purchasers.

(c) The unused portion of authorized revenue increases permitted in one year but not fully implemented may be implemented only in the fiscal year following the year in which the full allowable increase was implemented and only for the level of care of the class of purchasers to which the increase applied. The unused portion of authorized revenue increases may not be compounded.

### § 150.775 Limitation on price or cost increases for outpatient services.

(a) A long term care institution may not increase any of its prices for outpatient services or property in excess of the following limitations:

(1) The customary prices for all services and property may not exceed 106 percent (computed on an aggregate weighted basis using the immediately preceding fiscal year's billings) of the customary prices for all services and property lawfully in effect on the last day of the immediately preceding fiscal year; and

(2) The price charged (rounded to the nearest quarter dollar) for any service or property may not exceed 110 percent of the customary price lawfully in effect for that service or property on the last day of the immediately preceding fiscal year. However, price increases need not be limited to amounts less than $1.00.

(b) The unused portion of authorized price increases permitted in one year but not fully implemented may be implemented only in the fiscal year following the year in which the full allowable increase was not taken. The unused portion of authorized price increases may not be compounded.

(c)(1) The formula for determining price increases computed on an aggregate weighted basis under pragraph (a)(1) of this section, herein referred to as *%AWPI*, is as follows:

$$\%AWPI=\sum\frac{P_2-P_1}{P_1}\times\frac{B_1}{B_2}\times 100$$

where,

$P_1$ = The customary price lawfully in effect on the last day of the immediately preceding fiscal year for a service or property.

$P_2$ = The highest customary price charged or to be charged during the current fiscal year for that service or property.

$B_1$ = The actual gross billings during the immediately preceding fiscal year for that service or property.

$B_2$ = The total gross billings during the immediately preceding fiscal year for all services or property.

$\Sigma$ = The sum of.

(2) If a long term care institution elects not to increase a price (rounded to the nearest quarter dollar) for any service or property over the price lawfully in effect for that service or property on the last day of the immediately preceding fiscal year, by more than that percentage increase authorized under paragraphs (a)(1) and (b) of this section, then the price increases may be imple-

mented without regard to the computation of *%AWPI* in paragraph (c)(1) of this section.

(3) If actual gross billings for every service or property whose price is to be increased cannot be determined with reasonable accuracy, the formula for determining %AWPI in paragraph (c)(1) of this section be adjusted as follows:

$$\%AWPI = \sum \%I \times \frac{G_1}{B_2}$$

where,

$\%I$ = The highest percentage price increase for any service or property within a group of similar or related services or property.

$G_1$ = The actual gross billings during the immediately preceding fiscal year for that group of similar or related services or property.

**§ 150.776 Medicaid reimbursement rates.**

(a) If a State agency responsible for administering the Medicaid program within that State decides to raise its State or a regional level of Medicaid reimbursement by more than 6.5 percent over the preceding fiscal year rate for any level of care and to obtain an exception to the limitations of § 150.773 with respect thereto for each long term care institution participating in Medicaid reimbursement within that region or State, the State shall demonstrate and certify to the Council the following with respect to that Medicaid reimbursement rate increase:

(1) The former rate, the date it was established, the new rate, the percentage increase, and the proposed effective date of the new rate;

(2) That the increase is cost related, as demonstrated by a reliable and valid statistical sample;

(3) That the increase is necessary to implement and maintain the standards of service required by Federal or State regulations, or both; and

(4) That the increase, in the opinion of the agency, is not inflationary within the meaning of the Economic Stabilization Program guidelines.

(b) Within 30 days after receipt of the State agency's certification, the Council may take one or more of the following actions:

(1) Require the State agency to furnish additional information regarding the rate increase.

(2) Suspend the 30-day period for Council action.

(3) Issue the State agency a certificate of compliance.

(4) Refuse to issue the State agency a certificate of compliance.

(c) If the Council issues a certificate of compliance to a State agency or fails to take any action within the 30-day period specified in paragraph (b) of this section, then long term care institutions participating in Medicaid reimbursement within that region or State shall not be subject to the limitations contained in § 150.773 with respect to their average realized revenues per diem derived from levels of care covered by the State agency's certification.

(d) If the Council refuses to issue a certificate of compliance to a State agency, then long term care institutions in that region or State shall remain subject to all the limitations contained in § 150.773. Where a refusal to issue a certificate of compliance occurs after expiration of the 30-day period, the Council may issue an order modifying, deferring, suspending, or disapproving any increases already implemented by those long term care institutions.

**§ 150.777 Patient's personal funds.**

When a long term care institution provides services or property which are paid for from the personal funds of patients, the institution shall increase the price to the patient of a service or property only on a dollar-for-dollar basis those net cost increases that have been incurred with respect to that service or property. In addition, a long term care institution shall not charge to a Medicaid patient's personal account any services or property that have been or are normally paid for from other sources.

**§ 150.778 Special pricing rules.**

(a) The price for a new level of care, for a new outpatient service or property, for an inpatient or outpatient service or property provided by a new facility, for a service or property provided by a long term care institution serving a new market, or resulting from a capital expenditure which has been approved under § 150.781 or § 150.782 may be determined by any one of the following methods, without regard to the limitations prescribed in § 150.773:

(1) The price for the service or property or level of care shall not be unreasonably inconsistent with the prevailing prices charged in a substantial number of current transactions for a similar service or property by a substantial number of other long term care institutions providing health care services and properties. The prices so determined may reflect an incremental charge for debt service and depreciation costs.

(2) The long term care institution shall establish its prices by using any pricing practice commonly used by a substantial number of long term care institutions. The prices so determined may reflect an incremental charge for debt service and depreciation costs.

(b) Notwithstanding the provisions of paragraph (a) of this section, prices for a new facility involving phased construction approved as an entire project under §150.781 or § 150.782(c) shall be established initially for the entire new facility, except that if discrete stages of the new facility are opened for service over a period longer than one year and the costs of the discrete stages can be segregated, new prices may be established for services or property provided from each stage as they are successively brought into service.

(c) New prices authorized pursuant to this section shall become effective no earlier than the first day of the fiscal year in which the services or property shall be made available to patients. However, if the approval required by § 150.781 is not obtained, or a request for exception under § 150.782(c) is not filed with the Council before the close of the fiscal year, then the new prices shall become effective no earlier than the first day of the fiscal year in which the approval is obtained or the request is filed.

(d) Prices or expenses for a new inpatient service that are not included in the total prices or expenses for inpatient services provided by a new facility or by a long term care institution serving a new market, or in the total prices or expenses for inpatient services or property resulting from an approved capital expenditure under § 150.781 or § 150.782 (c) shall be included among the total prices or expenses of those services of the long term care institution subject to the limitations of § 150.773.

(e) Each institution which prices a property or service provided by or in a new facility or new market, respectively, in accordance with paragraph (a) of this section shall submit justification for those prices to the Cost of Living Council on Form CLC–71 at the end of the fiscal year in which the service or property was first made available.

(f) A long term care institution may use the special pricing rules of this section at any time within twelve months after the service or property described in paragraph (a) was first made available to patients. Except as authorized under §§ 150.781 and 150.782(c)(1), an institution may not raise its prices for such a service or property when more than twelve months have elapsed since the service or property was first made available to patients.

(g) The revenues derived from the provision of new levels of care, from the provision of services or property by a new facility and from the provision of services or property by a long term care institution serving a new market are not subject to the limitations contained in § 150.773 until after the first full fiscal year such levels of care or services or property were provided.

(h) The Council may modify, defer, suspend or disapprove any prices or expenses implemented pursuant to this section if the Council finds that such charges or expenses are inconsistent with the rules of this subpart or unreasonbly inconsistent with the goals of the Economic Stabilization Program.

**§ 150.779 Price schedules.**

Each long term care institution shall maintain at each of its facilities a schedule showing its prices for all services on the last day of the preceding fiscal year, and each subsequent change in such a price and the date such change was made. The schedule shall be made available for public inspection, and a copy shall be furnished or mailed promptly to third party payors or to the Cost of Living Council upon request. Each institution shall either post a conspicuous and easily readable sign in each of its facilities stating the availability and location of the schedule or affix a legend to all billing statements stating the availability and location of the schedule. No price increase may be implemented before the

schedule is made available and notice of availability provided as prescribed herein.

**§ 150.780 Reporting procedures.**

Each long term care institution shall, within 120 days after the end of each fiscal year, submit a completed Form CLC–71 to the Office of Health (Compliance), Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508.

**§ 150.781 Approval of capital expenditures by a State's planning agency.**

(a) When a long term care institution has obtained the approval of a State's planning agency for a capital expenditure in accordance with the provisions of this section, the institution may establish new prices for the services or property resulting from the capital expenditure in accordance with § 150.778, and adjust its average realized revenues per diem for such services or property in accordance with Form CLC–71. However, when a capital expenditure incurred prior to January 1, 1974, was approved on the merits by a planning agency listed in paragraph (b) of this section, the institution shall not be subject to the provisions of paragraphs (b) through (e) of this section, and may establish new prices in accordance with § 150.778, and adjust its revenues as provided in this paragraph.

(b) A capital expenditure under consideration by the long term care institution must be approved on the merits, based upon a clear demonstration of community need, by the appropriate planning agency specified in this paragraph. The long term care institution must request approval from the planning agency designated pursuant to section 1122 of the Social Security Act. (Pub. L. 92–603, 86 Stat. 1386–89 (42 U.S.C. 1320a–1)). If a State is not participating in the program under section 1122, then the approval must be obtained from the State agency administering a certificate of need program for long term care institutions. If a State is not participating in a program under section 1122 and has no State agency administering a certificate of need program, then the approval must be obtained from an agency designated under section 314(b) of the Public Health Service Act (Pub. L. 92–585, 86 Stat. 1292 (42 U.S.C. 246(b)); otherwise, approval must be obtained from a State agency designated pursuant to section 314(a) of the Public Health Service Act (Pub. L. 92–585, 86 Stat. 1292 (42 U.S.C. 246(a))).

(c) The capital expenditure, directly related operating expenses, and the prices to be charged for the services proposed in the project must be approved on the merits by either the same agency which granted an approval under paragraph (b) of this section or another agency (such as a rate-setting commission or long term care commission) designated by the Governor of the State or the Mayor of the District of Columbia to perform this specific function. However, if a State is participating in the program under section 1122, the agency designated pursuant to section 1122 must be the approving agency.

(d) An agency which reviews a request for approval of a capital expenditure and directly related operating expenses by a long term care institution under paragraph (c) of this section must evaluate the following:

(1) All expenses attributable to the capital expenditure and directly related operating expenses, calculated without regard to the annual allowances authorized by this subpart.

(2) Charge increases, calculated in accordance with § 150.778, required to finance the proposed project taking into consideration cash legally available from restricted reserves for both capital expenditures and operating expenses.

(e) Within sixty (60) days after the date of the approval, the chief executive officer of the long term care institution shall so notify the Cost of Living Council in writing. The written notice shall be accompanied by a copy of the approval, a complete statement of approved charges and expenses, and a written statement signed by the chairman of the governing board of the institution certifying that funds legally available from restricted reserves have or will be applied to the capital expenditure or its directly related operating expenses in accordance with the approval.

**§ 150.782 Exceptions.**

(a) No long term care institution may exceed the limitations set forth in §§ 150.773, and 150.775 except as may be authorized pursuant to this subpart. Each long term care institution shall, in addition to meeting the specific requirements of this section, prepare any request for exception to be submitted to the Council in conformity with the general provisions relating to exceptions prescribed by Part 155 of this chapter and shall obtain the recommendation of the State advisory agency referred to in § 150.783 on the request for exception. The State advisory agency shall forward the institution's request for exception, together with its recommendation, directly to the Council. The requirement for the recommendation shall not apply if the State advisory agency fails to act within thirty (30) days unless the agency shall have requested corrected or additional information in which case the thirty (30) day period shall be suspended from the date of the request until the agency informs the institution that the information has been received. The 30-day period shall then resume running.

(b) Requests for exception submitted under this section by a long term care institution are considered to be provisionally approved 60 days after the date of filing of the request with the Council. The Council shall inform the long term care institution promptly by written notice of the date of filing and the docket number of the request for exception. During the 60-day period, the Council may issue a suspense notice which shall have the effect of preventing the unexpired portion of the 60-day period from continuing to run, if the documents submitted by the institution are incomplete, erroneous or do not meet the criteria set forth in this section. In any case in which the Cost of Living Council issues a suspense notice and requests additional or corrected information from the institution, the 60-day period shall resume running only after the Council has informed the institution that the information has been received and accepted. The price or expense increases made under the authority of this section shall be applied only to services or property provided to patients by the institution after the 60-day period has expired. If after implementation of an increase following the expiration of the 60-day period, the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the increase. In such an instance, if the exception request had been submitted in good faith, the long term care institution shall not be required to refund any monies received, or to reduce reimbursements otherwise allowable from the date of expiration of the 60-day period until the Council's determination of the request or be subject to any criminal fine or civil penalty on account of the increase implemented on the basis of the provisional approval of this section.

(c)(1) A long term care institution may request from the Council an exception for adjustment, to be calculated in accordance with § 150.778 and Form CLC–71, in the limitations set forth in § 150.773 by reason of capital expenditures when the State approval procedures authorized by § 150.781 are or were not available to the institution. The request for exception must be accompanied by supporting documentation, indicating the reason why the approval procedures were not available, and permitting the Council to evaluate the following:

(i) Whether there exists a community need for the proposed project adequate to assure financial support without causing localized shortages of labor or serious hospital market disruptions susceptible of requiring other exceptions by the Council;

(ii) Whether the project will foster cost containment initiatives or improved efficiency and productivity in the long term care institution;

(iii) All charges and directly related operating expenses attributable to the capital expenditure calculated without regard to the annual allowances authorized by this subpart;

(iv) Charge increases required to finance the proposed project taking into consideration funds legally available from restricted reserves for both capital expenditures and directly related operating expenses.

(2) The request must be submitted to the Council within twelve months following the date that the services and property furnished by reason of the capital expenditure were first made available to patients;

(3) Each request shall be signed by the chief executive officer of the institution. The request also shall be accompanied by a written statement signed by the chairman of the governing board of the institution certifying that funds legally available from restricted reserves

have been or shall be applied to the capital expenditure or its directly related operating expenses as stated in the request for exception.

(d) A long term care institution may request an exception for experimentation in long term care reimbursement methodologies. The Council may grant a prospective exception to a single institution or to a group of institutions as members of a class, geographic or otherwise. The Council may consult with the Department of Health, Education, and Welfare prior to making its determination. Requests submitted pursuant to this paragraph need not be cost justified.

(e) (1) A long term care institution may request an exception as provided in this paragraph when a serious hardship or gross inequity has been caused by any of the following occurrences:

(i) A demonstrable increase in bad debts experience that causes the institution's gross charges not to reflect accurately actual collections;

(ii) Increased expenses resulting from requirements imposed by law or government regulation; and

(iii) Increased expenses incurred by reason of wage and salary increases that are exempt under the provisions of § 150.32 of this chapter, or are below minimum wage rates imposed by Federal or State statutes of general application.

(2) Each request for an exception will be evaluated on the basis of cost justification. In reviewing evidence of the cost justification submitted by the institution, the Council will also consider evidence of cost containment initiatives, prudent management practices and evidence of consistent application of accepted accounting principles demonstrated by the institution. As part of its evaluation, the Council will review the following financial factors:

(i) All allowable operating expenses, including depreciation, and special reserve accounts that are required to be replenished by reason of contractual agreement or consistent historical application of a governing board resolution;

(ii) Working capital needs; and

(iii) All revenues from patient services, and revenues from other operating activities.

(f) A long term care institution may request an exception for any reason causing a serious hardship or gross inequity. Each request submitted pursuant to this paragraph shall be evaluated on the basis of cost justification. In reviewing the cost justification submitted by the institution, the Council shall also consider evidence of cost containment initiatives, prudent management practices and consistent application of accepted accounting principles demonstrated by the institution. As part of its evaluation, the Council shall review the following financial factors:

(1) All allowable operating expenses, including depreciation, and special reserve accounts that are required to be replenished by reason of contractual agreement or consistent historical application of a governing board resolution;

(2) Working capital needs;

(3) All legally available funds including revenues from patient services, revenues from other operating activities, and revenues from non-operating sources such as unrestricted gifts received during the fiscal year being reviewed or unrestricted income from unrestricted and restricted reserves;

(4) Changes in any prices or directly related operating expenses resulting from capital expenditures previously authorized under this subpart or resulting from services or property authorized under Cost of Living Council Notice 73–2 (38 FR 30798) published on November 7, 1973; and

(5) Evidence of cost behavior that is unanticipated and significantly different from that on which the institution has budgeted.

### § 150.783 Advisory State actions.

The governor of each State and the mayor of the District of Columbia are each requested to designate an agency to advise the Council on requests for exceptions to these regulations or on any other matters that the Council may from time to time specify. Each agency shall review the requests for exception filed with it under § 150.782(a) pursuant to the applicable guidelines set forth in this subpart and whenever it considers that granting of an exception is essential to the provision of adequate health services and consistent with the Economic Stabilization Program shall recommend to the Administrator of the Office of Health, Cost of Living Council that an exception be granted by the Council.

### § 150.784 State control program.

(a) An agency designated by the governor of a State or mayor of the District of Columbia that has a long term care price control program may apply to the Cost of Living Council for authorization to administer the control program within the State or District of Columbia in lieu of the controls set forth in §§ 150.769 through 150.787 and administered by the Cost of Living Council. The State agency shall submit to the Cost of Living Council a comprehensive description of its proposed stabilization plan and of its existing or proposed rules for use by the agency in considering requests for price increases for the long term care institutions under its jurisdiction. The submission to the Council shall include an evaluation of the long term care institutions or associations of long term care institutions to be covered by the control program.

(b) The governor of a State or the mayor of the District of Columbia may designate an agency to coordinate a long term care price control program and assign to a nongovernmental organization the responsibility for administering the program. Such program must meet all the requirements of this section.

(c) To qualify for authorization under this section, a control program must—

(1) Have as its objective the substantial limitation of the rising price of long term care, and there must be reasonable basis for determination that the objective can be met;

(2) Include rules and regulations that are fair and equitable;

(3) Contain adequate and assured funds for staffing, commencement of program and operations for a minimum of one year;

(4) Provide for participation in policy development by provider groups, long term care institutions and consumers;

(5) Be coextensive in coverage with the Economic Stabilization Program controls for long term care institutions, or it must be demonstrated that the State program will have substantial impact on long term care charges and expenses;

(6) Include objective standards by which to measure overall performance;

(7) Include uniform standards for measuring individual provider performance;

(8) Include procedures for consideration of requests for exception and for review of original decisions denying such requests;

(9) Include provisions to assure compliance (such provisions may provide for the agency to order refunds, rollbacks, or such other remedies that are reasonable and appropriate to achieve compliance); and

(10) Include a provision for price posting similar to that required in § 150.779.

(d) If the Cost of Living Council approves the proposed stabilization program and rules of an agency, it will notify the agency that when those proposed rules are finally adopted and put into effect by the agency, the Cost of Living Council will issue a certificate of compliance to that agency. If the Cost of Living Council approves existing rules of an agency, it will issue a certificate of compliance to that agency.

(e) A long term care institution may place in effect, in accordance with the rules of an agency to which a certificate of compliance has been issued, any price increase authorized or allowed to go into effect under the State program.

(f) Except as provided in paragraphs (g) and (h) of this section, actions taken under the program of an agency to which a certificate of compliance has been issued under paragraph (d) of this section are not subject to review by the Cost of Living Council.

(g) Each agency to which a certificate of compliance has been issued under paragraph (d) of this section shall also agree to furnish periodically to the Cost of Living Council such information as the Council may prescribe for the Council's use in determining whether the agency is following its adopted rules and whether the purposes of the Economic Stabilization Program are being served.

(h) The Cost of Living Council may revoke a certificate of compliance issued under paragraph (d) of this section at any time, or take such other action with respect to the certificate as it considers appropriate, if it determines that the rules to which the certificate applies are not being followed or are not serving the purposes of the Economic Stabilization Program. Price increases approved under the State program prior to such revocation or other action shall in no way be

affected by such revocation or other action.

(i) Any long term care institution not subject to a control program certified under this section is subject to this subpart.

§ 150.785 Prohibition.

No long term care institution subject to this subpart may adopt any change in charging practices, reduction in quality or quantity of services, or any other practice that has the effect of avoiding compliance with any provision of this Title.

§ 150.786 Remedies for non-compliance.

(a) In addition to any remedies provided in Part 155, if the Council determines that the limitations contained in § 150.773 or § 150.775 have been exceeded, and no exception has been granted, the Council may order:

(1) The reduction of prices to compensate for realized revenues or other increases in excess of the limitations; or

(2) The reduction of prices to assure that realized revenues and prices will not exceed the limitations contained in §§ 150.773, 150.775, or 150.777; or

(3) The refund to appropriate classes of purchasers of an aggregate amount equal to the excess (the amount to be refunded or credited to an account shall be allocated on a pro rata basis); or

(4) Any other action which is reasonable and appropriate to cause the remission of such excess realized revenues; or

(5) Any combination of actions under this paragraph (a)(1).

(b) Except as otherwise provided in this subpart, if a long term care institution determines that it has exceeded the limitations contained in §§ 150.773, 150.775, or 150.777, the institution shall submit a plan for achieving compliance with these sections to the Office of Health (Compliance), Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508. Such a compliance plan may provide for a reduction of prices or reimbursed expense increases, a stipulation of no price increases or reimbursed expense increases for a certain period of time, refunds, any other action which is reasonable and appropriate to cause the remission of excess charges, or a combination of any of the foregoing. The Cost of Living Council may approve such a plan, order certain changes, or order a different plan of its own design.

§ 150.787 Savings and severability.

(a) If this subpart is held invalid with respect to any long term care institution, Subpart O of this Part in effect on December 31, 1973, shall govern the long term care institution.

(b) If any provision of §§ 150.769 through 150.787 of this subpart applicable to long term care institutions is held invalid, the other applicable provisions of these sections shall remain in full force and effect.

8. In 6 CFR Part 150, an Appendix is added to Subpart R to read as follows:

APPENDIX TO SUBPART R—CONTROL OF HOSPITAL COSTS UNDER THE ECONOMIC STABILIZATION PROGRAM

Current inflationary problems of the health sector and the need for Federal activity result from the nature of the industry itself, and the incentives faced by health care managers. As will be discussed below, the fact that most hospital bills are now paid on a cost-plus basis has generated a "blank check" environment for the financing of hospital care. Although this kind of reimbursement system existed before 1965, it was not until the introduction of Medicare and Medicaid that cost-plus reimbursement accounted for a substantial proportion of hospital revenue. Hence, it was this massive infusion of Federal and State funds that radically affected hospital behavior. The effects were especially significant given the original intent of Congress that Federal financing programs should be neutral with respect to the delivery system. Many now consider the passage of the Medicare and Medicaid amendments in 1972 as a partial repeal of the original intent of Congress.

Among the many amendments included in this bill, P.L. 92-603, several stand out as major changes in the role of the Federal Government vis-a-vis health providers: those with respect to capital expenditures, Professional Standards Review Organizations, limitations on reasonable cost reimbursement, payment for the services of teaching physicians, utilization review, and prospective reimbursement. In several instances the provisions of this act, specifically prohibit reimbursement for costs that would normally be allowed unless the hospital has complied with comprehensive health planning requirements, and does not provide care in a much more expensive way than other similar providers. The usual procedure has been for Medicare to reimburse all costs actually incurred by an institution in providing medically necessary care to program beneficiaries. The important feature of the 1972 amendments is that they now recognize that some of the costs which used to be considered reasonable may not be reimbursed if a hospital spends more than other comparable institutions to provide similar services. Similarly, if non-Medicare and non-Medicaid patients are not asked to pay (the key is being asked, not actually paying) their full share of costs, i.e., charges are less than costs, Medicare will reimburse only to the level of charges.

At the time that most of these amendments were being debated in the Congress, the Administration introduced, in August 1971, Phase I of its Economic Stabilization Program. It is crucial for an understanding of this program to appreciate the environment in which it was created. This environment has both a past and a future. The past is Medicare and Medicaid; the future is National Health Insurance. A critical issue involved in the debate over National Health Insurance will be the level of government participation in the medical care system.

In the end, the discussion about the Economic Stabilization Program is really whether an uncontrolled and unregulated health delivery system should exist when all or most of the medical bill is paid on a cost-plus basis by some third-party payor. A second issue, of course, is if controls are necessary, what shape should they take.

Phase IV controls are now also being issued for long term care institutions, medical practitioners and medical laboratories, and health maintenance organizations. The remainder of those who were designated as "noninstitutional providers of health services", during Phase II are no longer covered by specific health price controls. The goal of the Phase IV controls in each sector of the health industry is to define the required limitations on the proper unit of volume and at the appropriate level in order to allow for continued development and growth within an effective cost containment framework.

Medical practitioners and medical laboratories are to continue under price increase limitations although prices may be raised an average of 4% instead of 2.5%, in recognition of higher practice costs. The Phase II requirement of cost justification has been removed, and the exceptions process simplified and liberalized. The new HMO controls attempt to deal directly with the dual nature of the HMO—they include provisions to cover both the insurance company functions and the activities that the HMO performs as a provider of health service. They are designed to aid and encourage the development of HMOs.

Long term care institutions are being placed under a system which limits to 6.5% increases in realized per diem revenue by class of purchaser. This recognizes the character of long term care institutions in which much revenue comes from just a few sources such as State Medicaid programs. The new system also recognizes the fact that stays are generally long, occupancy stable, and the bulk of reimbursed services can be included in a single daily rate.

Because of the overriding importance of the hospital sector and the complex procedures necessary to control its costs, we will focus our discussion on the hospital and the controls designed to moderate the rate of increase in hospital costs.

BACKGROUND

In the modern history of the health industry, 1965 stands out as a line of demarcation—pre- and post-Medicare/Medicaid.

Table 1, below shows the rate of change of the Consumer Price Index for medical care and semi-private room rate compared with the "all-items" C.P.I. for selected years. This index, constructed and maintained by the Bureau of Labor Statistics is also referred to as the "cost of living" index. Even prior to the passage of Medicare, hospital costs were increasing more rapidly than the overall cost of living.

TABLE 1

AVERAGE ANNUAL INCREASES IN CONSUMER PRICE INDEX

[In percent]

| | All items | Medical care | Semi-private room |
|---|---|---|---|
| 1950 | | | |
| 1955 | 2.2 | 3.8 | 6.9 |
| 1960 | 2.0 | 4.1 | 6.3 |
| 1965 | 1.3 | 2.5 | 5.8 |
| 1967 | 2.9 | 7.1 | 19.8 |
| 1969 | 5.4 | 6.8 | 13.4 |
| 1970 | 5.9 | 6.3 | 12.9 |
| 1971 | 4.3 | 6.5 | 12.2 |
| 1972 | 3.3 | 3.2 | 6.6 |
| Fiscal years 1969 to 1971 | 5.6 | 6.7 | 13.0 |
| Phase II (November 1971 to January 1973) | 3.6 | 3.4 | 5.4 |

Source: Consumer Price Index, Bureau of Labor Statistics.

The pre-Medicare/Medicaid experience suggests that the health industry has always possessed significant inflationary potential. However, it was only after the introduction of Medicare and Medicaid that the problem of hospital and medical care inflation really became serious and succeeded in achieving great visibility. The semi-private room rate

which had been increasing at about 6.0% a year jumped to rates of increase of between 13 and 20 percent following the introduction of these two Federal programs. These rates of increase were more than three times the increase reported for all prices in the economy.

Table 2 presents a summary of the growth in hospital expenses for various items—labor, nonlabor, and capital in pre- and post-Medicare/Medicaid periods. Again the dramatic increases following the introduction of those Federal programs is apparent.

TABLE 2

COMPOUND GROWTH RATES FOR SELECTED HOSPITAL INDICES

[In percent]

| Index | Pre-medicare (1960-65) | Post-medicare (1966-71) |
|---|---|---|
| Total expense | 10.2 | 17.0 |
| Payroll expense | 10.1 | 15.9 |
| Nonpayroll expense | 10.4 | 18.6 |
| Personnel | 5.1 | 5.6 |
| Average salary | 4.7 | 9.8 |
| Increase in plant assets | 8.0 | 9.1 |

Source: "The Hospital—A Changing Environment," Investment Research, First National City Bank, 1973, p. 6.

With the aid of this very simple table, two important aspects of hospital cost increases are shown:

1. Although significant, wage increase in the post-Medicare period did not account for all of the growth in payroll expenses; much of the increase resulted from increases in the number of hospital employees.

2. Payroll expenses in total grew in the post-Medicare period less rapidly than did nonpayroll expenses.

To obtain more meaningful measures of hospital cost increase, these aggregate statistics are converted into two commonly used measures—expense per patient day and expense per admission. These measures take into account the full picture of hospital cost inflation including the fact that major increases in spending resulted from increased use of laboratory tests, X-rays, therapy, drugs, etc.

Table 3 below summarizes these increases for selectively grouped periods.[1]

[1] The Phase III/IV row and the "intensity" columns were calculated using the projections and index discussed in the section on Phase IV controls.

TABLE 3

INCREASE IN HOSPITAL EXPENSES

[In percent]

| | Expense per adjusted patient-day | Expense per adjusted admission | Intensity of services per day [1] | Intensity of services per admission [2] |
|---|---|---|---|---|
| Pre-medicare (1963 to 1965) | 7.5 | 8.2 | 3.0 | 3.7 |
| Post-medicare (1966 to 1969) | 12.2 | 14.4 | 7.2 | 9.0 |
| Pre-ESP (1969 to 1971) | 13.9 | 11.6 | 5.1 | 2.3 |
| Phase II (1972 to 1973) | 10.4 | 8.9 | 4.2 | 2.8 |
| Phase III | 9.0 [3] | 7.4 [3] | 2.9 | 1.9 |

NOTE.—The wage increases included in the input price index were of health workers which rose significantly faster after Medicare than wages for all workers. Hence, the increase in "wages and prices" is not all uncontrollable in the usual sense. The increase in intensity of services is therefore the amount of funds used to purchase more equipment or personnel.

[1] Obtained by dividing expense per adjusted patient-day by hospital wage and price index and calculating percentage increases.
[2] Obtained by dividing expense per adjusted admission by hospital wage and price index and calculating percentage increase.
[3] Projection using January-July 1973 and projected through 1974.

Before Medicare, expense per patient day and expense per admission were rising at rates of 7.5 percent and 8.2 percent respectively. This meant intensity increases of 3.0 percent and 3.7 percent respectively.[2]

In contrast, the immediate post-Medicare period saw increases of 12.2% in expense per day and 14.4% in expense per admission, with increases in intensity of 7.2 percent per day and 9.0 percent per admission. As explained in the notes accompanying Table 3, these increases in intensity represent the amount spent in the provision of more services per patient day or per admission, after taking into account increases in the prices of goods and services bought by hospitals.

The period just before the imposition of economic controls (1969–1971) saw the annual per diem increase go up even more, to 13.9 percent. However, during 1968 the average length of stay declined, with the result that expense per admission rose only 11.6 percent or an intensity increase of 2.3 percent. Intensity increases per day rose 5.1 percent, down from the 7.2 percent of the immediately preceding period, but still higher than before Medicare. These figures clearly show the very rapid growth of hospital costs per day of service or per stay in a hospital immediately following the introduction of Medicare. They also show the start of a very encouraging trend. Length of stay has been declining steadily in the range of 1–2 percent annually since 1968. This means that when people go into the hospital, they get out faster. Thus, the cost of a total stay in a hospital, the real cost with which the patient is concerned, has been rising more slowly than the cost per day. More tests and other services are being performed, but in a shorter number of days.

The use of the last two columns in Table 3 is an attempt at separating hospital cost increases into: (1) those necessary to provide the same level of services as in the previous year; and (2) those cost increases which were used to provide more services per day or per stay in a hospital, i.e., increases in "intensity of services". As noted in Table 2 however, part of the increase in the cost of producing the same care in the post-Medicare period was for wage increases higher than those offered to most workers in the economy. In the usual sense of an index, one would not take the data for the index from the area under analysis. Rather, comparisons would be drawn to the area from what had occurred in the economy in general. In this case, however, we have attempted to use actual input price data from the health industry itself wherever possible, in order to highlight the growth in the amount spent to provide more services. That is, after Medicare, when the pressures to control costs were reduced, hospital workers received increases in wages greater than those paid to non-hospital workers. Although some of this wage increase went to increase the earnings of low wage earners, all hospital workers benefited from these increases. This difference could amount to as much as one percent of total cost diverted from increased use of inputs to higher wage increases for health workers.

Table 4 brings together many of the ideas which we have discussed thus far. On a per patient day basis, cost increases accelerated rapidly after 1965 with an important factor being greater intensity and services provided per day of care. In order to understand the need for and the potential impact of economic controls it was necessary to decompose these cost increases in some summary format into that part which arose from the higher prices paid for the inputs, and that part that arose from increases in services.

Before the introduction of Medicare, the relatively low rates of increase in costs were divided evenly between increases in wages and prices, and increases in the amount spent on more services. With the introduction of Medicare, increased use of inputs began immediately, followed shortly thereafter by large increases in wages and hiring of more employees.

Table 4 shows that during the 1969-1971 period, when average cost per patient day was rising 14.8 percent, wages were rising 10 percent, and hospitals were increasing their employees per day at a rate of 3.7 percent. Similarly, non-payroll expenses during this period were rising 15.9 percent annually, when prices were going up only 5.1 period and the use of non-wage inputs was increasing at an annual rate of 10.3 percent.

[2] Feldstein (p. 17) using a different set of adjustments had calculated an annual increase in intensity of about 4 percent in this period, and a 3.8 percent average of 1955-1968 "The Rising Cost of Hospital Care", Martin S. Feldstein, 1971, Information Resources Press.

TABLE 4

FACTORS CONTRIBUTING TO HOSPITAL COST INCREASES (EXPENSES PER PATIENT DAY)

| Item | Average annual percentage increase | | | | | |
|---|---|---|---|---|---|---|
| | 1950–60 | 1960–65 | 1965–67 | 1967–69 | 1969–71 | 1971–72[1] |
| Total increase | 7.5 | 6.7 | 10.3 | 13.8 | 14.8 | 11.6 |
| Increase in wages and prices | 3.8 | 3.5 | 4.1 | 8.0 | 8.2 | 5.7 |
| Wages | 5.2 | 4.7 | 4.7 | 9.9 | 10.0 | 7.0 |
| Prices | 1.5 | 1.3 | 2.9 | 4.8 | 5.1 | 3.3 |
| Changes in service | 3.7 | 3.2 | 6.2 | 5.8 | 6.6 | 5.9 |
| Labor | 3.1 | 1.7 | 3.8 | 2.8 | 3.7 | 2.2 |
| Other | 4.6 | 5.6 | 9.6 | 9.8 | 10.3 | 10.1 |
| Percent of total increase due to— | | | | | | |
| Wages and prices | 49.6 | 51.6 | 39.7 | 58.2 | 55.3 | 49.5 |
| Changes in services | 50.4 | 48.4 | 60.3 | 41.8 | 44.7 | 50.5 |

[1] Based on estimates from the "Hospital Indicators" National Hospital Panel Survey in Hospitals, J.A.H.A., Dec. 16, 1972.

Source: Price data are from the Consumer Price Index, Bureau of Labor Statistics. All other data are from Hospitals, Guide Issues, August 1, various years, and Hospital Statistics 1971, American Hospital Association, 1972.

The proportion of the increase in per day costs going into more inputs of all types has continued to the point where these intensity increases amount to almost half of the total. One possible explanation for this trend is that the system has not yet fully adjusted from the tremendous increase in inputs that began in 1965. Although the relative proportion of increases going to increased use of inputs declined in 1967–1969, it was not because these increases were tapering off, but because wages and prices began to increase at double pre-Medicare rates.

Having established that by all definitions of cost, hospital costs were rising at very high rates between 1965 and 1971, let us turn briefly to theories and definitions of hospital inflation before proceeding to discuss economic controls as they were designed to combat inflation in this health care sector.

INFLATION IN THE HOSPITAL INDUSTRY

In the discussion thus far we have passed over a discussion of the appropriate measure of the price of hospital services. As indicated previously, we have concentrated on the more inclusive measures of hospital prices such as cost per patient day or cost per admission. While these inclusive definitions of hospital prices are now widely used in the economics of health care literature, their use in the design of the health care cost control regulations is at the heart of the current controversy over the proposed Phase IV controls. To understand why the definitions of price as used in other sectors of the economy are not appropriate for the hospital sector, it is useful to briefly discuss why hospital cost inflation has occurred.

