federal register

FRIDAY, MAY 9, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 91

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federal register

Area Code 202 Phone 523–5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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PROCLAMATION 4372

National Arthritis Month, 1975

By the President of the United States of America

A Proclamation

Arthritis, the oldest known chronic disease, is still the Nation's greatest crippler. This disease and related rheumatic disorders afflict more than 20 million people in the United States, at an annual cost of about $4 billion, and are exceeded only by heart disease as the most common chronic illness in the country today.

Recognition of this major public health problem and determination to combat it effectively have been demonstrated through the passage of the National Arthritis Act of 1974 by the United States Congress, which I was pleased to sign earlier this year. As this legislation makes plain, the total cost of arthritis must be counted not only in terms of dollars, but of human suffering and disability. Uncontrolled arthritis significantly decreases the quality of American life and has a negative economic, social, and psychological impact on the families of those afflicted.

We have learned a great deal through governmentally and privately supported research. Yet this disorder is not fully understood and it is not adequately controllable. We must meet the critical need for new research ideas and studies upon which advances in the area of arthritis treatment and prevention can be based. Our goal continues to be the eventual elimination of arthritis as a cause of human suffering and dire expense to our Nation.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, do hereby proclaim the month of May, 1975, as National Arthritis Month. I urge the people of the United States and educational, philanthropic, scientific, medical and health care organizations and professionals to advance the programs of our national effort to discover the cause and cures of arthritis and other rheumatic diseases and to alleviate the suffering of victims of these disorders.

IN WITNESS WHEREROF, I have hereunto set my hand this seventh day of May, in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America, the one hundred ninety-ninth.

Gerald R. Ford

[FR Doc. 75-12401 Filed 5-7-75; 2:26 pm]

Proclamation 4373 • May 7, 1975

Fixing Terminal Date Respecting Service in the Armed Forces Entitling Persons To Certain Veterans Benefits

By the President of the United States of America

A Proclamation

The Congress has provided that entitlement to certain veterans benefits be limited to persons serving in the Armed Forces during the period, beginning August 5, 1964, referred to as the Vietnam era. The President is authorized to determine the last day on which a person must have entered the active military, naval, or air service of the United States in order for such service to qualify as service during that period.

The signing of the cease-fire agreements and implementing protocols on January 27, 1973, between the United States of America and the Republic of Vietnam, on the one hand, and the Democratic Republic of Vietnam and the Provisional Revolutionary Government of the Republic of South Vietnam on the other hand, has terminated active participation by the Armed Forces of the United States in the Vietnam conflict.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by Section 101(29) of Title 38 of the United States Code, do hereby proclaim, for the purposes of said Section 101(29), that May 7, 1975, is designated as the last day of the "Vietnam era."

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America the one hundred ninety-ninth.

Gerald R. Ford

[FR Doc.75-12402 Filed 5-7-75;2:27 pm]

EDITORIAL NOTE: For the texts of the President's statement and letter to the Speaker of the House and President of the Senate concerning the eligibility period for benefits to Vietnam era veterans, see Weekly Compilation of Presidential Documents (vol. 11, no. 19).

Executive Order 11856 • May 7, 1975

Amending the Civil Service Rules To Except Certain Positions From the Career Service

By virtue of the authority vested in me by the Constitution of the United States of America and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, Section 9.11 of Civil Service Rule IX is amended by adding "and the Small Business Administration" after "Environmental Protection Agency."

Gerald R. Ford

THE WHITE HOUSE,
May 7, 1975.

[FR Doc.75-12403 Filed 5-1-75;2:27 pm]

Executive Order 11857 • May 7, 1975

Amending Executive Order Nos. 11803,[1] 11837,[2] and 11842 [3] To Provide Authority To Increase the Number of Members of the Presidential Clemency Board

By virtue of the authority vested in me as President of the United States by Section 2 of Article II of the Constitution of the United States, Section 1 of Executive Order No. 11803 of September 16, 1974, is hereby amended as follows:

By adding the following at the end of the last sentence, "The President may appoint such additional members to the board as he shall from time to time determine to be necessary to carry out its functions."

Gerald R. Ford

THE WHITE HOUSE,
May 7, 1975.

[FR Doc.75-12404 Filed 5-7-75;2:28 pm]

[1] 39 FR 33297.
[2] 40 FR 4895.
[3] 40 FR 8935.

Executive Order 11858 • May 7, 1975

Foreign Investment in the United States

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Act of February 14, 1903, as amended (15 U.S.C. 1501 et seq.), section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. (a) There is hereby established the Committee on Foreign Investment in the United States (hereinafter referred to as the Committee). The Committee shall be composed of a representative, whose status is not below that of an Assistant Secretary, designated by each of the following:

(1) The Secretary of State.
(2) The Secretary of the Treasury.
(3) The Secretary of Defense.
(4) The Secretary of Commerce.
(5) The Assistant to the President for Economic Affairs.
(6) The Executive Director of the Council on International Economic Policy.

The representative of the Secretary of the Treasury shall be the chairman of the Committee. The chairman, as he deems appropriate, may invite representatives of other departments and agencies to participate from time to time in activities of the Committee.

(b) The Committee shall have primary continuing responsibility within the Executive Branch for monitoring the impact of foreign investment in the United States, both direct and portfolio, and for coordinating the implementation of United States policy on such investment. In fulfillment of this responsibility, the Committee shall:

(1) arrange for the preparation of analyses of trends and significant developments in foreign investments in the United States;

(2) provide guidance on arrangements with foreign governments for advance consultations on prospective major foreign governmental investments in the United States;

(3) review investments in the United States which, in the judgment of the Committee, might have major implications for United States national interests; and

(4) consider proposals for new legislation or regulations relating to foreign investment as may appear necessary.

(c) As the need arises, the Committee shall submit recommendations and analyses to the National Security Council and to the Economic

Policy Board. It shall also arrange for the preparation and publication of periodic reports.

SEC. 2. The Secretary of Commerce, with respect to the collection and use of data on foreign investment in the United States, shall provide, in particular, for the performance of the following activities:

(a) The obtainment, consolidation, and analysis of information on foreign investment in the United States;

(b) the improvement of procedures for the collection and dissemination of information on such foreign investment;

(c) the close observation of foreign investment in the United States;

(d) the preparation of reports and analyses of trends and of significant developments in appropriate categories of such investment;

(e) the compilation of data and preparation of evaluations of significant investment transactions; and

(f) the submission to the Committee of appropriate reports, analyses, data and recommendations relating to foreign investment in the United States, including recommendations as to how information on foreign investment can be kept current.

SEC. 3. The Secretary of the Treasury is authorized, without further approval of the President, to make reasonable use of the resources of the Exchange Stabilization Fund, in accordance with section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), to pay any of the expenses directly incurred by the Secretary of Commerce in the performance of the functions and activities provided by this order. This authority shall be in effect for one year, unless revoked prior thereto.

SEC. 4. All departments and agencies are directed to provide, to the extent permitted by law, such information and assistance as may be requested by the Committee or the Secretary of Commerce in carrying out their functions and activities under this order.

SEC. 5. Information which has been submitted or received in confidence shall not be publicly disclosed, except to the extent required by law; and such information shall be used by the Committee only for the purpose of carrying out the functions and activities prescribed by this order.

SEC. 6. Nothing in this order shall affect the data-gathering, regulatory, or enforcement authority of any existing department or agency over foreign investment, and the review of individual investments provided by this order shall not in any way supersede or prejudice any other process provided by law.

Gerald R. Ford

THE WHITE HOUSE,
May 7, 1975.

[FR Doc.75-12405 Filed 5-7-75;2:28 pm]

Executive Order 11859 • May 7, 1975

Inspection of Income, Estate, and Gift Tax Returns by the Senate Committee on Government Operations

By virtue of the authority vested in me by Section 6103(a) of the Internal Revenue Code of 1954 (26 U.S.C. 6103(a)), it is hereby ordered that any income, estate, or gift tax return for the years 1955 to 1975, inclusive, shall, subject to the conditions imposed herein, during the Ninety-fourth Congress, be open to inspection by the Senate Committee on Government Operations or any duly authorized subcommittee thereof, in connection with its studies of the operation of Government activities at all levels with a view to determining the economy and efficiency of the Government.

Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decision 6132, relating to the inspection of returns by committees of the Congress, approved by the President on May 3, 1955.

The Commissioner of Internal Revenue shall ensure compliance with the applicable provisions of the Privacy Act of 1974 (5 U.S.C. 552a) by seeing that no such inspection is permitted unless (1) the Committee or subcommittee has furnished a written statement specifying the purpose of the inspection; and (2) such statement establishes that the inspection relates to a matter within the jurisdiction of the Committee or subcommittee, or the Commissioner has received the written consent of the taxpayer to the inspection.

Gerald R. Ford

THE WHITE HOUSE,
May 7, 1975.

[FR Doc. 75-12406 Filed 5-7-75;2:29 pm]

rules and regulations

Title 7—Department of Agriculture

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

[Lemon Reg. 691]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period May 11–17, 1975. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.991 Lemon Regulation 691.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisons of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons began the week of May 4–10 active but is easing due to inclement weather. Average f.o.b. price was $6.25 per carton the week ended May 3, 1975, compared to $6.28 per carton the previous week. Track and rolling supplies at 139 cars were down 3 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on May 6, 1975.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period May 11, 1975 through May 17, 1975, is hereby fixed at 280,000 cartons.

(2) As used in this section, "handled," and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: May 7, 1975.

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

[FR Doc.75-12430 Filed 5-8-75;8:45 am]

PART 900—GENERAL REGULATIONS

Subpart—Public Information

REVISION TO RULES OF PRACTICE

The regulations on the availability of records maintained by the Agricultural Marketing Service (AMS), 7 CFR Part 900, Subpart—Public Information, are revised to read as follows:

Subpart—Public Information

AVAILABILITY OF PROGRAM INFORMATION, STAFF MANUALS AND INSTRUCTIONS, AND RELATED MATERIAL

Sec.
900.500 General.
900.501 Public inspection and copying.
900.502 Indexes.
900.503 Requests for records.
900.504 Appeals.

AUTHORITY: (5 U.S.C. 301, 552).

Subpart—Public Information

AVAILABILITY OF PROGRAM INFORMATION, STAFF MANUALS AND INSTRUCTIONS, AND RELATED MATERIAL

§ 900.500 General.

This subpart is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A, of Subtitle A of this Title (7 CFR 1.1–1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations of this subpart, govern the availability of records of AMS to the public.

§ 900.501 Public inspection and copying.

Materials maintained by AMS, including those described in § 1.2(a) of this title, are available for public inspection and copying in the AMS Information Division, Room 3080–S, U.S. Department of Agriculture (USDA), at 14th and Independence Avenue, SW., Washington, D.C. 20250. The public may request access to these materials during regular working hours, 8:15 a.m.–4:45 p.m., Monday through Friday except holidays.

§ 900.502 Indexes.

The headquarters office of each AMS Division shall prepare, make available for public inspection and copying, and update quarterly, an index of all material required to be made available in § 1.2(a) of this title. Copies of these indexes will be maintained at the location given in § 900.501. A specific index

should be re-requested by name of the Division which prepared it (see § 900.503 for Division names). Notice is hereby given that quarterly publication of these indexes is unnecessary and impracticable inasmuch as the material is voluminous and does not change often enough to justify the expense of quarterly publication. Upon specific request, however, copies of any index will be provided at a cost not to exceed the direct cost of duplication.

§ 900.503 Requests for records.

Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.3(a) of this title. Authority to make determinations regarding initial requests, in accordance with § 1.4(c) of this title, is hereby delegated to each Division Director of AMS. Requests shall be addressed to the appropriate Director, as follows: Director, Cotton Division; Director, Dairy Division; Director, Federal-State Marketing Improvement Program; Director, Fruit and Vegetable Division; Director, Grain Division; Director, Livestock Division; Director, Poultry Division; Director, Tobacco Division; Director, Transportation and Warehouse Division; Director, Information Division; Director, Administrative Services Division; Director, Financial Services Division; Director, Personnel Division; Director, Technical Services Division. The remainder of the address for each of the Directors listed above is as follows: Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. In cases of uncertainty as to which Division Director to contact, the request shall be addressed to Director, Information Division, who will in turn refer it to the proper division.

§ 900.504 Appeals.

Any person whose request under § 900.503 above is denied shall have the right to appeal such denial in accordance with § 1.3(e) of this title. Appeals shall be addressed to the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Effective date. This revision shall be effective May 9, 1975.

Signed at Washington, D.C., on May 6, 1975.

ERVIN L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.75-12306 Filed 5-8-75;8:45 am]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 0—MISCONDUCT OF EMPLOYEES

Organization and Procedural Changes; Correction

In FR Doc. 75-5205, appearing at page 8774, in the issue for Monday, March 3, 1975, the following changes should be made:

1. In § 0.735-3(d)(2), on page 8775, first column, the reference to NRC Manual Chapter 0702, "Reporting and Investigation Irregularities" is corrected to read NRC Manual Chapter 0702, "Notification and Investigation of Misconduct."

2. In § 0.735-3(g) on page 8775, first column, the words "The Director, Office of Administration" are corrected to read "The Office of the Agency Inspector and Auditor".

Dated at Washington, D.C., this 5th day of May 1975.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.75-12231 Filed 5-8-75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 75-WE-26-AD; Amdt. 39-2198]

PART 39—AIRWORTHINESS DIRECTIVES

Certain AiResearch Model TPE331-1, -2, -3, -5, and -6 Series Engines

There have been failures of the fuel pump and control drive gears on AiResearch Model TPE331-1, -2, -3, -5, and -6 series engines that can result in complete power loss. Since this condition is likely to exist or develop in other engines of the same type design, an airworthiness directive is being issued to require: inspection of the fuel pump and control drive backlash; modification of the torque sensor assembly mounting arm, as necessary; and, installation of this modification before exceeding the engine operating time in service at the manufacturer's recommended mid-term inspection or overhaul.

Since a situation exists that requires immediate adoption of the regulation, it is found that notice and public procedure are impracticable and good cause exists for making this amendment 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 is amended by adding the following new airworthiness directive:

AIRESEARCH MANUFACTURING COMPANY OF ARIZONA. Applies to certain Models and serial numbers of TPE331 series engines as follows:

Model:	*Serial number effectivity*
TPE331-1-101B	P-93058 through P-93064.
TPE331-1-151A	P - 02249, P - 92336 through P-92356.
TPE331-1-151K	P-91194, P-91195, P-26001 through P-26022.
TPE331-1-151G	P - 91193, P - 91196 through P-91198.
TPE331-2-201A	P-90218 through P-90287, P - 90290 through P-90294, P-90296.
TPE331-3U/3UW-303G, 307G/-303G.	P-03108, P-03109, P-03112 through P-03188, P - 03193, P-03195, P - 05031 through P-05048.
TPE331-5-251C	P-22006 through P-22103.
TPE331-5-251K	P - 06113, P - 06190 through P-06442, P-06444 through P-06537.
TPE331-6-251M/-252M.	P - 20144, P - 20182 through P-20577.
TPE331-6-252B	P-27001, P-27002.

In addition to the above serial number engines, also affected by this AD are any Model TPE331-1, -2, -3, -5, or -6 series engines which have been modified in accordance with AiResearch Service Bulletin TPE331-72-0064, dated February 1, 1974 or subsequent FAA-approved revision.

Compliance required as indicated.

To detect, correct and prevent loosening of the torque sensor assembly mounting arm, accomplish the following:

(a) Engines with less than 200 hours total time in service since new or last overhaul: Before exceeding 200 hours total time in service, or an additional 25 hours time in service after the effective date of this AD, whichever occurs later, inspect the fuel control assembly drive in accordance with the instructions contained in paragraph 2.C. of AiResearch Service Bulletin TPE331-72-0095, dated April 18, 1975, or later FAA-approved revision. If the fuel pump and control drive backlash exceed the limits specified in the above referenced service bulletin, modify the torque sensor assembly mounting arm per the instructions contained in paragraph 2.D. of that bulletin before further flight.

(b) Engines with more than 200 hours total time in service since new or last overhaul: Before exceeding an additional 100 hours time in service after the effective date of this AD, inspect fuel control assembly drive, and modify the torque sensor assembly mounting arm per paragraph (a), above, as necessary.

(c) If the fuel control assembly drive meets the backlash limits specified in the above referenced service bulletin, the inspections required in paragraphs (a), and (b), above, must be repeated at intervals not to exceed 400 hours thereafter until the torque sensor assembly mounting arm is modified per paragraph 2.D. of the above referenced service bulletin. This modification must be incorporated before the affected engine exceeds the time in service since new or overhaul at the manufacturer's recommended mid-term inspection as defined in paragraphs 2.A., 2.C., or 2.D. of the Revision No. 7, dated March 20, 1975, or later revisions, of AiResearch Service Bulletin No. 606; or, if this mid-term inspection has already been accomplished prior to the effective date of this AD, before exceeding the recommended overhaul period as defined in the Service Bulletin No. 606, Revision 7, dated March 20, 1975, as revised.