Martin Feldstein offers much evidence that hospital cost inflation is caused primarily by increases in the demand for services.[3] Several reasons are offered for the increased demand. As insurance coverage increases, and the net cost to the patient is reduced, more and higher quality care is demanded, hence higher costs. The growth of cost-plus reimbursement (see above) has also put hospitals in a position where they may incur higher costs (to provide higher quality or more expensive services) without fear of reductions in demand, or a reduction in their revenues.[4]

Explanations of the causes of inflation of this type usually place the emphasis on a general increase in demand for a commodity or service which can only be satisfied at higher prices. The higher price then serves to ration the available supply, making it available to those willing to pay this higher price. The inflation in health cost, due to increased demand for services was, however, characterized by an unusual circumstance. As the cost of care rose, because of the addition of more and costlier inputs, demand did not slacken. The patient faced an extremely low net price, resulting from ever-increasing insurance. In addition, under Medicare and Medicaid, where the net price to the patient is essentially zero, with the programs paying for all incurred costs, the desire to increase the number and kinds of services went totally unchecked. In essence, the potential menu of services rendered by the hospital was unlimited.

Blue Cross had always reimbursed on a cost basis, but until the introduction of Medicare and Medicaid, and the tremendous growth of insurance coverage in the late 1960's, Blue Cross cost reimbursement alone was generally not sufficient to cause this tremendous alteration in hospital behavior. The growth of Blue Cross during the 1940's and 1950's did change hospital behavior somewhat, but it was only when Medicare and Medicaid began, and over 50% of all hospital revenues came from cost reimbursement, that behavior changed substantially. In addition, at some point higher hospital costs are reflected back to patients in the form of higher Blue Cross premiums. This was not the case with Medicare and Medicaid where the patient essentially pays no premium. There is however, a one day hospital deductible under Medicare which has gone up in proportion to increased hospital costs, but this accounts for only a small amount of the dollar increase in hospital expenses. The net result of all these changed activities is that while the total cost of a day of hospital care rose from $16 in 1950 to $109 in 1973, a patient's out-of-pocket costs actually declined from $10 per day to $9 per day.[5] As mentioned above, one of the factors that generally limits inflation is the inability to expand production or services indefinitely as demand increases. The relative ease with which supply can respond to changes in price is called the "elasticity of supply". It has often been assumed that the supply of hospital services is relatively inelastic, i.e., that it does not respond significantly to changing prices or conditions. However, the post-Medicare/Medicaid experience did much to dispel that notion. The quantity response of the hospitals to the increase in demand that accompanied the introduction of Medicare and Medicaid was implicit in the increase in the number of nonfederal short-term general hospitals, the number of beds, and the average hospital size from 1965–1970 (see Table 5).

At the same time that the number of hospitals and beds was being expanded, patients began to stay in hospitals longer. Length of stay began increasing from an average of 7.8 days in 1965 to 8.4 days in 1968, partly because of the increase in elderly patients. Length of stay levelled off in 1968 and then began to decline. Hospital occupancy rates rose from 76% in 1965 to 78% in 1970, but then they, too, began to decline. Occupancy *continued* to decline until 1973 when, according to Indicators data, it levelled off. A comparison of capacity utilization (i.e., occupancy) rates during this period is revealing. In 1965, when there were 741,000 beds they were occupied 76% of the time. In 1970, with a supply of 848,000 beds and a 5% greater length of stay, the occupancy rate was only 2.6% higher than it had been in 1965. Clearly, the new beds were not being used to capacity or even to the same extent as was the old supply. By 1972, with a supply of beds 14% higher than that of 1965, the occupancy rates were 75.2%, lower even than the 1965 rate.

[3] Ibid. Chapter 3.

[4] Medicare, Medicaid, and most Blue Cross plans contract with participating hospitals, and agree to pay the costs of providing services to the beneficiaries or subscribers of the third party. The share of costs to be assumed is determined retrospectively (i.e., after the fiscal year is over) by calculating the ratio of the subscribers' gross charges to the total charges billed by the institution, and applying the ratio to the total costs of the covered departments.

[5] Hospital Indicators Panel Survey.

TABLE 5

HOSPITALS, BEDS, SIZE, AND UTILIZATION, SELECTED YEARS

| Year | Hospitals | Beds (thousands) | Average bed size | Average length of stay (days) | Occupancy rate |
|---|---|---|---|---|---|
| 1965 | 5,736 | 741 | 129 | 7.8 | 76.0 |
| 1968 | 5,820 | 806 | 138 | 8.4 | 78.2 |
| 1970 | 5,859 | 848 | 145 | 8.2 | 78.0 |
| 1972 | 5,843 | 884 | 151 | 7.9 | 75.2 |

Source: Hospital Statistics, 1972.

These figures might lead one to question the long-term wisdom of the post-Medicare/Medicaid quantity response. It is necessary to ask how many beds were really needed. If there had been no more beds in 1972 than in 1965, each bed would have had to be occupied only 88% of the time in order to serve all the 1972 admissions to hospitals. This does not seem to be an unusually high capacity utilization rate. But even granting that the optimal occupancy rate for most hospitals is several percentage points lower, one is still troubled by the expansion of supply and the resultant costs to all patients of maintaining one out of every four beds empty at all times.

The causes of hospital cost inflation described above, and the large increase in hospital expenses, would lead one to the conclusion that there would have been an inflation problem even if the prices hospitals paid for their inputs (labor, capital, consumable goods) had not risen in any unusual manner. Yet such increases did occur in the latter half of the 1960s, somewhat fueled by the cost pass-through approach to reimbursement, but also caused by external forces. These increases add an additional layer to the inflation problem. There have been many empirical studies which have shown the contribution to inflation made by increases in the cost of each factor. In the recent book by Karen Davis and Richard Foster,[6] the authors summarize this literature. The two basic cost items that have exacerbated the cost inflation problem are capital[7] and labor.[8] The assurance of adequate reimbursement for services led to an essentially unconstrained increase in the amount of equipment purchased and the number of hospitals, beds, and an increase in average bed size. These increases often occurred without regard to the usual analytical criteria of efficiency, need, or likely utilization. It also led to increases in the number of hospitals offering various kinds of complexity expanding services.[9] That is, as demand expanded without constraint, the use of non-wage inputs and different technologies expanded as well. Much of this expansion was in the physical plant itself, where the relatively small proportion of cash required allowed major capital expansion with the assurance that third party payments would generate adequate revenues to meet mortgage obligations.

Increased labor costs as well have been a factor in adding to hospital inflation. Increases in the hospital's wage bill have come about both through increases in the wages per employee, in part due to so-called "catch-up" wage increases, and increases in the number of employees.

The question of "catch-up" wage increases has two phases—catch-up of lower paid hospital employees with other hospital employees and catch-up of hospital employees with non-hospital employees. Although comparison is difficult since many hospital jobs do not exist elsewhere, data from the triennial BLS Industry Wage Study in Hospitals when compared with the general "Area Wage Surveys," also conducted by BLS, show that there has been significant closing of the gaps between hospital employees and those in other industries.[10]

Although it is difficult to measure the precise impact of the extension of minimum wage legislation to hospital employees, and the spread of collective bargaining agreements, there is little doubt that they have had major effects. Those areas of the country, such as Oakland-San Francisco and New York City, which had some of the first collective bargaining agreements (and strikes by hospital employees) now have the highest wage scales in the health industry, and have wages generally comparable to, if not higher than, similarly employed individuals outside the hospital industry. Much of these increases are reflected in the 10 percent wage increases after Medicare that are shown in Table 4.

In summary, the analysis of hospital cost inflation reveals that the uncontrolled increases in expenditures for health care were directed into a variety of channels. They were reflected only in part in higher room and board rates. Still further increases were reflected in the costs of ancillary services. The need for these increases had resulted from substantially higher wage increases to hospital employees, the employment of more workers per patient served, the purchase of newer and more elaborate equipment, and the building of more and fancier hospitals.

All of these cost increases were translated into higher unit charges and larger increases in the aggregations of charges per day and per stay, and higher total reimbursements from third party payors.

Consequently, no single measure of price can properly reflect the changes that occurred, nor can one seek to control hospital cost inflation by limiting the growth in only one price or group of prices. It is for this reason that most health economists now rely on the more inclusive measures of cost per patient day and the cost per admission as indices of hospital prices.

### FIRST ATTEMPTS AT ECONOMIC CONTROLS—PHASE II

In 1971 hospital room charges were rising at 13 percent per year, and hospital costs per patient day were rising even faster, at 14.8 percent. The tremendous increase in the use of inputs, especially non-wage inputs, continued, and wage rates were now rising at 10 percent per year. Prices in the general economy were rising faster than at any time in the previous twenty years (at 5.1 percent per year).

The decision was made by the President in the summer of 1971 to place the economy under a 90-day wage and price freeze with a series of Phase II economic controls to be established by the end of the freeze. Because of its unique characteristics, the health industry was singled out for separate controls that would deal with the special nature of inflation in that sector of the economy. These controls, issued by the Price Commission in December 1971, were developed in conjunction with the Health Services Industry Committee.

### PHASE II CONTROLS

The Phase II health controls included regulations for institutional providers of care (hospitals and nursing homes) and non-institutional providers of care (predominantly physicians and dentists). While the goal of the institutional provider regulations was based on the Price Commission goal for the general economy, a halving of inflation rates in each sector, it was impossible to implement health controls that were the same as, for example, shoe controls. As indicated previously, there are factors other than a narrow definition of price per unit of service that enter the picture; cost reimbursement, technological advance, greater use of inputs, and the ambiguous nature of the product produced by a hospital.

The first major problem was how to correlate hospital care paid for under cost reimbursement contracts with that paid for on the basis of charges per service.[11] Using a limitation of 6.0 percent on increases in aggregate annual revenues due to price increases as the basic control, a per diem limitation of 8.0 percent was instituted for cost reimbursers, with the additional 2.0 percent for increased intensity of services per day. Thus, there was an explicit limit on price increases for both charge paying patients (revenues generated through increases in prices) and cost paying patients (maximum allowable per diem increases in costs). Combined with the 6.0 percent increase in aggregate annual revenues due to price increases was a 5.5% limit on increases in the wage bill, not the wage rate. This meant that additional employees had to be balanced against funds for old workers. This 5.5 percent wage bill increase produced an allowable 3.3 percent increase in total costs.[12] The remainder of the 6 percent allowance was divided between a 2.5 percent increase in non-wage costs (the general goal for the entire economy) and a 1.7 percent factor to allow for increases in expenditures for new technology not directly billed to patient services. This was a residual intensity factor not specifically defined.

[6] Community Hospitals: "Inflation in the Pre-Medicare Period", Karen Davis and Richard Foster, 1973, Social Security Administration.

[7] See Maw Lin Lee, "A Conspicuous Production Theory of Hospital Behavior", Southern Economic Journal, July 1971, pp. 48–58.

[8] See "Rising Cost of Hospital Care", op. cit. Chapter 5.

[9] See Ralph E. Berry, Jr. "Perspectives on Rate Regulation", paper presented at the Conference on Regulation in the Health Industry, January 9, 1974 National Academy of Sciences, Institute of Medicine, Washington, D.C. P. 12ff.

[10] In addition to the evidence presented in Feldstein, Chapter 5, there is a discussion of hospital nursing wages relative to other nurse wages and relative to other female-oriented occupations such as teacher and secretary in: Altman, S.H. "The Present and Future Supply of Registered Nurses", 1971, U.S. Department of Health, Education and Welfare, Division of Nursing, p. 80. Altman shows significant progress made by registered nurses relative to these other occupations. Unpublished data from the same study also show larger increases for RN's relative to industrial nurses.

[11] The Social Security Administration estimates (unpublished data) that in 1971 about 54% of all hospital care was paid for under cost reimbursement contracts.

[12] Labor costs in a hospital are estimated by the Social Security Administration to be about 60% of total costs.

The 1.7 percent allowance for new technology and the 2 percent intensity allowance for cost reimbursement allowed for increases attributable to changes in the number of services and their method of provision. Table 6 shows increases in the intensity of hospital services for the years up to the beginning of the Economic Stabilization Program. As can be seen, these increases had fallen off from a high of 7.2 percent in 1698 to 4.5 percent in 1970.

TABLE 6

ESTIMATED PER DIEM "INTENSITY" INCREASES

[In percent]

| Year | Total | Excluding new technology factor |
|---|---|---|
| (1) | (2) | (3)[1] |
| 1956 to 1965 | 3.2 | 1.8 |
| 1966 | 6.7 | 5.0 |
| 1967 | 7.6 | 5.9 |
| 1968 | 7.2 | 5.5 |
| 1969 | 5.5 | 3.8 |
| 1970 | 4.5 | 2.8 |

[1] Column (3) is derived by subtracting the 1.7 percent new technology factor from column (2), leaving just the intensity increases experienced in each year.

Source: 1972 Annual Report of the Board of Trustees of the Federal Hospital Insurance Trust Fund, p. 21, transmitted June 6, 1971, to the Speaker of the House of Representatives.

The other main feature of the Phase II regulations was a volume index which adjusted a hospital's level of allowable cost and revenues, as the number of days of care or admissions increased or decreased. It was this volume index which prevented the total revenue of a hospital from being fixed, regardless of the number of services rendered. It did, however, provide for a one-to-one correspondence between changes in volume and changes in allowable revenue and costs.

The Phase II system was designed for the short run and therefore, it could not deal completely with such factors as changes in the volume of services of new capital facilities.

It has always been recognized that the added cost of treating more patients, particularly in a well-functioning hospital, is far less than the average cost of treating all patients. As a hospital adds a few more patients, it is not necessary to add such items as more x-ray machines, nurses, or even beds. Therefore, the hospital that increased its volume of patients was permitted more allowable costs and revenues than it really needed to treat the additional patients. The requirement for cost justification meant that if these potential revenues were not actually spent, they had to be returned. Thus, there was still an incentive to spend.

The hospital that declined in volume of patients faced a different and more severe problem. If the decline in volume was 5%, expenses had to be reduced by a full 5%. However, because a significant portion of hospital costs is fixed in the short run, the effect of the Phase II volume adjustment was to take away some allowable costs that had to be incurred regardless of how many patients were served. The result was that many hospitals facing declines in volume had to dip into (and perhaps exhaust) reserves in order to meet operating expenses.

RESULTS UNDER PHASE II

The 13 months under Phase II saw a halving of increases in the hospital room and board rates. The semi-private room rate rose only 6.6% during 1972, and only 5.4% between November 1971 and January 1973.[12]

[12] Consumer Price Index, Bureau of Labor Statistics.

Analysis of just this measure of cost alone would have led one to believe that the problem of health care cost inflation was over. Yet economists, as was demonstrated previously, caution that the average daily service charge omits a large and growing fraction of costs that grows differently. Therefore, it was necessary to review the performance of other indices of cost such as cost per patient day and cost per admission. It became clear that while the rate of increase in room and board rates declined by over 50% during Phase II, cost per adjusted patient day and cost per adjusted admission declined by much less—only about 25%. What appears to have happened was that hospitals were willing to sacrifice some part of price increase revenues from charge payors as long as they knew that cost reimbursers were still there to pay the majority of the bills.

The Phase II regulations produced some unusual results in hospitals especially during the extension periods of Phase III/IV in 1973. Hospital charge increases were contained, and revenue increases from charge payors reduced accordingly. On the other hand, costs continued to increase at almost the pre-ESP rates. To the extent that they found them reasonable, cost reimbursers were continuing to reimburse for all incurred costs, thereby assuming a relatively larger share of reimbursed expenses than they had in the past. Aside from the general implications to the system this result was of special concern to the public programs such as Medicare and Medicaid. Although it is difficult to explain the reasons behind this result with any precision, it is also clear that admissions increased under Phase II. Whereas in 1971 admissions had only risen .4 percent and patient days went down 1.5 percent, during 1972, admissions rose 2.6 percent and patient days increased 1.8 percent. The trend toward shorter length of stay did, however, continue.

PHASE IV CONTROLS

The Phase IV hospital controls switch the emphasis from individual prices as a proxy for costs to a more aggregate measure of price—total cost of a hospital stay. Under the Phase IV regulations, changes in the number of admissions is used as a means of adjusting the hospital's volume of services and allowable cost increases.

Two important departures from the Phase II system are the separate treatment of increased costs due to new and approved capital expenditure and the separation of the controls on inpatient and outpatient services. The Phase II system had included a single 6% control limit which was to be an average for every hospital service. For the institution that was not expanding, such a limit was more than sufficient to meet its expenses. However, new construction generally requires a new pricing structure, and that required an exception which was not easy to obtain. Further, complicating the situation was the fact that it was often impossible, to obtain financing unless some assurance could be given that when the project was completed, the hospital pricing structure could be changed. Such an assurance was generally unobtainable, even in the exceptions process.

The Phase IV health regulations now provide that an institution planning a capital expenditure of more than $100,000 can recover such costs if it has demonstrated the need for the project and the reasonableness of the costs. The approval of the state agency designated under section 1122 of the Social Security Act (comprehensive health planning provisions) is to be taken as demonstration of community need. This change makes the process more reasonable and manageable since capital allowances are included in addition to those allowed for current operations. The new provisions also reinforce the development of area-wide and state-wide planning activities rather than the continued predominance of Federal controls.

In order not to discourage the trend towards increased use of outpatient services, a separate limit of 6 percent was established for hospital outpatient services. Such a limit could be implemented either on an aggregate weighted (by service) basis, similar to the physician limitations, or a 6 percent increase across the board for all services. This provision does not place any limits on the amount of outpatient services provided.

The controls dropped the requirement of cost justifying all price increases in order to maximize managerial flexibility. The only internal cost constraint remaining is the 5.5% wage limitation plus all allowable fringe benefit increases.

THE 7.5 PERCENT LIMIT

The basic control of Phase IV is a limit of 7.5 percent on increases in charges and reimbursed cost per admission. These limitations are placed on the institution that does not plan, and does not in fact have a different volume of admissions than in the past year. Since no change in admissions is projected, this allowance really amounts to a budget prospectively set no higher than 7.5 percent above the prior year's operating budget (remembering that new capital expenditure, even for the same number of patients is still an add-on).

Experience during the first part of 1973 showed that 7.5 percent was likely to be a reachable target. Data for the first quarter of 1973 taken from the "Hospital Indicators Panel Survey of the American Hospital Association" showed expenses per adjusted admission rising at an annualized rate of 7.1 percent compared to a rate of 8.9 percent for 1972 (and a rate of 8.2 percent for the fourth quarter of 1972). Results for the first half of the year showed an increase of about 7.5 percent. This was a significant trend since the economy was generally decontrolled under voluntary Phase III guidelines. It was this period that was used for projecting increases for 1974 rather than a time when the whole economy was under strict controls.

The 7.5 percent control limit was based on three components:

1. an estimate of the cost of producing the same level of services as in the previous year;

2. a productivity offset to account for more efficient production of last years' services; and

3. an intensity factor to provide a margin for increases in the quantity of services (in addition to those which result from capital expenditures of more than $100,000).

In estimating the increased cost of producing the same level of services, there was no difficulty in estimating the impact of wage increases because the 5.5 percent guideline plus 0.7% fringe benefit limit is still in effect. Similarly, it was not difficult to determine the proportion of a hospital's cost imputed to labor and non-labor inputs. It is generally recognized that a 60% payroll factor and 40% non-payroll factor are reasonable.[14]

The problem of estimating an index of factor prices, as Feldstein has noted, was the most severe. The major reason for the difficulty is the lack of weights to be attributed to each of the major non-wage items purchased by a hospital.

Because such an index was not generally available it was necessary for the Cost of Living Council to develop such an index. This

[14] These ratios were first used by the Phase II Health Services Industry Committee and have also been used by the Phase IV Health Industry Advisory Committee.

was accomplished by using three sources for weights for non-wage items, and a variety of sources for projections of inflation. Table 7 presents the categories selected (column 1), their estimated percentage of non-wage costs (column 2), the increases projected for 1974 using 1973 observations as of September 1973 (column 3), and their weighted contributions to non-wage and total cost increases (columns 4 & 5). This factor input price index has also been applied retrospectively to data for 1963–1972 and calculations have yielded the wage and price index with values for the last ten years. These values were used to adjust the expense data in Table 3 to come up with estimates of the increases in intensity expenditures per day and per admission in pre-control years.

TABLE 7

1974 PROJECTION OF INCREASES IN NONWAGE COST ITEMS

| Category | Percent of nonwage costs | Likely increase | Contribution to increase in— | |
|---|---|---|---|---|
| | | | Nonpayroll costs | Total costs |
| (1) | (2) | (3) | (4) | (5) |
| | | *Percent* | *Percent* | *Percent* |
| 1. Fringe benefits | 13.5 | 0.7 | | 0.42 |
| 2. Drugs | 7.0 | 1.2 | 0.08 | .03 |
| 3. Raw food | 7.0 | 15.0 | 1.05 | .42 |
| 4. Utilities | 4.2 | 8.3 | .35 | .14 |
| 5. Depreciation | 9.5 | 3.5 | .48 | .19 |
| 6. Interest | 4.1 | | | |
| 7. Insurance | 1.9 | 3.3 | .06 | .03 |
| 8. Medical supplies | 21.5 | 4.6 | .99 | .40 |
| 9. Other | 31.3 | 5.0 | 1.57 | .63 |
| Total | 100.0 | | 4.61 | 2.26 |

The weights used in rows 2–7 of column (2) were calculated from a sample of S–52 forms on file at the Cost of Living Council. Rows 1 and 8 were estimated from data supplied by the New York State Hospital Association, which also confirmed the estimates from the sample of S–52's. The weights derived were later confirmed to be consistent with available data from the American Hospital Association. The increases projected in column (3) are either 1973–1974 CPI projections or estimates based on other available data. The CPI drugs index showed no significant changes in 1973, but an allowance was included to allow for some substitution of more expensive drugs outside of the "intensity" allowance discussed later.

Most interest and depreciation funds are covered under the "new capital" provisions and can be recovered without regard to the operating limit. However, an allowance was included to take into account the effect of small (less than $100,000) projects. The increases projected for insurance (3.3%), and utilities and fuel (8.3%) are the 1973 CPI projections. The events of the last few months however, suggest that the amount of future increases in hospital fuel costs are uncertain. For this reason a separate notice is being issued with the regulations to permit hospitals to adjust their allowance because of increased fuel costs.

The increases projected for medical supplies, 4.6% is half the annual increase in the value of industry shipments as projected by the U.S. Department of Commerce for 1972–1980. This item may be somewhat misleading because many supply prices do not increase as new products enter the market (similar to drugs). However, half the increase in shipment values was included to permit a large part of the product substitution (without technological change) without resort to the intensity allowance. The final item, the residual, "other", was estimated to increase by 5 percent. This represents the average increase for 1973 in the CPI all items, less food. This index was selected because we had already taken account of increases in the cost of raw food. The process was repeated using the 1973 WPI, less agricultural products, with similar results. This projection was originally designed to be consistent with COLC goals, but there was enough rounding in the final calculations so that even increases of up to 8 percent could be accommodated within the same control limit. The original estimate of wage and input price increases (using 5% CPI increase) was 5.86%. Using a 6% assumption the factor goes up to 5.97% while 7% yields 6.11% and 8% yields 6.23%.

PRODUCTIVITY OFFSET

It was necessary to develop some offset of the Phase IV allowances to recognize increased productivity of hospital services. The three authors whose works are discussed here provided us with the background for the selection of the 1% tradeoff.

Richard Elnicki estimates average annual changes in labor productivity in three combinde Connecticut hospitals from a high of 1.54% to a low of .62%, over a 10 year period.[15] As part of an effort undertaken for the Cost of Living Council, Jim Jeffers, Professor of Economics at Iowa University,[16] developed an alternative methodology and used the same data as Elnicki. Although the estimates are not comparable, the work of both Elnicki and Jeffers indicate that the hospitals studied experience significant increases in factor productivity over the period. Jeffers' estimates ranged from around .5% to about 1.7%. Jerry Cromwell, Senior Economist of Abt Associates, also undertook a study for the Department of Health, Education and Welfare.[17] He estimated hospital productivity nationally over the 1964–1971 period for nine cost centers that incur slightly more than 50% of all hospital costs. The results show a positive productivity increase for all bed sizes, and an overall productivity gain, nationally, of 1.13 percent. It was therefore determined that a 1% tradeoff for productivity gains was not unreasonable.

[15] Richard Elnicki, "Effect of Phase II Price Controls on Hospital Services," "Health Services Research," Summary 1972, Pp. 106–116.

[16] James Jeffers, "Measurement of Changes in the Productivity of Inputs Producing Hospital Services", final report on contract CLC–73–7139, July 1, 1973, unpublished.

[17] Jerry Cromwell, "Hospital Productivity Trends in U.S. Short-term General Non-Teaching Hospitals," supported under contract number HEW–05–73–19 by the Division of Health Evaluation.

INTENSITY ALLOWANCE

Table 6 shows the per diem intensity increases recorded by the Social Security Administration for the pre- and post-Medicare periods. Before Medicare, per diem intensity increases averaged 3.2% annually. We divided these increases by the value of our wage and price index for each year and recalculated the effective increase in intensity in terms of 1967 input prices, obtaining 3.6 percent. Then in establishing our intensity allowances for Phase IV we sought to repeat the calculations for 1974 so as to obtain an intensity allowance which would be similar to the long term pre-Medicare trend.

Since all calculations for Phase IV had been done on a per admission basis, we had to establish a bridge from per diem increases to per admission increases. We have also seen that under Phase II rules, costs for the first nine months of 1973, have risen 7.4% per admission and 8.9% per day (since length of stay has continued to drop at 1.3%). If that relationship were to continue, the basic Phase IV system is likely to produce a 9% per diem increase. It is also likely that the more liberal capital expansion provisions, case mix adjustment, and exceptions policies should inflate that figure another 1.0 to 1.5 percent. Thus, the total per diem increase should be in the range of 10.0 to 10.5 percent.

We assumed that 50% of the per diem cost increase would be due to intensity (5.0–5.25 percent).[18] When the 10.0 to 10.5 percent per diem increases are deflated by the 1974 value of the index, the resulting real increases in intensity allowed by the Phase IV regulations are 3.2–3.3 percent, which is comparable to the pre-Medicare intensity increases. That is, the 2.5% intensity allowance included in the 7.5% operating limit, is consistent with those intensity increases recorded before the Medicare/Medicaid inflationary cycle.

Combining the three factors, increased cost needed to produce last years' services, productivity offset, and intensity factor leads to the following result:

TABLE 8

PHASE IV COST INCREASES

| | *Percent* |
|---|---|
| Increased cost of unchanged operations | 5.9 |
| Payroll 6.0% × 60% (weight) = 3.6% | |
| Non-payroll 5.7% × 40% (weight) = 2.3% | |
| Adjustment for increased productivity | −1.0 |
| Allowance for increased intensity | 2.5 |
| Net cost increase | 7.4 |

THE MARGINAL COST ASSUMPTIONS

Whereas Phase II assumed that almost all costs were variable as volume changed, the Phase IV controls took careful account of the differences that had to be recognized between fixed and variable costs. We used three pieces of research that could be categorized as studies in short run relationships of marginal (i.e., those that vary with output) to average costs, P. Feldstein, Lave and Lave, and M. Feldstein.[19]

Paul Feldstein used monthly cost and activity observations over a two year period

[18] See table 4.

[19] P. Feldstein, "An Empirical Investigation of the marginal Cost of Hospital Service," Chicago, University of Chicago, 1961.

J. Lave and L. Lave, "Estimated Cost Functions", "American Economic Review" June 1970, Pp. 379–395.

M. Feldstein, Economic Analysis for Health Service Efficiency, Amsterdam, North Holland Publishing Company, 1968.

for Gary (Indiana) Methodist Hospital. He found that the ratio of short run marginal cost to short run average cost ranged from 21–27%. Feldstein also estimated short run total cost functions for each of several hospital departments and concluded that in most cases, costs did not vary significantly with small increments in output.

The Laves used semi-annual observations on 74 Western Pennsylvania hospitals, and estimated an average cost function based on utilization, size and a time trend. A second stage regressed the coefficients of the independent variables against a number of environmental factors (urban-rural, teaching status) to determine in each case the optimum set of explanatory variables according to the usual goodness of fit criteria. This technique of economic analysis yields a quantitative estimate of the amount of variation in costs explained by changes in volume of patients. The Laves also found evidence of slight economies of scale (services can be produced more cheaply as the number produced increases) and of an accelerating rate of cost inflation. They also found that marginal cost varied between 40–65% of average cost.

Martin Feldstein analyzed the cost implications of differences in the intensity of utilization of a given stock of facilities (Chapter 5). He was specifically concerned with the average and marginal costs of short-run increases in the rate of case-flow. The marginal cost of a case was found to be almost 21% of average cost, calculated at the mean values of the independent variables. Feldstein also calculated the MC/AC ratios for seven individual case-mix categories. The MC/AC ratios, by category, are: general medical, 0.17; pediatrics, 0.26; surgery, 0.21; ear-nose-throat, 0.47; gynecology, —0.03; obstetrics, 0.47; and others, 0.40. Feldstein also found a serious underutilization of the stock of hospital facilities in the short-run.

After evaluating the literature, with special emphasis on the above three studies, and with the assistance of the Bureau of Health Services Research and Evaluation of the Department of Health, Education and Welfare, a marginal cost to average cost factor of 40% was included in the Phase IV regulations. If this adjustment were used from zero change in admissions, it would mean that an institution that was increasing in volume would be allowed only 40% of average cost and charge for each extra admission. The hospital that was declining in volume would be allowed to keep 60% of the average cost and charge of each lost admission, and recover the difference from the remaining patients.

There are, however, statistical indications that while the 40/60 ratio is a reasonable average, when volume of admissions increases the marginal cost may actually be somewhat higher, i.e., it costs more than 40% to service the increased admissions; and that when volume is declining the fixed costs may be higher, i.e., a hospital cannot reduce its cost per case by 40%.[20] For this reason, and to reduce the need for hospitals to make charge adjustments for small changes in volume, a "zone of no adjustment" was created.

ZONE OF NO ADJUSTMENT

The imposition of the Phase IV volume adjustment is delayed for most hospitals, with the extent of the delay dependent on their size. For the first 2% increase in admissions for large hospitals (and 4% increase for small[21]) the 7.5% allowance is permitted over last year's per admission averages, with no adjustment required. That is to say, the hospital is allowed to assume that all costs are variable.

The large hospital that declines up to 5% in admissions (10% for small hospitals) is allowed to assume that all costs are fixed. That is to say, the hospital may keep its total budget at 107.5% of the last year's budget. Once volume changes go beyond these limits, the volume adjustment begins. The equations for calculating the percentage limits for each change in volume appear in the appendix. Much has been made of the marginal cost assumption and the potential harshness of the volume adjustment. The effect of the zone, however, is to postpone the volume adjustment and to liberalize the marginal cost assumption. Table 9 shows, for both large and small hospitals, the actual marginal cost assumption of the regulations, depending upon the change in volume that is actually experienced. A further modification in the volume adjustment formula is a limit on the required reduction in price for volume increases such that a hospital could impose at least a 3% increase in cost per admission. On the down-side a limit of 20% was imposed on the allowable cost increase per admission. These are shown in Table 9.

[20] The American Hospital Association has been concerned with the 60–40 split of costs. They presented data that show that on the up-side, marginal costs are 80% of average costs and on the down-side, they are only 10–20% of average cost.

[21] A small hospital is defined as one with less than $2.5 million in budget or less than 4,000 admissions.

TABLE 9A

INCREASING ADMISSIONS ALLOWANCE FOR VARIABLE COSTS AND ALLOWANCE PER ADMISSION

[In percent]

| Percent change admissions | Large hospital | | Small hospital | |
|---|---|---|---|---|
| | Per admission | Variable costs | Per admission | Variable costs |
| 0 | 7.50 | ---------- | 7.50 | ---------- |
| +1 | 7.50 | 100 | 7.50 | 100 |
| +2 | 7.50 | 100 | 7.50 | 100 |
| +3 | 6.87 | 80 | 7.50 | 100 |
| +4 | 6.26 | 70 | 7.50 | 100 |
| +5 | 5.66 | 64 | 6.87 | 88 |
| +6 | 5.07 | 60 | 6.28 | 80 |
| +7 | 4.49 | 57 | 5.69 | 74 |
| +8 | 3.92 | 55 | 5.11 | 70 |
| +9 | 3.36 | 53 | 4.54 | 67 |
| +10 | 3.00 | 52 | 3.98 | 64 |
| +11 | 3.00 | 56 | 3.43 | 62 |
| +12 | 3.00 | 60 | 3.00 | 65 |
| +13 | 3.00 | 63 | 3.00 | 68 |
| +14 | 3.00 | 66 | 3.00 | 70 |
| +15 | 3.00 | 68 | 3.00 | 72 |

TABLE 9B

DECREASING ADMISSIONS ALLOWANCE FOR FIXED COSTS AND ALLOWANCE PER ADMISSION

[In percent]

| Percent change admissions | Large hospital | | Small hospital | |
|---|---|---|---|---|
| | Per admission | Fixed costs | Per admission | Fixed costs |
| 0 | 7.50 | 100 | 7.50 | 100 |
| −1 | 8.59 | 100 | 8.59 | 100 |
| −2 | 9.69 | 100 | 9.69 | 100 |
| −3 | 10.83 | 100 | 10.83 | 100 |
| −4 | 11.98 | 100 | 11.98 | 100 |
| −5 | 13.16 | 100 | 13.16 | 100 |
| −6 | 13.90 | 93 | 14.36 | 100 |
| −7 | 14.67 | 88 | 15.59 | 100 |
| −8 | 16.24 | 85 | 18.13 | 100 |
| −9 | 17.06 | 82 | 19.49 | 100 |
| −10 | 17.89 | 80 | 20.00 | 100 |
| −11 | 18.74 | 78 | 20.00 | 91 |
| −12 | 9.61 | 77 | 20.00 | 83 |
| −13 | 0.00 | 75 | 20.00 | 77 |
| −14 | 20.00 | 70 | 20.00 | 71 |
| −15 | 20.00 | 65 | 20.00 | 67 |

CASE-MIX ADJUSTMENT

There has also been much concern about the flexibility of the Phase IV system when a hospital's patient-mix changes. As many hospital services are shifted to out-patient settings, and as more illnesses become treatable, hospital patient-mix will become generally more complex, and perhaps also more expensive. There can also be shifts among institutions, with certain hospitals becoming referral centers for difficult cases.

The Phase IV controls include adjustment of revenues and costs that recognizes the increased costs of a more complex patient-mix. It is not part of the basic control system, and is placed in force at the option of the hospital. It will not be used to penalize hospitals that shift to less complex patients and is a self-executing adjustment.

The patient-mix adjustment procedure relies on either of two standard patient allocation systems. In addition, a hospital may use another allocation system with prior COLC approval. The procedure to allocate charges and expenses works in the following way. The current year's distribution of patients is determined by the category list below, and last year's total admissions are restated in these proportions.

Allocation of Patients

1. Medical, Surgical, Obstetrics, Pediatrics, Psychiatric; OR

2. H-ICDA diagnostic codes representing at least 85% of the hospital's admissions, the balance being included in a residual "other" category.

A restated "total charges" for the last year is then calculated using the actual charge per case (in each category) multiplied by the restated number of admissions in that category, with all the results added. The restated total budget is then divided by the actual total admissions to get a restated average charge per admission for the last year. The percent by which this amount exceeds last year's actual average charge per admission is the increment which could be added to the basic control allowances for charges and expenses. There is, however, a potential bias in the assumption that expenses due to patient-mix changes will change by the same percentage as the charges. The more likely case is that the difference in costs would be greater than the difference in charges. This is due to the fact that charges for high cost items are often redistributed to room and board rates. Patients do not pay $800 per day for coronary care. They pay perhaps $250, with all the other patients absorbing $1–2 in their room rates. Therefore charge ratios might not reflect cost differences. If a hospital felt that the data were indeed not reflective of a particular situation, it could request an exception.

INCENTIVES UNDER PHASE IV

As in any system of control based on a particular unit of output, the incentive is to increase the volume of that unit. That is true of the Phase IV system as it was under Phase II. But Phase IV includes three features to minimize such undesirable incentives:

(1) It is more difficult to create an unnecessary admission than to extend each hospital stay one extra day or order some extra tests "just in case".

(2) The simple outpatient limitation (with no intensity limitation) does not inhibit the trend toward more services being performed on an outpatient basis.

(3) Finally, and most importantly, the hospital that increases its volume of admissions beyond the zone is required to recognize that all costs are not variable, and that some economies of scale should be realized. In contrast, the Phase II system allowed free rein to increase costs and charges one-for-one with volume increases.

The Phase II system worked in such a way as to have undesirable effects on the hospital that had declining length of stay or declining occupancy. The Phase IV regulations changed that situation. The Phase IV zone on the down-side is structured to allow hospitals to maintain their budgets even if volume decreases. This volume reduction might have been unanticipated, but it might also have been the result of an active program of utilization review or a movement to pre-admission testing. Either way, the institution is not forced into a position of having to stop such desirable and Federally required activities or face financial ruin.

Finally, the control limit itself was designed to provide for the needs of hospitals, although it will be necessary to exercise some measure of cost consciousness in order to continue operations without financial difficulties. The capital exception and patient-mix adjustment are added measures of flexibility to permit desirable growth and change in the industry.

APPENDIX

There are four regions of volume changes, and hence operating allowances, between the 20% ceiling and 3% floor of the Phase IV regulations. For those who wish to do their own calculations we list below the relevant equation for each region.

REGION 1—Negative change in admission, greater than 5% for larger hospitals or 10% for small hospitals.

$$\text{Limitation} = \frac{ADM_B^{1.075}\left[1-\left(\frac{.4}{ADM_B}\right)\cdot(C\cdot ADM_B)-(ADM_C)\right]}{ADM_C}-1$$

REGION 2—Negative change in admissions within the zone.

$$\text{Limitation} = \frac{ADM_B\cdot 1.075}{ADM_C}-1$$

REGION 3—Positive or no change in admissions within the zone—7.5% limitation

REGION 4—Positive change in admissions beyond the zone (minimum allowance is 3%).

$$\frac{1.075}{ADM_C}\cdot[(C\cdot ADM_B)+.4(ADM_C-(C\cdot ADM_B))]-1$$

NOTATION

$ADM_B$ = Number of admissions in the base year.

$ADM_C$ = Number of admissions in the control year.

$C$ = Zone level, defined as ratio (e.g., −5% zone is .95, +2% is 1.02).

1.075 = Base standard.

9. In 6 CFR Part 152, Subpart D is amended by adding thereto a new § 152.40b to read as follows:

**§ 152.40b Certain providers of health care.**

(a) *Exemption.* Pay adjustments affecting employees engaged on a regular and continuing basis in the operation of a firm described in paragraph (b) of this section or in support of such operation are exempt from and not subject to the limitations set forth in this Title.

(b) *Exempted health care firms.* The exemption provided in paragraph (a) of this section applies to firms that are:

(1) Bloodbanks and blood donor stations.
(2) Chiropractors.
(3) Clinical psychologists.
(4) Clinics and dispensaries not owned or operated by an acute care hospital, long term care institution, medical practitioner, Health Maintenance Organization or HMO provider of health care services as defined in Subpart R of Part 150.
(5) Christian Science practitioners.
(6) Community mental health centers.
(7) Contact lens technicians.
(8) Curative baths or spas.
(9) Dental laboratories.
(10) Dieticians.
(11) Drug and alcohol abuse centers.
(12) Family planning clinics.
(13) Health camps and resorts.
(14) Homemaker and home health aide agencies (including a home health agency or services operated by a hospital when the hospital maintains separate financial accounts for the agency or services).
(15) Housing for the elderly not included in the definition of "long term care institution" of § 150.771 of this Title.
(16) Institutions for the mentally retarded.
(17) Medical photography.
(18) Midwives.
(19) Migrant health clinics.
(20) Naturopaths.
(21) Neighborhood health centers.
(22) Nutritionists.
(23) Occupational therapists.
(24) Opticians.
(25) Optometrists.
(26) Oxygen tent service.
(27) Physiotherapists who are not licensed physicians.
(28) Psychiatric social workers.
(29) Rehabilitation centers (therapy and treatment).
(30) Tuberculosis and other sanatoria operated separately from acute care hospitals or long term care institutions.
(31) Visiting nurse associations.
(32) Vocational rehabilitation institutions.

(c) *Covered employees.* An employee is considered to be engaged on a regular and continuing basis in the operation of a firm described in paragraph (b) of this section or in support of such operation only if such employee is employed by such a firm and only if such firm is not controlled or operated by an acute care hospital (except in the case of a home health agency or service operated by a hospital when the hospital maintains separate financial accounts for the agency or service), a long term care institution, a health maintenance organization, or a medical practitioner or medical laboratory (as defined in Subpart R of Part 150 of this chapter), and only if such firm is not doing business at the location of any such provider of health care.

(d) *Effective date.* The exemption provided in this section shall be applicable to pay adjustments with respect to work performed on and after January 1, 1974.

10. In 6 CFR Part 152, Subpart I is amended by revising the subpart title and amending §§ 152.91 and 152.92 to read as follows:

**Subpart I—Special Rules Applicable to Providers of Health Care**

**§ 152.91 Scope.**

This subpart establishes mandatory rules applicable to pay adjustments by providers of health care. Providers of health care include acute care hospitals, medical practitioners and medical laboratories, health maintenance organizations and health maintenance organization providers of health care, and long term care institutions. For purposes of this section, the definitions of such providers of health care shall be the same as the applicable definitions in Subpart R of Part 150 of this chapter.

**§ 152.92 Pay adjustments affecting employees in the health care industry.**

(a) *General.* Except as provided in this subpart, pay adjustments affecting employees in the health care industry remain subject to the classification, pre-

notification, and reporting requirements of the Council and the rules and regulations of the Pay Board in effect on January 10, 1973. The Cost of Living Council shall succeed to and assume all applicable rights, duties, and obligations of the Pay Board contained therein. Whenever authorizations from or reports to the Pay Board are required under those rules and regulations, such authorizations shall be obtained from and reports made to the Council in the form and within the time required under regulations of the Pay Board in effect on January 10, 1973.

(b) *Special rule.* For purposes of this subpart, the term "pay adjustments affecting employees in the health care industry" includes payments to self-employed registered, practical, and trained nurses who charge fees for their services based solely on fixed time units including, but not limited to, an hourly, shift, or daily basis, and who are subject to the provisions of § 150.503 of this chapter. For purposes of this paragraph, the term "fees" includes those fees established by a central registry or association for such nurses.

[FR Doc.74-1624 Filed 1-16-74;2:15 pm]

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PART III

# COST OF LIVING COUNCIL

■

## PHASE IV PRICE FORMS

## Title 6—Economic Stabilization

## CHAPTER I—COST OF LIVING COUNCIL

## PART 150—PHASE IV PRICE REGULATIONS

### Establishment of Appendix A—Phase IV Price Forms

The purpose of this amendment is to establish an Appendix A at the end of Part 150 of Chapter I. This appendix will contain the Phase IV price forms. This appendix is being added so that the the forms will receive FEDERAL REGISTER publication and dissemination, and so that they may be more easily referenced when amendments to them need to be made.

At this time the Council is publishing in Appendix A the Form "CLC–22—Prenotification, Report, or Record of Prices, Costs and Profits" and four supporting schedules to the CLC–22, specifically the "Schedule C—Calculation of Cost Justification to Support Net Price Increases on Form CLC–22", "Schedule F—Report or Record of Food Manufacturing Revenues", "Schedule T—Report of Retailing and Wholesaling Markups or Gross Margins", and "Schedule R—Reconciliation of Forms 10–K, 10–Q or Other Financial Statements to Form CLC–22".

The Form CLC–22 and its supporting schedules are being published as they were originally issued. Since then there have been a number of changes in the instructions which include, but are not limited to, the alterations to the Form CLC–22 instructions and to the Schedule R concerning the computation of base period profit margin, announced in Cost of Living Council Notice 1973–7, December 28, 1973; the amended "Certification of No Price Increase" in the CLC–22 Instructions, CLC Notice No. 73–5 (38 FR 35348, December 27, 1973); a "Certification That Public Disclosure Not Required", Cost of Living Council Release No. 456, November 7, 1973; and the alteration to column (e), Part IV of the Instructions to the CLC–22, announced in a letter of August 18, 1973 sent by the Deputy Director of CLC to all Tier I firms. These and the other amendments which have been made to the various instructions remain in effect, and will be incorporated in a revised set of instructions which the Council expects to issue in the near future. As part of the issuance process, the Council is today filing a notice of proposed rulemaking with the FEDERAL REGISTER, CLC Notice No. 1974–2 (39 FR 2730, January 23, 1974), containing a proposed revised "Instructions for the Preparation of Form CLC–22" and to Schedules C, F, R, and T. The preamble to the proposed revision discusses in some detail both the changes which have already been made, and those the Council proposes to implement.

Because the purpose of this amendment is to provide a more ready access to forms which have been public for some time, the Council finds that publication in accordance with normal rulemaking procedure is unnecessary and that good cause exists for making this amendment effective in less than 30 days.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E. O. 11730, 39 FR 19345; Cost of Living Council Order Number 14, 38 FR 1489)

In consideration of the foregoing, Part 150 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective January 17, 1974.

Issued in Washington, D.C., on January 17, 1974.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

1. Part 150 of Title 6 of the Code of Federal Regulations is amended by the establishment of an Appendix A—Phase IV Price Forms, to be placed at the end of Part 150 and to read as set out herein:

APPENDIX A—PHASE IV PRICE FORMS

Form CLC–22
August 1973
Replaces Form CLC–2,
For Fiscal Periods
Ending After
August 11, 1973

Economic Stabilization Program

# PRENOTIFICATION, REPORT, OR RECORD OF PRICES, COSTS, AND PROFITS

OMB NUMBER 172–R0007 Approval Expires April 1974

Identification Number
Parent
Unconsolidated Entity

## Part I—Identification Data

Internal Use Only

1. Form applies to:
   (a) ☐ Parent and consolidated entities
   (b) ☐ Unconsolidated entity

2. Type of submission:
   (a) ☐ Prenotification (b) ☐ Quarterly Report (c) ☐ Certification
   (d) ☐ Other _____

3. (a) Name of parent or unconsolidated entity to which this form applies

(b) Address (number and street)

(c) City or town, State and ZIP code

(d) Name of chief executive officer

(e) Name of parent (if Item 1(b) is checked)

4. Is this a resubmission? ☐ Yes ☐ No

| | month | day | year |
|---|---|---|---|
| 5. Ending date of most recently completed fiscal year ► | | | |
| 6. Reporting period ending date ► | | | |

7. Annual sales or revenues (to be completed by parent only) ► $ 000

## Part II—Calculation of Base Period Profit Margin (For dollar amounts omit 000; show percentages to two decimal places.)

| | month | day | year | |
|---|---|---|---|---|
| 8. Base year 1 net sales (from Schedule R)—fiscal year ended | | | | $ |
| 9. Base year 2 net sales (from Schedule R)—fiscal year ended | | | | $ |
| 10. Total (add items 8 and 9) ► | | | | $ |
| 11. Base year 1 operating income (from Schedule R) | | | | $ |
| 12. Base year 2 operating income (from Schedule R) | | | | $ |
| 13. Total (add items 11 and 12) ► | | | | $ |
| 14. Base period profit margin (divide item 13 by item 10) ► | | | | % |

## Part III—Calculation of Profit Variation (For dollar amounts, omit 000; show percentages to two decimal places.)

| | Cumulative Period |
|---|---|
| 15. Net sales (from Schedule R) ► | $ |
| 16. Base period profit margin (from item 14, Part II) ► | % |
| 17. Target cumulative period profit (item 15 times item 16) ► | $ |
| 18. Actual operating income (from Schedule R) ► | $ |
| 19. Cumulative period profit under (over) target profit (subtract item 18 from item 17) ► | $ |

## Part IV—Additional Information

20. (a) Name and title of individual to be contacted for additional information

(b) Address (number and street)

(c) City or town, State and ZIP code | (d) Phone number (include area code)

21. You must maintain, for possible inspection and audit, a record of all price changes after November 13, 1971. Give location of such records.

## Part V—Certification

I certify that the information submitted on and with this form is factually correct, complete and in accordance with Economic Stabilization Regulations (Title 6, Code of Federal Regulations) and instructions to Form CLC–22.

Type name and title of the Chief Executive Officer of parent, or other authorized Executive Officer, and date signed.

| Name | Date | Signature |
|---|---|---|
| Title | | |

**Part VI—Price/Cost Information**

| 22. Name of parent or unconsolidated entity | 23. Reporting period—month day year From: | to: month day year |
|---|---|---|

| 24. Product line or service line description (a) | 4-digit SIC (b) | Sales (000 omitted) (c) | Weighted Average Percentage Above (Below) Base Price: Prenotified (d) | Weighted Average Percentage Above (Below) Base Price: Charged (e) | Cost Justification (f) | Maximum Price Increase (g) |
|---|---|---|---|---|---|---|
| (1) | | $ | % | % | % | % |
| (2) | | | | | | |
| (3) | | | | | | |
| (4) | | | | | | |
| (5) | | | | | | |
| (6) | | | | | | |
| (7) | | | | | | |
| (8) | | | | | | |
| (9) | | | | | | |
| (10) | | | | | | |
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| (25) | | | | | | |
| (26) | | | | | | |
| (27) | | | | | | |
| (28) | | | | | | |
| (29) | | | | | | |
| (30) | | | | | | |
| (31) | | | | | | |
| (32) | | | | | | |
| (33) | | | | | | |
| 25. Total sales from continuation schedules | | $ | | | | |
| 26. Total item 24, lines (1) through (33) & item 25 | | $ | | | | |
| 27. New products and services | | | | | | |
| 28. Wholesale/retail | | | | | | |
| 29. Public utilities | | | | | | |
| 30. Health services | | | | | | |
| 31. Insurance | | | | | | |
| 32. Construction operations | | | | | | |
| 33. Agricultural products | | | | | | |
| 34. Foreign operations | | | | | | |
| 35. Exports | | | | | | |
| 36. Custom products | | | | | | |
| 37. Lumber and related products | | | | | | |
| 38. Other | | | | | | |
| 39. Total | | $ | | | | |

Express all percentages to the nearest two decimal places.

Form CLC–22 (August 1973)

# Cost of Living Council

## 2000 M Street, N.W.
## Washington, D.C. 20508

Instructions for the Preparation of Form CLC–22
Prenotification, Report, or Record of Prices, Costs, and Profits

## General Instructions

### A. Purpose

1. Form CLC–22 is designed to provide the data necessary for the Cost of Living Council (CLC) and the Internal Revenue Service (IRS) to execute their role in monitoring the performance of the economy pursuant to Executive Order 11730.

2. Form CLC–22 provides the means by which certain firms subject in whole or in part to 6 CFR, Part 150, report price adjustments and related costs and profits on a quarterly basis. In addition, Form CLC–22 provides the means by which a firm prenotifies certain price adjustments.

### B. Who Must Use Form CLC–22

1. Each price category I or II firm, as defined in 6 CFR, Part 150, Subpart C, must submit quarterly reports on Form CLC–22 and each price category I firm shall prenotify price increases on Form CLC–22 to the IRS in accordance with regulations issued by the CLC.

2. All firms are encouraged to prepare and maintain Form CLC–22 in the firm's records to assist in complying with Phase IV regulations.

3. **General Rules.** The following rules apply for the purpose of determining who must use Form CLC–22:

   a. **Determination of "Firm."** If a firm is not directly or indirectly controlled by another firm, that firm is called a "parent" for the purposes of this Form CLC–22. The parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls taken all together, constitute the "firm" for the purpose of paragraphs B.1. and B.2, above.

   b. **Parent and Consolidated Entities.** Once the prenotification or reporting status is determined, only the sales or revenues of the parent and the sales or revenues of the controlled entities (if any), consolidated with the parent in its financial statements prepared in accordance with generally accepted accounting principles are combined for purposes of preparation of the Form CLC–22 applicable to the "Parent and Consolidated Entities." The Form CLC–22 is prepared by the parent for and on behalf of the entire consolidated group for submission to the IRS.

   c. **Unconsolidated Entity.** In addition to preparing Form CLC–22 for and on behalf of the entire consolidated group, the parent must prepare a separate Form CLC–22 for and on behalf of each unconsolidated entity with annual sales or revenues of $10 million or more. An "unconsolidated entity" is any entity directly or indirectly controlled by a parent but not consolidated with the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An "unconsolidated entity" includes any entity consolidated with that unconsolidated entity for purposes of financial statements prepared in accordance with generally accepted accounting principles.

   d. **Entity.** For purposes of this form and all supporting schedules, entity means the "parent and consolidated entities" or an "unconsolidated entity."

4. **Certification of No Price Increase.** Any entity that would otherwise be required to file the Form CLC–22 on a quarterly basis which has not increased any price in excess of the greater of the base price or the adjusted freeze price, must submit within 30 days of the end of the entity's fiscal quarter, a Form CLC–22 with Parts I, IV, and V completed in accordance with these instructions, and, with the following certification typed in Part VI, Item 24, Lines (1) through (33):

   > I certify that as of (a), (b) has not at any time since (c); (1) charged a price in excess of the greater of the adjusted freeze price defined in accordance with 6 CFR, Part 150, Subpart E or the base price established in accordance with 6 CFR, Part 150, Subpart F, (2) charged a price for any custom product or service as defined in 6 CFR 150.104, or, if it has charged such a price, that the annual sales or revenues attributable to all its custom products or services will represent less than $10 million and less than

1 percent of the entity's annual sales or revenues, or, (3) increased a price pursuant to the special rule for volatility in 6 CFR 150.156.

Chief Executive Officer (or other authorized executive officer

The following information is entered in the appropriate blanks of the certification:

(a) the reporting period ending date

(b) the name of the entity to which the Form CLC–22 applies

(c) the date of the last day in base price period.

### C. When to Submit Form CLC–22

Firms required to prenotify price increases must file a Form CLC–22 at least 30 days prior to charging a price for which prenotification is required pursuant to 6 CFR, Part 150, Subpart H. Firms required to file Form CLC–22 as a report of price adjustments, and related costs and profits, must submit such report to the IRS not later than 45 days after the last day in the entity's fiscal quarter and 90 days after the last day in the entity's fiscal year.

### D. What to Submit or Prepare

This form and instructions require only basic information. However, the CLC and the IRS may request additional data in particular cases. Firms must submit 2 copies of the Form CLC–22, Schedules C, R, and T, as required, and all other supporting schedules and documentation indicated in the instructions. Firms which submit a Form CLC–22 which contains incomplete or incorrect information will be required to submit a corrected Form CLC–22 and will be considered in violation of the reporting requirements if a complete and correct form is not submitted within the time period prescribed.

### E. Where to Submit

Firms required to file must forward Form CLC–22 and attachments to the IRS office designated in the table at the end of these instructions.

### F. Suggestions for Improvement

The CLC welcomes suggestions for improving this and other forms, and seeks ways of obtaining the information it needs to exercise its responsibilities under Phase IV of the Economic Stabilization Program with the minimum amount of public burden. Suggestions should be submitted to:

Cost of Living Council
Office of the Executive Secretariat
2000 M Street, N.W.
Washington, D. C. 20508

### G. Rounding

For purposes of this form, all percentages must be expressed to the nearest two decimal places (such as 15.92%). All dollar entries must be rounded to the nearest $1000 and the 000 should be omitted (such as $1,750,803 entered as $1,751).

### H. Sanctions

The timely submission of a Form CLC–22 by a firm as a report or prenotification is a mandatory requirement under the Phase IV regulations. Late filing, failure to file, failure to keep records, or failure otherwise to comply with these instructions, may result in criminal fines, civil penalties, and other sanctions as provided by law.

## Specific Instructions

### PART I—Identification Data

**Item 1a or b. Organization/Status.** Check the box which indicates the status of the organization to which this form applies.

**Item 2. Type of Submission**

**Prenotification**—Check box (a) if Form CLC–22 is used to prenotify a price adjustment.

**Quarterly Report**—Check box (b) if Form CLC–22 is used to make a quarterly report.

**Certification**—Check box (c) if a Certification of No Price Increase is to be typed in Part VI (See General Instructions, paragraph B 4).

**Other**—Check box (d) if Form CLC–22 is used for purposes other than in 2 (a), (b), or (c) and explain the purpose on the line provided.

**Item 3. Name, Address, and Chief Executive Officer**

**Name.** If item 1(a) is checked enter the legal name of the parent. If item 1(b) is checked enter the legal name of the unconsolidated entity.

**Address.** Enter the address of the executive office.

**Chief Executive Officer.** Enter the name and title of the Chief Executive Officer.

**Parent.** If item 1(b) is checked, enter the legal name of the parent.

**Item 4. Is this a resubmission?** Answer Item 4 "yes" if you are supplying additional information or are resubmitting a report. In either case, the form must be completed in its entirety.

**Item 5. Ending date of most recently completed fiscal year.** Enter the date of the last day of the most recently completed fiscal year of the entity. If the fiscal year ending date has changed, enter the word "change" and attach a letter explaining the change.

**Item 6. Reporting Period Ending Date.** Enter the date of the last day in the reporting period. The reporting period must conform with the entity's most recently completed fiscal quarter.

**Item 7. Annual Sales or Revenues** (To be completed by Parent only). Enter for the most recently completed fiscal year, the total of the annual sales or revenues (as defined in 6 CFR, Part 150, Subpart B) of the parent and its consolidated and unconsolidated controlled firms.

### PART II—Calculation of Base Period Profit Margin

This part must be completed at the time the initial Form CLC–22 is prepared. Thereafter, this part must be completed only if the base period profit margin is restated. If the firm received an order granting a request for an exception affecting its base period profit margin, it may use the provisions of

such an order in calculating the base period profit margin in accordance with the instructions to this Part. In such cases, the firm must enclose a copy of the exception order and document its use and dollar effect. The term "base period" means any two, at the option of the entity, of that entity's fiscal years ending on or after August 15, 1968, other than the fiscal year for which compliance is being measured. A fiscal year in which it is determined that the entity unlawfully exceeded its base period profit margin can be a base period fiscal year except that operating income for that year must be reduced by the amount of operating income derived from prices in violation or the dollar value of the excess profit margin, whichever is less. In determining a base profit period for the purpose of computing a base period profit margin a weighted average of profits during the two years chosen must be used. The entries made in Items 8, 9, 11, and 12 must be reconciled on the Schedule R to Form CLC–22 with the corresponding entries reported on the supporting Form 10–K or other financial statements required in the Instructions to the Schedule R. Any required R must be attached to the Form CLC–22.

**Items 8 and 9. Net Sales.** Enter, from the appropriate Schedule R, the amount on Line 12.

**Item 10. Total.** Enter the sum of Items 8 and 9.

**Items 11 and 12. Operating Income.** Enter, from the appropriate Schedule R, the amount on Line 13.

**Item 13. Total.** Enter the sum of Items 11 and 12.

**Item 14. Base Period Profit Margin.** The base period profit margin is calculated by dividing Item 13 by Item 10.

## PART III—Calculation of Profit Variation

This part must be completed by the entity each time Form CLC–22 is prepared as a quarterly report. The entries made in Items 15 and 18 must be reconciled on the Schedule R to Form CLC–22 with the corresponding entries reported on the supporting Form 10–K, Form 10–Q, or other financial statements required (see instructions to Schedule R). Schedule R must be attached to the Form CLC–22. If the entry in Item 19 shows the Cumulative Period Profit over the Target Profit, the entity must attach on explanation as to why it does not appear to be conforming with the general price rules in 6 CFR, Part 150, Subpart E and Subpart K.

**Item 15. Net Sales.** Enter, from appropriate Schedule R, the amount in Line 12.

**Item 16. Base Period Profit Margin.** Enter the base period profit margin from Part II, Item 14, or if Item 14 is not completed, enter the base period profit margin from the most recently completed Form CLC–22 with a completed Part II.

If the entity is allowed a profit margin pursuant to the Loss and Low Base Period Profit Margin rule of 6 CFR 150.202, it should enter that profit margin in Item 16 and attach a supporting schedule to document the computation of the capital turnover ratio using net sales determined in accordance with 6 CFR 150.202. However, the completion of Part II, Form CLC–22, in accordance with the instructions, continues to be a requirement.

**Item 17. Target Cumulative Period Profit.** Enter the target amount of cumulative period profit determined by multiplying Item 15 by Item 16.

**Item 18. Actual Operating Income.** Enter, from appropriate Schedule R, the amount on Line 13.

**Item 19. Cumulative Period Profit Under (Over) Target Profit.** This entry is determined by subtracting Item 18 from Item 17.

## PART IV—Additional Information—

Self explanatory

## PART V—Certification

Type the name and title of the individual who has signed the certification and the date of signing. The individual who signs and certifies this Form CLC–22 must be the Chief Executive Officer of the Parent or such other executive officer of the entity as authorized by the Chief Executive Officer to sign for him for this purpose. Such authorization in the following format must be received by the appropriate IRS office as indicated in the table at the end of these instructions.

**Delegation of Authority to Sign and Certify**

_____
(Typed date of signing)

_____
(Name of parent)

I, _____
(Name)

hereby certify that I am the _____
(Title)

of the above-named parent; and that, as such, I am authorized to sign documents and to certify, on behalf of said parent, the accuracy and completeness of all the information in such documents. Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the person(s) listed below, who is (are) executive officers of the above-named parent or entity of the firm. This delegation is effective until it is revoked in writing, and the Internal Revenue Service is so notified.

_____ _____
(date) (Signature)

**Authorized Individuals**

| Name and Title | Extent of Authorization |
|---|---|
| | |
| | |

**Special Instructions for the Preparation of Form CLC–22 as a Prenotification Document**

1. The prenotification requirement is determined according to the annual sales or revenues of the parent and the consolidated and unconsolidated entities it directly or indirectly controls. Once it has been determined

that prenotification is required, an entity must prenotify regardless of the amount of its own sales and revenues, unless the entity is an unconsolidated entity with less than $10 million or unless the prenotification requirement is modified by the Council pursuant 6 CFR, Part 150, Subpart H.

2. When prenotifying a price increase, entities must fill out Parts II and III of Form CLC–22 unless such parts to the Form CLC–22 have been previously filed with the IRS. All other parts of this form must be completed in accordance with the instructions for those parts except that items 27 through 39 in Part VI are not required to be completed. Firms need only show product lines or service lines for which a price increase is being requested. In no case may prenotification be made as a part of the required quarterly report.

## PART VI—Price/Cost Information

### Introduction

This part is used to report or prenotify weighted average price adjustments by product line. For purposes of this form, "product line" means product, product line, service or service line. Any price adjustments which have been made by means of change in quantity, quality, specifications or characteristics must be taken into account when reporting price adjustments. The price of an item in inventory may be increased only to reflect cost increases incurred in the production of that item.

### Alternative Treatment of Operations of Entity

A firm which is subject to 6 CFR, Part 150, Subpart E and which is also engaged in wholesaling or retailing, or both, is subject to the requirements of Subpart K of this part with respect to its wholesaling and retailing operations. However, if the sales or revenues derived from wholesaling and retailing activities amounted to both less than $50 million and less than 10% of the firm's total manufacturing or service revenues subject to 6 CFR, Part 150, Subpart E in the most recently ended fiscal year, the firm may, at its option, treat its wholesale and retail operations for pricing and reporting purposes as manufacturing or service activities.

As an alternative to the method for prenotifying, a firm which is subject to 6 CFR Part 150, Subpart K and which also engages in manufacturing or service activities, or both, is subject to the requirements of Subpart E of Part 150 with respect to its manufacturing and service activities. However, if the sales or revenues derived from manufacturing and service activities were less than $50 million and less than 10% of the firm's total retailing or wholesaling revenues for the most recently completed fiscal year, the firm may include its manufacturing and service activities in its merchandising pricing plan (see Instructions to Schedule T to Form CLC–22). When manufacturing or service activities are so included, customary initial percentage markups and gross margins shall be computed, in the case of manufacturing activities, on the basis of direct material costs and, in the case of service activities, on the basis of direct material and direct labor costs.

### Calculations Required in Completing Part VI, Form CLC–22

In order to arrive at the weighted average percentage price adjustment required in Part VI, Form CLC–22, the entity must:

(1) Calculate base prices,

(2) Calculate current prices; and

(3) Weight the difference between each current price and base price by the quantity of the respective items sold.

The explanations and examples below are standards for the correct computation of the base price, current price, and weighted average percentage price adjustment (price adjustment). In selecting its method for computing its price adjustment, the entity may use alternative techniques which, when applied in a consistent and unbiased manner, result in a percentage which is not materially different from the percentage derived using the standards below. Some of these alternative techniques are mentioned in the explanation below.

### Computation of Base Price and Current Price

An item is a product or service unit sold, leased or offered for sale or lease to class of purchaser.

The base price of an item is the average unit price of that item computed for the firm's last fiscal quarter ended prior to January 11, 1973 in which transactions occurred with respect to the item and class of purchaser concerned. The average unit price of an item for a period is determined by dividing the net sales of the item for the period by the quantity of the item sold for that period. Prices charged pursuant to temporary special deals or temporary special allowances may be excluded in computing the base price of an item.

The current price of an item is the average unit price of that item computed for the reporting period for Form CLC–22. The following is an example of the calculation of a base price. The computation of a current price is identical except the sales and quantity data are taken from the reporting period and not the base price period.

Firm A's fiscal year end is November 30. The base price period is the fiscal quarter ended 11/30/72.

During that period product B sold as follows:

| | | | |
|---|---|---|---|
| 100 | units | $1.00 = | $100 |
| 100 | units | 1.05 = | 105 |
| 200 | units | 1.10 = | 220 |
| 400 | units | | $425 |

$$\text{Base price for Item B} = \frac{\text{net sales}}{\text{units sold}} = \frac{\$425}{400} = \$1.06$$

The base price must be determined for each item. Firms which cannot reasonably calculate base prices for each item may employ valid sampling techniques.

### Computation of Weighted Average Percentage Price Adjustment Above (Below) Base Price

The calculation of the weighted average percentage price adjustment is necessary to complete Part VI, Item 24 (d) and (e), regardless of whether the adjustment is above or below (set off by parenthesis) base price.

The weighted average percentage price adjustment is the difference between current revenues and base price revenues for the product line all over base price revenues. The result is

multiplied by 100 to convert to a percentage. Current revenues are net sales of the product for the reporting period (average unit price times quantity sold). Base price revenues are the revenues that would have been derived during the reporting period if all prices had been at base price (i.e. base price times quantity sold during the reporting period).

Although the calculation of the weighted average percentage price adjustment requires determination of price changes at the item level, it may not be feasible to compute and record the percentage price changes at this level of detail. In such cases, it may be permissible to use a sampling, averaging, exceptions, or other valid technique to calculate a weighted average percentage price adjustment. Where these techniques are used, the entity must adhere to accepted standards with regard to materiality, sampling validity, and consistency. In all cases, the entity must maintain documentation which outlines the type of techniques used in calculating the weighted average percentage price adjustment.

The entity must weight its price changes according to one of the following methods:

(1) The quantity sold during the reporting period (as shown in the formula and illustration below);

(2) The quantity sold during the base price period providing the entity can demonstrate that there is no material difference in product mix between the base price period and the reporting period;

(3) The value of the sales to which a price change applies as a proportion of the total sales for which the weighted average is computed.

All methods of weighting must take into account price increases and decreases from base price.

The weighted average price adjustment above (below) base price can be computed using the following formula:

$$\frac{\text{(Current revenues)—(Base price revenues)}}{\text{(Base price revenues)}} \times 100 = \text{Weighted average percentage price adjustment}$$

**ILLUSTRATION OF COMPUTING THE WEIGHTED AVERAGE PERCENTAGE PRICE ADJUSTMENT**

The steps for computing the weighted average percentage price adjustment using weighting by quantity sold during the reporting period (method (1) above) are:

1. Multiply the quantity of each item sold during the reporting period by its base price. The result is the base price revenues for each item.
2. Total the base price revenues (Column 5) for the individual items to arrive at the total base price revenues (sum of Column 5).
3. Divide the total base price revenues computed in step (2) above into the difference between total current revenues (sum of column 6) and total base price revenues and multiply the result by 100 to convert to a percentage.

**SAMPLE CALCULATION OF WEIGHTED AVERAGE PERCENTAGE PRICE ADJUSTMENT**

| (1) Item | (2) Base price | (3) Average price reporting period column | (4) Quantity sold during reporting period (000's) | (5) Base price revenues (000's) column (2) × column (4) | (6) Current revenues (000's) |
|---|---|---|---|---|---|
| A | $ 5 | $ 4.80 | 40 | $ 200 | $ 192 |
| B | 6 | 6.10 | 60 | 360 | 366 |
| C | 3 | 3.20 | 50 | 150 | 160 |
| D | 10 | 10.00 | 15 | 150 | 150 |
| E | 8 | 8.25 | 40 | 320 | 330 |
| Total | | | | 1,180 | 1,198 |

$$\text{WEIGHTED AVERAGE PERCENTAGE PRICE ADJUSTMENT} = \frac{1198-1180}{1180} \times 100 = 1.53\%$$

## Specific Instructions

**Item 22.** Enter the name of the parent or unconsolidated entity as shown in Part I, Item 3(a), Form CLC–22.

**Item 23.** If CLC–22 is used to prenotify price increases, enter the dates of the first day and last day of the current cost period for prenotification purposes as defined in 6 CFR, Part 150, Subpart G.

If CLC–22 is used as a quarterly report enter the beginning and ending dates of the fiscal quarter to which the CLC–22 applies.

**Item 24.** Lines (1) through (33) are provided for the prenotification and the reporting of price and cost information. An entity subject to prenotification may not charge a price on any item in a product line above the higher of the adjusted freeze price or the base price as defined above without prenotifying such an increase to the IRS pursuant to 6 CFR, Part 150, Subpart H, even though the weighted average percentage price adjustment with respect to all base prices within the product line is zero or less.

Col (a)—For reporting purposes, list all product lines on lines (1)—(33), accounting for all entity sales except the sales applicable to Items 27—39. For prenotification purposes, list the product lines in which a prenotified price increase will be made. Price adjustments and supporting cost justification must be recorded for each product line categorized

by a 4-digit Standard Industrial Classification (SIC) Code if that is the entity's customary pricing unit (e.g., cost or profit center) for that product line. If a customary pricing unit includes more than one 4-digit SIC code, such pricing unit may be used and a listing of 4-digit SIC codes included within that pricing unit must be attached to the form. The listing of SIC codes must be in decreasing order of sales within the pricing unit. If the customary pricing unit is at a level of aggregation which is less than one 4-digit SIC code, the entity may record price adjustments and supporting cost justification at that level. A customary pricing unit is that unit which has been historically and continually applied.

Col (b)—Enter the applicable 4-digit SIC code for each product line listed in Column (a).

Col (c)—All entries in this column must be net of intercompany sales. For prenotification purposes, enter annual sales or revenues at present prices projected for the twelve months following the last day of the current cost period (entered in Item 23) for the product line listed in Column (a). If Part VI is being used for reporting purposes, enter the applicable sales for each product line for the reporting period.

Col (d)—For prenotification purposes, enter the weighted average percentage price adjustment requested by the entity. The prenotified percentage price increase for the product line may not be charged until 30 days after the Form CLC–22 used for prenotification has been filed with the IRS. For any subsequent Form CLC–22 submitted as a report, the last prenotified percentage must not be exceeded for that product line by the percentage in Column (e), Item 24, Part VI, Form CLC–22. For reporting purposes, leave this column blank.

Col (e)—For reporting purposes, enter the weighted average percentage price adjustment above (below) base price for the reporting period. An entity which submits a Form CLC–22 as a prenotification document during a reporting period in accordance with 6 CFR, Part 150, Subpart H may not exceed the prenotified price adjustment during that reporting period or any subsequent period (see instructions to Column (d) above). Accordingly, any entry in Column (e), Part VI, Form CLC–22 used as a report, which is greater than the latest entry in Column (d), Part VI, Form CLC–22 used as a prenotification document during or prior to the reporting period must be accompanied by an explanation as to why the entity does not appear to be complying with the prices rules in 6 CFR, Part 150, Subpart E. For prenotification purposes, leave this column blank.

Col (f)—For those product lines with amounts in Column (d) (prenotifying) or (e) (reporting) that are greater than zero, enter the percentage cost justification from Schedule C, Line 12 unless the entity has not charged a price for an item in the product line above the adjusted freeze price. Schedule C must be attached for each amount entered in this Column where the entity has charged a price in excess of the adjusted freeze price or the base price, whichever is higher and the weighted average percentage price adjustment entered in Column (e) is greater than zero. If the percentage cost justification in this column is less than the percentage entered in Column (e) Part VI), the entity must furnish documentation explaining why the price increase exceeds the cost justification. For example, if the price of a product has been increased in accordance with a historical seasonal fluctuation (6 CFR 150.203) and the price (Col. e) exceeds cost justification (Col. f) the entity must demonstrate its qualification for the seasonality provision on an attached document.