NOTE: Engine Models TPE331-6-252B and -252M are not specifically included in the above referenced Service Bulletin No. 606. Refer to paragraph 2.D of this service bulletin for mid-term inspection and overhaul times applicable to these engine models.

(d) Equivalent procedures may be approved by the Chief, Aircraft Engineering Division, FAA Western Region, upon submission of adequate substantiation data.

(e) Aircraft may be flown to a base for performance of inspections as required by paragraphs (a) and (b) above per FAR's 21.197 and 21.199.

This amendment becomes effective May 15, 1975.

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

Issued in Los Angeles, California on May 1, 1975.

LYNN L. HINK,
Acting Director,
FAA Western Region.

[FR Doc.75-12176 Filed 5-8-75;8:45 am]

[Airspace Docket No. 75-RM-17]

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

Transition Area, Correction

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to delete reference to "Price" VOR in the description of the Price, Utah transition area and substitute in lieu thereof "Carbon" VOR.

Also, in the description of Domestic VOR Federal Airway V134 substitute "Carbon" for "Price".

The name change will become effective on June 19, 1975.

Since this amendment is editorial in nature and no substantial change in regulation is effected, notice and public procedure thereon are unnecessary. In view of the foregoing, § 71.171 (40 FR 354) and § 71.121 (40 FR 307) are amended by deleting "Price" in the description of VOR Federal Airways and transition area and substituting "Carbon" therefor.

Effective date. This amendment shall be effective 0901 GMT, June 19, 1975.

Issued in Aurora, Colorado, on May 12, 1975.

I. H. HOOVER,
Acting Director,
Rocky Mountain Region.

[FR Doc.75-12178 Filed 5-8-75;8:45 am]

[Airspace Docket No. 73-WA-13]

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

Designation of Terminal Control Area at New Orleans, Louisiana

On January 14, 1974, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (39 FR 1780) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a Group II Terminal Control Area (TCA) for New Orleans, La.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. Numerous comments were received and were given due consideration.

The comments received in response to the Notice raised several objections, namely that the proposed TCA would force single-engine aircraft to overfly Lake Pontchartrain at low altitudes; the cost of transponder equipment; the impact to pilot training; lack of justification; additional fuel consumption; the economic burden to install transponders on large numbers of helicopters and that tourists would avoid New Orleans.

The major objection to a TCA for New Orleans was that the surface area, as described in the NPRM, would force single-engine aircraft to overfly Lake Pontchartrain to the north; or when flying south of the proposed TCA surface area force these aircraft to overfly the Des Allemands swamp south of Highway 90.

In response to these objections the surface area, as proposed in the NPRM, has been redesigned to exclude the area north of the south shore of Lake Pontchartrain (Area B), an area along Highway 90 to the south (Area C), and a corridor over Moisant Airport (Area F). Area B is designated with a floor of 600 feet MSL and Area C has a floor of 1,000 feet MSL. Area F excludes a corridor from 1,000 feet MSL to 2,000 feet MSL, 1 mile wide in which aircraft may overfly Moisant Airport. These new areas (Areas B, C, and F) will eliminate the requirement of extended flight to avoid the lake and swamp areas, also, the objection of increased fuel consumption, will no longer be valid. Additionally, the floor of the TCA that overlies the Lakefront Airport has been raised from 3,000 feet to 4,000 feet MSL.

Federal Aviation Regulations § 91.24 (b) allows for the operation of helicopters without a transponder below 1,000 feet AGL if a letter of agreement to do so has been reached between the operator(s) and the New Orleans Approach Control. This would eliminate the economic burden to the large numbers of helicopters that operate within the area.

We do not feel that the statement that tourists will avoid New Orleans because of a TCA is a valid statement. We also believe that pilot training will not be affected to any great extent.

The establishment of terminal control areas at 22 large hub airports was proposed in Notice 69-41 and supplemental notices thereto, and adopted on May 20, 1970 (35 FR 7782), to create a safer environment in those congested terminal areas. Notice 73-WA-13 asked for input necessary to design an appropriate airspace configuration that can provide the safest environment with the least impact on the airspace users. Substantial changes have been made in the New Orleans TCA configuration due to comments received to that notice.

As a result of objections, meetings have been held between the FAA and users in the New Orleans area. The results of these meetings are also reflected in the airspace configuration for the TCA.

An effort will be made to accommodate nontransponder equipped aircraft based at New Orleans Lakefront Airport under the provisions of FAR 91.24. This will provide for transit between Lakefront and the airports north and west of New Orleans when there is an actual need. Operation will require an operative two-way radio and an air traffic control clearance and would be based on traffic flow and volume.

The FAA has been reconsidering the requirements for altitude encoding altimeters in Group II TCAs because of the many objections received regarding the burden involved. Amendment 91-127 was issued on April 7, 1975, and becomes effective on May 14, 1975. The amendment rescinds the requirement for altitude encoders in Group II TCAs.

In consideration of the foregoing § 71.401(b) (40 FR 640) of the Federal Aviation Regulations is amended effective 0901 GMT, July 17, 1975, by adding the New Orleans Group II Terminal Control Area as follows:

Primary Airport: New Orleans International Airport—Moisant Field (Lat. 29°59'30"N., Long. 90°15'37"W.)

Area A.—That airspace extending upward from the surface to and including 7,000 feet MSL within a 7-mile radius of the New Orleans International Airport—Moisant Field, and within a 1.5-mile radius of the ILS Runway 10 outer compass locator (Lat. 30°01'30"N., Long. 90°23'59"W.) excluding that airspace north of the south shore of Lake Pontchartrain, that airspace within and underlying Area C described hereinafter, and that airspace within Area F described hereinafter.

Area B.—That airspace extending upward from 600 feet MSL to and including 7,000 feet MSL north of the south shore of Lake Pontchartrain within a 7-mile radius of the New Orleans International Airport—Moisant Field excluding Area F described hereinafter.

Area C.—That airspace extending upward from 1,000 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning 7 miles southwest of the New Orleans International Airport—Moisant Field on the north shore of the Mississippi River, thence east along the Mississippi River north shore to and southeast along a line one-half mile east of and parallel to the Sellers Field Runway 16/34 extended centerline, to and southwest along the Southern Pacific Railroad track to and counterclockwise along a 4-mile radius of the New Orleans International Airport—Moisant Field to and east along the north shore of the Mississippi River to and southeast along the Harvey 300°T (295°M) radial to and clockwise along the 7-mile radius of the New Orleans International Airport—Moisant Field to the point of beginning.

Area D.—That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL within a 15-mile radius of the New Orleans International Airport-Moisant Field excluding Areas A, B, and C previously described, Area F described hereinafter, the airspace within the New Orleans Lakefront Airport Control Zone which lies within a 15-mile radius of the New Orleans International Airport-Moisant Field, and the airspace within a 5-statute-mile radius of NAS New Orleans-Alvin Callender Field (Lat. 29°49'40"N., Long. 90°01'25"W.).

Area E.—That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL within a 20-mile radius of the New Orleans International Airport-Moisant Field, excluding Areas A, B, C, and D previously described and Area F described hereinafter.

Area F.—That airspace extending upward from the surface to 1,000 feet MSL and from 2,000 feet MSL to 7,000 feet MSL ½ nautical mile either side of a line extending from Lat. 30°01'09" N., Long. 90°07'47" W., to Lat. 29°-59'30" N., Long. 90°15'37" W., to Lat. 30°03'-36" N., Long. 90°22'10" W.

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

Issued in Washington, D.C., on May 5, 1975.

F. L. CUNNINGHAM,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-12177 Filed 5-8-75;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. RM74-16 Order No. 526]

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS; MISCELLANEOUS CHARGES; ETHICAL STANDARDS

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Uniform Filing of Natural Gas Reserves Information; Correction

APRIL 30, 1975.

In FR Doc. 75-5656 appearing at page 8940 in the issue of Tuesday, March 4, 1975, on page 8946, delete ordering paragraph (A) and substitute the following:

(A) Amend § 3.170 of Part 3, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations to read as follows:

§ 3.170 Approved forms, etc.

(a) * * *

* * * * *

(27) Form No. 40, National Gas Companies Annual Report of Proved Domestic Gas Reserves, Including Those of Any Affiliate (Associate) or Subsidiary, of Each Person Found By The Commission to be a "natural gas company" within the meaning of the Natural Gas Act.

* * * * *

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12218 Filed 5-8-75;8:45 am]

Title 20—Employee's Benefits

CHAPTER V—MANPOWER ADMINISTRATION, DEPARTMENT OF LABOR

PART 614—UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEN

Revised Schedule of Remuneration

Pursuant to 5 U.S.C. 8508 and 5 U.S.C. 8521(a)(2), Title 20, Chapter V, Part 614, of the Code of Federal Regulations was amended by revising § 614.19, the "Schedule of Remuneration" for the Unemployment Compensation Program for Ex-Servicemen (UCX program). The revised schedule was published in the FEDERAL REGISTER on January 2, 1975, at 40 FR 3, and was made effective wih respect to first claims under the UCX program which were filed on and after January 5, 1975.

While the revised schedule was made effective immediately after publication, interested persons were invited to submit comments on revised § 614.19, through January 31, 1975. No comments were received, and no further change in 20 CFR 614.19 is contemplated at this time.

Signed at Washington, D.C., this 5th day of May 1975.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.75-12295 Filed 5-8-75;8:45 am]

PART 616—INTERSTATE ARRANGEMENT FOR COMBINING EMPLOYMENT AND WAGES

Definition of Paying State

Pursuant to section 3304(a)(9) (A) and (B) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(9) (A) and (B)), as amended by section 121 of the Employment Security Amendments of 1970, Pub. L. 91-373, 84 Stat. 702, and pursuant to 20 CFR 616.11, Title 20, chapter V, Part 616, of the Code of Federal Regulations was amended, effective December 31, 1974, by revising § 616.6(e), which defines the term "Paying State" for the purposes of the Interstate Arrangement for Combining Employment and Wages. The revisions were published in the FEDERAL REGISTER, 39 FR 45214, on December 31, 1974.

While the revisions were made effective upon publication in the FEDERAL REGISTER, interested persons were invited to submit comments on the revisions through January 31, 1975, as if the document were a proposal. No comments were received, and no further change in 20 CFR 616.6(e) is contemplated at this time.

Signed at Washington, D.C., this 30th day of April 1975.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.75-12296 Filed 5-8-75;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 510—NEW ANIMAL DRUGS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEED

Tylosin

The Commissioner of Food and Drugs has evaluated a new animal drug application (96-272V) filed by Kent Feeds, Inc., Muscatine, IA 52761, proposing safe and effective use of a tylosin premix for manufacture of swine feed. The application is approved, effective on May 9, 1975.

The Commissioner is amending Parts 510 and 558 (formerly Parts 135 and 135e prior to recodification published in the FEDERAL REGISTER of March 27, 1975 (40 FR 13802)) to reflect this approval.

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 510 and 558 are amended as follows:

1. Part 510, Subpart G, is amended in § 510.600 (formerly § 135.501) by adding a sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2), as follows:

§ 510.600 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address:	*Drug Listing No.*
* * * * *	
Kent Feeds, Inc., 1600 Oregon, Muscatine, IA 52761	013975
* * * * *	

(2) * * *

Drug Listing No.	*Firm name and address*
* * * * *	
013975	Kent Feeds, Inc., 1600 Oregon, Muscatine, IA 52761.
* * * * *	

2. Part 558, Subpart B, is amended in § 558.625 (formerly § 135e.10) by adding paragraph (b)(36) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(36) To 013975: 0.8 gram per pound; paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date: This amendment shall be effective on May 9, 1975.

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

Dated: May 5, 1975.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.75-12228 Filed 5-8-75;8:45 am]

PART 510—NEW ANIMAL DRUGS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEED

Tylosin

The Commissioner of Food and Drugs has evaluated a new animal drug application (98-429V) filed by J. C. Feed Mills, Waterloo, IA 50704, proposing safe and effective use of a tylosin premix for manufacture of swine feed. The application is approved, effective on May 9, 1975.

The Commissioner is amending Parts 510 and 558 (formerly Parts 135 and 135e prior to recodification published in the FEDERAL REGISTER of March 27, 1975 (40 FR 13802)) to reflect this approval.

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 510 and 558 are amended as follows:

1. Part 510, Subpart G, is amended in § 510.600(c) (formerly § 135.501(c)) by adding alphabetically to pararaph (c)(1) and numerically to paragraph (c)(2) a sponsor as follows:

§ 510.600 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address:	*Drug listing No.*
* * * * *	
J. C. Feed Mills, 1050 Sheffield, P.O. Box 224, Waterloo, IA 50704----	039741
* * * * *	

(2) * * *

Drug Listing No.:	*Firm name and address*
* * * * *	
039741..	J. C. Feed Mills, 1050 Sheffield, P.O. Box 224, Waterloo, IA 50704.
* * * * *	

2. Part 558 is amended in § 558.625 (formerly § 135e.10) by adding paragraph (b)(35) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(35) To 039741: 2 grams per pound; paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date. This amendment shall become effective on May 9, 1975.

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

Dated: May 5, 1975.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.75-12229 Filed 5-8-75;8:45 am]

PART 510—NEW ANIMAL DRUGS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Tylosin

The Commissioner of Food and Drugs has evaluated a new animal drug application (99-468V) filed by Allied Mills, Inc., 110 N. Wacker Drive, Chicago, IL 60606, proposing safe and effective use of a tylosin premix for manufacture of swine feed. The application is approved, effective on May 9, 1975.

The Commissioner is amending Parts 510 and 558 (formerly Parts 135 and 135e prior to recodification published in the FEDERAL REGISTER of March 27, 1975 (40 FR 13802)) to reflect this approval.

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 510 and 558 are amended as follows:

1. Part 510 is amended in § 510.600(c) (formerly § 135.501(c)) by adding alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) a new sponsor as follows:

§ 510.600 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address:	*Drug listing No.*
* * * * *	
Allied Mills, Inc., 110 N. Wacker Drive, Chicago, IL 60606-------	012323
* * * * *	

(2) * * *

Drug listing No.:	*Firm name and address*
* * * * *	
012323..	Allied Mills, Inc., 110 N. Wacker Drive, Chicago, IL 60606.
* * * * *	

2. Part 558 is amended in § 558.625 (formerly § 135e.10) by adding paragraph (b)(33) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(33) To 012323: 0.8 gram per pound; paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date. This amendment shall become effective on May 9, 1975.

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

Dated: May 5, 1975.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.75-12230 Filed 5-8-75;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-211]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On September 20, 1973, in 38 FR 26368, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included Washington Township, Ohio, as an eligible community and included Map No. H 390598 01 which indicates that Lots No. 1, 4 through 18, 20 through 28, 30 through 33, 35 through 140, 146 through 154, and 157 through 159, Raintree Subdivision, Washington Township, Ohio, as recorded in Volume 69, Pages 51 and 52 in the office of the Recorder of Lucas County, Ohio, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective September 21, 1973, Map No. H 390598 01 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: April 25, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12251 Filed 5-8-75;8:45 am]

[Docket No. FI-242]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On November 5, 1973, in 38 FR 30441, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the Village of Lincolnshire, Illinois, as an eligible community and included Map No. H 170378 01 which indicates that the property at 20 Londonderry Lane, Deerfield, Illinois, being Lot 9, Block 20, Unit No. 9, Lincolnshire Subdivision, Lake County, Illinois, as recorded in Plat Book 35, Page 27, in the Office of the Recorder of Deeds, Lake County, Illinois, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective November 9, 1973, Map No. H 170378 01 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: April 17, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12250 Filed 5-8-75;8:45 am]

[Docket No. FI-274]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On December 28, 1973, in 38 FR 35457, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Mishawaka, Indiana, as an eligible community and included Map No. H 180227 03 which indicates that the One Hundred Center Complex, Mishawaka, Indiana, as recorded in Plat Record 1, Page 19, and Plat Record 6, Page 103 in the office of the Recorder of St. Joseph County, Indiana, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective December 21, 1973, Map No. H 180227 03 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 30, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12249 Filed 5-8-75;8:45 am]

[Docket No. FI-274]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On December 28, 1973, in 38 FR 35461, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included Haverford Township, Pennsylvania, as an eligible community and included Map No. H 420417 04 which indicates that Cross Creek Park, Haverford Township, Pennsylvania, as recorded in Tax Plat Book No. 774–424 in the Court House of Delaware County, Media, Pennsylvania, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the structure, Nitre Hall, on the above property is not within the Special Flood Hazard Area. Accordingly, effective December 28, 1973, Map No. H 420417 04 is hereby corrected to reflect that the structure on the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: April 25, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12248 Filed 5-8-75;8:45 am]