If prices have been increased pursuant to volatile pricing authority granted the entity, a copy of the order granting the authority and a supporting schedule must be attached to the Form CLC–22 displaying the cost of the volatile material and corresponding price of product during the reporting period. If the entity increased prices only in response to increases in volatile materials, such supporting documentation may be in lieu of the entry in this column and the supporting Schedule C for the product line in Column (a).

Col (g)—For prenotification purposes, enter the highest percentage price increase which will be made for any item in the product line. For reporting purposes, enter the highest percentage price increase over base price which was made for any item in the product line during the reporting period. The maximum price which may be charged for any one item in that line may not exceed 110% of the base price or 110% of the adjusted freeze price of that item (whichever is greater) plus the amount which results from multiplying the base price or the adjusted freeze price of that item (whichever is greater) by the percentage of cost justification determined in accordance with this part with respect to that product line or service line.

**Examples of Calculation of Item Maximum Price Limitation**

Example 1:

| | |
|---|---|
| Base Price | $5.00 |
| Adjusted Freeze Price | $5.20 |
| Cost Justification | 8% |

Maximum Price Limitation = $5.20 + $5.20 (10% + 8%)
$5.20 + $ .94 = $6.14 (or 118% of the adjusted freeze price)

Example 2:

| | |
|---|---|
| Base Price | $2.50 |
| Adjusted Freeze Price | $2.40 |
| Cost Justification | 12% |

Maximum Price Limitation = $2.50 + $2.50 (10% + 12%)
= $2.50 + $ .55 = $3.05 (or 122% of the base price)

If the entry in this column exceeds the maximum price increase limitation as described in 6 CFR, Part 150, Subpart E, the entity must attach an explanation as to why it has exceeded the maximum price limitation.

**Item 25.** Enter total sales reflected on attached continuation schedules. Use additional copies of Part VI, Form CLC–22 for any continuation schedule.

**Item 26.** Enter the total for Item 24, Lines (1)–(33) and Item 25.

NOTE: Items 27 through 39 need not be completed for prenotification purposes.

**Item 27.** New Items—Enter sales or revenues for the reporting period of all new items whose price has not been increased above a price determined in accordance with 6 CFR, Part 150, Subpart F. An entity which has projected sales and revenues for its current fiscal year of $10 million or more derived from the sale or lease of new items must attach documentation demonstrating that with respect to each new item with projected annual sales of $1 million or more which is offered for sale or lease for the first time during the quarter concerned, that the item qualified as a new item as defined in 6 CFR 150.103 and that the base price of that item has been determined in accordance with that section. For each such item, the entity must include the following information:

1. Name and description of item (attach sufficient documentation so that a comparison with the most nearly similar item can be made).
2. Base price of item.
3. Expected sales or revenues for 12 months following the last day of the reporting period.
4. Date first offered.
5. Method used to determine base price (Average Price, Net Operating Profit Markup, Customary Initial Percentage Markup, or Customary Practice).
6. Documentation supporting the determination of base price.
7. Description of new market, if applicable.
8. Cost of improving or restoring an item for lease and amount of 3 month's rent, if applicable.
9. Estimated sales and revenues from sales and leases of all new items for the current fiscal year including sales and revenues before August 12, 1973.

**Item 28.** Enter sales or revenues for the reporting period for wholesaling and retailing activities reported on Schedule T, Form CLC–22.

**Item 29.** Enter sales or revenues for the reporting period form operations of a public utility as defined in 6 CFR, Part 150, Subpart B.

**Item 30.** Enter sales or revenues for the reporting period from providers of health services subject to 6 CFR, Part 130, Subpart G.

**Item 31.** Enter sales or revenues for the reporting period from all insurance operations covered by 6 CFR, Subpart M.

**Item 32.** Enter sales or revenues for the reporting period from construction operations as defined in 6 CFR, Part 150, Subpart N.

**Item 33.** Enter sales or revenues for the reporting period from the sales of agricultural products exempt in 6 CFR, Part 150, Subpart D.

**Item 34.** Enter sales or revenues for the reporting period of foreign operations. To determine sales or revenues of foreign operations, refer to the foreign operations exclusion in the definition of "annual sales or revenues" in 6 CFR, Part 150, Subpart B.

**Item 35.** Enter the amount of export sales for the reporting period.

**Item 36.** Enter sales or revenues of custom products for the reporting period as defined in 6 CFR, Part 150, Subpart F.

**Item 37.** Enter sales or revenues for the reporting period of lumber and related products defined in 6 CFR, Part 150, Subpart D.

**Item 38.** Enter sales or revenues for the reporting period of all other products or services exempted in 6 CFR, Part 150, Subpart D.

**Item 39.** Total Column (c) Items 26 through 39. This total should be reconciled to the sales or revenues for the reporting period.

## WHERE TO FILE FORM CLC–22 AND RELATED SCHEDULES

| If the parent of the firm is located in this area of the United States | because its Internal Revenue Service district office is: | then entities of the firm must file forms with this Internal Revenue Service-Stabilization key district. |
|---|---|---|
| CENTRAL | Cincinnati, Ohio<br>Louisville, Kentucky | P.O. Box 1637<br>Cincinnati, Ohio 45201<br>Tel. #513-684-2397 |
| | Cleveland, Ohio<br>Parkersburg, West Virginia | P.O. Box 99184<br>Cleveland, Ohio 44199<br>Tel. #216-522-3200 |
| | Detroit, Michigan | P.O. Box 1487<br>Detroit, Michigan 48231<br>Tel. #313-226-7672 |
| | Indianapolis, Indiana | P.O. Box 44587<br>Indianapolis, Indiana<br>Tel. #317-633-8660 |
| MID-ATLANTIC | Baltimore, Maryland | P.O. Box 1456<br>Baltimore, Maryland 21203<br>Tel. #301-962-2428 |
| | Newark, New Jersey | P.O. Box 940<br>Newark, New Jersey 07101<br>Tel. #201-645-6277 |
| | Philadelphia, Pennsylvania<br>Wilmington, Delaware | P.O. Box 58<br>Philadelphia, PA. 19105<br>Tel. #215-597-9688 |
| | Pittsburgh, Pennsylvania | P.O. Box 2529<br>Pittsburgh, PA. 15230<br>Tel. #412-644-5604 |
| | Richmond, Virginia | P.O. Box 10165<br>Richmond, Virginia 23240<br>Tel. #804-782-2392 |
| MIDWEST | Aberdeen, South Dakota<br>Fargo, North Dakota<br>St. Paul, Minnesota | P.O. Box 3450<br>St. Paul, Minnesota 55165<br>Tel. #612-725-7133 |
| | Chicago, Illinois | P.O. Box 1193<br>Chicago, Illinois 60690<br>Tel. #312-353-5187 |
| | Des Moines, Iowa<br>Omaha, Nebraska | P.O. Box 797<br>Des Moines, Iowa 50303<br>Tel. #515-284-4070 |
| | Milwaukee, Wisconsin | P.O. Box 91247<br>Milwaukee, Wisconsin 53202<br>Tel. #414-224-3350 |
| | Springfield, Illinois<br>St. Louis, Missouri | Postal Drawer 1087<br>Central Station<br>St. Louis, Missouri 63188<br>Tel. #314-622-5084 |
| NORTH ATLANTIC | Albany, New York<br>Buffalo, New York | P.O. Box 271<br>Niagara Square Station<br>Buffalo, New York 14201<br>Tel. #716-842-3812 |
| | Augusta, Maine<br>Boston, Massachusetts<br>Burlington, Vermont<br>Portsmouth, New Hampshire | P.O. Box 9084<br>J. F. Kennedy Post Office<br>Boston, Massachusetts 02203<br>Tel. #617-223-4750 |
| NORTH ATLANTIC Cont. | Brooklyn, New York | P.O. Box 40 GPO<br>Brooklyn, New York 11202<br>Tel. #212-855-4994 |
| | Hartford, Connecticut<br>Providence, Rhode Island | P.O. Box 1379<br>Hartford, Connecticut 06101<br>Tel. #203-244-3245 |
| | Manhattan, New York | P.O. Box 3036<br>Church Street Station<br>New York, New York 10008<br>Tel. #212-466-1600 |
| SOUTHEAST | Atlanta, Georgia<br>Birmingham, Alabama | P.O. Box 1067<br>Atlanta, Georgia 30301<br>Tel. #404-526-4301 |
| | Columbia, South Carolina<br>Greensboro, North Carolina | P.O. Box 20541<br>Greensboro, N. Carolina 27420<br>Tel. #919-275-9111 Ext. 613 |
| | Jackson, Mississippi<br>Nashville, Tennessee | P.O. Box 220<br>Nashville, Tennessee 37202<br>Tel. #615-749-7151 |
| | Jacksonville, Florida | P.O. Box 35045<br>Jacksonville, Florida 32202<br>Tel. #904-791-3552 |
| SOUTHWEST | Albuquerque, New Mexico<br>Dallas, Texas | 1100 Commerce Street<br>Code 305<br>Dallas, Texas 75202<br>Tel. #214-749-1876 |
| | Austin, Texas<br>New Orleans, Louisiana | P.O. Box 1398<br>Austin, Texas 78767<br>Tel. #512-397-5621 |
| | Cheyenne, Wyoming<br>Denver, Colorado<br>Little Rock, Arkansas<br>Oklahoma City, Oklahoma<br>Wichita, Kansas | P.O. Box 66<br>Oklahoma City, OK. 73101<br>Tel. #405-231-4127 |
| WESTERN | Los Angeles, California<br>Phoenix, Arizona | P.O. Box 3231<br>300 N. Los Angeles Street<br>Los Angeles, Calif. 90053<br>Tel. #213-688-2381 |
| | Reno, Nevada<br>Salt Lake City, Utah<br>San Francisco, California | P.O. Box 36011<br>450 Golden Gate Avenue<br>San Francisco, Calif. 94102<br>Tel. #415-556-8839 |
| | Boise, Idaho<br>Helena, Montana<br>Portland, Oregon<br>Seattle, Washington | P.O. Box 20166<br>2200 Sixth Avenue<br>Seattle, Washington 98121<br>Tel. #206-442-1024 |
| | Anchorage, Alaska | P.O. Box 20166<br>2200 Sixth Avenue<br>Seattle, Washington 98121<br>Tel. #206-442-1024 |
| | Honolulu, Hawaii | P.O. Box 3231<br>300 N. Los Angeles Street<br>Los Angeles, Calif. 90053<br>Tel. #213-688-2381 |

Schedule C
Form CLC–22
(August 1973)

Economic Stabilization Program

# CALCULATION OF COST JUSTIFICATION TO SUPPORT NET PRICE INCREASES ON FORM CLC–22

OMB NUMBER 172–R0007 APPROVAL EXPIRES APRIL 1974

Identification Number
Parent
Unconsolidated Entity

## PART I—IDENTIFICATION DATA

Internal Use Only

1. (a) Name of parent or unconsolidated entity (as shown in item 3(a), Part I, Form CLC–22)

(b) Address (street, city, State, and ZIP code)

2. (a) Product or service line description
From columns (a) and (b), Part VI, on corresponding Form CLC–22

(b) 4-digit SIC

3. Reporting period ending date — month day year

## PART II—CALCULATION OF COST JUSTIFICATION

Express all percentages to the nearest two decimal places

| COST ELEMENTS (Attach supporting schedules as required by instructions) | (a) METHOD USED: INPUT | (a) METHOD USED: OUTPUT | (b) Percentage Increase (Decrease) in Current Cost Level vs. Base Cost Level | (c) Percentage of Cost Element to Total SALES during Base Cost Period | (d) (b) x (c) Expressed as a Percentage |
|---|---|---|---|---|---|
| 4. Direct materials | | | | | |
| (a) Imported | | | | | |
| (b) Other | | | | | |
| 5. Direct labor | | | | | |
| 6. Other manufacturing or service costs | | | | | |
| (a) Labor | | | | | |
| (b) Other costs | | | | | |
| 7. Other operating costs | | | | | |
| (a) Labor | | | | | |
| (b) Marketing, general and administrative | | | | | |
| (c) All other | | | | | |
| 8. Nonallowable costs | | | | | |
| 9. Profit | | | | | |
| 10. Subtotal | | | | 100.00% | % |
| 11. Offset for productivity increase | | | | | % |
| 12. Weighted average percentage price increase justified by this schedule (Subtract item 11 from item 10) | | | | | % |

13. Base cost period — From: month day year To: month day year

14. Current cost period — From: month day year To: month day year

# Cost of Living Council

2000 M Street, N.W.
Washington, D.C. 20508

Instructions for Preparation of Schedule C
Calculation of Cost Justification to Support Net Price Increases on Form CLC–22

## General Instructions

Schedule C to Form CLC–22 provides the means by which firms calculate cost justification for charging a price increase pursuant to the general price rules, 6 CFR, Part 150, Subpart E. This schedule must be prepared for each product line in Column (a), Part VI, Form CLC-22 for which a weighted average price increase is being prenotified (Column (d), Part VI) or reported (Column (e), Part VI), unless:

(1) The prenotified or reported price adjustment is zero or less for the product line in Column (a), Part VI, Form CLC–22; or

(2) The entity has not charged a price in excess of the higher of the adjusted freeze price or the base price for the product line in Column (a), Part VI, Form CLC–22.

## Specific Instructions

### PART I—Identification Data

**Item 1.**

(a) Enter the legal name of the parent or unconsolidated entity, as shown in Part I, Item 3(a), Form CLC–22.

(b) Enter address of the entity's executive office.

**Item 2.**

Enter the product or service line description as shown in Item 24, Columns (a) and (b), Part VI, Form CLC–22, for which this schedule is prepared.

**Item 3.**

Enter the date of the last day in the reporting period as shown in Part I, Item 6, Form CLC–22.

### PART II—Calculation of Cost Justification

The level of costs from which all cost increases are measured (base costs) is the level of costs incurred during the firm's last fiscal quarter ended prior to January 11, 1973 (base cost period), in which costs were incurred with respect to the product line concerned. The current level of costs (current costs), which are compared with base costs to determine the amount of allowable cost increase for justifying a price increase pursuant to 6 CFR, Part 150, Subpart E, is the level of costs incurred during the current cost period. For purposes of reporting on the Form CLC–22, the current cost period is the last accounting month in the reporting period as defined in the instructions for Item 6, Part I, Form CLC–22. For purposes of prenotification on the Form CLC–22, the current cost period is the accounting month most recently ended prior to the date of signing (Part V, Form CLC–22).

There are two primary methods for measuring cost increases—the input method and the output method. The input method is employed by computing the rates (such as dollars per hour, dollars per ton, dollars per kilowatt hour) of cost elements being incurred on the last day of the current cost period. For prenotification purposes for all input costs that can be calculated as of a date certain, the date of signature on the Form CLC–22 may be considered the last full day of the current cost period. These rates are compared with the rates of cost elements being incurred on the first full day of business in the base cost period. The output method is employed by measuring the average cost (cost per equivalent unit of finished goods) incurred throughout the current cost period as is compares to the average cost during the base cost period. Consistent with 6 CFR Part 150, Subpart G, labor cost increases must be calculated using the input method. All other cost increases are measured using the input method when the entity's customary accounting data can reasonably be used to determine the applicable rates. Otherwise, the entity may employ the output method of calculating its non-labor cost increases.

Indicate in Column (a) of Part II whether the cost justification for each cost element was determined by the input or output method by placing an "X" in the applicable column.

Cost increases are not required to be reduced by an offset for a volume increase. However, in calculating cost increases for cost elements affected by volume, the volume used for calculating current costs must not be less than the volume used for calculating base costs. Cost elements must be measured consistently between the base cost level and all current levels for all submissions of the Schedule C to Form CLC–22.

### Allowable Costs

(Items 4 through 7)

Only costs associated with the generation of net sales or revenues and included in the determination of operating income (see the instructions to Schedule R to Form CLC–22) are allowable as justification for a price above base price. Furthermore, allowable costs under Part II are costs that have been

incurred, are continuing to be incurred, are necessary and reasonable, and have not been disallowed by the Cost of Living Council. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration must be given to:

1. Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the firm's business;
2. The restraints or requirements imposed by such factors as sound business practice, arm's length bargaining, and Federal and state laws and regulations;
3. The action that a prudent person would take in the circumstances considering his responsibilities to the owners of the business, his employees, his customers, Federal and state government, and the public at large; and
4. Significant deviations from the established practices of the firm.

Each column in Part II must be filled out for each cost element including those elements where there has been no change. If a cost element does not apply enter "NA." Entities which submit a Schedule C which contains incomplete or incorrect information will be required to submit a corrected Schedule C and will be considered to be in violation of the reporting requirements if complete and correct schedules are not submitted within the time periods prescribed.

**Item 4. Direct Materials**

Include materials and material related costs in accordance with accounting procedures normally employed by the firm. Those costs should be further classified by means of a reasonable allocation technique into "Imported" and "Other" as indicated on Lines (a) and (b) of this Item.

"Imported" materials are materials produced outside of the United States where the form of the materials has not changed substantially between the date of its initial sale into United States commerce and the date of its purchase by the firm.

Supporting schedules must be attached to Schedule C listing significant types of direct materials for which cost rates have changed, and the percentage change in each of these materials.

**Item 5. Direct Labor**

Include labor costs in accordance with accounting procedures normally employed by the firm. "Labor" means wages and salaries and includes all forms of direct and indirect remuneration or inducement for personal services which are reasonably subject to valuation as defined in 6 CFR 152.2. For this, and for all other labor items for which a cost change is shown, provide supporting detail in an attachment including the following information:

1. Name of employee unit.
2. Number of employees in employee unit.
3. Percentage increase for the employee unit.
4. Implementation date of increase.

If any portion of the labor cost increases shown in Column (c) includes cost increases resulting from any adjustment exceeding 5.5 percent (excluding qualified fringe benefits) for an employee unit for any control year as determined under the applicable wage stabilization rules of the Economic Stabilization Regulations, supporting documentation must be attached to the Schedule C including all data pertaining to the labor increase listed above and the basis for any exception.

**Item 6. Other Manufacturing or Service Costs**

Other manufacturing or service costs should be segregated as indicated on Lines (a) and (b). Labor categories must include all labor costs; and supporting detail as described for Item 5 must be provided. Supporting schedules must be attached listing the cost elements or functional accounts included, and any basis for allocation.

**Item 7. Other Operating Costs**

Other operating costs must be segregated as indicated on Lines (a), (b), and (c).

Other operating costs include expenses incurred directly and allocated expenses within the firm, if such allocations are consistent with those in prior periods.

Supporting schedules must be attached listing the cost elements or functional accounts covered, the basis for allocation and volume assumptions.

Enter the data required by Columns (b), (c), and (d) for each cost element.

**Item 8. Non-Allowable Costs**

Include costs other than those described under "Allowable Costs."

**Item 9. Profit (Loss)**

Enter in Column (c) the percentage of profit or loss for the product line so that the sum of all percentages in Column (c) equals 100%.

**Item 10. Subtotal**

Enter in Column (d) the total of the percentages in Column (d), Items 4—7.

**Item 11. Offset for Productivity Increase**

Increases in costs must be offset by reduction in costs due to improvements in productivity, regardless of whether labor costs have increased.

The productivity offset for a product line composed of products in no more than one 4-digit SIC code is determined by calculating the sum of all allowable labor costs represented by Column (c), Items 4–7, Part II, Schedule C, dividing that sum by the total sales represented by Column (c), Part II, and multiplying the resulting percentage by the average annual rate of productivity gain applicable for the appropriate industrial category as set forth in the table in 6 CFR, Part 150, Subpart E. If a product line is composed of products in more than one 4-digit SIC code, each resulting percentage in the above calculation for each 4-digit SIC code is weighted by the percentage that estimated sales for the most recently completed fiscal quarter in that 4-digit SIC code is to total sales for the most recently completed fiscal quarter for the product line. If a product line is composed of products with a 4-digit SIC code which is not included in the table, the entity must attach a schedule indicating the manner in which the productivity offset for this product line was determined. In no instance may negative productivity be utilized to justify a price increase.

An example of the calculation of a productivity offset required on a supporting schedule is as follows:

A manufacturer of tobacco products is requesting an increase in the prices of cigarettes (SIC 2111) and cigars (SIC 2121). The sales for the most recently completed fiscal quarter and the corresponding rate of productivity (from the Appendix A to Part 150, Subpart E) for each product is:

| Product | SIC | Productivity Rate | Sales Dollars | Weighted Sales |
|---|---|---|---|---|
| Cigarettes | 2111 | 2.1% | $ 60,000,000 | 1,260,000 |
| Cigars | 2121 | 4.9% | 40,000,000 | 1,960,000 |
| TOTAL | | | $100,000,000 | 3,220,000 |

$$\text{Weighted Average Rate} = \frac{3{,}220{,}000}{100{,}000{,}000} \times 100\% = 3.22\%$$

The percent of labor costs to total sales is derived by adding the percents in Items 5, 6(a), and 7(a). In the example above:

| Item | % From Column (c) (Sched. C) |
|---|---|
| 5 | 18 |
| 6(a) | 5 |
| 7(a) | 2 |
| Total | 25% |

The entry for Item 11 is computed by multiplying the weighted average productivity rate times the percent that labor costs are to total sales:

$$3.22\% \times 25\% = 0.81\%$$

**Item 12. Weighted Average Percentage Price Increase Justified by this Schedule C**

This entry is determined by subtracting Item 10 from Item 9, Column (d). The result represents the percentage above the base price that prices may be increased. Enter this percentage on the appropriate line in Part VI. Column (f), Form CLC–22 for the product line or service line for which this Schedule C has been prepared.

**Item 13. Base Cost Period**

Enter the dates of the firm's last fiscal quarter which ended prior to January 11, 1973 in which costs were incurred with respect to the product line concerned.

**Item 14. Current Cost Period**

Enter the beginning and ending dates of the current cost period. For reporting purposes, the current cost period is the reporting periods as defined in the instructions for Item 6, Part I, Form CLC–22. For purposes of prenotification, the current cost period is the accounting month most recently ended prior to the date of signing (Part V, Form CLC–22).

Schedule F
Form CLC–22
(October 1973)

Economic Stabilization Program

# REPORT OR RECORD OF FOOD MANUFACTURING REVENUES

OMB NUMBER 172–R0014 APPROVAL EXPIRES APRIL 1974

Identification Number
Parent
Unconsolidated Entity

1. (a) Name of parent or unconsolidated entity (as shown in item 3(a), Part I, Form CLC–22)

(b) Address (street, city, State, and ZIP code)

2. Report for:
(a) ☐ Month (b) ☐ Quarter

(c) Reporting period: (From) Month Day Year (Through) Month Day Year

(d) Base period:
(1) Meat (From) Month Day Year (Through) Month Day Year
(2) Other food Month Day Year Month Day Year

3. Price rule

| Product Line Description (a) | 4-digit SIC (b) | Base Revenues (c) | Volume Ratio (d) | Cost Justification Plus 100% (e) | Permissible Revenues (Col. c × d × e) (f) | Current Revenues (g) | Current Revenues Under (Over) (Col. f — g) (h) |
|---|---|---|---|---|---|---|---|
| (1) | | $ | % | % | $ | $ | $ |
| (2) | | | | | | | |
| (3) | | | | | | | |
| (4) | | | | | | | |
| (5) | | | | | | | |
| (6) | | | | | | | |
| (7) | | | | | | | |
| (8) | | | | | | | |
| (9) | | | | | | | |
| (10) | | | | | | | |
| (11) | | | | | | | |
| (12) | | | | | | | |
| (13) | | | | | | | |
| (14) | | | | | | | |
| (15) | | | | | | | |
| (16) | | | | | | | |
| (17) | | | | | | | |
| (18) | | | | | | | |
| (19) | | | | | | | |
| (20) | | | | | | | |
| (21) | | | | | | | |
| (22) | | | | | | | |
| (23) | | | | | | | |
| (24) | | | | | | | |
| (25) | | | | | | | |
| (26) | | | | | | | |
| (27) | | | | | | | |
| (28) | | | | | | | |
| 4. Total sales from continuation schedules | | | | | | | |
| 5. Total item 3, lines (1) through (28) & item 4 | | $ | | | $ | $ | $ |

# Cost of Living Council

## 2000 M Street, NW.
## Washington, D.C. 20508

Instructions for Preparation of Schedule F
Report or Record of Food Manufacturing Revenues

## General Instructions

### A. PURPOSE

Schedule F provides the means by which certain firms engaged in "food manufacturing" report monthly and quarterly on a product line basis in accordance with the price rules set forth in 6 CFR, Part 150, Subpart Q.

### B. REPORTING REQUIREMENTS

1. *Who Must File.* The submission of Schedule F, as a supporting schedule to Form CLC–22, is required by all price category I and II firms engaged in food manufacturing activities, except that a firm which both derives less than 20% of its annual sales or revenues from food manufacturing and less than $50 million of annual sales or revenues from food manufacturing may elect to price with respect to its food manufacturing activities in accordance with 6 CFR, Part 150, Subpart E. Firms making this election do not prepare Schedule F but do prepare Form CLC–22 and required supporting schedules in accordance with the general and specific instructions to Form CLC–22. The "adjusted freeze price" as defined in 6 CFR, Part 150, Subpart Q applies to firms making this election.

2. *Monthly Reports.* Each price category I and II firm engaged in food manufacturing, and pricing in accordance with the gross margin rule of 6 CFR, 150.606, must submit monthly reports with information on volume, costs and sales on a Schedule F attached to a Form CLC–22. The monthly report shall be submitted within 30 days after the close of each accounting month except no report is required for the month which concludes a fiscal quarter.

3. *Quarterly Reports.* Each price category I and II firm engaged in food manufacturing and pricing in accordance with the gross margin rule of 6 CFR 150.606 must submit quarterly reports with information on volume, costs and sales on a Schedule F attached to a Form CLC–22. The report shall be submitted within 45 days after the end of the first, second and third fiscal quarters and within 90 days after the end of the fourth quarter which concludes a fiscal year.

4. *Initial Report.* The initial report, either monthly or quarterly, must be submitted for the accounting month or fiscal quarter which includes September 10, 1973. It shall include, as an attachment, the following statement: "Food raw materials purchased and resold without change in form (were) (were not) included in the computation of aggregate revenue from the sale of food during the base period pursuant to 6 CFR 150.606 (c)(4)(i)."

The option regarding—

(1) The election to price in accordance with 6 CFR, Part 150, Subpart E or in accordance with the gross margin rule of 6 CFR 150.606;

(2) The inclusion or exclusion of food raw materials purchased and resold without change in form as reflected in Item 3, Column c, Schedule F;

(3) The determination of base period as indicated in Item 2(d), Schedule F, and the schedule attached to the initial report, and;

(4) The basis for determining food or food raw material units in Item 3, column (d), Schedule F—

must be exercised as set forth in the initial report. No change in the exercise of any of these options may be made without the prior written approval of the Council or the Internal Revenue Service.

5. *Where to File.* Firms required to file Schedule F must forward the schedule and attachments to the IRS office designated in the table at the end of the Form CLC–22 instructions.

6. *Recordkeeping.* Use of the Schedule F attached to a Form CLC–22 and accompanied by one or more Schedules C by a price category III firm pricing in accordance with the gross margin rule is encouraged in order to ensure that such a firm is meeting the requirement of 6 CFR, Part 150, Subpart Q that it prepare and maintain at its principal place of business sufficient records to determine compliance with the Economic Stabilization regulations.

### Specific Instructions

**Item 1.**

(a) Enter the legal name of the parent or unconsolidated entity, as shown in Part I, item 3(a) of the Form CLC–22 to which the Schedule is attached.

(b) Enter the address of the executive office.

**Item 2.**

(a) and (b) Check one box (a) or (b) to indicate whether the Schedule is a monthly or quarterly report.

(c) Enter the beginning and ending dates for the reporting period checked in Item 2(a) or (b) above. The reporting for Schedule F purposes is, as stated in the Specific Instructions for Item 6 of Form CLC–22, an accounting month or fiscal quarter of the entity.

(d) Enter the beginning and ending dates of the base period for the slaughtering and processing of livestock and the manufacturing of meat products in (1) and for all other food manufacturing activities in (2). With respect to the slaughtering and processing of livestock or the manufacturing of meat products, base period means any four consecutive fiscal quarters of the "entity", as defined in the Form CLC–22 instructions, which began after May 25, 1970, and which ended prior to May 11, 1973. For all other food manufacturing activities base period means any four consecutive fiscal quarters of the "entity" from the eight fiscal quarters which ended prior to May 11, 1973. Only one base period may be selected for each of these two classifications and must be consistently applied to all product lines within each classification. The base period with respect to a new product line is, (1) in the case of a new product line first offered for sale after the end of the last fiscal quarter ended before May 11, 1973, the first fiscal quarter in which a sale occurs; and (2) in the case of a new product line first offered for sale before the end of the last fiscal quarter ended before May 11, 1973, and after the base period selected for the other product lines concerned, the first fiscal quarter in which a sale occurs, plus any immediately ensuing consecutive fiscal quarter or fiscal quarters, not to exceed three, which ended before May 11, 1973.

**Item 3.**

*Price Rule.*—Except as provided in 6 CFR 150.606, any price may be charged with respect to any item in a product line as long as total sales revenues for that product line for any fiscal quarter ending after September 9, 1973, do not exceed the amount derived by (i) multiplying the total sales revenues in the base period for that product line by the ratio that the volume of food or food raw material units for that product line in the fiscal quarter bears to the volume of food or food raw material units for that product line in the base period, and (ii) multiplying the product of (i) by the net increases in allowable costs since the base cost period plus 100%. This computation is illustrated by the following equation:

$$R_2 = R_1 \times \frac{V_2}{V_1} \times (C + 100\%)$$

For purposes of computing column (f), Item 3, for each product line,

$R_2$=permissible sales revenue

$R_1$=aggregate revenue during the base period

$V_2$=volume of food or food raw material units during the reporting period

$V_1$=volume of food or food raw material units during the base period

C=net increases in allowable costs since the base cost period

*Column (a)—Product Line Description.* Enter a brief description of each "food" product line of the entity. Data must be recorded for each product line categorized by a 4-digit Standard Industrial Classification (SIC) Code if that is the entity's customary pricing unit (e.g., cost or profit center) for that product line. If a customary pricing unit includes more than one 4-digit SIC code, such pricing unit may be used and a listing of 4-digit SIC codes included within that pricing unit must be attached to the form. The listing of SIC codes must be in decreasing order of sales within the pricing unit. If the customary pricing unit is at a level of aggregation which is less than one 4-digit SIC code, the entity may record revenues, volume and costs at that level. A customary pricing unit is that unit which has been historically and continually applied.

*Column (b)—4-digit SIC.* Enter the applicable 1967 4-digit SIC code for each product line. The 1972 "Standard Industrial Classification Manual," which defines such codes, may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402. This edition of the manual has a table for conversion of the 1972 codes to the 1967 codes.

*Column (c)—Base Revenues.* ($R_1$) Enter the total sales revenues in the base period for each product line. Food raw material purchased and sold without change in form may be included or excluded in computing the total sales revenues during the base period, but only in accordance with the option exercised in the initial report unless prior written approval to change the option has been granted by CLC or IRS. The cost of freight and insurance in connection with food sales may either be included in, or excluded from, total sales revenues during the base period, but the treatment of "freight-out" shall be consistent as between the base period and each fiscal quarter ending after September 9, 1973. Any net hedging losses, by a firm which used the futures markets in a non-speculative manner to hedge against price risks, with respect to food markets during the base period may be included as an addition to actual sales revenues during the base period and any net hedging gains by that firm with respect to food markets during the base period may be included as an offset to actual sales revenues during the base period. However, a firm which includes any net loss pursuant to this paragraph shall include as an offset any net gain as a result of non-speculative hedging activities in accordance with this paragraph.

*Column (d)—Volume Ratio* $\left(\frac{V_2}{V_1}\right)$ Enter the ratio (expressed as a percentage) that the volume of food or food raw material units in the reporting period (whether accounting month or fiscal quarter) bears to the volume of food or food raw material units in the base period. "Food or food raw material units" means, at the option of the firm concerned and calculated in accordance with its customary accounting practices on a consistent basis for both the reporting period and base period, either:

(1) the total units of food raw material in inventory on the first day of the period concerned, plus the total units of food raw material purchased during the period concerned, less the total units of food raw material remaining in inventory on the first day after the period concerned (input basis); or

(2) the total units of food sold during the period concerned (output basis). To the extent that the customary accounting practices and records of the firm concerned permit identification of food raw material purchased and resold without change in form, that material must be excluded in computing food or food raw material units for the reporting period.

*Column (e)—Cost Justification+100% (C+100%).* Enter in column (e) the net increase in allowable cost ("C") plus 100%. "C" represents the net increase in allowable costs and is the percentage figure taken from line 12 of Schedule C to Form CLC–22 attached to and in support of the Schedule F. "C" includes increases and decreases in both food raw material costs and other costs.

*Column (f)—Permissible Revenues* ($R_2$). Enter the product of columns (c) times (d) times (e). The result equals the total permissible revenues for the reporting period.

*Column (g)—Current Revenues.* Enter the total sales revenue for each product line in the reporting period. To the extent that the customary accounting practices and records of the firm concerned permit identification of food raw material purchased and resold without change in form, that material must be excluded in computing total sales revenues in the reporting period. Any net hedging losses with respect to the food market concerned during the reporting period may be included as an offset to actual sales revenues during the reporting period and any net hedging gains with respect to the food market concerned during the reporting period must be included as an addition to actual sales revenues during the reporting period. The cost of freight and insurance must be included in column (g) if included in column (c) and excluded from column (g) if excluded from column (c).

*Column (h)—Current Revenues Under (Over).* Enter the difference derived by subtracting current revenues, column (g) from permissible revenues, column (f). Any firm reporting an excess of current revenues over permissible revenues for any product line must demonstrate on supporting schedules, if the excess is to be justified, that the excess is due to seasonal patterns or is attributable to revenues derived from the sale of exempt items. Since the CLC may take into account any temporary unforeseen changes in product mix, such changes should also be noted on a supporting schedule.

Schedule R
Form CLC-22
(August 1973)

Economic Stabilization Program

# Reconciliation of Forms 10-K, 10-Q or Other Financial Statements to Form CLC–22

OMB Number: 172–R0007 Approval expires April 1974

Identification numbers

Parent

Unconsolidated entity

Internal use only

1 Name of parent or unconsolidated entity

2 Period reconciled: ☐ (a) Base year ended month day year

☐ (b) Cumulative period From month day year to month day year

| | (a) Net Sales/Revenues | (b) Income |
|---|---|---|
| 3 Net sales/revenues | | |
| 4 Net income | | |
| 5 Adjustments: | | |
| (a) public utilities | | |
| (b) foreign operations | | |
| (c) insurance | | |
| (d) construction operations | | |
| (e) agricultural products | | |
| (f) Total of Line 5 | | |
| 6 Intercompany sales/income (Attributable to line 5(a) through (e) above) | | |
| 7 Restatements not previously included | | |
| 8 Equity interest in other entities | | |
| 9 Nonoperating items (list) | | |
| (a) | | |
| (b) | | |
| (c) | | |
| (d) | | |
| (e) | | |
| (f) | | |
| (g) | | |
| Total of line 9 | | |
| 10 Income tax expense | | |
| 11 Extraordinary items (list) | | |
| (a) | | |
| (b) | | |
| (c) | | |
| Total of line 11 | | |
| 12 Net sales (To Part II or III of Form CLC–22) | | |
| 13 Operating income (To Part II or III of Form CLC–22) | | |

# Cost of Living Council

2000 M Street, N.W.
Washington, D.C. 20508

Instructions for the Preparation of Schedule R
Reconciliation of Forms 10–K, 10–Q or Other Financial Statements to Form CLC-22

## General Instructions

Schedule R is used to reconcile net sales/revenues and net income reported on Forms 10–K and 10–Q, as filed with the Securities and Exchange Commission (SEC) (or other financial statements if Forms 10–K and 10–Q are not required to be filed with the SEC) to net sales and operating income as shown in Parts II and III, Form CLC–22.

Schedule R must be attached to Form CLC–22 for each base year required to be shown in Part II, Form CLC–22 and for each cumulative period in Part III, Form CLC–22.