[Docket No. FI-274]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On December 28, 1973, in 38 FR 35458, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Insurance Rate Maps were available for public inspection. This list included the Borough of Rumson, New Jersey, as an eligible community and included Map No. H 345316 07, which indicates that property located at 19 Highland Avenue, Rumson, New Jersey, as recorded in Deed Book 3883, Pages 296 and 297, in the office of the County Clerk of Monmouth County, New Jersey, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the structure on the above property is within Zone C, and is not within the Special Flood Hazard Area. Accordingly, effective December 28, 1973, Map No. H 345316 07 is hereby corrected to reflect that the structure on the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 29, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12246 Filed 5-8-75;8:45 am]

[Docket No. FI-274]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On December 28, 1973, in 38 FR 35458, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Insurance Rate Maps were available for public inspection. This list included the Borough of Rumson, New Jersey, as an eligible community and included Map No. H 345316 07, which indicates that property located at 25 Highland Avenue, Rumson, New Jersey, as recorded in Deed Book 3777, Pages 447 and 448, in the office of the County Clerk of Monmouth County, New Jersey, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the structure on the above property is within Zone C, and is not within the Special Flood Hazard Area. Accordingly, effective December 28, 1973, Map No. H 345316 07 is hereby corrected to reflect that the structure on the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 29, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12247 Filed 5-8-75;8:45 am]

[Docket No. FI-288]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On June 13, 1974, in 39 FR 20693, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the Township of Boonton, New Jersey, as an eligible community and included Map No. H 340336 03 which indicates that Block 27, Lots No. 1 through 35 and 37 through 40 of Beaverbrook Subdivision, Township of Boonton, Morris County, New Jersey, as shown on the Preliminary Plat-Improvement Plan for Beaverbrook, and subject to the conditions stated in the State of New Jersey Department of Environmental Protection Stream Encroachment Permit No. 6044 are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective May 31, 1974, Map No. H 340336 03 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act

of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: April 17, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12245 Filed 5-8-75;8:45 am]

[Docket No. FI-340]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On August 21, 1974, in 39 FR 30122, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Lawton, Oklahoma, as an eligible community and included Map No. H 400049 05 which indicates that Lots No. 37 through 39, Block 10, and Lots No. 1 through 5, Block 19, Part 15, Woodland Hills Addition, Lawton, Oklahoma, as recorded in Book 931, Page 707 in the records of the County Clerk of Comanche County, Oklahoma, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective August 8, 1974, Map No. H 400049 05 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: April 30, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12244 Filed 5-8-75;8:45 am]

[Docket No. FI-340]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On August 21, 1974, in 39 FR 30122 the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Lawton, Oklahoma, as an eligible community and included Map No. H 400049 05 which indicates that Lots No. 40 through 45, Block 10, Woodland Hills Addition, Lawton, Oklahoma, as recorded in Book 931, Page 707 in the office of the County Clerk of Comanche County, Oklahoma, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that Lots No. 44 and 45 and the structures on Lots No. 40 through 43 of the above property are not within the Special Flood Hazard Area. Accordingly, effective August 9, 1974, Map No. H 400049 05 is hereby corrected to reflect that Lots No. 44 and 45 and the structures on Lots No. 40 through 43 of the above property are not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: May 1, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12243 Filed 5-8-75;8:45 am]

[Docket No. FI-347]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities; Correction

On August 29, 1974, in 39 FR 31526, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Newport News, Virginia, as an eligible community and included Map No. H 510103 15 which indicates that Lots No. 1, 1A, 2 through 15, 15A, 16, 16A, 17, 17A, 18, 18A, 19, 19A, 20 through 30, 30A, 31, 31A, 32, 32A, 33, 33A, 34, and 38 through 42, Beechwood Subdivision, Section 26, Newport News, Virginia, as recorded in Plat Book 9, Page 20 in the office of the Clerk of Hustings Court for the City of Newport News, Virginia, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective August 16, 1974, Map No. H 510103 15 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: April 29, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-12242 Filed 5-8-75;8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 182—COOPERATIVE EDUCATION PROGRAMS

Notice of proposed rulemaking was published in the FEDERAL REGISTER on January 17, 1975 (40 FR 3007) setting forth regulations governing the administration of cooperative education programs under Part D of Title IV of the Higher Education Act of 1965, as amended. This program provides grants to institutions of higher education for administration of cooperative education programs; grants to or contracts with institutions of higher education for training or research related to cooperative education; and grants to public or nonprofit private agencies or organizations, or contracts with public or private agencies, when such grants or contracts will make a significant contribution to obtaining the objectives of the program.

Pursuant to section 503 of the Education Amendments of 1972, (Pub. L. 92–318), a public hearing on the proposed regulations was held in Washington, D.C. on February 18, 1975. In addition, interested persons were invited to submit written comments to the Office of Education.

Summary of comments. Both the written comments and the testimony received at the hearing requested that the regulations be changed to reflect a broader concept of cooperative education which would encompass "parallel type" as well as alternate type cooperative education programs. No other suggested change in the regulations was proposed.

Response. The regulations are in accord with the statutory definition of cooperative education program. The suggested change would require a legislative amendment. Accordingly no changes have been made in the proposed regulations.

Effective date. Pursuant to section 431 (d) of the General Education Provisions Act, as amended by Pub. L. 93-380, these regulations were transmitted to Congress concurrently with the publication of the notice of proposed rulemaking in the FEDERAL REGISTER. The statutory period for Congressional action under section 431(d) expired without action having been taken.

Pursuant to section 503(d) of the Education Amendment of 1972 (Pub. L. 92–138), these regulations become effective on or before June 9, 1975.

(Catalog of Federal Domestic Assistance, Program No. 13.510; Cooperative Education)

Dated: April 17, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: May 1, 1975.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Subpart A—General

Sec.
182.1 Scope and purpose.
182.2 Definitions.
182.3 Application procedures.
182.4 General provisions.

Subpart B—Cooperative Education Programs

182.11 Eligible programs.
182.12 Funding criteria for institutional programs.
182.13 Maintenance of effort.
182.14 Ineligible expenditures.
182.15 Records and reports.

Subpart C—Training, Demonstration, and Research Projects

182.21 Eligible grantees and contractors.
182.22 Eligible projects.
182.23 Funding criteria for training projects.
182.24 Trainee stipends and dependency allowances.
182.25 Funding criteria for research and demonstration projects.
182.26 Reporting requirements.

AUTHORITY: Pub. L. 89-329, as amended; 20 U.S.C. 1087a-1087c.

Subpart A—General

§ 182.1 Scope and purpose.

This part establishes regulations implementing the Cooperative Education Programs (Part IV-D of the Higher Education Act of 1965, as amended). The purpose of this program is to enrich the quality and scope of postsecondary education through educationally related work experiences which afford a student an opportunity to earn funds needed for his education while becoming better prepared for his educational or career objectives. In order to achieve this purpose, the Commissioner of Education is authorized to make grants to institutions of higher education for planning, establishing, expanding, or carrying out programs of cooperative education and to make grants or to enter into contracts for training, research, or demonstration projects for cooperative education.

(20 U.S.C. 1087a, 1087b, and 1087c)

§ 182.2 Definitions.

As used in this part

"Cooperative education" means a course of study at an institution of higher education under which full-time students enrolled in the institution undertake, as a prescribed program of study, full-time academic study for specified periods of time in sequence with at least two separate periods of full-time educationally related work experience in government, industry, business, or social or educational agencies, for a specified period of time of not less than one week for each period.

"Full-time educationally related work experience" means employment or service in which a student undertakes activities which:

(a) Are related to the student's educational, professional, or career objectives;

(b) Are incorporated, as a regular and essential feature of the student's education, into the academic curriculum of the institution's cooperative education program through enrollment of the student during the work experience and through efforts to promote interaction between the student's work experience and his academic study;

(c) Provide for compensation to the student by the employer at the prevailing rate for other employees in comparable positions; provided, however, that an exception may be made for a student who chooses to work for a social or educational agency without pay or at a rate less than the prevailing rate for comparable full-time employees; and

(d) Require the student to be present on the job for the same number of hours, or otherwise spend the same amount of time, as the employer has established as full-time employment for purposes other than programs under this part.

"Full-time student" means a student who is carrying a full-time academic work load, other than by correspondence, measured in terms of (a) the tuition and fees customarily charged for full-time study by the institution and (b) the course work or other required activities as determined by the institution in which the student is enrolled.

"Institution of higher education" or "institution" means an institution of higher education as defined in sections 491(b) and 1201(a) of the Higher Education Act of 1965, as amended. The term includes any school of nursing and any proprietary institution of higher education which has an agreement with the Commissioner containing such terms and conditions as the Commissioner requires to ensure that the availability of assistance to students at that institution under Title IV of the Act has not resulted, and will not result, in an increase in the tuition, fees, or other charges to such student.

"Combination of institutions of higher education" means a group of institutions that have entered into a cooperative arrangement for the purposes of carrying out a mutual objective in the field of cooperative education or a public or private nonprofit agency or organization designated or created by such group of institutions for the purpose of carrying out a common objective on their behalf.

(20 U.S.C. 1087a-1087c)

§ 182.3 Application procedures.

(a) *Cooperative education programs.* An applicant desiring to receive a grant to plan, establish, expand, or carry out a cooperative education program under Subpart B shall submit an application on a form provided by the Commissioner by the closing date established annually by the Commissioner and published in the FEDERAL REGISTER.

(b) *Training, research, and demonstration projects.* Any proposal for a grant or contract for a research, demonstration, or training project under Subpart C shall be submitted by the closing date established annually by the Commissioner in the FEDERAL REGISTER and shall set out in narrative form the specific objectives to be attained, the applicant's experience and ability to attain the proposed objectives, and a proposed budget to carry out the project.

§ 182.4 General provisions.

Assistance provided under this part is subject to applicable provisions contained in Subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters).

(20 U.S.C. 1087b, 1087c; 45 CFR 100a, 38 FR 30654, November 6, 1973, as amended 39 FR 19211, May 31, 1974)

Subpart B—Cooperative Education Programs

§ 182.11 Eligible programs.

(a) Grants may be awarded under this subpart to institutions of higher education for the purpose of planning, establishing, expanding or carrying out a program of cooperative education as defined in § 182.2.

(b) An institution may not receive annual grants under this subpart for more than three fiscal years.

(c) Grants awarded to any institution under this subpart shall not exceed $75,000 in any fiscal year.

(20 U.S.C. 1087b)

§ 182.12 Funding criteria for institutional programs.

The Commissioner shall evaluate applications under this subpart in accord both with the criteria set out in § 100a.-26(b) of this chapter and with the following:

(a) The extent to which the proposed program gives evidence of:

(1) Comprehensive and in-depth planning;

(2) Direct liaison between the institution and the student's employing agency;

(3) Supervision by the institution of the placement of students in educationally related work experience;

(4) Securing by the institution of an adequate number of employment opportunities;

(5) Provision of adequate guidance and counseling by the institution; and

(6) Efforts by the institution to promote interaction between the student's work experience and his academic study;

(b) Whether the period of educationally related work experience is of sufficient duration to make a significant contribution toward meeting the student's educational and career goals;

(c) The extent to which the proposal reflects institutional commitment to cooperative education as evidenced by:

(1) The involvement of administrators, trustees, faculty, students, prospective employers, and cooperative education specialists;

(2) The establishment of procedures for making curriculum and calendar changes needed to reflect the particular needs of students participating in the cooperative education program; and

(3) The articulation of a cooperative education philosophy appropriate to the needs and characteristics of the institution; and

(d) The extent to which the program proposal demonstrates an awareness of the particular needs with respect to cooperative education of disadvantaged and handicapped students.

(20 U.S.C. 1087b)

§ 182.13 Maintenance of effort.

An institution receiving a grant under this subpart shall, during the period of the grant, provide support, from sources other than this part, for the program or programs assisted under the grant at a level not less than it expended from sources other than Title IV–D of the Higher Education Act on such program or programs during the fiscal year preceding such grant.

(20 U.S.C. 1087b(b)(2))

§ 182.14 Ineligible expenditures.

(a) Assistance provided under this subpart shall not be used for:

(1) Compensating any student for his educationally related work experience or providing financial assistance to any student to meet the costs of his education;

(2) Compensating any person serving in a cooperative education program, in an administrative or clerical position, if such person is receiving payment for services on a full-time basis during the same period under another Federal grant or contract;

(3) Purchasing or leasing equipment, unless specifically authorized by the Commissioner;

(4) Purchasing or leasing land or purchasing, leasing, constructing, or improving any building.

(20 U.S.C. 1087b)

(b) Assistance provided under this subpart shall not be used for any program which involves sectarian training or which is intended primarily to prepare students to be ministers or teachers of theological subjects.

(20 U.S.C. 1087a, 1087b)

§ 182.15 Records and reports.

(a) An institution receiving a grant under this subpart shall make such reports and shall keep such records as the Commissioner may require and shall afford access to such records on the part of the Commissioner at any reasonable time.

(b) The institution shall submit a performance report within 60 days after the conclusion of the grant period.

(20 U.S.C. 1087b)

Subpart C—Training, Demonstration and Research Projects

§ 182.21 Eligible grantees and contractors.

The following agencies are eligible to receive awards for projects under this subpart:

(a) *Grantees.* Institutions of higher education, combinations of such institutions, and, when the Commissioner determines that such grant will make an especially significant contribution to attaining the objectives of this subpart, other public or nonprofit private agencies or organizations.

(b) *Contractors.* Institutions of higher education, combinations of such institutions, and, where the Commissioner determines that such contract will make an especially significant contribution to attaining the objectives of this subpart, other public or private agencies or organizations.

(20 U.S.C. 1087c)

§ 182.22 Eligible projects.

The Commissioner may make grants or contracts under this subpart to grantees and contractors who are eligible under § 182.21 for the following purposes:

(a) To train persons for planning, establishing, administering, or coordinating programs of cooperative education;

(b) To demonstrate or explore the feasibility or value of innovative methods of cooperative education; or

(c) To research methods of improving, developing, or promoting the use of programs of cooperative education.

(20 U.S.C. 1087c)

§ 182.23 Funding criteria for training projects.

The Commissioner shall evaluate applications for training projects under this subpart in accord both with the criteria set out under § 100a.26(b) of this chapter and with the following:

(a) The extent to which the project proposes to make trainees aware of the need to modify existing undergraduate teaching practices, and the student calendar, and curricula in order to inaugurate and administer cooperative education programs;

(b) The extent to which the training project incorporates prior experience in or builds upon prior successful cooperative education programs or introduces successful innovations;

(c) The extent to which the proposed training project provides for clearly defined procedures that give evidence of comprehensive and indepth planning;

(d) The extent to which the proposed training project shows promise of developing trainees who may apply their expertise in more than one type of cooperative education program; and

(e) The extent to which the applicant demonstrates its commitment to a cooperative education training program by proposing to utilize resources other than those which may be made available by the Federal Government.

(20 U.S.C. 1087c)

§ 182.24 Trainee stipends and dependency allowances.

(a) *Stipends.* The Commissioner shall include in any grant or contract for a training project an amount sufficient to pay each trainee attending a full-time training institute of at least one week's duration a stipend of $75 per week.

(b) *Dependency allowances.* The Commissioner shall include in any grant or contract for a training project an amount sufficient to pay dependency allowances up to $15 per week for each dependent of a trainee in a full-time institute which is four weeks or more in duration. For purposes of this subparagraph, "dependent" means any of the following persons, if the trainee to whom the allowance is paid is providing over half of such person's support for the calendar year in which the training institute begins:

(1) A spouse;

(2) A son or daughter of the trainee or a descendent of either;

(3) A stepson or stepdaughter of the trainee;

(4) A brother, sister, stepbrother or stepsister of the trainee;

(5) A father or mother of the trainee or an ancestor of either;

(6) A stepfather or stepmother of the trainee;

(7) A son or daughter of a brother or sister of the trainee;

(8) A brother or sister of the father or mother of the trainee;

(9) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the trainee;

(10) An individual (other that the trainee's spouse) who during the calendar year in which the training begins, has been living in the trainee's home and is a member of the trainee's household (but not if the relationship between the individual and the trainee is in violation of local law); or

(11) An individual who—

(i) Is a descendent of a brother or sister of the father or mother of the trainee;

(ii) For the academic year of the trainee receives institutional care required by reason of a physical or mental disability; and

(iii) Before receiving such institutional care was a member of the same household as the trainee.

(20 U.S.C. 1087c)

§ 182.25 Funding criteria for research and demonstration projects.

The Commissioner shall evaluate applications for research or demonstration projects under this subpart in accord both with the criteria set out in § 100a.26 (b) of this chapter and with the following:

(a) The extent to which the research project proposes to assess the degree of change necessary to modify existing undergraduate teaching practices, the student calendar or curricula to meet the needs of students participating in a cooperative education program;

(b) The extent to which the research provides for:

(1) Well delineated methodologies;

(2) Realistically designed work schedules; and

(3) A logical relationship between stated objectives and research design;

(c) The extent to which the proposed project would explore innovative approaches to the operation of cooperative education programs and evaluate them; and

(d) The extent to which the project proposes to demonstrate the feasibility of a stated hypotheses for developing, improving, and promoting the use of cooperative education nationally through:

(1) Experimental models; and

(2) Various methods of information dissemination.