Entities which file Forms 10–K and 10–Q with the Securities and Exchange Commission must attach to Schedule R a copy of their Form 10–Q for each fiscal quarter or a copy of their Form 10–K for each fiscal year which ends on the date entered in Item 6, Part I, Form CLC–22. With the first submission, entities must file Form 10–K for each of the two base years, unless such forms were previously filed with the Cost of Living Council as a part of a Form CLC–2 or Form CLC–22 filing.

Entities which do not file Forms 10–K and 10–Q with the Securities and Exchange Commission must, in lieu of such forms, attach to Form CLC–22 a copy of applicable quarterly and annual financial statements prepared in accordance with generally accepted accounting principles. In addition, such entities which do not file Form 10–K with the Securities and Exchange Commission but which have annual financial statements audited by independent public accountants must attach a copy of such audited statements in conformance with the requirements for submitting Form 10–K. Such firms which do not have audited annual financial statements must attach a document explaining why such statements are not available.

## Specific Instructions

**Line 1** Enter the name of parent or unconsolidated entity as shown in Part I, Item 3(a), Form CLC–22.

**Line 2 Period Reconciled**

a. If Schedule R applies to a base year, check box (a) and enter the ending date of the fiscal year appearing in Part II (Item 8 or 9 as applicable) of Form CLC–22.

b. If Schedule R applies to the cumulative period, check box (b) and enter the date of the first day of the current fiscal year and the last day in the reporting period (see Item 6, Form CLC–22).

**Line 3 Net Sales/Revenues**

Enter the total amount of net sales of tangible products and other revenues reported in Form 10–K, 10–Q or other financial statements as defined in SEC Regulation S–X.

**Line 4 Net Income**

Enter the amount of net income as shown in Form 10–K, 10–Q or other financial statements as defined in SEC Regulation S–X.

**Line 5 Adjustments**

Net sales and revenues and corresponding income from public utility operations, foreign operations, insurance operations, agricultural products, and where required, construction operations are excluded from the net sales/revenues figure.

Enter in Column (a) the net sales and revenues and in Column (b) the corresponding income from:

a. public utility operations as defined in the instructions for Item 29, CLC–22.

b. foreign operations, as defined in the instructions for Item 34, Form CLC–22.

c. insurance operations as defined in the instructions for Item 31, Form CLC–22.

d. construction operations as defined in 6 CFR, 150.452 where the entity is subject to 6 CFR, Part 150, Subpart N and separates construction operations from non-construction operations for purposes of the profit margin calculation in accordance with 6 CFR 150.456.

e. agricultural products as defined in the instructions to Item 33, Form CLC–22.

Enter in 5 (f) the total of 5 (a) through 5 (e).

**Line 6 Intercompany Sales/Income**

Sales by any segment of the entity to the operations listed in Lines 5 (a) through 5 (e) above are to be reinstated if eliminated in the consolidated net sales/revenues in Line 3 and net income in Line 4. Enter the amount of such intercompany sales and income on Line 6 and attach supporting detail.

**Line 7 Restatements not previously included**

Enter restatements of net sales/revenues, Line 3, and/or net income, Line 4, in accordance with the following instructions for the base years and/or current period. Accounting changes are of two broad, general types—(1) changes in the composition of a firm and its business entities and (2) changes in accounting principles.

A specific distinction is made between required accounting treatment for price control purposes and the accounting treatment required in periodic financial reports filed with the SEC. In addition to restatements of financial reports for accounting changes as required under generally accepted accounting priciples, the Cost of Living Council recognizes restatements reflecting pro forma information that is required to be disclosed in periodic reports filed with the SEC. These restatements should be entered on Line 7.

Changes in the composition of a firm and its business entities include (1) acquisitions accounted for on a "pooling of interests" basis and on a "purchase" basis, and (2) divestitures accounted for as "spin-offs", "split-offs", sales or abandonments of businesses and discontinued operations. Restatement of prior periods is normally required under generally accepted accounting principles for changes in business entities accounted for as a "pooling of interests" and when there has been a "spin-off, a "split-off", or a discontinued, sold or abandoned operation. These changes in firms and business entities are required to be restated in reports filed with the CLC if restatement is required in periodic reports filed with the SEC.

As to acquired entities accounted for on a "purchase" basis, restatement of the financial data for periods prior to the date of purchase is required in reports filed with the CLC provided the firm restates on a basis consistent with the pro forma information required to be disclosed for purchases in periodic reports filed with the SEC. If Form 10–K discloses discontinued or divested operations separately, then appropriate entries should be made on Line 7 to exclude the sales and net income or loss (if indicated in Lines 3 or 6) of such operations. The firm may only restate for purchased or divested entities when their results of operations and activities can be clearly distinguished for financial reporting purposes. Restatement for a divestiture by sale, abandonment or discontinuance will not be permitted for disposal of part of a line of business, the shifting of production or marketing activities for a particular line of business from one location to another, the phasing out of a product line or class of service and other changes occasioned by technological improvements.

Changes in accounting principles should be reflected during all periods affected on Line 7 as a restatement on a basis consistent with the pro forma information required to be disclosed for accounting principle changes in periodic reports filed with the SEC.

Where the reference is made above to periodic reports filed with the SEC, it should be interpreted by firms and entities not subject to SEC filings to mean would be required by, or required to be disclosed in, SEC filings. A supporting schedule should be filed with Schedule R listing each entity shown on Line 7 which has been either acquired or divested, describing the principle applicable to the restatement of each entity, and the amounts relative to each entity composing the totals shown on Line 7. The schedule should also reflect all other entities, acquired or divested (for which no restatement has been reflected on Line 7), describing the principle applicable to the acquisition or divestiture of each entity and giving the reasons why each such entity has not been reflected as a restatement on Line 7. Additionally, the supporting schedule should describe each accounting principle change and the methods used in determining the effects of such changes in accounting principles. Further, the supporting schedule should describe any accounting principle change which has not been reflected on Line 7 and the reasons that restatement was not entered. These changes in the composition of a firm and its business entities and changes in accounting principles should be reflected on each quarterly Form CLC–22 when such information is available.

**Lines 8, 9, 10, and 11—Excluded items**

Items 8, 9, 10, and 11 must be excluded from net income.

**Line 8 Equity Interest in Other Entities**

When net income includes equity interest in unconsolidated subsidiaries, joint ventures, or other ventures, such amounts must be excluded. Enter in Line 8 the amount of such equity interest as included in the entity's financial statement, whether or not disclosed as a separate line or caption item.

**Line 9 Nonoperating items**

Enter and describe on the lines provided (or separate attachment if required) all items of a non-operating income or nature. Generally, non-operating income or expense items include, but are not limited to, the following (except where such items are related to the reporting entity's principal business activity): interest income, dividend income, gains or losses on disposition of assets, royalty income and gains or losses on foreign exchange. Interest expense, (including interest expense, debt discount and debt expense on long term debt) is considered operating expense for purposes of this report.

**Line 10 Income Tax Expense**

Enter all taxes based on income as it appears on the entity's financial statements.

**Line 11 Extraordinary Items**

Enter all items that are not of a normal recurring nature and are not applicable to the regular operations of the entity. Items shown as extraordinary must be in agreement with the corresponding items in the financial statements. Also enter amounts pertaining to cumulative effects of changes in accounting principles, in accordance with SEC Regulation S–X, if shown as a separate line item or caption in the financial statement.

**Line 12 Net Sales**

Enter the net total of Lines 3 through 7.

**Line 13 Operating Income**

Enter the net total of Lines 4 through 11.

Schedule T
Form CLC–22
August 1973)

Economic Stabilization Program

# REPORT OF RETAILING AND WHOLESALING MARKUPS OR GROSS MARGINS

OMB NUMBER 172–R0007 APPROVAL EXPIRES APRIL 1974

Identification Number
Parent
Unconsolidated Entity
Internal Use Only

1. (a) Name of parent or unconsolidated entity (as shown on part I line 3(a) Form CLC–22)

(b) Address (street, city, State, and ZIP code)

2. (a) Name of pricing entity

(b) Address (street, city, State, and ZIP code)

(c) Annual sales or revenues

$ 000

3. (a) Reporting period ending: month day year

(b) Purpose of this Schedule:

☐ Quarterly Report for: ☐ Pricing Plan

☐ 1st ☐ 2nd ☐ 3rd ☐ 4th Quarter

(c) Is this a resubmission? ☐ Yes ☐ No

4. All percentages in Item 5 represent:

☐ Customary Initial Percentage Markups ☐ Gross Margins

(Check only one)

5. Schedule of Markups or Gross Margins

| Merchandise or Customer Category | Pricing Base Period From: month day year to: month day year | | | | | Quarterly Reporting Period | Annual Period |
|---|---|---|---|---|---|---|---|
| (a) | (b) Year | (c) 1st Qtr | (d) 2nd Qtr | (e) 3rd Qtr | (f) 4th Qtr | (g) | (h) |
| (1) | % | % | % | % | % | % | % |
| (2) | | | | | | | |
| (3) | | | | | | | |
| (4) | | | | | | | |
| (5) | | | | | | | |
| (6) | | | | | | | |
| (7) | | | | | | | |
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| (21) | | | | | | | |
| (22) | | | | | | | |
| (23) | | | | | | | |
| (24) | | | | | | | |

6. Individual to be contacted for additional information
(a) Name

(b) Title

(c) Address

(d) Telephone number (include area code)

# Cost of Living Council

## 2000 M Street, N.W.
## Washington, D.C. 20508

Instructions for the Preparation of Schedule T
Report of Retailing and Wholesaling Markups or Gross Margins

## General Instructions

### A. Purpose

Schedule T must be used for the submission of a pricing plan for the retailing and wholesaling activities of Price Category I and II firms. Price Category I and II firms must submit for the approval of the Internal Revenue Service the pricing plan prior to charging a price in excess of the adjusted freeze price. In addition, Price Category I and II firms must use Schedule T for quarterly and annual reports for their retailing and wholesaling activities. Price Category III firms must prepare and retain in their files a completed Schedule T as a part of the pricing plan.

A separate Schedule T must be prepared for each pricing entity. The selection of employing markups or gross margins and the identification of merchandise or customer categories is determined at the pricing entity level.

This Schedule does not apply to retailing or wholesaling of crude petroleum products subject to 6 CFR, Part 150, Subpart L.

### B. Definitions

1. **CLC-22 Entity**—the same organization as the "entity" for purposes of the Form CLC-22 and applicable schedules. The term "CLC-22 entity" is used to distinguish between the entity to which the Form CLC-22 (and required Schedule T) applies and the pricing entity which applies to retailers and wholesalers subject to Subpart K.

2. **Cost**—total invoice costs of all merchandise within a category plus transportation allocated to that merchandise.

3. **Customary Initial Percentage Markup (Markup)**—

$$\text{Markup} = \frac{\text{Initial Price} - \text{Cost}}{\text{Cost}} \times 100$$

4. **Customer Category**—a group of related customers distinguished from other customers because of customary pricing differentials between those customers and other customers, which is treated as a single pricing unity irrespective of the products they purchase.

5. **Gross Margin**

$$\text{Gross Margin} = \frac{\text{Revenues} - \text{Cost}}{\text{Cost}} \times 100$$

6. **Initial Price**—total sales prices of all merchandise within a category when first offered for sale.

7. **Merchandise Category**—a group of related products which is treated as a single pricing unit.

8. **Pricing base period**—at the option of the CLC-22 entity, either the last fiscal year ending prior to February 5, 1973 or the most recent four fiscal quarters ending prior to February 5, 1973.

9. **Pricing Entity**—the lowest level of organization within a firm at which the initial pricing decisions are made, irrespective of whether these decisions may be modified at a lower level. Various types of such pricing entities are illustrated in the following examples.

   Firm A, a nationwide supermarket chain, has established 20 geographical zones for pricing purposes. Basic pricing decisions are made at the zone level, although individual stores have discretion to vary specific prices. Each zone is a pricing entity and merchandise categories will be reported at the zone level.

   Firm B is composed of nine divisions. Each division operates a number of general merchandise stores. Basic pricing decisions for individual stores are made at the division level. Each division is a pricing entity which will report merchandise categories.

   Firm C, a food wholesaler, operates several large warehouses, each of which serves as a pricing entity. The firm's pricing decisions are made in a manner so as to achieve a stated return on overall sales made at each warehouse. In this case, each warehouse is a pricing entity and customer categories will be reported at the warehouse level.

   Firm D, a wholesaler, sells various types of heavy machinery. All pricing decisions are made at the corporate headquarters. Therefore, Firm D is the pricing entity and merchandise categories will be reported on a firm-wide level.

10. **Revenues**—total revenues realized from the sales of merchandise within a category less returns and credits.

## C. Who Must File

1. **Pricing Plan**

   Prior to charging the price of any item in excess of its adjusted freeze price each price category I or II firm subject to Subpart K must file a merchandise pricing plan together with Schedule T.

2. **Quarterly Report**

   Each CLC-22 entity of a price category I or II firm with wholesaling or retailing operations (other than retailing or wholesaling of crude petroleum or other petroleum products subject to 6 CFR, Part 150, Subpart L) must attach a Schedule T to its quarterly Form CLC-22 and to its pricing plan for each of its pricing entities.

   If the CLC-22 entity in its operations which are subject to 6 CFR, Part 150, Subpart K has not charged a price in excess of the adjusted freeze price, it must complete items 1, 3, and 6, and type in Item 5 the following certificate:

   "(CLC-22 entity) has not charged a price in excess of the adjusted freeze price for those products subject to 6 CFR, Part 150, Subpart K."

## D. What to File

1. For purposes of the quarterly report and the pricing plan, the CLC-22 entity must attach all supporting information indicated on Schedule T and in these Instructions. However, since only basic information is required, a CLC-22 entity may be requested to provide additional data in particular cases.
2. A CLC-22 entity which files Schedules T containing incomplete or incorrect information will be required to submit corrected schedules and may be in violation of the reporting requirements if complete and correct schedules are not submitted within the time prescribed.

## E. When and Where to File

Each required quarterly and annual Schedule T must be attached to the Form CLC-22 and must be filed with the appropriate Internal Revenue Service Office not later than 45 days after the end of each fiscal quarter or not later than 90 days after the end of the fiscal year.

Pricing plans must be filed in accordance with paragraph F below.

## F. Pricing Plan

1. CLC-22 entities described in Paragraph C above (Who Must File) must prepare and submit to the Internal Revenue Service a pricing plan before charging a price in excess of the adjusted freeze price. The plan must include the following information:
   a. A description of the CLC-22 entity's internal organization as it relates to pricing activities.
   b. A list of pricing entities.
   c. A completed Schedule T of Form CLC-22 for each pricing entity, including merchandise categories, customer categories, the pricing base period markup or gross margin for each category, and the markup or gross margin realized for each category during each fiscal quarter of the pricing base period. (Do not fill in Columns (g) and (h), Item 5, of Schedule T. Other information required for the pricing plan may be submitted on supplementary sheets attached to Schedule T.)
   d. A list of products or product lines carried.
   e. A description of the manner in which the pricing entity makes pricing decisions.
2. The Internal Revenue Service, within 60 days after receiving a pricing plan, will review the plan and either approve it or take the action described below.
   a. If the information in a pricing plan is incomplete or inaccurate or the plan does not conform to the requirements, the Internal Revenue Service will notify the CLC-22 entity and explain why the plan cannot be approved. The CLC-22 entity will be advised to submit additional data or to modify the plan to meet requirements within a prescribed period of time. When a CLC-22 entity receives a notice of an incomplete or nonconforming plan, it may not put into effect any further price increases until the Internal Revenue Service approves the plan or otherwise advises the CLC-22 entity.
   b. If a CLC-22 entity does not submit the required additional information or modifications within the prescribed time limit, or, if after it is submitted, the Internal Revenue Service finds that the pricing plan still does not conform to the requirements, the CLC-22 entity may be ordered to reduce prices to adjusted freeze price or to an appropriate level above adjusted freeze price. A CLC-22 entity may also be ordered to submit a new pricing plan based on new categories or pricing entities specified by the Internal Revenue Service.
   c. In the case of a merchandise pricing plan for a firm which engages in retailing or wholesaling both meat or other food products which are subject to Subpart M of Part 130 or Subpart I of 6 CFR, Part 140 and non-food products, the firm shall, to the extent consistent with its customary pricing practices exclude all meat and other food items from the categories submitted. Insofar as meat and other food products are not so excluded they may be included in the firm's merchandise pricing plan. However, as provided in 6 CFR 150.304(e), pricing of those food products remains subject to the requirements of Subpart M of Part 130 and Subpart I of 6 CFR, Part 140.
3. Approved Plans
   a. When the Internal Revenue Service approves a pricing plan, the CLC-22 entity will be controlled using the categories and pricing entities shown in the approved plan. Those categories and entities will also be the basis for quarterly reporting to the Internal Revenue Service.
   b. Any modification of an approved pricing plan either after its submission or approval must receive prior approval by the Internal Revenue Service.

## Specific Instructions

**Items 1(a) and (b)**—Self-explanatory

**Items 2(a) and (b)**—Self-explanatory

**Item 2(c)**—Enter the annual sales or revenues of the pricing entity, computed in accordance with the definition in 6 CFR, Part 150, Subpart B.

**Item 3(a)**—Show the date of the last day in the reporting period. The reporting period is the CLC-22 entity's most recently completed fiscal quarter.

**Item 3(b)**—Check one box to indicate whether the Schedule is either a "quarterly report" or a "pricing plan." If the Schedule is a quarterly report, indicate the reporting quarter.

**Item 3(c)**—Check the "yes" box if you are supplying additional information or resubmitting a report to the Internal Revenue Service. In either case, complete the form in its entirety.

**Item 4**—Check the one box which indicates whether the percentages shown in Item 5 represent markups or gross margins.

**Item 5**—Enter the beginning and ending dates of the pricing base period in the space provided above Columns (b) through (f).

Column (a)—On each line, briefly describe each customer or merchandise category of control within the pricing entity. Appendix A to 6 CFR, Part 150, Subpart K provides acceptable category descriptions.

Schedule T may be used to report manufacturing and service activities if these activities (1) are less than 10 percent and less than $50 million of the total retail and wholesale sales of the firm for the most recently completed fiscal year; (2) are not used in computing price adjustments on another Economic Stabilization Program form; and (3) if such categories have been specified in a pricing plan approved by the Internal Revenue Service.

If manufacturing or service activities are included on Schedule T, attach a supporting document to show conformance with the requirements for inclusion of these activities.

Column (b)—For each category in Column (a), show the pricing entity's markup applied or gross margin realized during the entire pricing base period.

Columns (c) through (f)—For each category in Column (a), show the markup or gross margin realized during each of the pricing entity's four fiscal quarters within the pricing base period.

Column (g)—For each category in Column (a), show the markup of gross margin realized during the pricing entity's most recently completed fiscal quarter.

Column (h)—For each category in Column (a), show the annual markup applied or gross margin realized from the begining of the pricing entity's current fiscal year through the date shown in Item 3(a). Column (h) is completed only for the Schedule T submitted at the end of the fiscal year. The report submitted at that time will contain data for both the fourth quarter as well as the entire fiscal year.

**Item 6 a, b, c, d**—Self-explanatory

3

[FR Doc.74-1850 Filed 1-18-74;12:50 pm]

## COST OF LIVING COUNCIL

**[ 6 CFR Part 150 ]**

[CLC Notice No. 74-2]

### FORM CLC-22 AND SUPPORTING SCHEDULES C, F, R AND T

**Proposed Instructions for Preparation**

The Cost of Living Council is proposing to revise the Instructions for the Preparation of Form CLC-22, and the instructions for the preparation of the Form CLC-22's supporting schedules C, F, R and T.

A majority of these revisions to the instructions have been previously published in somewhat different format. The Council is proposing revised instructions for three reasons. The first is to consolidate the various instructions to the Form CLC-22 which have been issued for various sectors of the economy, such as food and petroleum, so as to make it easier to use the form. Second, the Council is taking this opportunity to make a number of clarifications to the instructions for the Form CLC-22 and supporting schedules; and, third, publishing the instructions to the Form CLC-22 in the FEDERAL REGISTER will give the widest possible notice of its contents.

While the Form CLC-22 itself has already been adopted by the Council, the revised instructions will not be adopted until they are approved by the Office of Management and Budget. At that time the Council will amend its regulations to incorporate the revised instructions.

Interested persons are invited to participate in the rulemaking by submitting written data, views or arguments with respect to the proposed regulations set forth in this notice, to the Executive Secretariat, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508. Comments should be identified with the designation "Proposed Revised CLC-22" written on the envelope. At least ten copies should be submitted. All communications received before January 31, 1974, will be considered by the Council before taking final action on the proposed revision, which may be changed in the light of comments received. All comments received in response to this notice will be available for examination and copying by interested persons at the Cost of Living Council, 2000 M Street, NW., Washington, D.C. during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. Submissions will be available both before and after the closing date for comments.

The Office of Management and Budget filed with the FEDERAL REGISTER on January 21, 1974 (39 FR 3522, January 22, 1974) an announcement of a Business Advisory Council meeting to be held on January 30, 1974 in Room 2010, New Executive Office Building, Washington, D.C. The Business Advisory Council will discuss the proposed revision to the Form CLC-22 and supporting schedules at that time. All persons submitting comment to the Council on the proposed revision are also invited to send copies of their comments to the Clearance Officer, Statistical Policy Division, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503.

In addition to publishing this notice of proposed rulemaking, the Council is today amending Part 150 of Title 6 of the Code of Federal Regulations to establish a new "Appendix A-Phase IV Price Forms" which will contain the Form CLC-22, its supporting schedules, and the instructions for their preparation, as they appeared when first issued. When these revised instructions are issued in final form, they will be added to Appendix A.

Since the Form CLC-22 has already been widely disseminated and discussed, this preamble will deal only with the changes to the form. It will point out those changes which stem from consolidation and discuss the corrections and clarifications.

The Form CLC-22 itself remains unchanged. All the alterations are in the "Instructions for the Preparation of the Form CLC-22, Prenotification Report, or Record of Prices, Costs and Profits." In the "General Instructions", Part A, "Purpose", paragraph 2 is altered only by an editorial change for the sake of brevity, and also by the inclusion of a paragraph from the "Additional Instructions for Food Manufacturing Reports" (hereinafter referred to as food reporting instructions).

Paragraph B.1 is changed by the inclusion of a paragraph from food reporting instructions. Paragraph B.3, "General Rules", is changed in subparagraph (a), "Determination of 'Firm' ", by the addition to the end thereof of a reference to Paragraph B.8. Paragraph B.8 is a new "Certification that Public Disclosure not Required."

Paragraph B.4, "Certification of No Price Increase" is substantially altered, in ways and for reasons which were set out in CLC Notice No. 73-5, (38 FR 35348, December 27, 1973).

Also included are paragraphs B.5, B.6, and B.7 taken from the "Additional Instructions for Petroleum and Petroleum Products" (hereinafter referred to as "oil instructions").

Item 8 of paragraph B is, as previously stated, a new "Certification That Public Disclosure Not Required." This certification grows out of the requirements of section 205 of the Economic Stabilization Act of 1970, as amended, which requires that a business enterprise with annual sales or revenues of $250 million or more which has charged a price for a substantial product which exceeds by more than 1.5 percent the price lawfully in effect on January 10, 1973, must make public certain of the information it supplies in its quarterly reports to the Council. Section 205 imposes the requirement of public disclosure on the firm rather than on the Council. However, the Council, through the operation of the Freedom of Information Act, is required to make this information public. Since the Form CLC-22 does not necessarily lend itself to listing the information which the Council needs in order to know whether a firm must make this information public, the Council is requiring a firm with annual sales or revenues of $250 million or more either to provide the Council with a copy of the Form CLC-22 from which the information which is not required by section 205 of the Economic Stabilization Act to be made public is deleted, or to certify, as set forth in Item 8 of paragraph B, that the firm is not required by section 205 to make this information public. This public disclosure certification had previously been sent to all Tier I firms in a slightly altered form.

Part C. "When to Submit Form CLC-22" includes a corresponding paragraph from the food reporting instructions.

Part D. "What to Submit or Prepare" is altered by the addition of a reference to Schedule F.

Parts E through H of the General Instructions are unaltered.

The Specific Instructions contain a number of changes. Part I, "Identification Data," is amended in Item 2, "Type of Submission," by the addition of a requirement that when the Form CLC-22 is being used as a public disclosure document, the submitting firm check the box marked "Other" and write in "Public Disclosure Required". This is already required by § 102.54(a)(1) of the Council regulations. Items 3, 4 and 5 are unchanged. Item 6 reflects a paragraph from the food reporting instructions. Item 7 is unchanged.

Part II. "Calculation of Base Period Profit Margin" formerly had to be completed only at the time the initial Form CLC-22 was prepared. After the submission of the initial Form CLC-22, Part II had to be completed only when the base period profit margin was restated. This provision is changed to require that Part II be filled out each time the Form CLC-22 is prepared. This change is necessitated by the division of responsibilities between the CLC and IRS. Some prenotifications are filed with the IRS, and others with the Council. If the initial prenotification went to the IRS and the subsequent prenotifications came to the Council, the Council would not, under the previous provision, have immediately available information as to the base period profit margin of the firm. This change requires no additional computations by the reporting firm. In addition, a paragraph regarding monthly reporting is included from the food reporting instructions at this point.

Part II is also amended by the deletion, from the sixth sentence of the first paragraph of Part II, of the phrase "by the amount of operating income derived from prices in violation or" and the phrase "whichever is less". This amendment is to conform the instructions to the definition of "base period profit margin" contained in § 150.31 of the Phase IV regulations.

The Council formerly required that a Schedule R, Reconciliation of Forms 10-K, 10-Q, or Other Financial Statements to Form CLC-22, had to be attached to each Form CLC-22 containing data in Part II of the form. Atlhough the Council is now requiring that Part II be filled in on each Form CLC-22, the Council is not requiring a Schedule R

until the entries in Part II change. Instructions to Part II are correspondingly amended. Two sentences are added to the end of this paragraph to reflect the changes set forth in CLC Notice 1973–7, "inclusion of completed years in Base Period before final data is available" (39 FR 1103, January 4, 1974). Items 8 through 14 of Part II are unchanged.

Part III. "Calculation of Profit Variation" is amended by inclusion of a sentence from the food reporting instructions in the first sentence. In addition, Part II formerly had to be filled out only when Form CLC–22 was prepared as a quarterly report. When the form was prepared as a prenotification, the figures in Part III would be the same as they were on the most recent quarterly report submitted by the firm. With the Division of responsibility between the Council and IRS, the agency receiving the prenotification may not necessarily have in its possession the most recent quarterly report. This change requires no additional calculations unless there has been a restatement.

The requirement that Schedule R be attached in Support of Part III has been amended to correspond to the change in Part II discussed above.

Item 15 of Part III is unchanged. Item 16 is amended by deleting an instruction which applied only when the base period profit margin was not set out in Part II. As stated above, Part II is now always to be filled out.

Items 17, 18 and 19 are unchanged.

Part IV "Additional Information" is unchanged.

Part V "Certification" is unchanged.

The "Special Instructions for the Preparation of Form CLC–22 as a Prenotification Document" is changed to correspond to the new requirement that Parts II and III be filled out each time. New paragraphs 3 and 4 are added in Part V. Paragraph 3 is taken from the oil instructions, and paragraph 4 is taken from the Additional Instructions for Food Manufacturing Prenotification (herinafter referred to as food prenotification instructions).

Part VI "Price/Cost Information" is unchanged in the Introduction. In "Alternative Treatment of Operations of Entity", the second paragraph is amended to give effect to a prior amendment of § 150.305(d), which altered the conditions under which a firm could include its manufacturing and service activities in a merchandise pricing plan.

A new paragraph taken from the food prenotification instructions is entitled "Food Manufacturing." An additional paragraph is taken from food reporting instructions, specifying how Part VI is to be filled out when the Form CLC–22 is being used either as a monthly reporting document or as a quarterly reporting document.

A section entitled "Petroleum and Petroleum Products," taken from the oil instructions is added to Part IV.

A new section entitled "Broadcasting" is added to call attention to the broadcasting regulations contained in § 150.206 of the Council's regulations. These regulations modify the method used in completing Part VI.

A new section entitled "Capital Goods Manufacturers and Textile Manufacturers" is added to Part VI and sets out those changes which flow from the Council's recent provision in § 150.207, that certain capital goods manufacturers and textile manufacturers could use an alternate definition of transactions.

A new section entitled "Loss and Low Profits Firms", is added to reflect Cost of Living Council Phase IV Price Notice No. 1973–6 (39 FR 847, January 3, 1974).

The portions of the instructions entitled "Calculations Required in Completing Part VI, Form CLC–22", "Computation of Base Price and Current Price", and "Computation of Weighted Average Percentage Above (Below) Base Price" are unchanged.

In that part of the instructions entitled, "Illustration of Computing the Weighted Average Percentage Price Adjustment," the "Sample Calculation of Weighted Average Percentage Price Adjustment" is amended in column 3 by replacing the heading "Average price reported period column" with the heading "Average Price Reporting Period, column (6) ÷ column (4)." This change corrects a printing error, and conforms the Form CLC–22 example to that in the Form CLC–2.

The "Specific Instructions" are unchanged in Items 22 and 23 and in columns (a) and (b) of Item 24.

Column (c) of Item 24 is amended to make clear that, as in Phase II, sales for the product or service line include any sales or transfers to a retailing or wholesaling pricing entity of the firms submitting the Form CLC–22.

Column (c) is also amended to provide that the figures entered in it are net of sales of exempt items and net of long term contracts covered by §§ 150.76 and 150.312(b). This change as to the treatment of sales resulting from such contracts corresponds to the change previously discussed in the "Certification of No Price Increase." Since the Council does not require prenotification for prices charged under the long term contracts described in these two sections, the Council does not want the figures in column (c) to reflect these prices.

Column (d) is amended in its last sentence to provide that on a quarterly report, prenotification firms must enter the weighted average percentage above base price which was authorized on the most recent prenotification submission for which the 30 day prenotification period has expired.

This provision will allow the Council to compare the price increases allowed, column (d), with the price increases charged, column (e), since column (d) reports the cumulative prenotified price increases above base. By placing the prenotified percentage on the quarterly report it will be easier for the Council to compare columns (d) and (e).

The change to the instructions for column (e) will allow the Council to determine the effect of the price increase authorization being requested.

Column (f) is unchanged.

Column (g) is amended to require that for prenotification purposes, the highest percentage price increase "over base price" must be entered for any item in the product line. This amendment is to make clear that all percentages in Part VI entered on a prenotification document are cumulative.

Items 25 through 26 are unchanged.

In Item 27 the phrase "reported on Schedule T, Form CLC–22" is deleted because sales of revenues for the reporting period are not reported on the Schedule T.

Items 28 through 39 are unchanged.

### Instructions for Preparation of Schedule C

"Calculation of Cost Justification to Support Net Price Increases on Form CLC–22" is amended in the general instructions by including a paragraph at the end of general instructions from the food prenotification instructions. The "Specific Instructions" remain unchanged in Part I. Part II is altered by the inclusion of a paragraph from the food prenotification instructions, and by the inclusion of two paragraphs from the food reporting instructions rewritten into one paragraph headed "Food Manufacturing". There are minor clarifying changes concerning the input method in the paragraph which discusses methods of measuring cost increases.

In addition, a paragraph is added to incorporate the requirements of 6 CFR 150.132(c)(2) and 150.133(c)(2). The section of Part II referring to "Allowable Costs" is expanded by the inclusion of two paragraphs from the food reporting instructions. In addition, language has been added to detail the supporting documents required. Item 4 of Part II is expanded by the inclusion of a paragraph from the food prenotification instructions, and of several paragraphs from the food reporting instructions. Paragraph 2 in Item 4 is rewritten to clarify the provision for net hedging gains or losses with respect to food raw materials. Paragraph 6 is added so that the instructions reflect regulation amendments to 6 CFR 150.606(c)(4)(i).

Item 5 of Part II contains a clarifying amendment, in which the phrase "as defined in 6 CFR 152.2" is replaced by the phrase "as provided for in the definition of 'pay adjustment' in 6 CFR 152.2." Item 6 contains a paragraph taken from the food prenotification instructions. Items 7 through 10 are unchanged. Item 11, "Offset for Productivity Increase", is amended to make it clear that a firm engaged in service activities must determine the productivity offset and include the percentage in Item 11, subject to CLC or IRS review. The example in Item 11 of the calculation of a productivity offset is slightly altered to reflect the average annual rate of productivity gain currently shown in Appendix A. A new paragraph is added to the end of Item 11 to explain the calculation of a productivity offset involving more than one year.

Item 12 is expanded by the inclusion of instructions from the food reporting instructions and the food prenotification instructions.

Item 13 is expanded by the addition of instructions from the food prenotification instructions and the food reporting instructions. Also added is a paragraph using the language of 6 CFR 150.132, which provides for the base cost period of a new item.

Item 14 is altered to make it clear that a food manufacturer pricing in accordance with the gross margin rule of 6 CFR 150.606, the current cost period for food product lines on a quarterly report is the most recently completed fiscal quarter as is provided in 6 CFR 150.607(b)(4). The amendment to Item 14 also provides that for non-food product lines the current cost period on a quarterly report is the last accounting month in the fiscal quarter being reported.

INSTRUCTIONS FOR PREPARATION OF SCHEDULE F REPORT OR RECORD OF FOOD MANUFACTURING REVENUES

The General Instructions are unchanged in Part A. Part B is altered in paragraph 4(3) by deleting a reference to "the schedule attached to the initial report." The Council has decided not to require a schedule.

The Specific Instructions are unchanged in Items 1 and 2. Item 3 is corrected in the instructions for "Column (c)—Base Revenues" in the fourth sentence. The phrases in that sentence "as an addition to" and "as an offset to" were mistakenly reversed when these instructions were first issued. That mistake is corrected by reversing the two phrases. In addition, the term "food sales" is substituted for "food markets" to reflect the October 12, 1973 regulation amendments to 6 CFR 150.606(c)(4)(iii) as set forth at 38 FR 29209 (October 23, 1973). The instructions for Column (g) of Item 3 are also amended to reflect the October 12 amendments to 6 CFR 150.606. In addition, the Column (g) instructions are amended to make it clear that the cost of freight and insurance referred to is that in connection with food sales ("freight out"). Item 3 is amended in the instructions to Column (h), to reflect the October 30, 1973 amendment to § 150.606 of the Council regulations (38 FR 30097, November 1, 1973).

INSTRUCTIONS FOR PREPARATION OF SCHEDULE R RECONCILIATION OF FORMS 10–K, 10–Q OR OTHER FINANCIAL STATEMENTS TO FORM CLC–22

The General Instructions are amended by adding a final paragraph as provided for in CLC Notice 1973–7 issued December 28, 1973. The Specific Instructions are unaltered.

"INSTRUCTIONS FOR THE PREPARATION OF SCHEDULE T REPORT OF RETAILING AND WHOLESALING MARKUPS OR GROSS MARGINS"

The General Instructions in the first paragraph of Part A are rewritten to clarify the purpose of Schedule T. A new second paragraph is added to make clear that all firms must complete a merchandise pricing plan prior to increasing a price above the adjusted freeze price.

In addition the current second paragraph is amended to make evident the fact that a single pricing entity may employ both markups and gross margins in pricing for its wholesaling and retailing activities.

In the last paragraph of Part A the phrase "Covered products" is substituted for "crude petroleum products" so as to use terminology of the Phase IV regulations for petroleum and petroleum products.

Part B is unaltered in Items 1 through 6. Item 7, "Merchandise Category", is amended to make it plain that a pricing entity which derives 75 percent or more of its annual sales or revenues from retail food sales may treat all of its sales under one merchandise category.

Item 8, pricing base period, is altered in conformity with § 150.604(b), to provide for the additional fiscal year which may be used by a pricing entity with sufficient retail food sales. Items 9 and 10 are unaltered.

Part C is amended in paragraph 2, "Quarterly Report", to make it clear that certain firms engaged in food sales cannot file the certificate, and to provide for a signature for the certificate. Part D and E are unaltered. Part F "Pricing Plan" is amended by the deletion of paragraph 2(c), which dealt with merchandise pricing plans for firms subject to the food regulations of Part 130 or Part 140. Since Parts 130 and 140 have, for food manufacturing firms, been superseded by Phase IV regulations, this provision is no longer necessary.

The Specific Instructions in Items 1 through 4 are unaltered. Item 5 is modified so that the instructions for Column (a) reflect the amendment to 6 CFR 150.305(d) set forth in 38 FR 27289 (October 2, 1973).

In consideration of the foregoing, it is proposed to revise the Instructions for the Preparation of Form CLC–22, and the Instructions for the Preparation of Schedules C, F, R, and T, to read as set forth below.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345, Cost of Living Council Order Number 14, 38 FR 1489)

Issued in Washington, D.C., on January 17, 1974.