(20 U.S.C. 1087c)

§ 182.26 Reporting requirements.

(a) A recipient of a grant or contract under this subpart shall submit quarterly or other progress reports as the Commissioner may require, which shall include information on;

(1) The extent to which the objectives of the projects have been accomplished;

(2) What factors, if any, have prevented the accomplishment of project objectives, and what, if any, corrective measures are being taken; and

(3) Any highly significant aspects of the project.

(b) The recipient of a grant or contract under this subpart shall also submit a final report to the Commissioner within 60 days after conclusion of the project.

(20 U.S.C. 1087c)

[FR Doc.75-12300 Filed 5-8-75;8:45 am]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 2, Amdt. 7-10]

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Freedom of Information Act and Locations of Public Inspection Facilities

The purpose of this amendment is to revise and republish some of the appendices to Part 7 of the Regulations of the Office of the Secretary, which contain the locations of public inspection facilities and the indexes to materials available under the Freedom of Information Act. Appendices A through F are revised; Appendices G and H remain unchanged and are not republished here.

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

In consideration of the foregoing Appendices A through E of Part 7 of title 49, Code of Federal Regulations, are amended to read as follows:

APPENDIX A—OFFICE OF THE SECRETARY

1. *General.* This appendix describes the location and hours of operation of the document inspection facility of the Office of the Secretary (OST); the kinds of records that are available for public inspection and copying at the facility; and the procedures by which members of the public may make requests for records.

2. *Document Inspection Facility.* The document inspection facility for the Office of the Secretary is maintained by the Director of Public Affairs, Room 10106, Nassif Building, 400 Seventh Street, SW., Washington, D.C. This facility is open to the public from 9 a.m. to 5:30 p.m. local time, Monday through Friday except Federal holidays.

3. *Records available through the document inspection facility.* The following records are available through the document inspection facility:

(a) Any material issued by the Office of the Secretary and published in the FEDERAL REGISTER, including regulations.

(b) Final opinions (including concurring or dissenting opinions) and orders made in the adjudication of cases and issued from within the Office of the Secretary.

(c) Any policy or interpretation issued within the Office of the Secretary, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued from within the Office of the Secretary, that affects any member of the public, including the prescribing of any standard, procedure, or policy that when implemented requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) *DOT Orders.* DOT orders which are issued by the Department of Transportation and used primarily to promulgate internal DOT policy, instructions, and general guidance.

(f) *DOT Notices.* DOT notices which are issued by the Department of Transportation and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(g) *OST Orders.* OST orders which are issued by the Office of the Secretary and used primarily to promulgate internal OST policy, instructions, and general guidance.

(h) *OST Notices.* OST notices which are issued by the Office of the Secretary and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

4. *Requests for records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, may submit his request in writing to the Director of Public Affairs, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

APPENDIX B—UNITED STATES COAST GUARD

1. *General.* This appendix describes the document inspection facilities of the U.S. Coast Guard, the kinds of records that are available for public inspection and copying at those facilities and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facilities.* The document inspection facilities are located at the offices of the Commandant and District Commanders. These facilities are open to the public during regular working hours at the following addresses;

Commandant (A), U.S. Coast Guard, Washington, D.C. 20591. The facility is located at Coast Guard Headquarters, Office of Public and International Affairs, 400 7th Street, SW.

District Office, Commander, 1st Coast Guard District, 150 Causeway Street, Boston, Mass. 02114.

Commander, 2d Coast Guard District, Federal Building, 1520 Market Street, St. Louis, Mo. 88102.

Commander, 3d Coast Guard District Governors Island, New York, New York 10004.

Commander, 5th Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Va. 23705.

Commander, 7th Coast Guard District, Federal Building, Room 1012, 51 SW. First Ave., Miami, Florida.

Commander, 8th Coast Guard District, Customhouse, New Orleans, La. 70130.

Commander, 9th Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199.

Commander, 11th Coast Guard District, Heartwell Building, 19 Pine Avenue, Long Beach, Calif. 90802.

Commander, 12th Coast Guard District, 630 Sansomo Street, San Francisco, Calif. 94126.

Commander, 13th Coast Guard District, 618 Second Avenue, Seattle, Wash. 93104.

Commander, 14th Coast Guard District, PO. Box 48, FPO San Francisco 96610.

Commander, 17th Coast Guard District, FPO Seattle 98771.

3. Records available at document inspections facilities.

(a) The following records are available at any U.S. Coast Guard document inspection facility:

(1) Final opinions and orders made in the adjudication of cases by the Commandant, U.S. Coast Guard.

(2) U.S. Coast Guard numbered publications that affect any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(b) Opinions and orders of administrative law judges are available at the document inspection facility of the Office of the Commandant and the District in which the Hearing Examiner is located.

(c) Policies and interpretations issued within the U.S. Coast Guard (including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation) are available at the document inspection facility of the Office of the Commandant.

(d) An index of the records located at each facility is maintained at that facility.

(e) The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart H of this part.

4. Requests for identifiable records under Subpart E of this part. Each person desiring to inspect a record, or obtain a copy thereof, must submit his request in writing to the U.S. Coast Guard office from which such record may be made available. The addresses of the offices of the Commandant and District Commanders are listed in section 2 of this appendix. If the appropriate office to submit a request for a particular record is unknown, the request may be submitted to the Office of the Commandant at the address listed in section 2 of this appendix. The following table gives illustrations of types of records and specifies where requests for such records are appropriately addressed:

(a) Examples of records for which requests may properly be made to either the Office of the Commandant, U.S. Coast Guard or

office of the appropriate District Commander include the following:

(1) Marine Casualty investigation records
(2) Records of certificates and licenses issued
(3) Merchant vessel inspection records
(4) Records of merchant vessel documentation and recording of sales and other dispositions
(5) Records of Coast Guard property and contracts

(b) Examples of records for which requests may properly be made to the Office of the Commandant, U.S. Coast Guard include the following:

(1) Central files of merchant seamen
(2) Merchant vessel shipping articles
(3) Merchant vessel equipment approvals
(4) Merchant Marine Council proceedings
(5) Recreational boating records
(6) Great Lakes Pilotage records
(7) Records pertaining to bridges over navigable waters
(8) Central files of Coast Guard personnel
(9) Coast Guard courts martial records
(10) Coast Guard vessel and shore station log books more than 1 year old on January 1 of the year the request is made.

(c) Examples of records for which requests may properly be made to the office of the appropriate District Commander include the following:

(1) Navigation and Vessel Inspection penalty action records
(2) Search and rescue records
(3) Coast Guard vessel and shore station log books for the current calendar year and the calendar year immediately preceding the current year
(4) Port safety and waterfront facility records
(5) Aids to navigation records
(6) Records of bridges over navigable waters
(7) Merchant vessel logbooks and shipping articles
(8) Shipment and discharge of seamen records
(9) Shipyard and factory inspection records

5. Officials having initial authority to deny requests. The following officials have authority to make initial determinations to deny requests for records:

(a) District Commanders or their designees including:

(1) Commander, First Coast Guard District
(2) Commander, Second Coast Guard District
(3) Commander, Third Coast Guard District
(4) Commander, Fifth Coast Guard District
(5) Commander, Seventh Coast Guard District
(6) Commander, Eighth Coast Guard District
(7) Commander, Ninth Coast Guard District
(8) Commander, Eleventh Coast Guard District
(9) Commander, Twelfth Coast Guard District
(10) Commander, Thirteenth Coast Guard District
(11) Commander, Fourteenth Coast Guard District
(12) Commander, Seventeenth Coast Guard District

(b) Coast Guard Headquarters officials or their designees including:

(1) Chief of Staff
(2) Chief, Office of Public and International Affairs
(3) Chief, Office of Boating Safety
(4) Chief, Office of Research and Development
(5) Chief, Office of Engineering
(6) Chief, Office of Comptroller
(7) Chief, Office of Civil Rights
(8) Chief, Office of the Chief Medical Officer
(9) Chief, Office of Chief Counsel
(10) Chief, Office of Merchant Marine Safety
(11) Chief, Office of Operations
(12) Chief, Office of Personnel
(13) Chief, Office of Reserve
(14) Chief, Office of Marine Environment and Systems

6. Reconsideration of determinations not to disclose records. Any person who has been notified that a record or part of a record he has requested cannot be disclosed may apply in writing, to the Commandant, U.S. Coast Guard, for reconsideration of that request. The decision of the Commandant or his designee is administratively final.

Appendix C—Federal Aviation Administration

1. *General.* This appendix describes the document inspection facilities of the Federal Aviation Administration, the kinds of records that are available for public inspection and copying at these facilities, and the procedures by which members of the public may make requests for reasonably described records.

2. *Document inspection facilities.* Document inspection facilities are maintained for FAA Headquarters, each FAA regional office, the Aeronautical Center, and the National Aviation Facilities Experimental Center. The document inspection facility for the European Region is located at FAA Headquarters. These facilities are open to the public during regular working hours at the following addresses:

FAA Headquarters, 800 Independence Avenue, SW, Washington, D.C. 20590.
Alaskan Region, 632 Sixth Avenue, Anchorage, Alaska 99501.
Central Region, 601 East 12th Street, Kansas City, Mo. 64106.
Southern Region, 3400 Whipple Street, East Point, Ga. (Mailing Address: Post Office Box 20636, Atlanta, Ga. 30320).
Southwest Region, 4400 Blue Mound Road (Mailing Address: Post Office Box 1689), Forth Worth, Tex. 76101.
Western Region, 5651 West Manchester Avenue (Mailing Address: Post Office Box 92007), Los Angeles, Calif. 90045.
Eastern Region, JFK International Airport, New York, N.Y. 11430.
Pacific Region, 1833 Kalakaua Avenue (Mailing Address: Post Office Box 4009), Honolulu, Hawaii 96812.
Aeronautical Center, 6400 South MacArthur Boulevard (Mailing Address: Post Office Box 25082), Oklahoma City, Okla. 73125.
National Aviation Facilities Experimental Center, Tilton Road, Route 563 (near Pomona, N.J.) (Mailing Address: Atlantic City, N.J. 08405).
New England Region, 154 Middlesex Street, Burlington, MA 01803.
Great Lakes Region, 3166 Des Plaines Avenue, Des Plaines, IL 60018.
Rocky Mountain Region, 10255 East 25th Avenue, Aurora, CO 80010.
Northwest Region, FAA Building, Boeing Field, Seattle, WA 98108.

3. Documents available under Subpart E at document inspection facilities. a. The following records under Subpart E of this part are available at Federal Aviation Administration document inspection facilities;

(1) Final opinions and orders made in the adjudication of cases by the Administrator, Federal Aviation Administration.

(2) Policies and interpretations, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation. All such policies and interpretations made by the Administrator, Deputy Administrator, Associate Administrators, Directors and Heads of Offices are available at the FAA Headquarters document inspection facility; only those policies and interpretations made by the Administrator, Deputy Administrator and the Regional or Center Director concerned shall be available at Regional and Center document inspection facilities.

(3) Administrative staff manuals or instructions to staff that affect any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. Such documents are available at the inspection facility of the organizational unit which has issued them.

(b) An index of the records located at each document inspection facility is maintained at that facility.

(c) The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart H of this part.

(4) Requests for reasonably described records under Subpart E of this part. Each person desiring to inspect a record, or obtain a copy thereof, must submit his request in writing to the Assistant Administrator, Office of Information Services, FAA Headquarters, or the Director of the Region or Center in which it is located. The addresses of FAA Headquarters and the Regions and Centers are listed in paragraph 2 of this appendix. If the location of the record is not known, the request may be submitted to the Assistant Administrator, Office of Information Services, FAA Headquarters. Each request must be accompanied by the appropriate fee prescribed in Subpart I of this part. In some instances, the amount of the fee will have to be determined after the request has been received due to the circumstances peculiar to each case. The following table gives illustrations of types of records and where they are located:

a. Records pertaining to the issue, amendment, suspension or revocation of certificates, permits, authorizations, and approvals such as:

(1) Airman certificates and ratings for pilots, flight instructors, flight navigators, flight engineers, aircraft dispatchers, mechanics, repairmen, air traffic control operators, parachute riggers and ground instructor certificates are maintained at the Aeronautical Center.

(2) Aircraft registration certificates, and airworthiness certificates are maintained at the Aeronautical Center.

(3) Aircraft type certificates and production certificates are maintained at the regional office within which the issuance was made.

(4) Ferry permits and special flight authorizations are maintained at the district office of the region within which the issuance was made.

(5) Air carrier operating certificates, commercial operator certificates, agricultural aircraft operator certificates, repair station certificates, parachute loft certificates, pilot school certificates, and mechanic school certificates are maintained at the district office of the region within which the certification was taken.

b. Records of designations of representatives of the Administrator are located at FAA Headquarters.

c. Records covering civil rights violations determinations under title VI Civil Rights Act of 1964 are located at FAA Headquarters.

d. Records relating to Federal-aid Airport Grants are located at the regional office within which the grant was made.

e. Records of approvals of navigational facilities under FAR Part 171 are located at the regional office within which the approval was issued.

f. Records relating to civil penalty actions and seizure of aircraft are located at the regional office within which the action was taken.

5. Reconsideration of determination not to disclose records. Any person to whom a record is not made available within the time limits set forth in § 7.21 or any extension thereof under § 7.25 of Subpart C, and any person who has been notified that a record he has requested cannot be disclosed may apply, in writing, to the Assistant Administrator, Office of Information Services at FAA Headquarters, for reconsideration of that request.

Application for reconsideration must be made within 60 days from the expiration of the time limitations set forth in Subpart C or the receipt of denial and follow the procedures and requirements set forth in Subpart G. For all purposes, including that of judicial review, the decision of the Assistant Administrator, Office of Information Services is administratively final as the decision of the Federal Aviation Administration.

Appendix D—Federal Highway Administration

1. *General.* This appendix describes the location and hours of operation of document inspection facilities of the Federal Highway Administration (FHWA); the kinds of records that are available for public inspection and copying at these facilities; and the procedures by which members of the public may make requests for records.

2. *Document Inspection Facilities.* Document inspection facilities are maintained at the FHWA Headquarters office, each FHWA regional office, and each FHWA division office. These facilities are open to the public during regular FHWA working hours which are included parenthetically after each address below. Written requests for information should be sent to the appropriate office, and the envelope in which the request is sent must be prominently marked with the letters "FOIA."

Washington Headquarters

Records Officer, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590 (7:45–4:15 Eastern Time).

Regional Offices

Regional Federal Highway Administrator, Region 1, Federal Highway Administration, 4 Normanskill Boulevard (Elsmere), Delmar, NY 12504 (8–4:30 Eastern Time).

Regional Federal Highway Administrator, Region 3, Federal Highway Administration, 31 Hopkins Plaza, Baltimore, MD 21201 (8–4:30 Eastern Time).

Regional Federal Highway Administrator, Region 4, Federal Highway Administration, 1720 Peachtree Road NW., Atlanta, GA 30309 (7:45–4:15 Eastern Time).

Regional Federal Highway Administrator, Region 5, Federal Highway Administration, 18209 Dixie Highway, Homewood, IL 60430 (8–4:30 Central Time).

Regional Federal Highway Administrator, Region 6, Federal Highway Administration, 819 Taylor Street, Fort Worth, TX 76102 (8–4:30 Central Time).

Regional Federal Highway Administrator, Region 7, Federal Highway Administration, 6301 Rockhill Road, Kansas City, MO 64131 (7:45–4:15 Central Time).

Regional Federal Highway Administrator, Region 8, Federal Highway Administration, P.O. Box 25246, Building 40, Denver Federal Center, Denver, CO 80225 (7:45–4:15 Mountain Time).

Regional Federal Highway Administrator, Region 9, Federal Highway Administration, 450 Golden Gate Avenue, Box 36096, San Francisco, CA 94102 (7:45–4:15 Pacific Time).

Regional Federal Highway Administrator, Region 10, Federal Highway Administration, Rm. 412, Mohawk Bldg., 222 SW. Morrison St., Portland, OR 97204 (8:00–4:45 Pacific Time).

Regional Engineer, Region 15, Federal Highway Administration, 1000 North Glebe Road, Arlington, VA 22201 (7:45–4:15 Eastern Time).

Division Offices

Alabama, 441 High Street, Montgomery, AL 36104 (7:45–4:30 Central Time).

Alaska, Federal Building, 709 West Ninth Street, Juneau, AK 99801 (8–4:30 Pacific Time).

Arizona, 3500 N. Central Avenue, Suite 201, Phoenix, AZ 85012 (8–4:30 Mountain Time).

Arkansas, Room 3128, Federal Office Building, 700 West Capitol Avenue, Little Rock, AR 72201 (7:45–4:30 Central Time).

California, Federal Bldg., 2nd Floor, 801 I Street, Sacramento, CA 94814 (7:45–4:30 Pacific Time).

Colorado, 10488 W. 6th Place, Denver, CO 80215 (7:45–4:15 Mountain Time).

Connecticut, 990 Wethersfield Avenue, Hartford, CT 06114 (8–4:30 Eastern Time).

Delaware, Federal Office Bldg., 2nd Floor, 300 South New Street, Dover, DE 19901 (8–4:30 Eastern Time).

District of Columbia, 425 13th Street, NW., Washington, DC 20004 (7:45–4:15 Eastern Time).

Florida, Ackerman Bldg., 223 W. College Ave., Tallahassee, FL 32301 (8–4:30 Eastern Time).

Georgia, Suite 700, 1422 Peachtree Street, NW., Atlanta, GA 30309 (8–4:30 Eastern Time).

Hawaii, Pacific International Gold Bond Bldg., 677 Ala Moana Blvd., Suite 613, Honolulu, HI 96813 (7:15–4:15 Hawaii Time, 9:15–6:15 Pacific Time).

Idaho, 3010 W. State Street, Boise, ID 83703 8–5:00 Mountain Time).

Illinois, 3085 East Stevenson Drive, Springfield, IL 62708 (7:30–4:15 Central Time).

Indiana, I.S.T.A. Center, Room 707, 150 W. Market St., Indianapolis, IN 46204 (7:30–4 Eastern Time).

Iowa, 105 Sixth Street, Ames, IA 50010 (7:45–4:30 Central Time).

Kansas, 1263 Topeka Avenue, Topeka, KS 66612 (8–4:30 Central Time).

Kentucky, 151 Elkhorn Court, Frankfort, KY 40601 (8:00–4:45 Eastern Time).

Louisiana, Federal Bldg., Room 239, 750 Florida St., Baton Rouge, LA 70801 (8–4:30 Central Time).

Maine, Federal Building, U.S. Post Office, Room 614, 40 Western Avenue, Augusta, ME 04330 (7:30–4 Eastern Time).

Maryland, The Rotunda, Suite 220, 711 West 40th Street, Baltimore, MD 21211 (8–4:30 Eastern Time).

Massachusetts, John F. Kennedy Federal Building, Government Center, Room 612, Boston, MA 02203 (8:15–4:15 Eastern Time).

Michigan, Federal Building, 315 West Allegan Street, Room 211, Lansing, MI 48901 (8–4:45 Eastern Time).

Minnesota, Metro Square Building, Suite 490, Seventh & Robert Streets, St. Paul, MN 55101 (7:30–4 Central Time).

Mississippi, 666 North Street, Suite 105, Jackson, MS 39202 (7:45–4:15 Central Time).

Missouri, 209 Adams Street, Jefferson City, MO 65101 (7:45–4:15 Central Time).

Montana, 501 N. Fee Street, Helena, MT 59601 (7:45–4:30 Mountain Time).

Nebraska, 1701 South 17th Street, Lincoln, NE 68502 (8–4:30 Central Time).

Nevada, 106 East Adams Street, Carson City, NV 89701 (7:45–4:30 Pacific Time).

New Hampshire, Federal Building, 55 Pleasant Street, Concord, NH 03301 (8–4:45 Eastern Time).

New Jersey, Suburban Square Building, 25 Scotch Road, Trenton, NJ 08628 (8–4:30 Eastern Time).

New Mexico, 117 U.S. Courthouse, Santa Fe, NM 87501 (7:30–4:30 Mountain Time).

New York, Leo W. O'Brien Federal Building, 9th Floor, Albany, NY 12207 (8–4:30 Eastern Time).

North Carolina, 310 New Bern Avenue, Raleigh, NC 27611 (8–4:30 Eastern Time).

North Dakota, New Federal Bldg., P.O. Box 1755, Bismarck, ND 58501 (7:45–4:30 Central Time).

Ohio, Bryson Building, Room 333, Columbus, OH 43215 (8–4:30 Eastern Time).

Oklahoma, 2409 North Broadway, Oklahoma City, OK 73103 (8–4:45 Central Time).

Oregon, Standard Insurance Building, 477 Cottage Street, NE Salem, OR 97308 (7:45–4:30 Pacific Time).

Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108 (8–4:30 Eastern Time).

Puerto Rico, Caso Building, Room 805, 1225 Ponce de Leon Avenue, San Juan, PR 00907 (8–4:30 Atlanta Time—7–3:30 Eastern Time).

Rhode Island, Gardner Building, Third Floor, 40 Fountain Street, Providence, RI 02903 (8–4:30 Eastern Time).

South Carolina, 2001 Assembly Street, Suite 203, Columbia, SC 29201 (8:15–4:45 Eastern Time).

South Dakota, P.O. Box 700, Federal Office Building, Pierre, SD 57501 (8–5 Central Time).

Tennessee, Suite 236, 4004 Hillsboro Road, Nashville, TN 37215 (8–4:30 Central Time).

Texas, Rm. 826, Federal Office Building, 300 East Eighth Street, Austin, TX 78701 (7:45–4:35 Central Time).

Utah, Federal Bldg., 125 South State Street, Salt Lake City, UT 84111 (7:45–4:30 Mountain Time).

Vermont, Federal Building, Montpelier, VT 05602 (8–4:30 Eastern Time).

Virginia, Federal Building, 10th Floor, 400 North Eighth Street, Richmond, VA 23240 (7:45–4:45 Eastern Time).

Washington, 1007 South Washington Street, Olympia, WA 98507 (8–5:00 Pacific Time).

West Virginia, Rm. 2000 Federal Office Building 500 Quarrier Street, Charleston, WV 25301 (8–4:30 Eastern Time).

Wisconsin, 4502 N. Vernon Boulevard, Madison, WI 53705 (7:45–4:30 Central Time).

Wyoming, O'Mahoney Federal Center 2120 Capitol Street, Cheyenne, WY 82001 (7:45–4:45 Mountain Time).

3. *Records Available Through Document Inspection Facilities.* (a) The following records are available thru the FHWA Headquarters document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued from within the Federal Highway Administration.

(2) Any policy or interpretation issued within the Federal Highway Administration, including any policy or interpretation concerning a particular factual situation, if that policy of interpretation can reasonably be expected to have precedential value in any

case involving a member of the public in a similar situation.

(b) The following records are available thru all FHWA document inspection facilities:

(1) *FHWA Orders.* These orders are issued by the Federal Highway Administration and used primarily to promulgate internal FHWA policy, instructions, and general guidance.

(2) *FHWA Notices.* These notices are issued by the Federal Highway Administration and contain short term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(3) *FHWA Bulletins.* These bulletins are issued by the Federal Highway Administration and are used to promulgate one time announcements or transmit reports, publications, and other similar material.

(4) *FHWA/NHTSA Orders.* These are orders issued jointly by the Federal Highway Administration and the National Highway Traffic Safety Administration and contain policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Program.

(5) *FHWA Manuals.* These manuals are issued by the Federal Highway Administration and contain detailed procedures relating to policies and program responsibilities. They include the following:

(i) *Federal-Aid Highway Program Manual.* This Manual contains policies, procedures, standards, and guides relating to the administration of the Federal-Aid Highway Program and the Direct Federal Construction Program.

(ii) Organization Manual.

(iii) Administrative Manual.

(iv) External Audit Manual.

(v) Labor Compliance Manual.

(vi) Civil Rights Manual.

(vii) Highway Planning Program Manual.

(viii) Emergency Planning and Operations Manual.

(ix) Research and Development Program Manual.

(x) Right-of-Way Operations Manual.

(xi) Motor Carrier Safety Operations Manuals. These Manuals contain details of compliance programs, accident investigations, enforcement programs, and interpretations.

(6) *Highway Safety Standards.* These highway-related standards, issued by the Federal Highway Administration, apply to the aspects of State highway safety programs for which responsibility resides in the Federal Highway Administration under the Highway Safety Act of 1966 and delegations of authority by the Secretary of Transportation.

(7) Motor Carrier Safety Administrative Rulings.

(8) Motor Carrier Safety Waivers From Regulations.

(9) Indexes for the above records.

4. *Requests for Records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, may submit his request, in writing, to the FHWA Records Officer at the address listed in paragraph 2 above. Each request is subject to the appropriate fee prescribed in Subpart H of this part.

5. *Determination not to disclose records.* The FHWA Records Officer (HMS-10) in the Washington Headquarters is the only official authorized to deny requests for the disclosure of records for all FHWA organization elements, both Headquarters and field.

6. *Reconsideration of determination not to disclose records.* Any person who has been notified that a record or any part of a record he has requested cannot be disclosed, may apply, in writing, to the Associate Administrator for Administration, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590 for reconsideration of his request. The decision of the Associate Administrator for Administration is administratively final.

APPENDIX E—FEDERAL RAILROAD ADMINISTRATION

1. *General.* This appendix describes the document inspection facility of the Federal Railroad Administration, the kinds of records that are available for public inspection and copying at that facility and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facility.* The document inspection facility is maintained at the headquarters of the Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. This facility is open to the public during regular working hours.

3. *Records available at the document inspection facility.* The following records are maintained at the document inspection facility:

(a) Any material issued by the Federal Railroad Administration and published in the Federal Register, including regulations.

(b) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued from within the Federal Railroad Administration. Included are opinions and orders issued under the Safety Appliance Acts, Hours of Service Act, Signal Inspection Act, Locomotive Inspection Act, Accident Reports Act, and the Federal Railroad Safety Act.

(c) Any policy or interpretation issued within the Federal Railroad Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued from within the Federal Railroad Administration, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) Public Notice of pending administrative actions.

(f) Office of Safety Annual Report.

(g) Accident Bulletin.

(h) Rail-Highway Grade-Crossing Bulletin.

(i) Locomotive Specifications.

(j) Documents related to loans, loan guarantees, or grant programs conducted by the Federal Railroad Administration.

(k) An index to the material described in (a) through (d).

The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the free prescribed in Subpart H of this part.

4. *Requests for identifiable records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, must submit his request in writing to the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Each request must be accompanied by the appropriate fee prescribed in Subpart H of this part.

5. *Reconsideration of determination not to disclose Records.* Any person to whom a record has not been made available within the time limits established by this part, and any person who has been given a determination that a record he has requested will not be disclosed, may apply, in writing, to the Federal Railroad Administrator, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, for reconsideration of his request. For all purposes, including that of judicial review, the decision of the Administrator is administratively final.

In Appendix F, paragraphs 2 and 4 are amended to read as follows:

APPENDIX F—ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION

* * * * *

2. *Document inspection facility.* The document inspection facility of the Saint Lawrence Seaway Development Corporation is maintained at its headquarters building at Massena, New York. This facility is open to the public during regular working hours.

* * * * *

4. *Requests for identifiable records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, must submit his request in writing to the Director of Administration, Saint Lawrence Seaway Development Corporation, PO. Box 520, Massena, New York, 13662. Each request must be accompanied by the appropriate fee prescribed in Subpart H of this part. The decision of the Administrator, Assistant Administrator or the General Counsel to withhold a record is administratively final.

Appendices G and H remain the same.

(5 U.S.C. 552; Pub. L. 93-502, 83 Stat. 1565; 31 U.S.C. 438, 49 U.S.C. 1657.)

Effective date. This amendment is effective May 9, 1975.

Issued in Washington, D.C., on May 2, 1975.

WILLIAM T. COLEMAN, Jr.,
Secretary of Transportation.

[FR Doc.75-12275 Filed 5-8-75;8:45 am]

CHAPTER I—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—OFFICE OF PIPELINE SAFETY

[Amdt. 192-21, Docket No. OPS-241]

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

Odorization of Gas in Transmission Lines

This amendment to Part 192 establishes in § 192.625 minimum Federal safety standards for odorization of gas in certain transmission lines. It also modifies § 192.705 and adds a new § 192.706 to require that transmission lines be patrolled and surveyed for leaks on the basis of class location and whether the lines carry odorized gas.

To allow lead time for compliance, the new requirements for odorization of gas do not become applicable until January 1, 1977. Until then, the interim standards in Part 190 of Title 49 of the Code of Federal Regulations applicable to the odorization of gas in transmission lines in the States of California, Connecticut, New Hampshire, New York, New Jersey, Massachusetts, Rhode Island, and Vermont will remain in effect as provided by § 192.625(g).

Requirements for odorization of gas in all pipelines were originally proposed in Docket No. OPS-3E (Notice 70-5; 35 FR 5482, April 2, 1970). The comments to that docket were almost unanimously

opposed to the odorization of gas in transmission lines. As a consequence, the Office of Pipeline Safety (OPS) issued Notice 70–11 (35 FR 9293, June 13, 1970), requesting additional comments on several problems of odorizing gas in transmission lines and information from States that required such odorization.

Comments on Notice 70–11 were also generally opposed to odorizing gas in transmission lines. Several States, however, urged adoption of the original proposal, indicating that their experience did not support the objections raised by other commenters. Because the record contained conflicting information as to odorization of gas in transmission lines, the applicability of the original proposal was limited in the final rule to mains and service lines (35 FR 13248, August 19, 1970).

To help determine the advisability of further action, OPS held a public hearing on September 17, 1970 (Notice 70–13, 35 FR 13470, August 22, 1970). On the basis of information received at that hearing and in response to the earlier notices, OPS issued Amendment 192–2 (35 FR 17335, November 11, 1970) to extend the cutoff date of the interim standards temporarily to maintain the required level of safety in those States requiring odorization of gas in transmission lines. The extension allowed additional time for OPS to study the safety benefits and problems of transmission line odorization. To provide time to evaluate the results of its study, OPS issued Amendment 192–6 (36 FR 25423, December 31, 1971), again temporarily extending the application of State law as Federal odorization standards for transmission lines.

A report of the study of odorization conducted by OPS is included in the docket for this proceeding. The study was based on contacts with interstate transmission operators, distribution operators, and State commissions experienced in the transportation of odorized gas in transmission lines.

It appeared to OPS, from the information provided by that study and the information in Docket No. OPS–3E, that limited odorization requirements and additional inspections might be warranted for transmission lines in populated areas. Therefore, on August 9, 1973, OPS issued Notice 73–2 (38 FR 22044, August 15, 1973) to begin this new rulemaking proceeding (Docket No. OPS–24) on odorization of gas in transmission lines. Accordingly, the interim standards were extended to provide time for completion of this proceeding. (Amdt. 192–7, 37 FR 17970, September 2, 1972; Amdt. 192–14, 38 FR 14943, June 7, 1973; Amdt. 192–15, 38 FR 35471, December 28, 1973; and Amdt. 192–16, 39 FR 45253, December 31, 1974)

In Notice 73–2, OPS discussed two main advantages to requiring odorization of gas in transmission lines: (1) Odorization allows the early detection of leaks in open air by the public; and (2) Without a requirement for odorization, high pressure gas transmission lines which run parallel with distribution lines under streets may continue to be operated without odorization while the distribution lines must be odorized. The notice also discussed conclusions drawn by OPS from its study and other relevant information pertaining to various problems of transmission line odorization.

In addition to proposing that gas in transmission lines in Class 3 and Class 4 locations be odorized, Notice 73–2 was directed toward alleviating several problems and unjustifiable expenses associated with transmission line odorization. For example, the smallest traces of sulphur compounds included in gas odorants cause serious problems in some underground storage fields. Notice 73–2 proposed to exclude gas going to underground storage fields from any requirement for odorization. In addition, the notice proposed an exception for gas in Class 3 lines en route to a predominantly Class 1 or Class 2 location because of the apparently low ratio of safety benefit to cost in those areas. A further exception was proposed for gas in a Class 3 location which would be detrimental to an industrial process. Except for gas en route to underground storage, the Notice did not propose exceptions for Class 4 locations.

The comments submitted to Docket No. OPS–24 as a result of Notice 73–2 were, for the most part, statements of opinion. Commenters did not submit any new information which, in the opinion of OPS, would affect the validity of the conclusions discussed in that Notice. Nevertheless, in light of many comments, the proposal in Notice 73–2 is changed in the final rule as indicated in the following discussion.

Many comments to Notice 73–2 favored adoption of the rules as proposed. Others, however, suggested changes considered necessary in view of the cost and technical problems associated with odorizing gas in transmission lines. Still other comments restated conventional opinions that odorization does not enhance the detection of leaks in transmission lines and that normal odorization is ineffective in open air. On these latter points, OPS believes the record is clear—a large number of gas leaks, including leaks on transmission lines, have been detected by people smelling odorant in open air.

In consideration of several comments and the views of the Technical Pipeline Safety Standards Committee (TPSSC), the proposed exemption for gas in Class 3 locations en route to predominantly Class 1 or Class 2 locations is adopted, but modified in § 192.625(b)(1) to also apply to gas in similarly situated Class 4 locations. High costs are involved in odorizing gas in those situations, and as discussed in the notice relative to Class 3 locations, similarly situated Class 4 locations are relatively few. Hence, OPS believes that imposition of an odorization requirement for gas in Class 4 locations en route to predominantly Class 1 or Class 2 locations is not reasonably justifiable.