JAMES W. MCLANE,
*Deputy Director,*
*Cost of Living Council.*

INSTRUCTIONS FOR THE PREPARATION OF FORM CLC–22 PRENOTIFICATION, REPORT, OR RECORD OF PRICES, COSTS, AND PROFITS

GENERAL INSTRUCTIONS

*A. Purpose.*

1. Form CLC–22 is designed to provide the data necessary for the Cost of Living Council (CLC) and the Internal Revenue Service (IRS) to execute their role in monitoring the performance of the economy pursuant to Executive Order 11730.

2. Form CLC–22 provides the means by which certain firms subject in whole or in part to 6 CFR Part 150, prenotify and report quarterly certain price adjustments and related costs and profits. Form CLC–22 also provides the means by which certain firms engaged in food manufacturing and subject to 6 CFR 150.606 report on a monthly and quarterly basis.

*B. Who Must Use Form CLC–22.*

1. Each price category I or II firm, as defined in 6 CFR, Part 150, Subpart C, must submit quarterly reports on Form CLC–22 and each price category I firm shall prenotify price increases on Form CLC–22 to the IRS in accordance with regulations issued by the CLC.

In addition, each price category I and II firm engaged in food manufacturing must submit monthly reports unless the firm derives both less than 20% and less than $50 million of its annual sales or revenues from food manufacturing and elects to price with respect to its food manufacturing activities in accordance with 6 CFR Part 150, Subpart E. The "adjusted freeze price" as defined in 6 CFR Part 150, Subpart Q applies to firms making this election.

2. All firms are encouraged to prepare and maintain Form CLC–22 in the firm's records to assist in complying with Phase IV regulations.

3. *General Rules.*—The following rules apply for the purpose of determining who must use Form CLC–22:

a. *Determination of "Firm."*—If a firm is not directly or indirectly controlled by another firm, that firm is called a "parent" for the purposes of this Form CLC–22. The parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls taken all together, constitute the "firm" for the purpose of paragraphs B.1, B.2 and B.8.

b. *Parent and Consolidated Entities.*—Once the prenotification or reporting status is determined, only the sales or revenues of the parent and the sales or revenues of the controlled entities (if any), consolidated with the parent in its financial statements prepared in accordance with generally accepted accounting principles are combined for purposes of preparation of the Form CLC–22 applicable to the "Parent and Consolidated Entities." The Form CLC–22 is prepared by the parent for and on behalf of the entire consolidated group for submission to the IRS.

c. *Unconsolidated Entity.*—In addition to preparing Form CLC–22 for and on behalf of the entire consolidated group, the parent must prepare a separate Form CLC–22 for and on behalf of each unconsolidated entity with annual sales or revenues of $10 million or more. An "unconsolidated entity" is any entity directly or indirectly controlled by a parent but not consolidated with the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An "unconsolidated entity" includes any entity consolidated with that unconsolidated entity for purposes of financial statements prepared in accordance with generally accepted accounting principles.

d. *Entity.*—For purposes of this form and all supporting schedules, entity means the "parent and consolidated entities" or an "unconsolidated entity."

4. *Certification of No Price Increase.*—Any entity that would otherwise be required to file the Form CLC–22 on a quarterly basis which has not, since August 12, 1973, for a non-exempt item, (1) charged a price in excess of the greater of the base price (6 CFR, Part 150, Subpart F) or the adjusted freeze price (6 CFR, Part 150, Subpart E or Subpart K, as applicable) except as allowed by 6 CFR 150.76 or 6 CFR 150.312(b) for prices specified in certain contracts; (2) charged a price in excess of the "current price" or reflecting an increased "base rate" as defined in 6 CFR 150.206 for firms engaged in broadcasting and pricing in accord-

ance with the audience size method, except as allowed by 6 CFR 150.206(c)(1)(i); (3) charged a price for a custom product or service unless it meets the de minimus rule set forth in 6 CFR 150.11(d)(3); (4) charged a price pursuant to the volatility provisions of 6 CFR 150.156; (5) charged a price for a covered product as defined in 6 CFR, Part 150, Subpart L; and (6) become subject to a profit margin limitation by virtue of 6 CFR 150.604(b)(3), 150.605(b), or 150.606(c)(3) may submit, within 30 days of the end of the entity's fiscal quarter, a Form CLC–22 with Parts I, IV, and V completed in accordance with these instructions, and with the following certification typed in Part VI, Item 24, Lines (1) through (33), in lieu of filling out Part VI as is otherwise required:

I certify that, to the best of my knowledge and belief, as of (a), (b) has not at any time since August 12, 1973: (1) Charged a price in excess of the greater of the adjusted freeze price defined in accordance with 6 CFR Part 150, Subpart E, or Subpart K, as applicable, or the base price established in accordance with 6 CFR Part 150, Subpart F or 6 CFR 150.207, as applicable, except as allowed by 6 CFR 150.76 or 6 CFR 150.312(b); (2) charged a price in excess of the current price or charged a price reflecting an increased base rate, pursuant to 6 CFR 150.206, except as allowed by 6 CFR 150.206(c)(1)(i); (3) charged a price for any custom product or service as defined by 6 CFR 150.-104, or, if it has charged such a price, that the annual sales or revenues attributable to all its custom products or services will represent less than $10 million or less than 1 percent of the entity's annual sales or revenues, whichever is greater; (4) charged a price pursuant to the special rule for volatility in 6 CFR 150.156; (5) charged a price for a covered product as defined in 6 CFR, Part 150, Subpart L; or (6) become subject to a profit margin limitation by virtue of § 150.604(b)(3), § 150.605(b), or § 150.606(c)(3) applicable to food activities.

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*Chief Executive Officer (or other authorized executive officer)*

The following information is entered in the appropriate blanks of the certification:

(a) The reporting period ending date.

(b) The name of the entity to which the Form CLC–22 applies.

5. *Quarterly Reporting for petroleum and Petroleum Products.*—Each "refiner", and each "retailer", "reseller", or "producer" (of domestic crude petroleum as an operator) which derives $50 million or more in annual sales or revenues from the sale of "covered products" as those terms are defined in 6 CFR 150.352, must prepare a Form CLC–22 as a quarterly report completed in accordance with these instructions.

6. *Recordkeeping for Petroleum and Petroleum Products.*—Each firm which derives less than $50 million but more than $1 million in annual sales or revenues from the retailing or reselling of covered products must prepare and maintain at its principal place of business, a Form CLC–22 as a quarterly report completed in accordance with these instructions.

7. *Prenotification by Refiners.*—Each refiner subject to the prenotification requirements in 6 CFR 150.355 must prenotify price increases on a Form CLC–22 used as a prenotifiation document in accordance with these instructions.

8. *Certification that Public Disclosure Not Required.* Any firm, as defined in these instructions, which has annual sales or revenues of $250 million or more and which has not charged a price for a substantial product which exceeds by more than 1.5% the price lawfully in effect for such product on January 10, 1973, or on the date 12 months preceding the end of the quarterly reporting period whichever is later, must submit as a supporting document to any Form CLC–22 filed as a quarterly report two copies of the following certification:

Certification that Public Disclosure Not Required:

I certify that, to the best of my knowledge and belief, (a) and all entities which it controls have not at any time during the reporting period ending (b) charged a price for a substantial product which exceeds by more than 1.5% the price lawfully in effect on (c).

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*Chief Executive Officer (or authorized officer)*

The following information is entered in the appropriate blanks of this certification:

(a) The name of the parent.

(b) The reporting period ending date.

(c) January 10, 1973, or the date 12 months preceding the reporting period ending date, whichever is later.

C. *When to Submit Form CLC–22*

Firms required to prenotify price increases must file a Form CLC–22 at least 30 days prior to charging a price for which prenotification is required pursuant to 6 CFR, Part 150, Subpart H. Firms required to file Form CLC–22 as a report of price adjustments, and related costs and profits, must submit such report to the IRS not later than 45 days after the last day in the entity's fiscal quarter and 90 days after the last day in the entity's fiscal year.

In addition, firms engaged in food manufacturing and pricing in accordance with the gross margin rule must submit a Form CLC–22 as a monthly report to the IRS not later than 30 days after the close of each accounting month except the month which concludes a fiscal quarter of the entity. This Form CLC–22 submitted as a monthly report must have a completed Schedule F attached.

D. *What to Submit or Prepare*

This form and instructions require only basic information. However, the CLC and the IRS may request additional data in particular cases. Firms must submit 2 copies of the Form CLC–22, Schedules C, R, F and T, as required, and all other supporting schedules and documentation indicated in the instructions. Firms which submit a Form CLC–22 which contains incomplete or incorrect information will be required to submit a corrected Form CLC–22 and will be considered in violation of the reporting requirements if a complete and correct form is not submitted within the time period prescribed.

E. *Where to Submit*

Firms required to file must forward Form CLC–22 and attachments to the IRS office designated in the table at the end of these instructions.

F. *Suggestions for Improvement*

The CLC welcomes suggestions for improving this and other forms, and seeks ways of obtaining the information it needs to exercise its responsibilities under Phase IV of the Economic Stabilization Program with the minimum amount of public burden. Suggestions should be submitted to:

Cost of Living Council
Office of the Executive Secretariat
2000 M Street, N.W.
Washington, D.C. 20508

G. *Rounding*

For purposes of this form, all percentages must be expressed to the nearest two decimal places (such as 15.92%). All dollar entries must be rounded to the nearest $1000 and the 000 should be omitted (such as $1,750,803 entered as $1,751).

H. *Sanctions*

The timely submission of a Form CLC–22 by a firm as a report or prenotifictaion is a mandatory requirement under the Phase IV regulations. Late filing, failure to file, failure to keep records, or failure otherwise to comply with these instructions, may result in criminal fines, civil penalties, and other sanctions as provided by law.

SPECIFIC INSTRUCTIONS

*PART I—Identification Data*

*Item 1a or b. Organization/Status.*—Check the box which indicates the status of the organization to which this form applies.

*Item 2. Type of Submission—Prenotification.*—Check box (a) if Form CLC–22 is used to prenotify a price adjustment.

*Quarterly Report*—Check box (b) if Form CLC–22 is used to make a quarterly report.

*Certification*—Check box (c) if a Certification of No Price Increase is to be typed in Part VI (See General Instructions, paragraph B4).

*Other*—Check box (d) if Form CLC–22 is used for purposes other than in 2(a), (b), or (c) and explain the purpose on the line provided. If the Form CLC–22 is being used as a public disclosure document, enter the words "Public Disclosure Required" and complete the form as required by 6 CFR Part 102, Subpart F.

*Item 3. Name, Address, and Chief Executive Officer—Name.*—If item 1(a) is checked enter the legal name of the parent. If item 1(b) is checked enter the legal name of the unconsolidated entity.

*Address.*—Enter the address of the executive office.

*Chief Executive Officer.*—Enter the name and title of the Chief Executive Officer.

*Parent.*—If item 1(b) is checked, enter the legal name of the parent.

*Item 4. Is this a resubmission?*—Answer Item 4 "yes" if you are supplying additional information or are resubmitting a report. In either case, the form must be completed in its entirety.

*Item 5. Ending date of most recently completed fiscal year.*—Enter the date of the last day of the most recently completed fiscal year of the entity. If the fiscal year ending date has changed, enter the word "change" and attach a letter explaining the change.

*Item 6. Reporting Period Ending Date.*—Enter the date of the last day in the reporting period. The reporting period must conform with the entity's most recently completed fiscal quarter.

If the Form CLC–22 is being prepared for submission with a Schedule F as a monthly report, the reporting period is the entity's most recently completed accounting month.

*Item 7. Annual Sales or Revenues* (To be completed by Parent only).—Enter for the most recently completed fiscal year, the total of the annual sales or revenues (as defined in 6 CFR, Part 150, Subpart B) of the parent and its consolidated and unconsolidated controlled firms.

*PART II—Calculation of Base Period Profit Margin*

This part must be completed each time the Form CLC–22 is prepared except that for purposes of monthly reporting pursuant to 6 CFR Part 150, Subpart Q, leave Part II blank. If the firm received an order granting a request for an exception affecting its base period profit margin, it may use the provisions of such an order in calculating the base period profit margin in accordance with the instructions to this Part. In such cases, the firm must enclose a copy of the exception order and document its use and dollar effect. The term "base period" means any two, at the

option of the entity, of that entity's fiscal years ending on or after August 15, 1968, other than the fiscal year for which compliance is being measured. A fiscal year in which it is determined that the entity unlawfully exceeded its base period profit margin can be a base period fiscal year except that operating income for that year must be reduced by the dollar value of the excess profit margin. In determining a base profit period for the purpose of computing a base period profit margin a weighted average of profits during the two years chosen must be used. Except where the data required in Part II is identical to the data in Part II of the Form CLC–22 most recently submitted by the entity, the entries made in Items 8, 9, 11, and 12 must be reconciled on the Schedule R to Form CLC–22 with the corresponding entries reported on the supporting Form 10–K or other financial statements required in the Instructions to the Schedule R. Any required Schedule R must be attached to the Form CLC–22.

For any prenotification document submitted by an entity within 90 days after the end of its most recently completed fiscal year, the entity may, in selecting its base period, elect to use such fiscal year in the calculation of its base period profit margin. An entity which uses its most recently completed fiscal year in calculating its base period profit margin need not submit a Schedule R for that fiscal year with a Form CLC–22 submitted as a prenotification document within 90 days after the end of that year.

*Items 8 and 9. Net Sales.*—Enter, from the appropriate Schedule R, the amount on Line 12.

*Item 10. Total.*—Enter the sum of Items 8 and 9.

*Items 11 and 12. Operating Income.*—Enter, from the appropriate Schedule R, the amount on Line 13.

*Item 13. Total.*—Enter the sum of Items 11 and 12.

*Item 14. Base Period Profit Margin.*—The base period profit margin is calculated by dividing Item 13 by Item 10.

*PART III—Calculation of Profit Variation*

This part must be completed by the entity each time Form CLC–22 is prepared except that for purposes of monthly reporting pursuant to 6 CFR, Part 150, Subpart Q, leave Part III blank. Except for a prenotification document the Part III of which is identical to Part III of the Form CLC–22 most recently submitted by the entity, the entries made in Items 15 and 18 must be reconciled on the Schedule R to Form CLC–22 with the corresponding entries reported on the supporting Form 10–K, Form 10–Q, or other financial statements required (see instructions to Schedule R). Any required Schedule R must be attached to the Form CLC–22. If the entry in Item 19 shows the Cumulative Period Profit over the Target Profit, the entity must attach on explanation as to why it does not appear to be conforming with the general price rules in 6 CFR, Part 150, Subpart E and Subpart K.

*Item 15. Net Sales.*—Enter, from appropriate Schedule R, the amount in Line 12.

*Item 16. Base Period Profit Margin.*—Enter the base period profit margin from Part II, Item 14.

If the entity is allowed a profit margin pursuant to the Loss and Low Base Period Profit Margin rule of 6 CFR 150.202, it should enter that profit margin in Item 16 and attach a supporting schedule to document the computation of the capital turnover ratio using net sales determined in accordance with 6 CFR 150.202. However, the completion of Part II, Form CLC–22, in accordance with the instructions, continues to be a requirement.

*Item 17. Target Cumulative Period Profit.*—Enter the target amount of cumulative period profit determined by multiplying item 15 by item 16.

*Item 18. Actual Operating Income.*—Enter from appropriate Schedule R, the amount on Line 13.

*Item 19. Cumulative Period Profit Under (Over) Target Profit.*—This entry is determined by subtracting Item 18 from Item 17.

*PART IV—Additional Information—*

Self explanatory.

*PART V—Certification*

Type the name and title of the individual who has signed the certification and the date of signing. The individual who signs and certifies this Form CLC–22 must be the Chief Executive Officer of the Parent or such other executive officer of the entity as authorized by the Chief Executive Officer to sign for him for this purpose. Such authorization in the following format must be received by the appropriate IRS office as indicated in the table at the end of these instructions.

DELEGATION OF AUTHORITY TO SIGN AND CERTIFY

_____
(Typed date of signing)

_____
(Name of parent)

I, _____
(Name)

hereby certify that I am the _____
(Title)

of the above-named parent; and that, as such, I am authorized to sign documents and to certify, on behalf of said parent, the accuracy and completeness of all the information in such documents. Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the person(s) listed below, who is (are) executive officers of the above-named parent or entity of the firm. This delegation is effective until it is revoked in writing, and the Internal Revenue Service is so notified.

_____ _____
(Date) (Signature)

AUTHORIZED INDIVIDUALS

| *Name and Title* | *Extent of Authorization* |
|---|---|
| _____ | _____ |
| _____ | _____ |

*Special Instructions for the Preparation of Form CLC–22 as a Prenotification Document.*—1. The prenotification requirement is determined according to the annual sales or revenues of the parent and the consolidated and unconsolidated entities it directly or indirectly controls. Once it has been determined that prenotification is required, an entity must prenotify regardless of the amount of its own sales and revenues, unless the entity is an unconsolidated entity with less than $10 million or unless the prenotification requirement is modified by the Council pursuant 6 CFR, Part 150, Subpart H.

2. When prenotifying a price increase items 27 through 39 in Part VI are not required to be completed. Firms need only show product lines or service lines for which a price increase is being requested. In no case may prenotification be made as a part of the required quarterly report.

3. Firms prenotifying a price increase pursuant to 6 CFR Part 150, Subpart L, must use a separate Form CLC–22 to prenotify price increases on covered products as defined. For purposes of a Form CLC–22 used to prenotify price increases on covered products, the terms "base price" used in computing the entries in columns (d), (e), and (g) and "base cost" used in computing the entry in column (f) are as defined in 6 CFR 150.352 and 150.355 respectively. However, the adjusted freeze price may not be used in calculating the entry in column (g).

4. Firms prenotifying a price increase pursuant to 6 CFR Part 150, Subpart Q must use a separate Form CLC–22 to prenotify such price increases and include in Part VI of the form only product lines which are "food" as defined in that subpart. For purposes of a Form CLC–22 used to prenotify price increases "base cost period" used in computing the entry in column (f) is as defined in 6 CFR 150.607.

*PART VI—Price/Cost Information*

*Introduction.*—This part is used to report or prenotify weighted average price adjustments by product line. For purposes of this form, "product line" means product, product line, service or service line. Any price adjustments which have been made by means of change in quantity, quality, specifications or characteristics must be taken into account when reporting price adjustments. The price of an item in inventory may be increased only to reflect cost increases incurred in the production of that item.

*Alternative Treatment of Operations of Entity.*—A firm which is subject to 6 CFR Part 150, Subpart E and which is also engaged in wholesaling or retailing, or both, is subject to the requirements of Subpart K or this part with respect to its wholesaling and retailing operations. However, if the sales or revenues derived from wholesaling and retailing activities amounted to both less than $50 million and less than 10% of the firm's total manufacturing or service revenues subject to 6 CFR Part 150, Subpart E in the most recently ended fiscal year, the firm may, at its option, treat its wholesale and retail operations for pricing and reporting purposes as manufacturing or service activities.

As an alternative to the method for prenotifying, a firm which is subject to 6 CFR Part 150, Subpart K and which also engages in manufacturing or service activities, or both, is subject to the requirements of Subpart E of Part 150 with respect to its manufacturing and service activities. However, if the sales or revenues derived by the firm or pricing entity concerned from manufacturing and service activities were less than 15% of the firm's or pricing entity's total retailing or wholesaling revenues for the most recently completed fiscal year, the firm may include its integrated manufacturing and service activities in its merchandising pricing plan (see Instructions to Schedule T to Form CLC–22). When manufacturing or service activities are so included, customary initial percentage markups and gross margins shall be computed, in the case of manufacturing activities, on the basis of direct material costs and, in the case of service activities, on the basis of direct material and direct labor costs.

*Food Manufacturing.*—For purposes of prenotifying data on "food" products pursuant to 6 CFR Part 150, Subpart Q:

(1) An entity subject to prenotification may not charge a price increase, on any item in a product line, supported by cost other than "food raw materials costs" without prenotifying such an increase to the IRS.

(2) Columns (d), (e) and (g) of Item 24 are left blank.

(3) The base cost period for purposes of completing column (f) and the required Schedule C is the base cost period as defined in 6 CFR Part 150, Subpart Q.

(4) Enter in column (f) a percentage not greater than the percentage cost justification shown on line 12, Schedule C.

For purposes of monthly reporting pursuant to 6 CFR Part 150, Subpart Q, leave Part VI blank. For purposes of quarterly reporting, firms pricing in accordance with the gross margin rule include in Line 38 the total of Column (g), Item 5, Schedule F. For those firms, food product lines are not entered in line 1–33 of item 24 of the Form CLC–22 filed as a quarterly report.

*Petroleum and Petroleum Products.*—For purposes of reporting price and cost data on covered products as defined in 6 CFR, Part 150, Subpart L:

(1) the base price for purposes of calculating the entries in columns (d), (e), and (g) is the base price as defined in 6 CFR, Part 150, Subpart L,

(2) the base cost period for purposes of completing column (f) and the required Schedules C is the base cost period as defined in 6 CFR, Part 150, Subpart L,

(3) the adjusted freeze price may not be used in calculating the entry in column (g),

(4) price and cost data on covered products that the entity sells as a refiner are entered in item 24.

(5) only the data required for columns (a), (b), and (c) of item 24 need be entered for the covered products that the entity sells as a producer, and

(6) Sales of the entity from reselling and retailing activities are included in Item 28. If the entry in Item 28 includes sales of other than covered products a supporting schedule must be attached which provides the dollar amount of sales of covered products that is included in the entry in Item 28.

*Broadcasting.*—"Current price" and "base rate", as defined in 6 CFR 150.206, are to be used to determine the price which may be charged for advertising units by firms engaged in television, radio broadcasting, or both, which are required, or have elected, to use the audience size method and to price in accordance with 6 CFR 150.206.

In reporting quarterly, such firms must attach a supporting schedule which provides for each advertising unit, the base rate, the audience size and the current price charged during the reporting period.

*Loss and Low Profit Firms.*—As long as a firm qualifies for authority to price as a loss or low profit firm pursuant to 6 CFR 150.201, it need not submit the following CLC forms or portions of forms in connection with quarterly reporting:

1. Columns (d), (f) and (g) of Part VI, Form CLC–22
2. Schedule C: Entire form
3. Schedule F: Entire form
4. Schedule T: Entire form

In addition, qualifying loss or low profit firms engaged in food manufacturing need not submit monthly reports pursuant to 6 CFR, Part 150, Subpart Q.

*Capital goods manufacturers and textile manufacturers.*—In calculating base prices and adjusted freeze prices for manufacturing activities subject to 6 CFR 150.207 a firm may elect to use the following definition of transaction: "Transaction" means an arms-length sale or lease between unrelated persons and is considered to occur at the time a binding contract is entered into between the parties. A firm may use contract prices pursuant to the preceding sentence only to the extent that those prices reflect costs which have been incurred or nonlabor costs committed to be incurred in the future under fixed price supplier contracts.

In calculating base costs under 6 CFR Part 150, Subpart G for manufacturing activities subject to 6 CFR 150.207, a firm which elects to use the optional contract definition of transaction must include those costs which are reflected in contract prices used as base prices and which otherwise would not be included in the calculation of base costs.

*Calculations Required in Completing Part VI, Form CLC–22.*—In order to arrive at the weighted average percentage price adjustment required in Part VI, Form CLC–22, the entity must:

(1) Calculate base prices,

(2) Calculate current prices; and

(3) Weight the difference between each current price and base price by the quantity of the respective items sold.

The explanations and examples below are standards for the correct computation of the base price, current price, and weighted average percentage price adjustment (price adjustment). In selecting its method for computing its price adjustment, the entity may use alternative techniques which, when applied in a consistent and unbiased manner, result in a percentage which is not materially different from the percentage derived using the standards below. Some of these alternative techniques are mentioned in the explanation below.

*Computation of Base Price and Current Price.*—An item is a product or service unit sold, leased or offered for sale or lease to class of purchaser.

January 11, 1973 in which transactions oc-

The base price of an item is the average unit price of that item computed for the firm's last fiscal quarter ended prior to January 11, 1973 in which transactions occurred with respect to the item and class of purchaser concerned. The average unit price of an item for a period is determined by dividing the net sales of the item for the period by the quantity of the item sold for that period. Prices charged pursuant to temporary special deals or temporary special allowances may be excluded in computing the base price of an item.

The current price of an item is the average unit price of that item computed for the reporting period for Form CLC–22. The following is an example of the calculation of a base price. The computation of a current price is identical except the sales and quantity data are taken from the reporting period and not the base price period.

Firm A's fiscal year end is November 30. The base price period is the fiscal quarter ended 11/30/72.

During that period product B sold as follows:

| | | |
|---|---|---|
| 100 units | $1.00 | $100 |
| 100 units | 1.05 | 105 |
| 200 units | 1.10 | 220 |
| 400 units | | $425 |

$$\text{Base price for item B} = \frac{\text{net sales}}{\text{units sold}} \times \frac{\$425}{400} = \$1.06$$

The base price must be determined for each item. Firms which cannot reasonably calculate base prices for each item may employ valid sampling techniques.

*Computation of Weighted Average Percentage Price Adjustment Above (Below) Base Price.*—The calculation of the weighted average percentage price adjustment is necessary to complete Part VI, Item 24 (d) and (e), regardless of whether the adjustment is above or below (set off by parenthesis) base price.

The weighted average percentage price adjustment is the difference between current revenues and base price revenues for the product line all over base price revenues. The result is multiplied by 100 to convert to a percentage. Current revenues are net sales of the product for the reporting period (average unit price times quantity sold). Base price revenues are the revenues that would have been derived during the reporting period if all prices had been at base price (i.e. base price times quantity sold during the reporting period).

Although the calculation of the weighted average percentage price adjustment requires determination of price changes at the item level, it may not be feasible to compute and record the percentage price changes at this level of detail. In such cases, it may be permissible to use a sampling, averaging, exceptions, or other valid technique to calculate a weighted average percentage price adjustment. Where these techniques are used, the entity must adhere to accepted standards with regard to materiality, sampling validity, and consistency. In all cases, the entity must maintain documentation which outlines the type of techniques used in calculating the weighted average percentage price adjustment.

The entity must weight its price changes according to one of the following methods:

(1) The quantity sold during the reporting period (as shown in the formula and illustration below);

(2) The quantity sold during the base price period providing the entity can demonstrate that there is no material difference in product mix between the base price period and the reporting period;

(3) The value of the sales to which a price change applies as a proportion of the total sales for which the weighted average is computed.

All methods of weighting must take into account price increases and decreases from base price.

The weighted average price adjustment above (below) base price can be computed using the following formula:

$$\frac{\text{(Current revenues)} - \text{(Base price revenues)}}{\text{(Base price revenues)}} \times 100 = \text{Weighted average percentage price adjustment.}$$

*Illustration of Computing the Weighted Average Percentage Price Adjustment.*—The steps for computing the weighted average percentage price adjustment using weighting by quantity sold during the reporting period (method (1) above) are:

1. Multiply the quantity of each item sold during the reporting period by its base price. The result is the base price revenues for each item.

2. Total the base revenues (Column 5) for the individual items to arrive at the total base price revenues (sum of Column 5).

3. Divide the total base price revenues computed in step (2) above into the difference between total current revenues (sum of column 6) and total base price revenues and multiply the result by 100 to convert to a percentage.

*Sample calculation of weighted average percentage price adjustment*

| (1) Item | (2) Base price | (3) Average price reporting period—col. (6) ÷ col. (4) | (4) Quantity sold during reporting period (in thousands) | (5) Base price revenues (in thousands)—col. (2) × col. (4) | (6) Current revenues (in thousands) |
|---|---|---|---|---|---|
| A | $5 | $4.80 | 40 | $200 | $192 |
| B | 6 | 6.10 | 60 | 360 | 366 |
| C | 3 | 3.20 | 50 | 150 | 160 |
| D | 10 | 10.00 | 15 | 150 | 150 |
| E | 8 | 8.25 | 40 | 320 | 330 |
| Total | | | | 1,180 | 1,198 |

$$\text{Weighted average percentage price adjustment} = \frac{1198 - 1180}{1180} \times 100 = 1.53\%$$

*Specific Instructions—Item 22.*—Enter the name of the parent or unconsolidated entity as shown in Part 1, Item 3(a), Form CLC–22.

*Item 23.*—If CLC–22 is used to prenotify price increases, enter the dates of the first day and last day of the current cost period for prenotification purposes as defined in 6 CFR Part 150, Subpart G.

If CLC–22 is used as a quarterly report enter the beginning and ending dates of the fiscal quarter to which the CLC–22 applies.

*Item 24.*—Lines (1) through (33) are provided for the prenotification and the reporting of price and cost information. An entity subject to prenotification may not charge a price on any item in a product line above the higher of the adjusted freeze price or the base price as defined above without prenotifying such an increase to the IRS pursuant to 6 CFR Part 150, Subpart H, even though the weighted average percentage price adjustment with respect to all base prices within the product line is zero or less.

Col (a)—For reporting purposes, list all product lines on lines (1)–(33), accounting for all entity sales except the sales applicable to Items 27–39. For prenotification purposes, list the product lines in which a prenotified price increase will be made. Price adjustments and supporting cost justification must be recorded for each product line categorized by a 4-digit Standard Industrial Classification (SIC) Code if that is the entity's customary pricing unit (e.g., cost or profit center) for that product line. If a customary pricing unit includes more than one 4-digit SIC code, such pricing unit may be used and a listing of 4-digit SIC codes included within that pricing unit must be attached to the form. The listing of SIC codes must be in decreasing order of sales within the pricing unit. If the customary pricing unit is at a level of aggregation which is less than one 4-digit SIC code, the entity may record price adjustments and supporting cost justification at that level. A customary pricing unit is that unit which has been historically and continually applied.

Col (b)—Enter the applicable 4-digit SIC code for each product line listed in Column (a).

Col (c)—All entries in this column must be net of intercompany sales but must include any sales or transfers to a retailing or wholesaling pricing entity of the firm. For prenotification purposes, enter annual sales or revenues at present prices projected for the twelve months following the last day of the current cost period (entered in Item 23) for the product line listed in Column (a). The amount entered in column (c) on a prenotification document must not include sales of the type which are required to be entered in Items 27 through 39 on a quarterly report including sales of products included in certain contracts provided for in 6 CFR 150.76 and 6 CFR 150.312(b). If Part VI is being used for reporting purposes, enter the applicable sales for each product line for the reporting period.

Col (d)—For prenotification purposes, enter the weighted average percentage price adjustment requested by the entity. The prenotified percentage price increase for the product line may not be charged until 30 days after the Form CLC–22 used for prenotification has been filed with the IRS. For any subsequent Form CLC–22 submitted as a report, the last prenotified percentage must not be exceeded for that product line by the percentage in Column (e), Item 24, Part VI, Form CLC–22. For reporting purposes price category I firms must enter the weighted average percentage above base price which was authorized pursuant to the most recent pre-notification submission for which the 30-day prenotification period has expired. For each entry, the firm shall provide a supporting schedule showing (1) the date the prenotification was filed, and (2) the IRS control number.

Col (e)—For reporting purposes, enter the weighted average percentage price adjustment above (below) base price for the reporting period. An entity which submits a Form CLC–22 as a prenotification document during a reporting period in accordance with 6 CFR, Part 150, Subpart H may not exceed the prenotified price adjustment during that reporting period or any subsequent period (see instructions to Column (d) above). Accordingly, any entry in Column (e), Part VI, Form CLC–22 used as a report, which is greater than the latest entry in Column (d), Part VI, Form CLC–22 used as a prenotification document during or prior to the reporting period must be accompanied by an explanation as to why the entity does not appear to be complying with the prices rules in 6 CFR, Part 150, Subpart E.

For prenotification purposes enter the weighted average percentage price adjustment above (below) base price for the most recently completed accounting month. In calculating the percentage, current revenues are net sales of the product line for the accounting month (average unit price times quantity sold). Base price revenues are the revenues that would have been derived during the accounting month if all prices had been at base price (i.e., base price times quantity sold during the period).

Col (f)—For those product lines with amounts in Column (d) (prenotifying) or (e) (reporting) that are greater than zero, enter the percentage cost justification from Schedule C, Line 12 unless the entity has not charged a price for an item in the product line above the adjusted freeze price. Schedule C must be attached for each amount entered in this Column where the entity has charged a price in excess of the adjusted freeze price or the base price, whichever is higher and the weighted average percentage price adjustment entered in Column (e) is greater than zero. If the percentage cost justification in this column is less than the percentage entered in Column (e) Part VI), the entity must furnish documentation explaining why the price increase exceeds the cost justification. For example, if the price of a product has been increased in accordance with a historical seasonable fluctuation (6 CFR 150.203) and the price (Col. e) exceeds cost justification (Col. f) the entity must demonstrate its qualification for the seasonality provision on an attached document.

If prices have been increased pursuant to volatile pricing authority granted the entity, a copy of the order granting the authority and a supporting schedule must be attached to the Form CLC–22 displaying the cost of the volatile material and corresponding price of product during the reporting period. If the entity increased prices only in response to increases in volatile materials, such supporting documentation may be in lieu of the entry in this column and the supporting Schedule C for the product line in Column (a).

Col (g)—For prenotification purposes, enter the highest percentage price increase over base price which will be made for any item in the product line. For reporting purposes, enter the highest percentage price increase over base price which was made for any item in the product line during the reporting period. The maximum price which may be charged for any one item in that line may not exceed 110% of the base price or 110% of the adjusted freeze price of that item (whichever is greater) plus the amount which results from multiplying the base price or the adjusted freeze price of that item (whichever is greater) by the percentage of cost justification determined in accordance with this part with respect to that product line or service line.

EXAMPLES OF CALCULATION OF ITEM MAXIMUM PRICE LIMITATION

Example 1:
Base Price ..... $5.00
Adjusted Freeze Price ..... $5.20
Cost Justification ..... 8%
Maximum Price Limitation = $5.20 + $52.20 (10% + 8%)
$5.20 + $.94 = $6.14 (or 118% of the adjusted freeze price).

Example 2:
Base Price ..... $2.50
Adjusted Freeze Price ..... $2.40
Cost Justification ..... 12%
Maximum Price Limitation = $2.50 + $2.50 (10% + 12%) = $2.50 + $.55 = $3.05 (or 122% of the base price).

If the entry in this column exceeds the maximum price increase limitation as described in 6 CFR, Part 150, Subpart E, the entity must attach an explanation as to why it has exceeded the maximum price limitation.

*Item 25.*—Enter total sales reflected on attached continuation schedules. Use additional copies of Part VI, Form CLC–22 for any continuation schedule.

*Item 26.*—Enter the total for Item 24, Lines (1)–(33) and Item 25.

NOTE: Items 27 through 39 need not be completed for prenotification purposes.

*Item 27.*—New Items—Enter sales or revenues for the reporting period of all new items whose price has not been increased above a price determined in accordance with 6 CFR, Part 150, Subpart F. An entity which has projected sales and revenues for its current fiscal year of $10 million or more derived from the sale or lease of new items must attach documentation demonstrating that with respect to each new item with projected annual sales of $1 million or more which is offered for sale or lease for the first time during the quarter concerned, that the item qualified as a new item as defined in 6 CFR 150.103 and that the base price of that item has been determined in accordance with that section. For each such item, the entity must include the following information:

1. Name and description of item (attach sufficient documentation so that a comparison with the most nearly similar item can be made).
2. Base price of item.
3. Expected sales or revenues for 12 months following the last day of the reporting period.
4. Date first offered.
5. Method used to determine base price (Average Price, Net Operating Profit Markup, Customary Initial Percentage Markup, or Customary Practice).
6. Documentation supporting the determination of base price.
7. Description of new market, if applicable.
8. Cost of improving or restoring an item for lease and amount of 3 month's rent, if applicable.
9. Estimated sales and revenues from sales and leases of all new items for the current fiscal year including sales and revenues before August 12, 1973.

*Item 28.*—Enter sales or revenues for the reporting period for wholesaling and retailing actiivties.

*Item 29.*—Enter sales or revenues for the reporting period from operation of a public utility as defined in 6 CFR, Part 150, Subpart B.

*Item 30.*—Enter sales or revenues for the reporting period from providers of health services subject to 6 CFR, Part 130, Subpart G.

*Item 31.*—Enter sales or revenues for the reporting period from all insurance operations covered by 6 CFR, Subpart M.

*Item 32.*—Enter sales or revenues for the reporting period from construction operations as defined in 6 CFR, Part 150, Subpart N.