One commenter objected to the proposed odorization requirements because, in accordance with § 192.9, they would apply to gas gathering lines as well as transmission lines. This commenter is correct that under Part 192 safety standards applicable to transmission lines also apply to gathering lines. Section 192.1(b) provides, however, that gathering lines outside certain populated areas are not covered by the standards. Indeed, they are exempt from the safety jurisdiction of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.) under which Part 192 is promulgated. The commenter did not substantiate why gathering lines in populated areas should not be subject to the same odorization standards as transmission lines. Therefore, following the precedent in Part 192 of subjecting gathering lines in populated areas to the standards for transmission lines, the comment was not adopted.

At some locations, liquid condensates in gas are extracted to provide dry gas for customers. The Interstate Natural Gas Association of America (INGAA) pointed out that these condensates are an important source of energy and that odorants in gas would render them undesirable to processors. Although the notice did not provide for this situation, under § 192.625(b)(2)(ii) the final rule excepts from the odorization requirement a transmission line used in transporting gas to a gas processing plant. As generally understood in the gas industry, a gas processing plant is a plant which removes liquefiable hydrocarbons or condensates from gas. As a result of the exception, condensates recovered at these plants may be further processed without detriment due to odorization.

While liquid condensates are also recovered from gas pipelines at locations other than gas processing plants, OPS believes that the volume of these condensates is not large enough to pose a major problem due to odorization.

Similarly, most water in gas is removed by dehydration plants near the point where gas is produced. Since the final rule only requires odorization in certain populated areas, most water will have been removed from the gas before it must be odorized. Nevertheless, commenters noted that dehydration plants may be located downstream from where odorization would be required. In such cases, an accumulation of odorant saturated water could pose a difficult disposal problem. In addition, because of the odorant, otherwise recoverable hydrocarbons would no longer be usable. Therefore, the final rule in § 192.625(b)(2)(iii) exempts from the odorization requirement a transmission line which transports gas to a dehydration plant. As discussed hereafter, the exemption only applies to gas in lines which transport unodorized gas before this amendment is issued.

In a further comment, INGAA noted that when large volumes of odorized gas are blown to the atmosphere during normal transmission line maintenance, the odorant could be annoying to the public. Also, INGAA asserted that if advance notice is given to prevent a false gas

leak scare, the lack of attention to gas odors could be potentially hazardous. OPS realizes that blow-downs involving odorized gas may create problems for the transmission operator, or nearby distribution operators. Yet, operators of transmission lines carrying odorized gas have been able to minimize any difficulties by scheduling blow-downs to avoid adverse weather conditions, by venting gas in remote areas where possible, and by adequate public warnings. Because the need for blow-downs is infrequent and they are of short duration, OPS believes that with proper planning no public annoyance or hazard should result.

INGAA also criticized the proposed odorization requirement as appearing to violate the Federal policies for protection of the environment evidenced by the air quality regulations of the Environmental Protection Agency in 40 CFR Part 52, the Federal Water Pollution Control Act, and the National Environmental Policy Act of 1969. INGAA did not substantiate its allegations. On the contrary, OPS believes that adoption of the proposed rules would not be violative, or lead to public violations, of the policies or substantive provisions of the cited environmental protection laws. This determination is based on the opinion that requiring odorization in certain transmission lines would not have a significant detrimental impact on air or water quality. The precise nature of air pollution due to gas odorants is uncertain. Furthermore, the opportunities for exposure of the atmosphere to gas odorants during blow-downs is infrequent and not sustained for long periods. Also, proper planning can minimize any adverse effects. As for water pollution, admittedly some pollution of hydrostatic test water by odorants may present a disposal problem. These occurrences should be minimal, however, due to the exceptions from required odorization provided by the final rule.

Commenters suggested that the final rule provide lead time for operators to comply with any new odorization requirements. OPS estimates that operators may need about 2 years to design, acquire materials, and build new odorization facilities required by the new rule. Therefore, under § 192.625(b), compliance is not required until January 1, 1977.

The proposed rule would have exempted gas en route to an underground storage field from the odorization requirements. Several commenters were concerned, however, that since the exemption did not apply to the transmission lines carrying the gas, odorization would still be required intermittently in the lines for gas going to distribution facilities. A transmission line used in transporting gas to underground storage is not necessarily used solely for that purpose. The same line may also be used, for example, to deliver gas to a distribution facility. If so, the frequent starting and stopping of odorizers on the basis of whether gas is being delivered to storage would create odorization problems for distribution companies. Also, intermittent odorization would hamper the necessary stabilization of an odorant level in the transmission line. For these reasons, the wording in the final rule in § 192.625 (b) is changed to exempt the pipeline, itself, rather than the gas, from the odorization requirement.

Another problem raised by commenters is that most lateral transmission lines serving distribution centers from interstate transmission lines are predominantly in Class 1 or Class 2 locations. In these cases, the terminal portion of a lateral line generally lies in a Class 3 or Class 4 location and under the proposed rule would have been subject to the odorization requirement. Because in most cases the segment of line to be odorized is short, commenters argued that the costs of installing and operating odorizers would far exceed the safety benefit. OPS agrees with these comments. The final rule, therefore, in § 192.625(b)(3) exempts odorization of gas in a transmission line used in transporting gas to a distribution center if 50 percent or more of the line is in a Class 1 or Class 2 location.

Although outside the scope of Notice 73-2, one commenter suggested that odorization be required in Class 1 and Class 2 locations as well as Classes 3 and 4. Classes 1 and 2 are areas of lower population density than Classes 3 and 4. OPS believes that any requirement for odorizing gas in transmission lines is most economically practicable in Classes 3 and 4 because of the greater risk in those areas. Perhaps more important, the requirement for odorization of gas in transmission lines is less reasonable where fewer people are available to smell an odor, as in Classes 1 and 2.

Section 192.625(h)(3) in the notice proposed to exempt odorization of gas in a Class 3 location where the odorant would be detrimental to an industrial process. One commenter noted that the same rationale for the proposed exemption also applies in Class 4 locations. OPS concurs: Odorization of gas destined for industrial processes in Class 4 locations may be just as detrimental as in Class 3 locations. In addition to adopting this comment, the proposed exemption is restated in § 192.625(b)(2)(iv) in more precise and restrictive terms. To exempt an entire transmission line from odorization based on the indefinite test of whether the odorant is "detrimental" to an industrial process, would result in a rule difficult to apply and enforce. As restated, the exemption applies where the presence of an odorant in an industrial process makes the end product unfit for the purpose for which it is intended, reduces the activity of a catalyst, or reduces the percentage completion of a chemical reaction. OPS believes that these criteria provide the same exemption as that intended by use of the term "detrimental" in the notice.

In the final rule, all the exceptions provided by § 192.625(b)(2) are limited to situations existing when this amendment is issued. As written, the exceptions are grandfather clauses which alleviate some of the technical problems and economic hardships associated with odorizing gas in transmission lines under existing circumstances. Also, by so limiting the exceptions, operators cannot provide new service to a storage field or certain plants and thereby avoid odorizing a line. OPS believes that with adequate planning, economic hardships associated with the new requirement for odorizing gas in transmission lines should be less for circumstances arising in the future. OPS realizes that similar technical problems relevant to odorizing gas in current situations may occur, for example, if a new industrial plant is added to an existing or new transmission line. Nevertheless, OPS prefers to deal with these problems on an individual basis in the waiver process under section 3(e) of the Natural Gas Pipeline Safety Act of 1968 when petitioned to do so. Waivers may be granted upon a petition showing that required odorization is inappropriate or of unreasonable application and if the waiver would be consistent with pipeline safety.

In addition to odorization, the notice proposed increased surveillance requirements for transmission lines carrying unodorized gas and for transmission lines in Class 3 and Class 4 locations. Regarding the proposed § 192.705, one commenter stated that improved safety could be achieved by allowing each operator to establish its own frequency of patrol rather than specifying maximum intervals between patrols. OPS believes a patrolling requirement must be flexible enough to allow for individual situations but also contain mandatory inspection periods to provide a minimum level of safety regardless of an operator's system. Section 192.705(b) considers individual situations by requiring more frequent inspections based on factors relevant to an operator's system.

Another commenter objected to the proposed time interval requirements for surveillance as being burdensome and costly. OPS does not agree. The notice proposed a refinement of the existing rule which is based on operating conditions. For example, the existing § 192.705 requires operators to examine transmission lines at highway and railroad crossings more frequently than elsewhere. The final rule merely establishes minimum periods for inspection at those locations. Also, OPS believes that any additional costs some operators may encounter are justified by the additional protection that will be afforded the public in the Class 3 and Class 4 areas.

A number of commenters and the TPSSC objected to the proposed requirement in § 192.706 that operators conduct gas detector surveys under their leakage survey plans. Generally, these objections were that requiring the use of gas detectors would unnecessarily restrict an operator's flexibility in conducting a leakage survey and that other methods of conducting leakage surveys are satisfactory.

OPS does not agree with these objections. Gas detector surveys were proposed under § 192.706 to provide a compensatory measure of protection for the

public where transmission lines carry unodorized gas in Class 3 and Class 4 locations and to provide added protection in Class 4 locations even when gas is odorized. In the opinion of OPS, to conduct leakage surveys without using detector equipment would not yield a level of safety comparable to that provided by odorization of gas. In light of the comments, however, the final rule does not require the use of detector equipment in Class 4 locations where transmission lines carry odorized gas. Also the term "gas detector" is changed to "leak detector" in the final rule to better identify and broaden the range of equipment that may be used.

OPS considers the use of leak detection devices to provide the most satisfactory means of protection in the absence of odorization for the following reasons. Without instruments, gas leaks are detected by sight, sound, smell, or by dying vegetation. However, most leaks are not visible or audible, and without an odorant natural gas cannot be detected by smell. It follows that observing vegetation is the only reasonable alternative to using gas detectors in conducting leakage surveys. At the same time, observing vegetation is not always effective. The effect of a gas leak on vegetation is only noticeable during the growing season; and a leak must exist for a long time to have a noticeable effect on vegetation. Further, many areas subject to the exceptions under § 192.625(b) from odorizing gas in transmission lines have a large amount of pavement and a sparse amount of vegetation. For these reasons, a requirement for using detector equipment is adopted.

In light of other comments, OPS wants to point out that neither § 192.705 nor § 192.706 specifies how patrols or leakage surveys are to be accomplished. The rules are written in performance language. Thus, for example, both aerial patrols and aerial leakage surveys would be acceptable where they are appropriate and effective.

Report of the Technical Pipeline Safety Standards Committee. Section 4(b) of the Natural Gas Pipeline Safety Act of 1968 requires that all proposed standards and amendments to such standards be submitted to the Committee and that the Committee be afforded a reasonable opportunity to prepare a report on the "technical feasibility, reasonableness, and practicability of each proposal." This amendment to Part 192 was submitted to the Committee as Item 5 in a list of five proposed amendments.

On January 17, 1975, the Secretary of the Committee, Louis W. Mendonsa, filed the following favorable report:

The following letter and attachments represent an official report by the Technical Pipeline Safety Standards Committee concerning the Committee's action related to five proposed amendments to 49 CFR Part 192, Minimum Federal Safety Standards for Transportation of Natural and Other Gases by Pipeline.

The Committee reviewed the proposals of the Office of Pipeline Safety at a meeting, held in Washington, D.C., on October 30 and 31, 1974, and through an informal balloting procedure recommended certain modifications, some of which were acceptable to the Office of Pipeline Safety. A formal ballot, reflecting the suggested changes, was prepared and distributed to the Committee members, by the undersigned on December 5, 1974.

Formal ballots have been submitted by all fourteen members of the Committee. The majority of the Committee approved all five items on the ballot as being technically feasible, reasonable, and practicable. Negative votes were cast by one member against Items 1, 2, and 3, by two members against Item 4 and by four members against Item 5. Another member, who had been unable to attend the meeting and participate in the discussions, abstained from voting.

Attachment A sets forth the minority opinions submitted in support of the negative votes on Items 4 and 5.

As a member of the Committee, Mr. Mendonsa also expressed the following minority view, disagreeing with the majority of the Committee on Item 5:

It is my view that the proposed change to § 192.625 is neither reasonable nor in the public interest. The proposed change will reduce rather than enhance public safety.

A second minority view was stated by Michael W. Anuskiewicz, as follows:

One of the major arguments of transmission companies opposing odorization of gas in transmission lines is the tremendous cost of the facilities required. The argument of such companies is self serving in that it does not consider the ill effects of real societal expenses.

If one supposes that transmission companies were to stop odorization, then (sic) each distribution company now receiving odorized gas would have to add odorization facilities at their own expense. This expense will of course be passed on to the consumer. It is obvious that cost effectiveness must suffer from a proliferation of such smaller units when considerably fewer more effective larger units can do the job better. This argument also does not consider the safety benefits obtained from maximizing the odorization of transmission pipeline gas. It would appear in fact that this argument is intended to minimize the odorization of such gas.

In respect to the proposed § 192.625(b)(2)(ii) a large high pressure transmission line could traverse a major metropolitan area, New York City or its suburbs, for example, continue through sparsely settled areas in New England for perhaps 150 miles, and if over 75 miles of this extension were in Class 1 or Class 2 locations no odorization would be required in the metropolitan area. If, on the other hand the line terminates in a Class 4 area, such gas must be odorized at that point. The logic of the rule as now proposed escapes us.

Nor is odorization required under § 192.625(b)(3)(iv) where gas is supplied to an industrial plant using the gas in a process to which an odorant is detrimental. Such a plant in the Boston, Massachusetts, or the Portland, Maine, area could effectively eliminate the need of odorization in transmission lines from Texas and Louisiana and throughout the entire Northeast, regardless of class locations traversed.

At least six states (shall we say the more progressive ones?) have required odorization of transmission line gas for many years. Such gas has been served to many types of industry with no ill effects. Moreover, if the required gas were served off a distribution line, the industrial plant would have no choice but to receive odorized gas, in some cases at a higher level than the minimum specified in 49 CFR Part 192.

For the foregoing reasons, we have voted to disapprove Item 5 as submitted.

A third minority view, stated by W. L. Walls, is set forth below:

My objection is to proposed § 192.625(b)(3)(iv) which would exclude transmission line odorization if one industrial plant supplied from it had one process in which the presence of the odorant was objectionable. I suspect this alone would result in no odorization for most transmission lines.

Such cases, however, are relatively rare and I feel the plant should bear the cost of odorant removal or concentration reduction rather than lose the safety benefits of general odorization.

The fourth Committee member to express a minority view, George W. White, concurred with the majority as follows:

After personal review and analysis of the OPS survey of state commissions, transmission operators and distribution operators, I am not convinced that odorization of gas in a transmission line will significantly contribute to the detection of leaks. However, based upon the necessity of establishing a permanent rule with uniform requirements throughout the United States and to discontinue the extension of the temporary rule each year, I feel that the proposed rule is reasonable and a practical answer to the problem, and as such I concur with the proposal.

Effective date. Section 3(e) of the Natural Gas Pipeline Safety Act of 1968 requires that standards and amendments thereto prescribed under the Act be effective 30 days after the date of issuance unless the Secretary determines good cause exists for an earlier or later effective date as a result of the period reasonably necessary for compliance. Accordingly, the amended § 192.625, 192.705, and the new § 192.706 will become effective 30 days after issuance. This effective date is not relevant, however, under § 192.625 to the odorization of gas in transmission lines in Class 3 or Class 4 locations. As discussed hereinabove, in view of the period necessary to bring transmission lines in those locations into compliance, the revised requirements do not become applicable until January 1, 1977. Meanwhile, leakage surveys using leak detector equipment must be conducted under § 192.706 as an alternative safety measure except where gas is odorized under § 192.625(g).

In consideration of the foregoing, Part 192 of Title 49 of the Code of Federal Regulations is amended as follows, effective June 4, 1975:

1. In § 192.625, paragraphs (a) and (b) are revised to read as follows:

§ 192.625 Odorization of gas.

(a) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

(b) After December 31, 1976, a combustible gas in a transmission line in a Class 3 or Class 4 location must comply with the requirements of paragraph (a) of this section unless—

(1) At least 50 percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;

(2) The line transports gas to any of the following facilities which received gas without an odorant from that line before May 5, 1975:

(i) An underground storage field;

(ii) A gas processing plant;

(iii) A gas dehydration plant; or

(iv) An industrial plant using gas in a process where the presence of an odorant—

(A) Makes the end product unfit for the purpose for which it is intended;

(B) Reduces the activity of a catalyst; or

(C) Reduces the percentage completion of a chemical reaction; or

(3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location.

* * * * *

2. In § 192.705, paragraph (a) is amended, paragraph (b) is revised, and paragraph (c) is deleted. As amended, § 192.705 reads as follows:

§ 192.705 Transmission lines: Patrolling.

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

(b) The frequency of patrols is determined by the size of the line, the operating pressures, the class location, terrain, weather, and other relevant factors, but intervals between patrols may not be longer than prescribed in the following table:

Class location of line	Maximum interval between patrols	
	At highway and railroad crossings	At all other places
1, 2	6 months	1 year.
3	3 months	6 months.
4	do	3 months.

3. Section 192.706 is added to read as follows:

§ 192.706 Transmission lines: Leakage surveys.

(a) Each operator of a transmission line shall provide for periodic leakage surveys of the line in its operating and maintenance plan.

(b) Leakage surveys of a transmission line must be conducted at intervals not exceeding 1 year. However, in the case of a transmission line which transports gas in conformity with § 192.625 without an odor or odorant, leakage surveys using leak detector equipment must be conducted—

(1) In Class 3 locations, at intervals not exceeding 6 months; and

(2) In Class 4 locations, at intervals not exceeding 3 months.

4. In the table of contents, § 192.706 is added to read as follows:

Sec.
192.706 Transmission lines: leakage surveys.

This amendment is issued under the authority of section 3 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1672) § 1.58(d) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.58(d)), and the redelegation of authority to the Director, Office of Pipeline Safety, set forth in Appendix A to Part 1 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 1).

Issued in Washington, D.C., on May 5, 1975.

JOSEPH C. CALDWELL,
Director,
Office of Pipeline Safety.

[FR Doc.75-12238 Filed 5-8-75;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 28—PUBLIC ACCESS, USE AND RECREATION

Nantucket National Wildlife Refuge, Mass.

The following special regulation is issued and is effective during the period May 15, 1975 through December 31, 1975.

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

MASSACHUSETTS

NANTUCKET NATIONAL WILDLIFE REFUGE

Entry by foot, motor vehicle, or boat is permitted during daylight hours for the purposes of nature study, photography, hiking, shell collecting, shell fishing, and surf fishing.

Registered over-the-sand vehicles are permitted on designated sand trails and on the open ocean beach. Vehicle permits will be required and may be obtained from The Trustees of Reservations, Coskata-Coutue Wildlife Refuge Manager. All over-the-sand vehicle permit requirements and regulations promulgated by The Trustees of Reservations for the Coskata-Coatue Wildlife Refuge will be applicable.

The refuge area, comprising 40 acres, is delineated on maps available from the Refuge Manager, Ninigret National Wildlife Refuge, PO. Box 307, Charlestown, Rhode Island 02813, and from the Regional Director, U.S. Fish and Wildlife Service, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1975.

RICHARD E. GRIFFITH,
Regional Director,
U.S. Fish and Wildlife Service.

MAY 2, 1975.

[FR Doc.75-12223 Filed 5-8-75;8:45 am]

proposed rules

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

GRAND CANYON NATIONAL PARK, ARIZONA

Revocation of Proposed Rulemaking

The proposed rulemaking contained in the FEDERAL REGISTER of Friday, March 14, 1975, Volume 40, Number 51, Page 11876 entitled "Grand Canyon National Park, Arizona, Designation of Snowmobile Routes" is hereby revoked. This revocation is necessary because there has not yet been an environmental assessment prepared for public review. Public comment on the desirability of designated snowmobile routes will be obtained at public meetings on the North Rim Development Concept Plan scheduled for mid-summer 1975.

MERLE E. STITT,
Superintendent,
Grand Canyon National Park.

[FR Doc.75-12272 Filed 5-8-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[7 CFR Part 1823]

[FmHA Instruction 442.1]

COMMUNITY FACILITY LOANS

Determination of Security and Facility Design in Certain Instances

Notice is hereby given that the Farmers Home Administration has under consideration the proposed amendment of § 1823.6 of Subpart A of Part 1823, Title 7, Code of Federal Regulations (38 FR 29025; 39 FR 17971; 39 FR 41829) by the addition of paragraphs (a)(3) and (b)(1)(iii) to allow that other than full time residents may be considered in determing security and facility design in certain instances. Former paragraphs (a) (3), (4), (5) and (6) of this section are redesignated as paragraphs (4), (5), (6), and (7) without change; former paragraph (b)(1) (iii) and (iv) are redesignated as paragraph (b)(1) (iv) and (v) without change.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendment to the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6315, South Building, Washington, D.C. 20250, on or before June 9, 1975. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Chief, Directives Management Branch during regular business hours. (8:15 a.m.-4:45 p.m.)

As proposed, § 1823.6(a)(3) and (b)(1)(iii) read as follows:

§ 1823.6 Security.

* * * * *

(a) * * *

(3) In those cases involving water and waste disposal projects where there is a substantial number of other than full time residents and facility costs result in a higher than reasonable rate for such full time residents, the loan will be secured by the assignment or pledge of general obligation bonds, taxes or assessments from public bodies or other organizations having the authority to issue bonds, taxes or assessments.

* * * * *

(b) * * *

(1) * * *

(iii) General obligation bonds, taxes or assessments. In those cases involving water and waste disposal projects where there is a substantial number of other than full time residents and facility costs result in a higher than reasonable rate for such full time residents, the loan will be secured by an assignment or pledge of general obligation bonds, taxes or assessments from public bodies or other organizations having the authority to issue bonds, taxes or assessments.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70).

Dated: May 5, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-12233 Filed 5-8-75;8:45 am]

Food and Nutrition Service

[7 CFR Part 271]

[Amdt. No. 59]

FOOD STAMP PROGRAM

Proposed Rulemaking

Pursuant to the authority contained in the Food Stamp Act of 1964, as amended (78 Stat. 703, as amended (7 U.S.C. 2011-2026)) notice is hereby given that the Food and Nutrition Service, Department of Agriculture, proposes to amend the regulations governing the Food Stamp Program to extend the implementation date of Public Assistance Withholding (PAW) by State agencies from July 1, 1975 to January 1, 1976.

The consideration behind this change is that several bills have been introduced in the Congress to make PAW optional. Many States still have much work to accomplish in implementing PAW which will require substantial expenditures. The Department feels that the States should not be forced to proceed with implementation until Congress has the time to act on the proposed legislation.

Interested persons may submit written comments, suggestions, or objections regarding the proposed amendments to P. Royal Shipp, Director, Food Stamp Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, not later than May 27, 1975. All comments, suggestions, or objections received by this date will be considered before the final regulations are issued.

All written comments, suggestions, or objections will be open to public inspection pursuant to 7 CFR 1.27(b) at the Office of the Director, Food Stamp Division, during regular business hours (8:30 a.m. to 5 p.m.) at 500 12th Street, SW., Washington, D.C., Room 650.

The proposed amendment is as follows:

Section 271.6(d)(2) of Chapter II, Title 7 of the Code of Federal Regulations is amended to read:

§ 271.6 Methods of distributing, issuing, and accounting for coupons and receipts.

* * * * *

(d) * * *

(2) The State agency shall permit no later than January 1, 1976, any household participating in the Program, if it so elects, to have the cost of its full monthly coupon allotment deducted from any grant or payment such household may be entitled to receive under Title IV of the Social Security Act, and have its full monthly coupon allotment distributed to it.

* * * * *

(78 Stat. 703, as amended (7 U.S.C. 2011-2026))

(Catalog of Federal Domestic Assistance Programs No. 10.551, National Archives Reference Service)

RICHARD L. FELTNER,
Assistant Secretary.

MAY 6, 1975.

[FR Doc.75-12307 Filed 5-8-75;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 5]

PAYROLL REPORTING REQUIREMENTS FOR TRUCK OWNER-OPERATORS

Extension of Time for Comments on Proposed Revision

This Department has proposed to revise its policy with regard to the payroll

requirements for truck owner-operators by the addition in Part 5 of a new § 5.16. This proposal was published in the FEDERAL REGISTER on Friday, February 21, 1975, 40 FR 7685. In that document all interested parties were invited to submit written comments on or before April 7, 1975, for consideration by the Department of Labor.

Replies received by the Department include requests for additional time in which to analyze the proposal and make comments.

Upon consideration of the requests for additional time to make comments received, notice is hereby given that the time for submission of comments is extended to and including May 30, 1975.

Signed at Washington, D.C., this 6th day of May 1975.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.75-12308 Filed 5-8-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 100d]

CERTIFICATION WITH RESPECT TO OPEN MEETINGS BY LOCAL EDUCATIONAL AGENCIES IN CERTAIN PROGRAMS

Proposed Rulemaking

Pursuant to section 812 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 887e), notice is hereby given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Title 45 of the Code of Federal Regulations by adding a new Part 100d to read as set forth below. This part will contain regulations governing the requirements that a local educational agency (LEA) submitting an application directly to the Commissioner under applicable programs of the Elementary and Secondary Education Act of 1965, certify to the Commissioner that the public has been afforded the opportunity to testify or otherwise comment on the application.

Section 812 provides: "No application for assistance under this Act may be considered unless the local educational agency making such application certifies to the Commissioner that members of the public have been afforded the opportunity upon reasonable notice to testify or otherwise comment regarding the subject matter of the application." This language is susceptible to the possible interpretation that a certification must be furnished to the Commissioner by every LEA applicant whether applying directly to the Commissioner under a so-called discretionary project type program in which grants are awarded by the Commissioner (e.g., the Bilingual Education Act) or a State administered program where applications are filed with the State educational agency. However, since the section of the statute deals with submission of certifications "to the Commissioner," it is believed that the requirement was intended to apply only to those programs where the application for assistance is also submitted to the Commissioner. In reviewing the application, the Commissioner could then determine whether the proper certification had been filed.

To extend the requirement to all State administered programs would read into the statute an intent to preclude consideration of an application by a State educational agency before the local educational agency had filed a separate certification with the Commissioner and the State agency had been so informed. That interpretation would greatly increase the administrative paperwork and create undue delays in the process of reviewing applications. Had State administered programs been within the ambit of the requirement, it is assumed that provision would have been included for the submission of the certification to the administering State agencies. The statute is thus interpreted as applying only to the programs enumerated in § 100d.1(b) of the draft regulations. In reaching this result, consideration has also been given to the existence of provisions in current law for public participation in the application development process in State administered programs.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulations to Dr. Milbrey Jones, U.S. Office of Education, Room 3125B, Regional Office Building No. 3, 7th and D Sts. SW., Washington, D.C. 20202.

Comments received in response to this notice will be available for public inspection at the above office on week days from 8:30 a.m. to 4 p.m. All relevant materials received on or before June 9, 1975, will be considered.

Dated: April 18, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: May 5, 1975.

STEPHEN KURZMAN,
Acting Secretary of Health, Education, and Welfare.

PART 100d—CERTIFICATION WITH RESPECT TO OPEN MEETINGS BY LOCAL EDUCATIONAL AGENCIES IN CERTAIN PROGRAMS

Sec.

100d.1 Purpose and scope.
100d.2 Requirement for open meetings by local educational agencies.
100d.3 Certification of open meetings.

AUTHORITY: Sec. 812, Elementary and Secondary Education Act of 1965, as added by sec. 110 of Pub. L. 93-380, 88 Stat. 513 (20 U.S.C. 887e).

§ 100d.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement the provisions of section 812 of the Elementary and Secondary Education Act of 1965, as added by section 110 of Pub. L. 93-380. Section 812 provides that before the application of a local educational agency under a program covered by this part may be considered, that agency must certify to the Commissioner that the public has been given the opportunity to testify or otherwise comment regarding the subject matter of the application.

(b) *Scope.* The provisions contained in this part are applicable to applications for Federal assistance from local educational agencies submitted to the Commissioner under the following authorities: Title III, section 306 (direct grants for supplementary services and centers (this section is revoked as of July 1, 1975)); Title V, Parts B and C (strengthening local educational agencies, comprehensive educational planning and evaluation); Title VII (bilingual education); Title VIII, section 807 (dropout prevention), 808 (school nutrition and health services), 809 (improvement of educational opportunities for Indian children), 811 (consumers education); and Title IX (ethnic heritage studies) of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 887e)

§ 100d.2 Requirement for open meetings by local educational agencies.

(a) *Open meetings.* Prior to the submission of an application under an applicable program listed in § 100d.1(b), a local educational agency shall hold at least one meeting, open to the public, at which the program or project for which assistance is being sought and the activities proposed to be conducted in the application are explained, and the persons in attendance are afforded an opportunity to testify or otherwise comment on the contents of the application.

(b) *Date and notice of the meetings.* A meeting held pursuant to paragraph (a) of this section shall be held no less than seven days prior to the submission of an application under any applicable program. Such local educational agency shall advertise a notice of the meeting in a newspaper of general circulation serving the area affected by the program or project for which assistance is being sought, or otherwise provide adequate public notice, not less than seven days prior to the date of such meeting.

(20 U.S.C. 887e)

§ 100d.3 Certification of open meetings.

An application filed by a local educational agency with the Commissioner under any applicable program shall contain a certification, in such form as the Commissioner may prescribe, that an open meeting was held as required by section 812 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 887e) and the regulation under this part. Such certification shall be accompanied by a copy of the notice provided pursuant to § 100d.2(b).

(20 U.S.C. 887e)

[FR Doc.75-12297 Filed 5-8-75;8:45 am]

Office of Child Support Enforcement

[45 CFR Part 304]

FEDERAL FINANCIAL PARTICIPATION

Proposed Rulemaking

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator of the Social and Rehabilitation Service (as the Secretary's designee to implement and administer the new Title IV–D of the Social Security Act as amended by Part B of Pub. L. 93–647) with the approval of the Secretary of Health, Education, and Welfare. The regulations would be located in a new Chapter III of Title 45 of the Code of Federal Regulations. The proposed regulations would establish a new Part 304 which defines when Federal financial participation is available at the 75 percent rate for the Title IV–D program.

These provisions would:

1. Require States to meet the requirements of 45 CFR Part 74 as a condition for Federal financial participation. (§ 304.10)

2. Provide that Federal financial participation will be available for expenditures made pursuant to the IV–D plan in accordance with State laws and procedures. (§ 304.11)

3. Prescribe the conditions for Federal financial participation and describe the services which are matchable by the Federal Government at the 75 percent rate. (§ 304.20)

4. Prescribe the expenditures of court and law enforcement officials made as a result of cooperative agreements entered into pursuant to § 302.34 for which Federal financial participation is available. (§ 304.21)

5. Provide Federal financial participation for purchased child support enforcement services in accordance with rates of payment which are determined by the IV–D agency to be reasonable and necessary to assure the quality of services purchased and for costs reasonably assignable to such services and require the IV–D agency to maintain records supporting these determinations. (§ 304.22)

6. Specify those expenditures for which Federal financial participation is not available. (§ 304.23)

7. Place conditions on Federal financial participation in the costs of nonexpendable property. (§ 304.24)

8. Establish a deadline for submission of claims in which the Federal Government will participate. (§ 304.25)

9. Prescribe the rate to be used to determine the Federal share of child support collections retained by the State as reimbursement for assistance payments pursuant to section 457 of the Act. (§ 304.26)

10. Prescribe the State funds which may be used by the State in meeting its share of the expenditures of the IV–D program. (§ 304.30)

Good cause exists for shortening the period for public comment in view of the overriding legal necessity for having final regulations implementing Part B of Pub. L. 93–647 in effect as of July 1, 1975.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions or objections thereto which are received in writing by the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, PO. Box 2366, Washington, D.C. 20013, by June 2, 1975.

Comments received will be available for public inspection in Room 5326 of the Department's Office at 330 C Street, SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202–245–0950).

Dated: May 1, 1975.

JAMES S. DWIGHT, Jr.,
Administrator.

Approved: May 6, 1975.

STEPHEN KURZMAN,
Acting Secretary.

Title 45, Chapter III of the Code of Federal Regulations is amended by adding a new Part 304 as set forth below:

PART 304—FEDERAL FINANCIAL PARTICIPATION

Sec.

304.10 General administrative requirements.
304.11 Effect of State rules.
304.20 Availability and rate of Federal financial participation.
304.21 Federal financial participation in costs of cooperative agreements with courts and law enforcement officials.
304.22 Federal financial participation in purchased child support enforcement services.
304.23 Expenditures for which Federal financial participation is not available.
304.24 Federal financial participation in non-expendable personal property.
304.25 Deadline for submission of claims for Federal financial participation.
304.26 Treatment of collections.
304.30 Public sources of State's share.

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

§ 304.10 General administrative requirements.

As a condition for Federal financial participation, the provisions of Part 74 of this title (with the exception of Subpart G, Matching and Cost Sharing and Subpart I, Financial Reporting Requirements) establishing uniform administrative requirements and cost principles shall apply to all grants made to States under this part.

§ 304.11 Effect of State rules.

Subject to the provisions and limitations of Title IV–D of the Act and Chapter III, Federal financial participation will be available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local child support enforcement agencies.

§ 304.20 Availability and rate of Federal financial participation.

(a) Federal financial participation at the 75 percent rate is available for:

(1) Necessary expenditures under the State title IV–D plan for the child support enforcement services and activities specified in this section and § 304.21 provided to individuals from whom an assignment of support rights has been obtained pursuant to § 232.11 of this title;

(2) Collection services pursuant to § 302.51(e)(1) of this chapter; and

(3) Parent locator services for individuals eligible pursuant to § 302.33 of this title;

(4) During any period prior to July 1, 1976, paternity and child support services under the State plan for individuals eligible pursuant to § 302.33 of this chapter.