*Item 33.*—Enter sales or revenues for the reporting period from the sales of agricultural products exempt in 6 CFR, Part 150, Subpart D.

*Item 34.*—Enter sales or revenues for the reporting period of foreign operations. To determine sales or revenues of foreign operations, refer to the foreign operations exclusion in the definition of "annual sales or revenues" in 6 CFR, Part 150, Subpart B.

*Item 35.*—Enter the amount of export sales for the reporting period.

*Item 36.*—Enter sales or revenues of custom products for the reporting period as defined in 6 CFR, Part 150, Subpart F.

*Item 37.*—Enter sales or revenues for the reporting period of lumber and related products defined in 6 CFR, Part 150, Subpart D.

*Item 38.*—Enter sales or revenues for the reporting period of all other products or services exempted in 6 CFR, Part 150, Subpart D.

*Item 39.*—Total Column (c) Items 26 through 39. This total should be reconciled to the sales or revenues for the reporting period.

*Where to file form CLC-22 and related schedules*

| If the parent of the firm is located in this area of the United States | Because its Internal Revenue Service district office is— | Then entities of the firm must file forms with this Internal Revenue Service Stabilization key district |
|---|---|---|
| Central | Cincinnati, Ohio; Louisville, Ky | P.O. Box 1637, Cincinnati, Ohio 45201, Telephone 513-684-2397. |
| | Cleveland, Ohio; Parkersburg, W. Va | P.O. Box 99184, Cleveland, Ohio 44199, Telephone 216-522-3200. |
| | Detroit, Mich | P.O. Box 1487, Detroit, Mich. 48231, Telephone 313-226-7672. |
| | Indianapolis, Ind | P.O. Box 44587, Indianapolis, Ind., Telephone 317-633-8660. |
| Mid-Atlantic | Baltimore, Md | P.O. Box 1456, Baltimore, Md. 21203, Telephone 301-962-2428. |
| | Newark, N.J | P.O. Box 940, Newark, N.J. 07101, Telephone 201-645-6277. |
| | Philadelphia, Pa., Wilmington, Del | P.O. Box 58, Philadelphia, Pa. 19105, Telephone 215-597-9688. |
| | Pittsburgh, Pa | P.O. Box 2529, Pittsburgh, Pa. 15230, Telephone 412-644-5604. |
| | Richmond, Va | P.O. Box 10165, Richmond, Va. 23240, Telephone 804-782-2392. |
| Midwest | Aberdeen, S. Dak., Fargo, N. Dak., St. Paul, Minn. | P.O. Box 3450, St. Paul, Minn. 55165, Telephone 612-725-7133. |
| | Chicago, Ill | P.O. Box 1193, Chicago, Ill. 60690, Telephone 312-353-5187. |
| | Des Moines, Iowa; Omaha, Nebr | P.O. Box 797, Des Moines, Iowa 50303, Telephone 515-284-4070. |
| | Milwaukee, Wis | P.O. Box 91247, Milwaukee, Wis. 53202, Telephone 414-224-3350. |
| | Springfield, Ill.; St. Louis, Mo | Postal Drawer 1087, Central Station, St. Louis, Mo. 63188, Telephone 314-622-5084. |
| North Atlantic | Albany, N.Y.; Buffalo, N.Y | P.O. Box 271, Niagara Square Station, Buffalo, N.Y. 14201, Telephone 716-842-3812. |
| | Augusta, Maine; Boston, Mass.; Burlington, Vt.; Portsmouth, N.H. | P.O. Box 9084, J. F. Kennedy Post Office, Boston, Mass. 02203, Telephone 617-223-4750. |
| | Brooklyn, N.Y | P.O. Box 40 GPO, Brooklyn, N.Y. 11202, Telephone 212-855-4994. |
| | Hartford, Conn.; Providence, R.I | P.O. Box 1379, Hartford, Conn. 06101, Telephone 203-244-3245. |
| | Manhattan, N.Y | P.O. Box 698, Canal Street Station, New York, N.Y. 10013, Telephone 212-466-1600. |
| Southeast | Atlanta, Ga.; Birmingham, Ala | P.O. Box 1067, Atlanta, Ga. 30301, Telephone 404-526-4301. |
| | Columbia, S.C.; Greensboro, N.C | P.O. Box 20541, Greensboro, N.C. 27420, Telephone 919-275-9111 Extension 613. |
| | Jackson, Miss.; Nashville, Tenn | P.O. Box 220, Nashville, Tenn. 37202, Telephone 615-749-7151. |
| | Jacksonville, Fla | P.O. Box 35045, Jacksonville, Fla. 32202, Telephone 904-791-3552. |
| Southwest | Albuquerque, N. Mex.; Dallas, Tex | 1100 Commerce St., Code 305, Dallas, Tex. 75202, Telephone 214-749-1876. |
| | Austin, Tex.; New Orleans, La | P.O. Box 1398, Austin, Tex. 78767, Telephone 512-397-5621. |
| | Cheyenne, Wyo.; Denver, Colo.; Little Rock, Ark.; Oklahoma City, Okla.; Wichita, Kans. | P.O. Box 66, Oklahoma City, Okla. 73101, Telephone 405-231-4127. |
| Western | Los Angeles, Calif.; Phoenix, Ariz | P.O. Box 3231, 300 North Los Angeles St., Los Angeles, Calif. 90053, Telephone 213-688-2381. |
| | Reno, Nev.; Salt Lake City, Utah; San Francisco, Calif. | P.O. Box 36011, 450 Golden Gate Ave., San Francisco, Calif. 94102, Telephone 415-556-8839. |
| | Boise, Idaho; Helena, Mont.; Portland, Oreg.; Seattle, Wash. | P.O. Box 20166, 2200 Sixth Ave., Seattle, Wash. 98121. Telephone 206-442-1024. |
| | Anchorage, Alaska | P.O. Box 20166, 2200 Sixth Ave., Seattle, Wash. 98121, Telephone 206-442-1024. |
| | Honolulu, Hawaii | P.O. Box 3231, 300 North Los Angeles St., Los Angeles Calif. 90053, Telephone 213-688-2381. |

## INSTRUCTIONS FOR PREPARATION OF SCHEDULE C

## CALCULATION OF COST JUSTIFICATION TO SUPPORT NET PRICE INCREASES ON FORM CLC-22

### GENERAL INSTRUCTIONS

Schedule C to Form CLC-22 provides the means by which firms calculate cost justification for charging a price increase pursuant to the general price rules, 6 CFR, Part 150, Subpart E. This schedule must be prepared for each product line in Column (a), Part VI, Form CLC-22 for which a weighted average price increase is being prenotified (Column (d), Part VI) or reported (Column (e), Part VI), unless:

(1) The prenotified or reported price adjustment is zero or less for the product line in Column (a), Part VI, Form CLC-22; or

(2) The entity has not charged a price in excess of the higher of the adjusted freeze price or the base price for the product line in Column (a), Part VI, Form CLC-22.

Schedule C to Form CLC-22 also provides the means by which firms calculate cost justification for charging a price increase supported by costs other than "food raw materials costs" pursuant to 6 CFR, Part 150, Subpart Q. This schedule must be prepared for each product line in Column (a), Part VI, Form CLC-22 for which a price increase is being prenotified and for each entry in Column (e), Item 3 of the Schedule F being submitted as a monthly or quarterly report.

### SPECIFIC INSTRUCTIONS

*PART I—Identification Data*

*Item 1.*—(a) Enter the legal name of the parent or unconsolidated entity, as shown in Part I, Item 3(a), Form CLC-22.

(b) Enter address of the entity's executive office.

*Item 2.*—Enter the product or service line description as shown in Item 24, Columns (a) and (b), Part VI, Form CLC-22, for which this schedule is prepared.

*Item 3.*—Enter the date of the last day in the reporting period as shown in Part I, Item 6, Form CLC-22.

*PART II—Calculation of Cost Justification.*

The level of costs from which all cost increases are measured (base costs) is the level of costs incurred during the firm's last fiscal quarter ended prior to January 11, 1973 (base cost period), in which costs were incurred with respect to the product line concerned. The current level of costs (current costs), which are compared with base costs to determine the amount of allowable cost increase for justifying a price increase pursuant to 6 CFR, Part 150, Subpart E, is the level of costs incurred during the current cost period. For purposes of reporting on the Form CLC-22, the current cost period is the last accounting month in the reporting period as defined in the instructions for Item 6, Part I, Form CLC-22. For purposes of prenotification on the Form CLC-22, the current cost period is the accounting month most recently ended prior to the date of signing (Part V, Form CLC-22).

*Food Manufacturing.*—For purposes of prenotification and reporting pursuant to 6 CFR, Part 150, Subpart Q the level of costs from which all cost increases, other than food raw materal cost increases, are measured (base costs) is the level of costs incurred during the next succeeding fiscal quarter following the base period as defined in § 150.603 in which costs were incurred with respect to the product line concerned. For purposes of reporting, the level of cost from which all food raw material cost increases are measured (base cost level) is the level of cost incurred during the "base period." The base cost period with respect to a new product is the fiscal quarter in which the new product concerned was first sold in arms-length trading between unrelated persons.

The current level of costs which are compared with base cost to determine the amount of allowable cost increase is the level of costs incurred during the current cost period. For purposes of reporting on the Schedule C supporting a Schedule F, the current cost period is the accounting month or fiscal quarter which is the reporting period as defined in the instructions for Item 6, Part I, Form CLC-22.

There are two primary methods for measurng cost increases—the input method and the output method. The input method is employed by computing the rates (such as dollars per hour, for labor, dollars per ton,

for raw materials, dollars per kilowatt hour) for electricity of cost elements being incurred on the last day of the current cost period. For prenotification purposes for all input costs that can be calculated as of a date certain, the date of signature on the Form CLC–22 may be considered the last full day of the current cost period. These rates are compared with the rates of cost elements being incurred on the first full day of business in the base cost period. The output method is employed by measuring the average cost (cost per equivalent unit of finished goods) incurred throughout the current cost period as it compares to the average cost during the base cost period. Consistent with 6 CFR Part 150, Subpart G, labor cost increases must be calculated using the input method. All other cost increases are measured using the input method when the entity's customary accounting data can reasonably be used to determine the applicable rates. Otherwise, the entity may employ the output method of calculating its non-labor cost increases. However, the Council may, at its discretion, require a firm to compute cost increases for all costs other than labor on either an input or output basis when such computation is necessary to represent accurately the firm's base and current cost levels.

Indicate in Column (a) of Part II whether the cost justification for each cost element was determined by the input or output method by placing an "X" in the applicable column.

Cost increases are not required to be reduced by an offset for a volume increase. However, in calculating cost increases for cost elements affected by volume, the volume used for calculating current costs must not be less than the volume used for calculating base costs. Cost elements must be measured consistently between the base cost level and all current levels for all submissions of the Schedule C to Form CLC–22.

*Allowable Costs* (Items 4 through 7).

Only costs associated with the generation of net sales or revenues and included in the determination of operating income (see the instructions to Schedule R to Form CLC–22) are allowable as justification for a price above base price. Furthermore, allowable costs under Part II are costs that have been incurred, are continuing to be incurred, are necessary and reasonable, and have not been disallowed by the Cost of Living Council. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration must be given to:

1. Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the firm's business;

2. The restraints or requirements imposed by such factors as sound business practice, arm's length bargaining, and Federal and state laws and regulations;

3. The action that a prudent person would take in the circumstances considering his responsibilities to the owners of the business, his employee, his customers, Federal and state government, and the public at large; and

4. Significant deviations from the established practices of the firm.

Each column in Part II must be filled out for each cost element including those elements where there has been no change. If a cost element does not apply enter "NA." Entities which submit a Schedule C which contains incomplete or incorrect information will be required to submit a corrected Schedule C and will be considered to be in violation of the reporting requirements if complete and correct schedules are not submitted within the time periods prescribed.

Since aggregate cost change, increases and (decreases), is represented for each cost element summarized on Schedule C, supporting documentation must detail by cost item description the composition of cost within each cost element and show the actual comparison of the base cost level versus current cost level. The resulting percentage change is then multiplied by the identifiable percentage of cost, for that cost item, to total sales during the base cost period, to arrive at the actual cost increase.

*Food Manufacturing.*—In computing column (c)—, for reporting and for prenotification purposes, strike the word "cost" from the term Base Cost Period in the column heading and enter the percentage of cost element to total sales during the base period applicable to the product line.

For a price category I firm the percentage increase in costs reported (column b) for each cost element other than food raw material (Item 4), must not exceed the percentage for that cost element which was prenotified and was allowable in the reporting period concerned in accordance with the prenotification regulations. In addition, the percentage increase in other costs reported must be less than the prenotified and otherwise allowable percentage for the cost element concerned to the extent that those costs have decreased since the prenotification document was submitted. Firms engaged in seasonal packing or processing may incur little or no costs during the base cost period and during reporting periods other than those in which production occurs. However, in accordance with the definition of "food raw material costs" in 6 CFR, Part 150, Subpart Q, food raw material costs for the period concerned includes the cost of food raw material in the inventory sold during the period concerned. By the same measure, costs other than food raw material costs in any period may be based on the costs incurred in the production of the inventory. Firms which use this method of cost accounting must apply it consistently and continuously for all periods concerned.

*Item 4. Direct Materials.*—Include materials and material related costs in accordance with accounting procedures normally employed by the firm. Those costs should be further classified by means of a reasonable allocation technique into "Imported" and "Other" as indicated on Lines (a) and (b) of this Item.

"Imported" materials are materials produced outside of the United States where the form of the materials has not changed substantially between the date of its initial sale into United States commerce and the date of its purchase by the firm.

Supporting schedules must be attached to Schedule C listing significant types of direct materials for which cost rates have changed, and the percentage change in each of these materials.

*Food Manufacturing.*—For purposes of prenotification pursuant to 6 CFR, Part 150, Subpart Q enter only "food raw materials costs" in Item 4, and leave blank Columns (a), (b), and (d).

For purposes of reporting pursuant to 6 CFR, Part 150, Subpart Q, enter "NA" in Item 4(a) and enter "food raw material costs" as defined in Subpart Q in Item 4(b). Enter direct material costs, other than food raw material costs in Item 6(b).

Consistent with 6 CFR, Part 150, Subpart Q, the entry in column (b) for Item 4(b) must be calculated using the output method.

The following requirements must be considered in calculating columns (b) and (c):

1. The cost of freight and insurance in connection with the purchase of food raw material ("freight in") must be included or excluded in calculating both the base cost level and current cost level.

2. Any net hedging losses by a firm which uses the futures markets in a non-speculative manner to hedge against price risks with respect to the purchase of food raw material concerned during the base period may be included as a food raw material cost during the base period, and any net hedging gains by that firm with respect to the purchase of food raw material concerned during the base period may be included as an offset to food raw material costs during the base period.

However, a firm which includes any net loss pursuant to this paragraph shall include as an offset any net gain as a result of non-speculative hedging activities in accordance with this paragraph.

3. Any net hedging losses with respect to the food raw material concerned during the reporting period may be included as a food raw material cost for the reporting period and any net hedging gains with respect to the food raw material concerned during the reporting period shall be included as an offset to food raw material costs for the reporting period.

4. A marketing cooperative and a firm engaged in market risk-sharing transactions as defined in 6 CFR 150.204 shall use imputed allowable costs determined in accordance with that section for purposes of computing food raw material costs.

5. Materials and material related costs are to be included in accordance with accounting procedures normally employed by the firm.

Supporting schedules must be attached to Schedule C listing significant types of direct materials for which cost rates have changed, and the percentage change in each of these materials.

6. To the extent that the customary accounting practices and records of the firm concerned permit identification of food or food raw material purchased and resold without change in form, those items or materials shall be excluded in computing food or food raw material units, food raw material costs, and revenues for any reporting period.

*Item 5. Direct Labor.*—Include labor costs in accordance with accounting procedures normally employed by the firm. "Labor" means wages and salaries and includes all forms of direct and indirect remuneration or inducement for personal services which are reasonably subject to valuation as provided for in the definition of "pay adjustment" in 6 CFR 152.2. For this, and for all other labor items for which a cost change is shown, provide supporting detail in an attachment including the following information:

1. Name of employee unit.
2. Number of employees in employee unit.
3. Percentage increase for the employee unit.
4. Implementation date of increase.

If any portion of the labor cost increases shown in Column (c) includes cost increases resulting from any adjustment exceeding 5.5 percent (excluding qualified fringe benefits) for an employee unit for any control year as determined under the applicable wage stabilization rules of the Economic Stabilization Regulations, supporting documentation must be attached to the Schedule C including all data pertaining to the labor increase listed above and the basis for any exception.

*Item 6. Other Manufacturing or Service Costs.*—Other manufacturing or service costs should be segregated as indicated on Lines (a) and (b). Labor categories must include all labor costs; and supporting detail as described for Item 5 must be provided. Supporting schedules must be attached listing the cost elements or functional accounts included, and any basis for allocation.

For purposes of prenotification pursuant to 6 CFR, Part 150, Subpart Q enter in Item 6(b) all materials costs other than "food raw materials costs".

*Item 7. Other Operating Costs.*—Other operating costs must be segregated as indicated on Lines (a), (b), and (c).

Other operating costs include expenses incurred directly and allocated expenses within the firm, if such allocations are consistent with those in prior periods.

Suporting schedules must be attached listing the cost elements or functional accounts covered, the basis for allocation and volume assumptions.

Enter the data required by Columns (b), (c), and (d) for each cost element.

*Item 8. Non-Allowable Costs.*—Include costs other than those described under "Allowable Costs."

*Item 9. Profit (Loss).*—Enter in Column (c) the percentage of profit or loss for the product line so that the sum of all percentages in Column (c) equals 100%.

*Item 10. Subtotal.*—Enter in Column (d) the total of the percentages in Column (d), Items 4–7.

*Item 11. Offset for Productivity Increase.*—Increases in costs must be offset by reduction in costs due to improvements in productivity, regardless of whether labor costs have increased.

The productivity offset for a product line composed of products in no more than one 4-digit SIC code is determined by calculating the sum of all allowable labor costs represented by Column (c), Items 4–7, Part II, Schedule C, dividing that sum by the total sales represented by Column (c), Part II, and multiplying the resulting percentage by the average annual rate of productivity gain applicable for the appropriate industrial category 1) as set forth in the table in 6 CFR, Part 150, Subpart E for firms engaged in manufacturing and 2) as determined by the firm (subject to CLC or IRS review) for firms engaged in service activities. If a product line is composed of products in more than one 4-digit SIC code, each resulting percentage in the above calculation for each 4-digit SIC code is weighted by the percentage that estimated sales for the most recently completed fiscal quarter in that 4-digit SIC code is to total sales for the most recently completed fiscal quarter for the product line. If a product line is composed of products with a 4-digit SIC code which is not included in the table, the entity must attach a schedule indicating the manner in which the productivity offset for this product line was determined. In no instance may negative productivity be utilized to justify a price increase.

An example of the calculation of a productivity offset required on a supporting schedule is as follows:

A manufacturer of tobacco products is requesting an increase in the prices of cigarettes (SIC 2111) and cigars (SIC 2121). The sales for the most recently completed fiscal quarter and the corresponding rate of productivity (from the Appendix A to Part 150, Subpart E) for each product is:

| Product | SIC | Productivity rate (in percent) | Sales dollars | Weighted sales |
|---|---|---|---|---|
| Cigarettes | 2111 | 1.9 | $60,000,000 | $1,140,000 |
| Cigars | 2121 | 5.0 | 40,000,000 | 2,000,000 |
| Total | | | 100,000,000 | 3,140,000 |

$$\text{Weighted average rate} = \frac{3,140,000}{100,000,000} \times 100\% = 3.14\%$$

The percent of labor costs to total sales is derived by adding the percents in Items 5, 6(a), and 7(a). In the example above:

| Item | Percent from column (c) (Sched. C) |
|---|---|
| 5 | 18 |
| 6(a) | 5 |
| 7(a) | 2 |
| Total | 25 |

The entry for Item 11 is computed by multiplying the weighted average productivity rate times the percent that labor costs are to total sales:

$$3.14\% \times 25\% = 0.79\%$$

Increases in allowable costs shall be reduced on a Schedule C supporting a prenotification and a monthly, or quarterly report by the annual productivity gain (as provided in 6 CFR 150.77) for that product line multiplied by the number of whole or partial productivity periods included in the period beginning with the first day of the base cost period and ending with the last day of the current cost period. For example, if the period determined is 13 months the annual productivity gain is multiplied by 2.

*Item 12. Weighted Average Percentage Price Increased Justified by this Schedule C.*—This entry is determined by subtracting Item 11 from Item 10, Column (d). The resulting cost justification percentage represents the percentage above the base price that prices may be increased. Enter this percentage on the appropriate line in Part VI. Column (f), Form CLC–22 for the product line or service line for which this Schedule C has been prepared.

For firms engaged in food manufacturing, the result represents, for purposes of prenotification pursuant to 6 CFR, Part 150, Subpart Q, the net allowable increase in costs other than "food raw materials costs" and for purposes of reporting the resulting costs justification precentage plus 100% is entered in Schedule F, Item 3, Column (e).

*Item 13. Base Cost Period.*—Enter the dates of the firm's last fiscal quarter which ended prior to January 11, 1973 in which costs were incurred with respect to the product line concerned.

The base cost period for a new item, as defined in 6 CFR 150.103, is the fiscal quarter in which the new item was first sold or leased in arms-length trading between unrelated persons.

For purposes of prenotification or reporting pursuant to 6 CFR, Part 150, Subpart Q, enter the beginning and ending dates of the next succeeding fiscal quarter following the base period as defined in § 150.603 in which costs were incurred with respect to the product line concerned. The base cost period with respect to a new product is the fiscal quarter in which the new product concerned was first sold in arms-length trading between unrelated persons.

*Item 14. Current Cost Period.*—Enter the beginning and ending dates of the current cost period. For purposes of reporting, other than for food manufacturers pricing in accordance with 6 CFR 150.606, the current cost period is the last accounting month in the reporting period, as defined in the instructions for Item 6, Part I, Form CLC–22. For purposes of prenotification, the current cost period is the accounting month most recently ended prior to the date of signing (Part V, Form CLC–22).

## Instructions for Preparation of Schedule F Report or Record of Food Manufacturing Revenues

### General Instructions

A. *Purpose*

Schedule F provides the means by which certain firms engaged in "food manufacturing" report monthly and quarterly on a product line basis in accordance with the price rules set forth in 6 CFR, Part 150, Subpart Q.

B. *Reporting Requirements*

1. *Who Must File.*—The submission of Schedule F, as a supporting schedule to Form CLC–22, is required by all price category I and II firms engaged in food manufacturing activities, except that a firm which both derives less than 20% of its annual sales or revenues from food manufacturing and less than $50 million of annual sales or revenues from food manufacturing may elect to price with respect to its food manufacturing activities in accordance with 6 CFR, Part 150, Subpart E. Firms making this election do not prepare Schedule F but do prepare Form CLC–22 and required supporting schedules in accordance with the general and specific instructions to Form CLC–22. The "adjusted freeze price" as defined in 6 CFR, Part 150, Subpart Q applies to firms making this election.

2. *Monthly Reports.*—Each price category I and II firm engaged in food manufacturing, and pricing in accordance with the gross margin rule of 6 CFR, 150.606, must submit monthly reports with information on volume, costs and sales on a Schedule F attached to a Form CLC–22. The monthly report shall be submitted within 30 days after the close of each accounting month except no report is required for the month which concludes a fiscal quarter.

3. *Quarterly Reports.*—Each price category I and II firm engaged in food manufacturing and pricing in accordance with the gross margin rule of 6 CFR 150.606 must submit quarterly reports with information on volume, costs and sales on a Schedule F attached to a Form CLC–22. The report shall be submitted within 45 days after the end of the first, second and third fiscal quarters and within 90 days after the end of the fourth quarter which concludes a fiscal year.

4. *Initial Report.*—The initial report, either monthly or quarterly, must be submitted for the accounting month or fiscal quarter which includes September 10, 1973. It shall include, as an attachment, the following statement: "Food raw materials purchased and resold without change in form (were) (were not) included in the computation of aggregate revenue from the sale of food during the base period pursuant to 6 CFR 150.606(c)(4)(i)."

The option regarding—

(1) The election to price in accordance with 6 CFR, Part 150, Subpart E or in accordance with the gross margin rule of 6 CFR 150.606;

(2) The inclusion or exclusion of food raw materials purchased and resold without change in form as reflected in Item 3, Column c, Schedule F;

(3) The determination of base period as indicated in Item 2(d), Schedule F, and;

(4) The basis for determining food or food raw material units in Item 3, column (d), Schedule F—

must be exercised as set forth in the initial report. No change in the exercise of any of these options may be made without the prior written approval of the Council or the Internal Revenue Service.

5. *Where to File.*—Firms required to file Schedule F must forward the schedule and attachments to the IRS office designated in the table at the end of the Form CLC–22 instructions.

6. *Recordkeeping.*—Use of the Schedule F attached to a Form CLC–22 and accompanied by one or more Schedules C by a price category III firm pricing in accordance with the gross margin rule is encouraged in order to ensure that such a firm is meeting the re-

quirement of 6 CFR, Part 150, Subpart Q that it prepare and maintain at its principal place of business sufficient records to determine compliance with the Economic Stabilization regulations.

SPECIFIC INSTRUCTIONS

*Item 1.*—(a) Enter the legal name of the parent or unconsolidated entity, as shown in Part I, item 3(a) of the Form CLC–22 to which the Schedule is attached.

(b) Enter the address of the executive office.

*Item 2.*—(a) and (b) Check one box (a) or (b) to indicate whether the Schedule is a monthly or quarterly report.

(c) Enter the beginning and ending dates for the reporting period checked in Item 2(a) or (b) above. The reporting for Schedule F purposes is, as stated in the Specific Instructions for Item 6 of Form CLC–22, an accounting month or fiscal quarter of the entity.

(d) Enter the beginning and ending dates of the base period for the slaughtering and processing of livestock and the manufacturing of meat products in (1) and for all other food manufacturing activities in (2). With respect to the slaughtering and processing of livestock or the manufacturing of meat products, base period means any four consecutive fiscal quarters of the "entity", as defined in the Form CLC–22 instructions, which began after May 25, 1970, and which ended prior to May 11, 1973. For all other food manufacturing activities base period means any four consecutive fiscal quarters of the "entity" from the eight fiscal quarters which ended prior to May 11, 1973. Only one base period may be selected for each of these two classifications and must be consistently applied to all product lines within each classification. The base period with respect to a new product line is, (1) in the case of a new product line first offered for sale after the end of the last fiscal quarter ended before May 11, 1973, the first fiscal quarter in which a sale occurs; and (2) in the case of a new product line first offered for sale before the end of the last fiscal quarter ended before May 11, 1973, and after the base period selected for the other product lines concerned, the first fiscal quarter in which a sale occurs, plus any immediately ensuing consecutive fiscal quarter or fiscal quarters, not to exceed three, which ended before May 11, 1973.

*Item 3.—Price Rule.*—Except as provided in 6 CFR 150.606, any price may be charged with respect to any item in a product line as long as total sales revenues for that product line for any fiscal quarter ending after September 9, 1973, do not exceed the amount derived by (i) multiplying the total sales revenues in the base period for that product line by the ratio that the volume of food or food raw material units for that product line in the fiscal quarter bears to the volume of food or food raw material units for that product line in the base period, and (ii) multiplying the product of (i) by the net increases in allowable costs since the base cost period plus 100%. This computation is illustrated by the following equation:

$$R_2 = R_1 \times V_2/V_1 \times (C+100\%)$$

For purposes of computing column (f), Item 3, for each product line,

$R_2$ = permissible sales revenue
$R_1$ = aggregate revenue during the base period
$V_2$ = volume of food or food raw material units during the reporting period
$V_1$ = volume of food or food raw material units during the base period
C = net increases in allowable costs since the base cost period

*Column (a)—Product Line Description.*—Enter a brief description of each "food" product line of the entity. Data must be recorded for each product line categorized by a 4-digit Standard Industrial Classification (SIC) Code if that is the entity's customary pricing unit (e.g., cost or profit center) for that product line. If a customary pricing unit includes more than one 4-digit SIC code, such pricing unit may be used and a listing of 4-digit SIC codes included within that pricing unit must be attached to the form. The listing of SIC codes must be in decreasing order of sales within the pricing unit. If the customary pricing unit is at a level of aggregation which is less than one 4-digit SIC code, the entity may record revenues, volume and costs at that level. A customary pricing unit is that unit which has been historically and continually applied.

*Column (b)—4-digit SIC.*—Enter the applicable 1967 4-digit SIC code for each product line. The 1972 "Standard Industrial Classification Manual," which defines such codes, may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402. This edition of the manual has a table for conversion of the 1972 codes to the 1967 codes.

*Column (c)—Base Revenues.*—($R_1$) Enter the total sales revenues in the base period for each product line. Food raw material purchased and sold without change in form may be included or excluded in computing the total sales revenues during the base period, but only in accordance with the option exercised in the initial report unless prior written approval to change the option has been granted by CLC or IRS. The cost of freight and insurance in connection with food sales may either be included in, or excluded from, total sales revenues during the base period, but the treatment of "freight-out" shall be consistent as between the base period and each fiscal quarter ending after September 9, 1973. Any net hedging losses, by a firm which used the futures markets in a non-speculative manner to hedge against price risks, with respect to food sales during the base period may be included as an offset to actual sales revenues during the base period and any net hedging gains by that firm with respect to food sales during the base period may be included as an addition to actual sales revenues during the base period. However, a firm which includes any net loss pursuant to this paragraph shall include as an offset any net gain as a result of non-speculative hedging activities in accordance with this paragraph.

*Column (d)—Volume Ratio* ($V_2/V_1$) Enter the ratio (expressed as a percentage) that the volume of food or food raw material units in the reporting period (whether accounting month or fiscal quarter) bears to the volume of food or food raw material units in the base period. "Food or food raw material units" means, at the option of the firm concerned and calculated in accordance with its customary accounting practices on a consistent basis for both the reporting period and base period, either:

(1) the total units of food raw material in inventory on the first day of the period concerned, plus the total units of food raw material purchased during the period concerned, less the total units of food raw material remaining in inventory on the first day after the period concerned (input basis); or

(2) the total units of food sold during the period concerned (output basis). To the extent that the customary accounting practices and records of the firm concerned permit identification of food raw material purchased and resold without change in form, that material must be excluded in computing food or food raw material units for the reporting period.

*Column (e)—Cost Justification ÷ 100% (C + 100%).*—Enter in column (e) the net increase in allowable cost ("C") plus 100%. "C" represents the net increase in allowable costs and is the percentage figure taken from line 12 of Schedule C to Form CLC–22 attached to and in support of the Schedule F. "C" includes increases and decreases in both food raw material costs and other costs.

*Column (f)—Permissible Revenues* ($R_2$).—Enter the product of columns (c) times (d) times (e). The result equals the total permissible revenues for the reporting period.

*Column (g)—Current Revenues.*—Enter the total sales revenue for each product line in the reporting period. To the extent that the customary accounting practices and records of the firm concerned permit identification of food raw material purchased and resold without change in form, that material must be excluded in computing total sales revenues in the reporting period. Any net hedging losses with respect to the food sales during the reporting period may be included as an offset to actual sales revenues during the reporting period and any net hedging gains with respect to food sales during the reporting period must be included as an addition to actual sales revenues during the reporting period. The cost of freight and insurance in connection with food sales (freight out), must be included in column (g) if included in column (c) and excluded from column (g) if excluded from column (c).

*Column (h)—Current Revenues Under (Over).* Enter the difference derived by subtracting current revenues, column (g) from permissible revenues, column (f). Any firm reporting an excess of current revenues over permissible revenues for any product line must demonstrate on supporting schedules, if the excess is to be justified, that the excess is due to seasonal patterns or changes in product mix, is attributable to revenues derived from the sale of exempt items.

INSTRUCTIONS FOR THE PREPARATION OF SCHEDULE R

RECONCILIATION OF FORMS 10–K, 10–Q OR OTHER FINANCIAL STATEMENTS TO FORM CLC–22

GENERAL INSTRUCTIONS

Schedule R is used to reconcile net sales/revenues and net income reported on Forms 10–K and 10–Q, as filed with the Securities and Exchange Commission (SEC) (or other financial statements if Forms 10–K and 10–Q are not required to be filed with the SEC) to net sales and operating income as shown in Parts II and III, Form CLC–22.

Schedule R must be attached to Form CLC–22 for each base year required to be shown in Part II, Form CLC–22 and for each cumulative period in Part III, Form CLC–22.

Entities which file Forms 10–K and 10–Q with the Securities and Exchange Commission must attach to Schedule R a copy of their Form 10–Q for each fiscal quarter or a copy of their Form 10–K for each fiscal year which ends on the date entered in Item 6, Part I, Form CLC–22. With the first submission, entities must file Form 10–K for each of the two base years, unless such forms were previously filed with the Cost of Living Council as a part of a Form CLC–2 or Form CLC–22 filing.

Entities which do not file Forms 10–K and 10–Q with the Securities and Exchange Commission must, in lieu of such forms, attach to Form CLC–22 a copy of applicable quarterly and annual financial statements prepared in accordance with generally accepted accounting principles. In addition, such entities which do not file Form 10–K with the Securities and Exchange Commission but which have annual financial statements audited by independent public accountants must attach a copy of such audited statements in conformance with the requirements for submit-

ting Form 10–K. Such firms which do not have audited annual financial statements must attach a document explaining why such statements are not available.

An entity which uses its most recently completed fiscal year in calculating its base period profit margin need not submit a Schedule R for that fiscal year with a Form CLC–22 submitted as a prenotification document within 90 days after the end of that year.

SPECIFIC INSTRUCTIONS

*Line 1.*—Enter the name of parent or unconsolidated entity as shown in Part I, Item 3(a), Form CLC–22.

*Line 2 Period Reconciled.*—a. If Schedule R applies to a base year, check box (a) and enter the ending date of the fiscal year appearing in Part II (Item 8 or 9 as applicable) of Form CLC–22.

b. If Schedule R applies to the cumulative period, check box (b) and enter the date of the first day of the current fiscal year and the last day in the reporting period (see Item 6, Form CLC–22).

*Line 3 Net Sales/Revenues.*—Enter the total amount of net sales of tangible products and other revenues reported in Form 10–K, 10–Q or other financial statements as defined in SEC Regulation S–X.

*Line 4 Net Income.*—Enter the amount of net income as shown in Form 10–K, 10–Q or other financial statements as defined in SEC Regulation S–X.

*Line 5 Adjustments.*—Net sales and revenues and corresponding income from public utility operations, foreign operations, insurance operations, agricultural products, and where required, construction operations are excluded from the net sales/revenues figure.

Enter in Column (a) the net sales and revenues and in Column (b) the corresponding income from:

a. public utility operations as defined in the instructions for Item 29, CLC–22.

b. foreign operations, as defined in the instructions for Item 34, Form CLC–22.

c. Insurance operations as defined in the instructions for Item 31, Form CLC–22.

d. construction operations as defined in 6 CFR 150.452 where the entity is subject to 6 CFR Part 150, Subpart N and separates construction operations from non-construction operations for purposes of the profit margin calculation in accordance with 6 CFR 150.456.

e. agricultural products as defined in the instructions to Item 33, Form CLC–22.

Enter in 5 (f) the total of 5 (a) through 5 (e).

*Line 6 Intercompany Sales/Income.*—Sales by any segment of the entity to the operations listed in Lines 5 (a) through 5 (e) above are to be reinstated if eliminated in the consolidated net sales/revenues in Line 3 and net income in Line 4. Enter the amount of such intercompany sales and income on Line 6 and attach supporting detail.

*Line 7 Restatements not previously included*—Enter restatements of net sales/revenues, Line 3, and/or net income, Line 4, in accordance with the following instructions for the base years and/or current period. Accounting changes are of two broad, general types—(1) changes in the composition of a firm and its business entities and (2) changes in accounting principles.

A specific distinction is made between required accounting treatment for price control purposes and the accounting treatment required in periodic financial reports filed with the SEC. In addition to restatements of financial reports for accounting changes as required under generally accepted accounting principles, the Cost of Living Council recognizes restatements reflecting pro forma information that is required to be disclosed in periodic reports filed with the SEC. These restatements should be entered on Line 7.

Changes in the composition of a firm and its business entities include (1) acquisitions accounted for on a "pooling of interests" basis and on a "purchase" basis, and (2) divestitures accounted for as "spin-offs", "split-offs", sales or abandonments of businesses and discontinued operations. Restatement of prior periods is normally required under generally accepted accounting principles for changes in business entities accounted for as a "pooling of interests" and when there has been a "spinoff", a "split-off", or a discontinued, sold or abandoned operation. These changes in firms and business entities are required to be restated in reports filed with the CLC if restatement is required in periodic reports filed with the SEC.

As to acquired entities accounted for on a "purchase" basis, restatement of the financial data for periods prior to the date of purchase is required in reports filed with the CLC provided the firm restates on a basis consistent with the pro forma information required to be disclosed for purchases in periodic reports filed with the SEC. If Form 10–K discloses discontinued or divested operations separately, then appropriate entries should be made on Line 7 to exclude the sales and net income or loss (if indicated in Lines 3 or 6) of such operations. The firm may only restate for purchased or divested entities when their results of operations and activities can be clearly distinguished for financial reporting purposes. Restatement for a divestiture by sale, abandonment or discontinuance will not be permitted for disposal of part of a line of business, the shifting of production or marketing activities for a particlar line of business from one location to another, the phasing out of a product line or class of service and other changes occasioned by technological improvements.

Changes in accounting principles should be reflected during all periods affected on Line 7 as a restatement on a basis consistent with the pro forma information required to be disclosed for accounting principle changes in periodic reports filed with the SEC.

Where the reference is made above to periodic reports filed with the SEC, it should be interpreted by firms and entitities not subject to SEC filings to mean would be required by, or required to be disclosed in, SEC filings. A supporting schedule should be filed with Schedule R listing each entity shown on Line 7 which has been either acquired or divested, describing the principle applicable to the restatement of each entity, and the amounts relative to each entity composing the totals shown on Line 7. The schedule should also reflect all other entities, acquired or divested (for which no restatement has been reflected on Line 7), describing the principle applicable to the acquisition or divestiture of each entity and giving the reasons why each such entity has not been reflected as a restatement on Line 7. Additionally, the supporting schedule should describe each accounting principle change and the methods used in determining the effects of such changes in accounting principles. Further, the supporting schedule should describe any accounting principle change which has not been reflected on Line 7 and the reasons that restatement was not entered. These changes in the composition of a firm and its business entities and changes in accounting principles should be reflected on each quarterly Form CLC–22 when such information is available.

*Lines 8, 9, 10, and 11—Excluded Items.*—Items 8, 9, 10, and 11 must be excluded from net income.

*Line 8 Equity Interest in Other Entities.*—When net income includes equity interest in unconsolidated subsidiaries, joint ventures, or other ventures, such amounts must be excluded. Enter in Line 8 the amount of such equity interest as included in the entity's financial statement, whether or not disclosed as a separate line or caption item.

*Line 9 Nonoperating Items.*—Enter and describe on the lines provided (or separate attachment if required) all items of a nonoperating income or nature. Generally, nonoperating income or expense items include, but are not limited to, the following (except where such items are related to the reporting entity's principal business activity): interest income, dividend income, gains or losses on disposition of assets, royalty income and gains or losses on foreign exchange. Interest expense, including interest expense, debt discount and debt expense on long term debt) is considered operating expense for purposes of this report.

*Line 10 Income Tax Expense.*—Enter all taxes based on income as it appears on the entity's financial statements.

*Line 11. Extraordinary Items.*—Enter all items that are not of a normal recurring nature and are not applicable to the regular operations of the entity. Items shown as extraordinary must be in agreement with the corresponding items in the financial statements. Also enter amounts pertaining to cumulative effects of changes in accounting principles, in accordance with SEC Regulation S–X, if shown as a separate line item or caption in the financial statement.

*Line 12 Net Sales.*—Enter the net total of Lines 3 through 7.

*Line 13 Operating Income.*—Enter the net total of Lines 4 through 11.

## INSTRUCTIONS FOR THE PREPARATION OF SCHEDULE T REPORT OF RETAILING AND WHOLESALING MARKUPS OR GROSS MARGINS

### GENERAL INSTRUCTIONS

A. *Purpose*

Schedule T is used by firms engaged in wholesaling/retailing activities (1) to fulfill the one-time requirement to complete a merchandise pricing plan prior to raising prices under Phase IV, and (2) to report quarterly with respect to compliance with customary markup or gross margin limitations.

All firms must complete a merchandise pricing plan before increasing a price above the adjusted freeze price and, in addition, price category I and II firms must file a completed Schedule T along with a merchandise pricing plan with the Internal Revenue Service prior to increasing any price above the adjusted freeze price.

A separate Schedule T must be prepared for each pricing entity. The selection of employing markups or gross margins and the identification of merchandise or customer categories is determined at the pricing entity level. However, a single pricing entity may employ both markups and gross margins so that some categories are controlled by means of gross margin and others by means of markup.

This Schedule does not apply to retailing or wholesaling covered products subject to 6 CFR, Part 150, Subpart L, Petroleum and Petroleum Products.

B. *Definitions*

1. *CLC–22 entity.*—the same organization as the "entity" for purposes of the Form CLC–22 and applicable schedules. The term "CLC–22 entity" is used to distinguish between the entity to which the Form CLC–22 (and required Schedule T) applies and the pricing entity which applies to retailers and wholesalers subject to Subpart K.

2. *Cost.*—total invoice costs of all merchandise within a category plus transportation allocated to that merchandise.

3. *Customary Initial Percentage Markup (Markup)*—

$$\text{Markup} = \frac{\text{Initial Price} - \text{Cost}}{\text{Cost}} \times 100$$

4. *Customer Category.*—a group of related customers distinguished from other customers because of customary pricing differentials between those customers and other customers, which is treated as a single pricing unit irrespective of the products they purchase.

5. *Gross Margin*

$$\text{Gross Margin} = \frac{\text{Revenues} - \text{Cost}}{\text{Cost}} \times 100$$

6. *Initial Price.*—total sales prices of all merchandise within a category when first offered for sale.

7. *Merchandise Category.*—A group of related products which is treated as a single pricing unit. A pricing entity which derives 75% or more of its annual sales or revenues from retail food sales may treat all of its sales under one merchandise category.

8. *Pricing base period.*—at the option of the CLC–22 entity, either the last fiscal year ending prior to February 5, 1973 or the most recent four fiscal quarters ending prior to February 5, 1973. A pricing entity which derives 75% or more of its annual sales or revenues from retail food sales may, in addition, use as its pricing base period the fiscal year immediately preceding the last fiscal year ending prior to February 5, 1973.

9. *Pricing Entity.*—the lowest level of organization within a firm at which the initial pricing decisions are made, irrespective of whether these decisions may be modified at a lower level. Various types of such pricing entities are illustrated in the following examples.

Firm A, a nationwide supermarket chain, has established 20 geographical zones for pricing purposes. Basic pricing decisions are made at the zone level, although individual stores have discretion to vary specific prices. Each zone is a pricing entity and merchandise categories will be reported at the zone level.

Firm B is composed of nine divisions. Each division operates a number of general merchandise stores. Basic pricing decisions for individual stores are made at the division level. Each division is a pricing entity which will report merchandise categories.

Firm C, a food wholesaler, operates several large warehouses, each of which serves as a pricing entity. The firm's pricing decisions are made in a manner so as to achieve a stated return on overall sales made at each warehouse. In this case, each warehouse is a pricing entity and customer categories will be reported at the warehouse level.

Firm D, a wholesaler, sells various types of heavy machinery. All pricing decisions are made at the corporate headquarters. Therefore, Firm D is the pricing entity and merchandise categories will be reported on a firm-wide level.

10. *Revenues.*—total revenues realized from the sales of merchandise within a category less returns and credits.

C. *Who Must File*

1. *Pricing Plan.*—Prior to charging the price of any item in excess of its adjusted freeze price each price category I or II firm subject to Subpart K must file a merchandise pricing plan together with Schedule T.

2. *Quarterly Report.*—Each CLC–22 entity of a price category I or II firm with wholesaling or retailing operations (other than retailing or wholesaling of crude petroleum or other petroleum products subject to 6 CFR, Part 150, Subpart L) must attach a Schedule T to its quarterly Form CLC–22 and to its pricing plan for each of its pricing entities. Except for firms engaged in food wholesaling or food retailing or both and subject to 6 CFR Part 150, Subpart Q.

If the CLC–22 entity in its operations which are subject to 6 CFR, Part 150, Subpart K has not charged a price in excess of the adjusted freeze price, it must complete items 1, 3, and 6, and type in Item 5 the following certificate:

"(CLC–22 entity) has not charged a price in excess of the adjusted freeze price for those products subject to 6 CFR, Part 150, Subpart K."

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*Chief Executive Officer (or other authorized executive officer)*

D. *What to File*

1. For purposes of the quarterly report and the pricing plan, the CLC–22 entity must attach all supporting information indicated on Schedule T and in these instructions. However, since only basic information is required, a CLC–22 entity may be requested to provide additional data in particular cases.

2. A CLC–22 entity which files Schedules T containing incomplete or incorrect information will be required to submit corrected schedules and may be in violation of the reporting requirements if complete and correct schedules are not submitted within the time prescribed.

E. *When and Where to File*

Each required quarterly and annual Schedule T must be attached to the Form CLC–22 and must be filed with the appropriate Internal Revenue Service Office not later than 45 days after the end of each fiscal quarter or not later than 90 days after the end of the fiscal year.

Pricing plans must be filed in accordance with paragraph F below.

F. *Pricing Plan*

1. CLC–22 entities described in Paragraph C above (Who Must File) must prepare and submit to the Internal Revenue Service a pricing plan before charging a price in excess of the adjusted freeze price. The plan must include the following information:

a. A description of the CLC–22 entity's internal organization as it relates to pricing activities.

b. A list of pricing entities.

c. A completed Schedule T of Form CLC–22 for each pricing entity, including merchandise categories, customer categories, the pricing base period markup or gross margin for each category, and the markup or gross margin realized for each category during each fiscal quarter of the pricing base period. (Do not fill in Columns (g) and (h), Item 5, of Schedule T. Other information required for the pricing plan may be submitted on supplementary sheets attached to Schedule T.)

d. A list of products or product lines carried.

e. A description of the manner in which the pricing entity makes pricing decisions.

2. The Internal Revenue Service, within 60 days after receiving a pricing plan, will review the plan and either approve it or take the action described below.

a. If the information in a pricing plan is incomplete or inaccurate or the plan does not conform to the requirements, the Internal Revenue Service will notify the CLC–22 entity and explain why the plan cannot be approved. The CLC–22 entity will be advised to submit additional data or to modify the plan to meet requirements within a prescribed period of time. When a CLC–22 entity receives a notice of an incomplete or nonconforming plan, it may not put into effect any further price increases until the Internal Revenue Service approves the plan or otherwise advises the CLC–22 entity.

b. If a CLC–22 entity does not submit the required additional information or modifications within the prescribed time limit, or, if after it is submitted, the Internal Revenue Service finds that the pricing plan still does not conform to the requirements, the CLC–22 entity may be ordered to reduce prices to adjusted freeze price or to an appropriate level above adjusted freeze price. A CLC–22 entity may also be ordered to submit a new pricing plan based on new categories or pricing entities specified by the Internal Revenue Service.

3. Approved Plans.

a. When the Internal Revenue Service approves a pricing plan, the CLC–22 entity will be controlled using the categories and pricing entities shown in the approved plan. Those categories and entities will also be the basis for quarterly reporting to the Internal Revenue Service.

b. Any modification of an approved pricing plan either after its submission or approval must receive prior approval by the Internal Revenue Service.

SPECIFIC INSTRUCTIONS

*Items 1(a) and (b).*—Self-explanatory.

*Items 2(a) and (b).*—Self-explanatory.

*Item 2(c).*—Enter the annual sales or revenues of the pricing entity, computed in accordance with the definition in 6 CFR, Part 150, Subpart B.

*Item 3(a).*—Show the date of the last day in the reporting period. The reporting period is the CLC–22 entity's most recently completed fiscal quarter.

*Item 3(b).*—Check one box to indicate whether the Schedule is either a "quarterly report" or a "pricing plan." If the Schedule is a quarterly report, indicate the reporting quarter.

*Item (c).*—Check the "yes" box if you are supplying additional information or resubmitting a report to the Internal Revenue Service. In either case, complete the form in its entirety.

*Item 4.*—Check the one box which indicates whether the percentages shown in Item 5 represent markups or gross margins.

*Item 5.*—Enter the beginning and ending dates of the pricing base period in the space provided above Columns (b) through (f).

Column (a)—On each line, briefly describe each customer or merchandise category of control within the pricing entity. Appendix A to 6 CFR, Part 150, Subpart K provides acceptable category descriptions.

Schedule T may be used to report integrated manufacturing and service activities if these activities of the firm or pricing entity (1) are less than 15 percent of the total retail and wholesale sales of the firm or pricing entity concerned for the most recently completed fiscal year; (2) are not used in computing price adjustments on another Economic Stabilization Program form; and (3) if such categories have been sepcified in a pricing plan approved by the Internal Revenue Service.

If integrated manufacturing or service activities are included on Schedule T, attach a supoprting document to show conformance with the requirements for inclusion of these activities.

Column (b)—For each category in Column (a), show the pricing entity's markup applied or gross margin realized during the entire pricing base period.

Columns (c) through (f)—For each category in Column (a), show the markup or gross margin realized during each of the pricing entity's four fiscal quarters within the pricing base period.

Column (g)—For each category in Column (a), show the markup or gross margin realized during the pricing entity's most recently completed fiscal quarter.

Column (h)—For each category in Column (a), show the annual markup applied or gross margin realized from the beginning of the pricing entity's current fiscal year through the date shown in item 3(a). Column (h) is completed only for the Schedule T submitted at the end of the fiscal year. The report submitted at that time will contain data for both the fourth quarter as well as the entire fiscal year.

*Item 6 a, b, c, d.*—Self-explanatory.

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PART IV

# DEPARTMENT OF LABOR

## Office of the Secretary

■

# COMPREHENSIVE MANPOWER SERVICES

## Proposed Financial Assistance Program

## DEPARTMENT OF LABOR

### Office of the Secretary

### COMPREHENSIVE MANPOWER SERVICES

### Announcement of Proposed Financial Assistance and Request for Notice of Intent To Apply for Prime Sponsorship

Pursuant to title I of the Comprehensive Employment and Training Act of 1973, effective December 28, 1973, the Secretary of Labor will establish a program to provide comprehensive manpower services throughout the United States. Such programs shall include the development and creation of job opportunities and the training, education and other services needed to enable individuals to secure and retain employment at their maximum capacity. This comprehensive manpower program will be carried out by selected prime sponsors through financial assistance to be made available by the Secretary of Labor.

*Prime sponsors.* In order to be eligible to receive such financial assistance as set forth in Section 102 of the Act, a prime sponsor must be a State [Sec. 102(a)(1)], a unit of general local government which has a population of 100,000 or more persons [102(a)(2)], or any combination of units of local government which contains any unit of general local government of 100,000 or more persons [102(a)(3)]. Any unit of general local government or any combination of units of general local government of less than a 100,000 population may be a prime sponsor in exceptional circumstances if the Secretary determines that such unit or units; (a) serve a substantial portion of a functioning labor market area or a rural area having a high level of unemployment and (b) have demonstrated that they have the capability for adequately carrying out the program, that a special need for services exists within the area to be served, and that they will carry out such programs and services in the area as effectively as the State in which they are located [102(a)(4)]. In addition, a limited number of existing concentrated employment program grantees serving rural areas having a high level of unemployment which the Secretary determines have demonstrated special capabilities for carrying out programs in such areas may be designated by the Secretary to be prime sponsors [102(a)(5)].

*Independently eligible prime sponsors.* Based upon information currently available and according to the Department of Treasury, Office of Revenue Sharing document entitled, "Data Elements Entitlement Period 4," October 1973, the jurisdictions on the attached list may be eligible to be prime sponsors under sections 102(a)(1) and (2). See Attachment No. 1.

Any jurisdictions not included on the list which have a population of at least 100,000, as determined by the Bureau of Census, Department of Commerce, should notify immediately, but no later than March 1, 1974, the appropriate Assistant Regional Director for Manpower, U.S. Department of Labor. A copy of this notification must be sent to the appropriate Governor.

*Units of Government which have less than 100,000 population desiring to be prime sponsors because of exceptional circumstances.* Any unit of general local government which does not have a population of 100,000 and wishes to be named a prime sponsor because of exceptional circumstances under the provisions of section 102(a)(4) should notify the appropriate Assistant Regional Director for Manpower of its intent to apply for prime sponsorship immediately, but no later than March 1, 1974. A copy of this notification must be sent to the appropriate Governor who will have the opportunity to comment. This notification should include information relative to:

(1) The labor market area in which the unit of general local government is located.

(2) The proportion of the labor market area population residing within the jurisdiction of the unit of general local government.

(3) A demonstration that the unit of general local government has the administrative and organizational capability for adequately carrying out programs under the Act.

(4) A demonstration that the unit of general local government can carry out the program as effectively as the State, e.g., past experience in operating manpower or manpower-type programs, effective linkages with community-based organizations and programs, administrative efficiency in terms of costs, and existence and effective operation of a Cooperative Area Manpower Planning System, an Operational Planning Grant, a Public Employment Program or other manpower delivery services.

(5) A demonstration that there is a special need for services within the area to be served, e.g., a high proportion of groups within the population such as disadvantaged youth, offenders, high school dropouts, a high unemployment rate, substantial outmigration, or unique commuting problems.

*Rural concentrated employment program grantees.* Any Concentrated Employment Program grantee serving a rural area having a high level of unemployment and desiring to serve as a prime sponsor should notify immediately after this publication, but no later than March 1, 1974, the appropriate Assistant Regional Director for Manpower, citing whatever special capabilities it has demonstrated in carrying out manpower programs. A copy of the notification must be sent to the appropriate Governor.

*Consortia.* Combinations of units of general local government may unite to form a multijurisdictional area to plan and operate a comprehensive manpower program. Such arrangements are encouaged, particularly in instances where the labor market area is broader than a single jurisdiction. For the purpose of this program, a labor market area "consists of a central city or cities and the surrounding territory within commuting distance. It is an economically integrated geographical unit within which workers may readily change jobs without changing their place of residence. Labor areas usually include one or more entire counties, except in New England where towns are considered the major geographical units", as defined in the current issue of "Area Trends in Employment and Unemployment," published by the U.S. Department of Labor, Manpower Administration.

The principal combinations possible are as follows:

(1) A Statewide or balance of State program where independently eligible jurisdictions are included;

(2) Two or more independently eligible units of government combined;

(3) One or more independently eligible jurisdictions plus additional units of government not independently eligible, such as a county in the balance of the State or a city in a county;

(4) A combination of units of government not independently eligible, in exceptional circumstances outlined in section 102(a)(4), as determined by the Secretary.

Multijurisdictional programs involving noncontiguous and interstate areas will be permitted under the provisions of sec. 609 of the Act. Approval will be accorded in individual cases based on reasonable proximity of the areas to one another and the economic efficiency of the arrangement for planning and delivering manpower services. Labor market areas represent an appropriate basis for effective manpower planning and programming.

*Procedures for applying for prime sponsorship.* In accordance with sec. 102(c)(1) of the Comprehensive Employment and Training Act of 1973, and in order to be considered eligible for prime sponsorship, the Secretary of Labor hereby informs all potentially eligible applicants that they must submit a notice of intent to apply for prime sponsorship immediately, but not later than March 1, 1974.

The notice of intent must be submitted to the appropriate Assistant Regional Director for Manpower (ARDM) and the Governor, in writing, and must contain the following information:

1. Name and address of applicant.
2. Geographical area(s) to be served.
3. Population of area(s) to be served.
4. Certification that potential prime sponsor has the required general governmental authority, defined as a unit of general local government or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers. [Sec. 601(10).]
5. Certification that the development of the applicant's plan will be in accordance with the directions specified in the Act and Regulations (e.g., involvement of community-based groups, involvement of local elected officials of the areas to be served).
6. Signature of the Chief Elected Official or Chief Executive Officer, as appropriate, of the prime sponsor's jurisdiction.

Where a multijurisdictional program is planned, the notice of intent to apply for prime sponsorship must so indicate. Appropriate Chief Elected Officials or Chief Executive Officials from all jurisdictions to be included in the multijurisdictional agreement must sign the notice

of intent to apply. However, if the consortium arrangement has not been consummated, the prime sponsor should summarize the status of discussions and activities undertaken regarding formation of the consortium. All jurisdictions being considered for the consortium must be identified. In addition, letters of consent to participate in multijurisdictional programs must be submitted along with the intent to apply by independently eligible prime sponsors who wish to participate in the balance of State or another prime sponsor's area.

In cases of multijurisdictional programs, a formal agreement also must be executed between or among all appropriate Chief Elected or Chief Executive Officials of the appropriate jurisdictions and submitted to the ARDM and the Governor by March 31, 1974. The formal written agreement will become a part of the grant package and should:

a. Identify the legal entity that will be named as prime sponsor.

b. Indicate the statutory authority of the signatories.

c. State the powers and limitations of the prime sponsor with regard to the program.

d. Acknowledge the accountability of the prime sponsor for Federal funds provided to the area and his responsibility to monitor, evaluate, and take corrective action relating to the pertinence of any and all subcontractors under the grant agreement.

e. Outline the procedure for participation of each Chief Elected or Executive Officer in decision making related to the planning and operation of the comprehensive manpower program.

*Additional funds available for consortia.* Section 103(b) of the Act provides that up to 5 percent of Title I funds shall be available to the Secretary to encourage voluntary combination agreements among units of general local government as authorized by section 102(a)(3) after consultation with and receiving recommendations from the Governor of the appropriate State. It is anticipated that consortia formed under this provision may receive increases of approximately 10 percent of their formula allocation of funds. We anticipate that multijurisdictional programs which include units of general local government in reasonable proximity to one another and include a unit of general local government with a population of 100,000 and which include a substantial portion of the labor market area in which they are located will be eligible for the increase in their formula allocation of funds.

*List of manpower regional offices.* All application information must be submitted to the appropriate Assistant Regional Director for Manpower. The names, addresses and areas of responsibility of the ARDMs are listed on Attachment #2.

*Implementation schedule.* The Department of Labor plans to implement the Comprehensive Employment and Training Act with prime sponsors at the beginning of Fiscal Year 1975 (July 1, 1974). The dates included in the discussion below represent approximate target dates by which the Department of Labor intends to implement the various titles of the Comprehensive Employment and Training Act.

Regulations prescribing program operations under Title I will be published by April 1, 1974. Announcement of title I allocations for Fiscal Year 1975, including additional funds for a summer youth program, is also expected by April 1, 1974. Prime sponsors will be expected to submit requests for grants to the appropriate Assistant Regional Director for Manpower by June 1, 1974. Fiscal Year 1975 grants will be made starting on or about July 1, 1974. Advance funding will be made available by June 1 to prime sponsors intending to operate a summer youth program, based upon a brief application to be submitted by May 1, 1974. It is recognized that it may not be possible for some jurisdictions, particularly those desiring to form consortia, to meet this schedule. In such cases, arrangements will be made to continue manpower programs on an interim basis until the new prime sponsor is able to assume full responsibility.

Implementation of title II which is scheduled for April 1974 will precede title I implementation. Publication of title II Regulations is planned for February and announcement of Fiscal Year 1974 allocations is scheduled for mid-February. Funding will be in a two-step process as it was with Section 5 of the Emergency Employment Act. Initial grants (20 percent of the formula allocations), based upon a brief application to the Assistant Regional Director for Manpower, will be made beginning March 1, 1974, if a supplemental appropriation is enacted. Final funding, based upon full and complete supporting documents, will begin April 1, 1974. Title II allocations for Fiscal Year 1975 will be made after the start of the fiscal year, based upon more recent unemployment data.

Title III programs for Indian tribes (section 302) will follow the same schedule as described for Title I prime sponsors. Identification of eligible prime sponsors, regulations and allocations will be published by April 1, 1974. Requests for grants should be submitted to the appropriate Assistant Regional Director for Manpower by June 1, 1974, and grants are expected to be made by July 1, 1974.

Signed at Washington, D.C., this 18th day of January 1974.

PETER J. BRENNAN,
*Secretary of Labor.*

ATTACHMENT 1

LISTING OF JURISDICTIONS OF 100,000 OR MORE POPULATION FOR COMPREHENSIVE EMPLOYMENT AND TRAINING ACT OF 1973

| *Area* | |
|---|---|
| **ALABAMA** | |
| Birmingham | Jefferson County |
| Huntsville | Mobile County |
| Mobile | Tuscaloosa County |
| Montgomery | Balance Alabama |
| Calhoun County | |
| **ALASKA** | |
| Greater Anchorage Borough | Balance Alaska |
| **ARIZONA** | |
| Phoenix | Maricopa County |
| Tucson | Balance Arizona |
| **ARKANSAS** | |
| Little Rock | Balance Arkansas |
| Pulaski County | |
| **CALIFORNIA** | |
| Anaheim | Kern County |
| Berkeley | Los Angeles County |
| Fremont | Marin County |
| Fresno | Merced County |
| Garden Grove | Monterey County |
| Glendale | Orange County |
| Huntington Beach | Riverside County |
| Long Beach | Sacramento County |
| Los Angeles | San Bernardino County |
| Oakland | San Diego County |
| Pasadena | San Joaquin County |
| Riverside | San Luis Obispo County |
| Sacramento | San Mateo County |
| San Bernardino | Santa Barbara County |
| San Diego | Santa Clara County |
| San Francisco City/County | Santa Cruz County |
| San Jose | Solano County |
| Santa Ana | Sonoma County |
| Stockton | Stanislaus County |
| Torrance | Tulare County |
| Alameda County | Ventura County |
| Butte County | Balance California |
| Contra Costa County | |
| Fresno County | |
| **COLORADO** | |
| Colorado Springs | El Paso County |
| Denver City/County | Jefferson County |
| Adams County | Pueblo County |
| Arapahoe County | Balance Colorado |
| Boulder County | |
| **CONNECTICUT** | |
| Bridgeport | Balance Connecticut |
| Hartford City | Stamford City |
| New Haven City | Waterbury City |
| **DELAWARE** | |
| New Castle County | Balance Delaware |
| **DISTRICT OF COLUMBIA** | |
| **FLORIDA** | |
| Ft. Lauderdale | Escambia County |
| Hialeah | Hillsborough County |
| Hollywood | Lee County |
| Jacksonville City/ Duval County | Leon County |
| Miami | Orange County |
| St. Petersburg | Palm Beach County |
| Tampa | Pinellas County |
| Alachua County | Polk County |
| Brevard County | Sarasota County |
| Broward County | Volusia County |
| Dade County | Balance Florida |
| **GEORGIA** | |
| Atlanta | Cobb County |
| Columbus City/ Muscogee County | De Kalb County |
| Macon | Fulton County |
| Savannah | Richmond County |
| | Balance Georgia |
| **HAWAII** | |
| Honolulu City/ Honolulu County | Balance Hawaii |
| **IDAHO** | |
| Ada County | Balance Idaho |
| **ILLINOIS** | |
| Chicago | La Salle County |
| Peoria | Lake County |
| Rockford | Macon County |
| Champaign County | Madison County |
| Cook County | Mehenry County |
| Du Page County | McLean County |
| Kane County | Rock Island County |

ILLINOIS—Continued

Sangamon County
St. Clair County
Tazewell County
Will County
Balance Illinois

INDIANA

Evansville
Ft. Wayne
Gary
Hammond
Indianapolis City/ Marion County
South Bend
Allen County
St. Joseph County
Delaware County
Elkhart County
La Porte County
Lake County
Madison County
Tippacanoe County
Virgo County
Balance Indiana

IOWA

Cedar Rapids
Des Moines
Black Hawk County
Scott County
Woodbury County
Balance Iowa

KANSAS

Kansas City
Topeka
Wichita
Johnson County
Balance Kansas

KENTUCKY

Lexington City/ Fayette County
Louisville
Jefferson County
Kenton County
Balance Kentucky

LOUSIANA

Baton Rge. City/E. Baton Rge. Par.
New Orleans City/ Parish
Shreveport
Calcasieu Parish
Jefferson Parish
Lafayette Parish
Ouachita Parish
Rapides Parish
Balance Louisiana

MAINE

MARYLAND

Baltimore
Anne Arundel County
Baltimore County
Harford County
Montgomery County
Prince Georges County
Washington County
Balance Maryland

MASSACHUSETTS

Boston City/Suffolk County
Cambridge
New Bedford
Springfield
Worcester
Balance Massachusetts

MICHIGAN

Ann Arbor
Dearborn
Detroit
Flint
Grand Rapids
Lansing
Livonia
Warren
Bay County
Berrien County
Oakland County
Ottawa County
Saginaw County
St Clair County
Calhoun County
Genesee County
Ingham County
Jackson County
Kalamazoo County
Kent County
Macomb County
Monroe County
Muskegon County
Washtenaw County
Wayne County
Balance Michigan

MINNESOTA

Duluth
Minneapolis
St Paul
Anoka County
Dakota County
Hennepin County
Ramsey County
St. Louis County
Balance Minnesota

MISSISSIPPI

Jackson
Harrison County
Balance Mississippi

MISSOURI

Independence City
Kansas City
Springfield City
St. Louis City
Jefferson County
St. Louis County
Balance Missouri

MONTANA

NEBRASKA

Lincoln City
Omaha City
Balance Nebraska

NEVADA

Las Vegas City
Clark County
Washoe County
Balance Nevada

NEW HAMPSHIRE

NEW JERSEY

Camden City
Elizabeth City
Jersey City
Newark City
Paterson City
Trenton City
Atlantic County
Bergen County
Burlington County
Camden County
Cumberland County
Essex County
Gloucester County
Hudson County
Mercer County
Middlessex County
Monmouth County
Morris County
Ocean County
Passaic County
Somerset County
Union County
Balance New Jersey

NEW MEXICO

Albuquerque City
Balance New Mexico

NEW YORK

Albany City
Buffalo City
New York City
Rochester City
Syracuse City
Town of Cheektowaga
Town of Tonawanda
Yonkers City
Town of Babylon
Town of Brookhaven
Town of Huntington
Town of Islip
Town of Smithtown
Town of Hempstead
North Hempstead Twp
Oyster Bay Twp
Albany County
Broome County
Chautauqua County
Chemung County
Dutchess County
Erie County
Monroe County
Niagara County
Oneida County
Onondaga County
Orange County
Oswego County
Rensselaer County
Rockland County
Saratoga County
Schenectady County
St. Lawrence County
Ulster County
Westchester County
Balance New York

NORTH CAROLINA

Charlotte City
Greensboro City
Raleigh City
Winston-Salem City
Buncombe County
Cumberland County
Durham County
Gaston County
Guilford County
Mecklenburg County
Onslow County
Wake County
Balance North Carolina

NORTH DAKOTA

OHIO

Akron City
Canton City
Cincinnati City
Cleveland City
Columbus City
Dayton City
Parma City
Toledo City
Youngstown City
Allen County
Butler County
Clark County
Columbiana County
Cuyahoga County
Franklin County
Greene County
Hamilton County
Lake County
Licking County
Lorain County
Lucas County
Mahoning County
Montgomery County
Portage County
Richland County
Stark County
Summitt County
Trumbull County
Balance Ohio

OKLAHOMA

Oklahoma City
Tulsa City
Comanche County
Oklahoma County
Balance Oklahoma

OREGON

Portland City
Clackamas County
Lane County
Marion County
Multnomah County
Washington County
Balance Oregon

PENNSYLVANIA

Allentown City
Erie City
Philadelphia City/ County
Pittsburgh City
Scranton City
Allegheny County
Beaver County
Berks County
Blair County
Bucks County
Butler County
Cambria County
Chester County
Cumberland County
Dauphin County
Delaware County
Erie County
Fayette County
Franklin County
Lackawanna County
Lancaster County
Lawrence County
Lehigh County
Luzerne County
Lycoming County
Mercer County
Montgomery County
Northampton County
Schuylkill County
Washington County
Westmoreland County
York County
Balance Pennsylvania

PUERTO RICO

Bayamon Mun.
Carolina Mun.
Ponce Municipio
San Juan Mun.
Balance Puerto Rico

RHODE ISLAND

Providence City
Balance Rhode Island

SOUTH CAROLINA

Columbia City
Anderson County
Charleston County
Greenville County
Richland County
Spartanburg County
Balance South Carolina

SOUTH DAKOTA

TENNESSEE

Chattanooga City
Knoxville City
Memphis City
Nashville City/ Davidson County
Hamilton County
Knox County
Sullivan County
Balance Tennessee

TEXAS

Amarillo City
Austin City
Beaumont City
Corpus Christi City
Dallas City
El Paso City
Fort Worth City
Houston City
Lubbock City
San Antonio City
Bell County
Bexar County
Brazoria County
Cameron County
Dallas County
Galveston County
Harris County
Hidalgo County
Jefferson County
McLennan County
Tarrant County
Wichita County
Balance Texas

UTAH

Salt Lake City
Salt Lake County
Utah County
Weber County
Balance Utah

VERMONT

VIRGINIA

Alexandria City
Hampton City
Newport News City
Norfolk City
Portsmouth City
Richmond City
Virginia Beach City
Arlington County
Fairfax County
Henrico County
Prince William County
Balance Virginia

WASHINGTON

Seattle City
Spokane City
Tacoma City
Clark County
King County
Kitsap County
Pierce County
Snohomish County
Spokane County
Yakima County
Balance Washington

WEST VIRGINIA

Cabell County
Kanawha
Balance West Virginia

WISCONSIN

| | | |
|---|---|---|
| Madison City | Outagamie County | WYOMING |
| Milwaukee City | Racine County | VIRGIN ISLANDS |
| Brown County | Rock County | AMERICAN SAMOA |
| Dane County | Waukesha County | GUAM |
| Kenosha County | Winnebago County | TRUST TERR. |
| Milwaukee County | Balance Wisconsin | |

ATTACHMENT 2

ASSISTANT REGIONAL DIRECTORS FOR MANPOWER

| | *States in Regions* |
|---|---|
| Region I, Boston:<br>Lawrence W. Rogers, Assistant Regional Director for Manpower, U.S. Department of Labor, J. F. Kennedy Bldg., Room 1703, Boston, Mass. 02203. | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. |
| Region II, New York:<br>Edward W. Aponte, Assistant Regional Director for Manpower, U.S. Department of Labor, 1515 Broadway, New York, N.Y. 10036. | New Jersey, New York, Puerto Rico, the Virgin Islands. |
| Region III, Philadelphia:<br>J. Terrell Whitsitt, Assistant Regional Director for Manpower, U.S. Department of Labor, P.O. Box 8796, Philadelphia, Pa. 19101. | Delaware, Maryland, Pennsylvania, Virginia, West Virginia. |
| Region IV, Atlanta:<br>William U. Norwood, Jr., Assistant Regional Director for Manpower, U.S. Department of Labor, 1317 Peachtree St. N.E., Room 405, Atlanta, Ga. 30309. | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee. |
| Region V, Chicago:<br>Commodore Jones, Acting Assistant Regional Director for Manpower, U.S. Department of Labor, 300 South Wacker Dr., Chicago, Ill. 60605. | Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. |
| Region VI, Dallas:<br>Richard L. Coffman, Assistant Regional Director for Manpower, U.S. Department of Labor, Federal Bldg., U.S. Court House, 1100 Commerce St., Dallas, Tex. 75202. | Arkansas, Louisiana, New Mexico, Oklahoma, Texas. |
| Region VII, Kansas City:<br>Neal B. Hadsell, Assistant Regional Director for Manpower, U.S. Department of Labor, Federal Bldg., Room 3000, 911 Walnut St., Kansas City, Mo. 64106. | Iowa, Kansas, Missouri, Nebraska. |
| Region VIII, Denver:<br>Frank A. Potter, Assistant Regional Director for Manpower, U.S. Department of Labor, 16015 Federal Office Bldg., 1961 Stout St., Denver, Colo. 80202. | Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. |
| Region IX, San Francisco:<br>Floyd E. Edwards, Assistant Regional Director for Manpower, U.S. Department of Labor, 450 Golden Gate Ave., Box 36084, San Francisco, Calif. 94102. | Arizona, California, Guam, Hawaii, American Samoa, Trust Territory of the Pacific Islands. |
| Region X, Seattle:<br>Jess C. Ramaker, Assistant Regional Director for Manpower, U.S. Department of Labor, 2154 Arcade Plaza, 1321 Second Ave., Seattle, Wash. 98101. | Alaska, Idaho, Oregon, Washington. |
| District of Columbia:<br>Thomas A. Wilkins, Administrator for District of Columbia, U.S. Department of Labor, District Bldg., Room 220, 14th and E Sts. NW., Washington, D.C. 20004. | District of Columbia. |

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