(b) Services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV–D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the child support enforcement program including the following:

(1) The administration of the State Child Support Enforcement Program, including, but not limited to the following:

(i) The establishment and administration of the State plan;

(ii) Monitoring the progress of program development and operations and evaluating the quality, efficiency, effectiveness and scope of child support enforcement services available in each political subdivision;

(iii) The establishment of all necessary agreements with other State and local agencies or private providers for the provision of services in support of child support enforcement in accordance with Subpart P, Procurement Standards, 45 CFR Part 74. These agreements may include:

(A) Necessary administrative agreements for support services;

(B) Utilization of State and local information resources;

(C) Cooperation with courts and law enforcement officials pursuant to § 302.34 of this chapter;

(iv) Securing compliance with the requirements of the State plan in operations under any agreements;

(v) The development and maintenance of systems for fiscal and program records and reports required to be made to the Office based on these records;

(vi) The development of a cost allocation system pursuant to § 302.16 of this chapter;

(vii) The development of and operation under standards for personnel administration pursuant to § 302.17 of this chapter;

(viii) The financial control of the State plan including the administration of Federal grants pursuant to § 301.15 of this chapter;

(ix) The establishment of agreements with agencies administering the State's

Title IV–A plan in order to establish criteria for:

(A) Referral of cases to the IV–D agency;

(B) Reporting on a timely basis information necessary to the determination and redetermination of eligibility and amount of assistance payments;

(C) Determining if individuals receiving assistance under the IV–A plan are cooperating adequately as required in § 232.12 of this title;

(D) The procedures to be used to transfer collections from the IV–D agency to the IV–A agency after the distribution described in § 302.51 of this chapter.

(2) The establishment of paternity including:

(i) Reasonable attempts to determine the identity of the child's father such as:

(A) Investigation

(B) The development of evidence including the use of the polygraph and blood tests;

(C) Pre-trial discovery;

(ii) Court or other actions to establish paternity pursuant to procedures established under State statutes or regulations having the effect of law;

(iii) Identifying competent laboratories to perform blood tests and making a list of those laboratories available;

(iv) Referral of cases to the IV–D agency of another State to establish paternity when appropriate;

(v) Cooperation with other States in determining paternity;

(3) The establishment and enforcement of support obligations including:

(i) Investigation, the development of evidence and when appropriate, bringing court actions;

(ii) Determination of the amount of the support obligation including developing the information needed for a financial assessment;

(iii) Referral of cases to the IV–D agency of another State to establish a support obligation when appropriate;

(iv) Enforcement of the support obligation including those activities associated with collections and the enforcement of court orders, such as contempt citations, issuance of warrants, investigation, wage attachment and processing, and the obtaining and enforcing of court-ordered support through civil or criminal proceedings either in the State that granted the order or in another State;

(v) Investigation and prosecution of fraud related to child support.

(4) The collection and distribution of support payments including:

(i) An effective system for making collections of established support obligations and identifying delinquent cases and attempting to collect support from these cases;

(ii) Collection of child support pursuant to § 302.51(e)(1) of this chapter;

(iii) Referral of cases to the IV–D agency of another State for collection when appropriate;

(iv) Making collections for another State;

(v) The distribution of funds as required by this chapter;

(vi) Making the IV–A agency aware of the amounts collected and distributed to the family for the purposes of determining eligibility for, and amount of, assistance under the State title IV–A plan;

(5) The establishment and operation of the State parent locator service including:

(i) Utilization of appropriate State and local locate sources to locate absent parents;

(ii) Utilization of the Federal Parent Locator Service;

(iii) Collection of the fee pursuant to §§ 302.35(e) and 302.70(f) of this chapter;

(iv) Referral of requests for location of an absent parent to the IV–D agency of another State;

(v) Cooperation with another State in locating an absent parent;

(6) Activities related to requests for certification of collection of child support delinquencies by the Secretary of the Treasury pursuant to § 302.71 of this chapter.

(7) Activities related to requests for utilization of the United States district courts pursuant to § 302.72 of this chapter.

(8) Establishing and maintaining case records as required by § 302.2 of this chapter.

§ 304.21 Federal financial participation in the costs of cooperative agreements with courts and law enforcement officials.

(a) Federal financial participation at the 75 percent rate is available in the costs of cooperative agreements with appropriate courts and law enforcement officials pursuant to § 302.34 of this chapter. "Law-enforcement officials" means district attorneys, attorneys general, and similar public attorneys and prosecutors and their staff. When performed pursuant to written agreement, cost of the following activities are subject to reimbursement:

(1) Subject to the conditions of § 304.20(a) of this chapter, the activities, including administration of such activities, specified in § 304.20(b)(2)–(8) of this chapter;

(2) Reasonable and essential short term training of law enforcement staff assigned on a full or part time basis to child support enforcement functions pursuant to the cooperative agreement.

(b) Federal financial participation is not available for the ordinary administrative costs of the judiciary system. Under this provision:

(1) Service of process and court filing fees are reimbursable only if the law enforcement agency would normally be required to pay the cost of such fees;

(2) Compensation of individuals (other than judges) employed by a court is reimbursable at the 75 percent rate if such individual performs any of the activities described in paragraph (b)(2)–(8) of § 304.20 of this chapter;

(3) No other court or judicial costs are subject to Federal financial participation.

§ 304.22 Federal financial participation in purchased child support enforcement services.

Federal financial participation is available at the 75 percent rate for the purchase of child support enforcement services as provided for in the State plan to the extent that payment for purchased services is in accordance with rates of payment established by the State which do not exceed the amounts reasonable and necessary to assure quality of service and in the case of services purchased from other public agencies, the cost reasonably assignable to such services. The determination that the amounts are reasonable and necessary and that the costs are reasonably assignable must be fully documented in the IV–D agency records. Services which may be purchased with Federal financial participation are those for which Federal financial participation is otherwise available under § 304.20 and which are included under the approved State plan.

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation is not available under this part for:

(a) Activities related to administering title I, IV–A, X, XIV, XVI, XIX or XX of the Act.

(b) Purchased child support enforcement services which are not secured in accordance with § 304.22.

(c) Construction and major renovations.

(d) Education and training programs and educational services except direct cost of short term training provided to IV–D agency staff or pursuant to § 304.21.

(e) Any expenditures which have been reimbursed by fees collected as required by this chapter.

(f) Costs of caseworkers who also perform the assistance payments function under title IV–A of the Act, except to the extent necessary to comply with § 235.70 of this title. In the case of a sparsely populated geographic area, upon justification by the IV–D agency documenting a lack of administrative feasibility in not utilizing staff of the IV–A agency, the office may approve alternate arrangements that include sufficient reporting and cost allocation methods that will assure compliance with Federal requirements and proper claims for Federal financial participation. Under this provision:

(1) "Caseworker" means any person who has decision-making authority over individual cases on a day-to-day basis and includes, but is not limited to, such designations as intake worker, eligibility technician, caseworker, and social worker.

(2) The "assistance payments function" means activities related to determination of eligibility for, and amount of financial assistance under the approved State plan under title I, IV–A, X, XIV or XVI, State Supplemental income payments under title XVI of the Act, and

State or local General Assistance programs. It includes the complete process of determining initial and continuing eligibility for financial and medical assistance and commodities distribution or food stamps.

§ 304.24 Federal financial participation in non-expendable personal property.

(a) *Conditions for Federal financial participation.* Federal financial participation is available at the 75 percent rate in amounts expended by the IV–D agency for a unit of non-expendable personal property which has a useful life of more than one year only to the extent of the depreciation expense (or annual use allowance of 6⅔ percent of acquisition cost) applicable to the period for which the property was used under a Federal program or activity; except that:

(1) Amounts expended for non-expendable personal property costing less than $5,000 may be subject to Federal financial participation for the full cost at the 75 percent rate at the time of acquisition at the option of the IV–D agency, except as provided in paragraphs (a) (2) and (3) of this section.

(2) Non-expendable personal property acquired under cost reimbursement contracts with the IV–D agency or for use under contracts with other agencies or providers shall be capitalized and depreciated (or subject to a use allowance) when it has an acquisition cost of $300 or more.

(3) Non-expendable personal property acquired and assigned for use to organizational elements of the IV–D agency, or of the department in which the IV–D agency is located, which are treated as indirect costs centers or pools in a Departmental Indirect Cost Rate or in a department wide cost allocation plan, shall be capitalized and depreciated (or subject to a use allowance) when it has an acquisition cost of $300 or more.

(b) *Definitions.* (1) Acquisition cost is the amount expended by a IV–D agency for the property (excluding interest) plus, in the case of property acquired with a trade-in, the book value (acquisition cost less amount depreciated through the date of trade in) of the property traded in. Property which was expensed when acquired which is traded in has a book value of zero.

(2) Depreciation expense for any time period is the portion of the acquisition cost of property which is assignable to that time period. The acquisition cost of the property shall be divided by the number of years of estimated useful service life of the property to arrive at the depreciation expense per year. This method shall be used unless a State obtains approval from the Regional Child Support Office to use another method, which must be demonstrated to be more consistent with the using up of the asset.

(3) The number of years of estimated useful service life of property shall be based on the Department of Treasury, Internal Revenue Service policies on depreciation for tax purposes. However, the Regional Child Support Office will approve a shorter period, if the IV–D agency can document that such period is justified.

(c) *Other administrative requirements*—(1) *Distribution of costs.* Amounts expended by the IV–D agency for non-expendable personal property may be directly charged to the Child Support Enforcement Program, if the property is being exclusively used for the program or activity at the time of the expenditures for the property. Amounts expended for such property not exclusively used for the Child Support Enforcement Program shall be allocated to such program and to other programs or activities by using one of the following methods:

(i) Using cost centers or pools and allocation bases which will distribute the costs consistent with program or activity usage of the property at the time of the expenditures. Any credits for property sold or retained for agency use in non-Federal programs (see § 74.134 of this title) shall be distributed to programs or activities consistent with the distribution methods used for such property expenditures at the time of acquisition; or

(ii) Using a common distribution factor for all property or for classifications of property (e.g., desks distributed based on number of staff employed in each program or activity). Credits for property sold or retained for use in non-Federal programs shall be distributed to programs or activities using the same distribution factors which are applied to expenditures for property acquired in the quarter in which such credits occurred.

(2) *Accountability and management of non-expendable property.* The provision in § 304.24(a)(1) does not affect the requirements on the IV–D agency to account for and manage non-expendable personal property as defined in § 74.132 of this title, in accordance with the provisions in § 74.134 through 136 of this title.

(3) *Disposition of Certain Property.* The IV–D agency shall not request disposition instructions for property with an acquisition cost of over $1,000 per unit as specified in § 74.134(c)(2) of this title, but rather shall sell the property and account for it as specified in § 74.134(c)(1) of this title.

§ 304.25 Deadline for submission of claims for Federal financial participation.

(a) *Treatment of expenditures.* Expenditures are considered to be made on the date on which the cash disbursements occur or the date to which allocated in accordance with Part 74 of this title. In the case of local administration, the date of disbursements by the local agency governs. In the case of purchase of services from another public agency, the date of disbursements by such other public agency governs. Different rules may be applied with respect to a State, either generally or for particular classes of expenditures only upon justification by the State to the Office of Child Support Enforcement and approval by the Office.

(b) *Due date for expenditure statements.* The due date for the submission of the quarterly statement of expenditures under § 301.15 of this chapter is 30 days after the end of the quarter.

(c) *Deadline for the submission of claims.* The deadline for the submission of claims for Federal financial participation in expenditures incurred in any Federal fiscal year is the due date of the quarterly statement of expenditures for the second quarter subsequent to the end of the fiscal year.

§ 304.26 Treatment of collections.

(a) In the determination of the amount of reimbursement to the Federal Government of amounts retained by the State to reimburse it for assistance payments under § 302.51(b)(2) and (4) of this chapter, if in the computation of the Federal share of assistance payments the State uses:

(1) The Federal medical assistance percentage under section 1118 of the Act, this percentage shall be used in the computation of the Federal reimbursement of retained child support payments.

(2) The computations in section 403 (a), the Federal reimbursement of amounts retained by the State to reimburse it for an assistance payment shall be to the extent of the Federal participation in the financing of the individual payment.

(b) If an incentive payment is made to a jurisdiction under § 302.52 of this chapter for the enforcement and collection of support obligations, such payment shall be made from the amounts computed in paragraph (a) or (b) of this section which would otherwise constitute the Federal share.

§ 304.30 Public sources of State's share.

(a) Public funds, other than those derived from private resources, used by the IV–D agency for its child support enforcement program may be considered as the State's share in claiming Federal reimbursement where such funds are:

(1) Appropriated directly to the IV–D agency; or

(2) Funds of another public agency which are transferred to the IV–D agency and are under its administrative control.

(b) Public funds used by the IV–D agency for its child support enforcement program may not be considered as the State's share in claiming Federal reimbursement where such funds are:

(1) Federal funds, unless authorized by Federal law to be used to match other Federal funds;

(2) Used to match other Federal funds.

[FR Doc.75-12320 Filed 5-8-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Ch. I]

[Docket No. 14581; Notice No. 75-17]

DISTANCE-TO-GO RUNWAY MARKERS

Advance Notice of Proposed Rulemaking

The Federal Aviation Administration is considering rulemaking to require that "distance-to-go" marker boards be installed every 1000 feet on all runways utilized by turbine-powered airplanes to provide a pilot with runway length information to assist him in making takeoffs and landings.

This advance notice of proposed rulemaking is being issued in accordance with the FAA's policy for early institution of public proceedings in actions related to rulemaking. An "advance" notice is issued to invite early public participation in the identification and selection of a course or alternate courses of action with respect to a particular rulemaking problem.

(Secs. 313, 601, and 612 of the Federal Aviation Act of 1958, 49 U.S.C. 1354, 1421, 1430; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All communications received on or before August 7, 1975, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

By letter of October 9, 1973, the Air Line Pilots Association (ALPA) petitioned the Federal Aviation Administrator to amend the Federal Aviation Regulations to require distance-to-go marker boards every 1000 feet on all runways utilized by turbine-powered airplanes. ALPA asserts that these marker boards would greatly assist a pilot in determining the safest course of action to follow in the event of an emergency situation and could thereby prevent an accident.

ALPA points out that the FAA does not presently require a minimum coefficient of friction, consideration of runway contaminants (e.g., rubber, soot, water, ice, snow), nor provide information on the progress of takeoff acceleration. ALPA states that variables such as gross weight of the aircraft, runway slope, temperature, airport altitude, wind conditions, dragging brakes, and undulating runway surfaces all affect takeoff distances. ALPA contends that distance-to-go marker boards every 1000 feet on the runway would provide the pilot with his location on the runway and thereby provide the best indication of compliance with programmed aircraft performance which has been established on the basis of the capability to stop safely on the runway using normal operating techniques.

The FAA has not yet determined that runway distance-to-go marker boards are necessary for safety, but the agency believes that it is important to review all relevant data that may be applicable to any adoption of such a requirement. To this end, the FAA solicits data, views, and arguments from all interested persons on the questions set forth below. Data supporting an answer should be submitted and sufficiently identified so that the FAA may make the most effective use of it.

1. Should runway distance markers be required on runways used by turbine-powered airplanes?

2. If runway distance markers were to be required, how should they be designed?

3. How would runway distance markers be used operationally under all conditions to effectively correlate actual airplane performance with programmed performance?

4. Would the use of runway distance markers increase crew workload or cause serious distractions from normal cockpit duties?

Issued in Washington, D.C., on May 1, 1975.

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

[FR Doc.75-12179 Filed 5-8-75;8:45 am]

[14 CFR Part 39]

[Docket No. 75-NE-18]

PRATT & WHITNEY MODEL TF33 ENGINES

Proposed Airworthiness Directives

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Pratt & Whitney Model TF33 aircraft engines containing certain thirteenth, fourteenth, fifteenth, and sixteenth stage compressor disks made from PWA 1022 material. Due to recent failures of other disks of the same material specification, the manufacturer has reevaluated the disk life of the PWA 1022 disk material used in these parts. As a result of this reevaluation, it has been determined that the web strength of the PWA 1022 disk material is not significantly greater than that of material used in earlier disks; and therefore, it is necessary to reduce the current cyclic life limits effective for these disks. Since this condition exists in all engines with disks of the same part number, the proposed airworthiness directive would reduce the disks cyclic life to designated lower limits in order to prevent possible engine failures. In view of the fact that the total cycles accumulated by engines in operation is significantly below the revised life limit, this AD is being published as a notice of proposed rulemaking.

Interested parties are invited to participate in the making of the proposed rule by submitting written data and views. Communications should identify the docket number and be submitted in duplicate to the Department of Transportation, Federal Aviation Administration, New England Region, Attention: Regional Counsel, Airworthiness Rules Docket, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received on or before June 9, 1975 will be considered before taking action upon the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Office of the Regional Counsel for examination by interested parties.

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

In consideration of the foregoing, it is proposed to amend § 39.13 of the Federal Aviation Regulations by adding the following new airworthiness directive:

PRATT & WHITNEY AIRCRAFT. Applies to all Pratt & Whitney Aircraft TF33-P-7 and TF33-P-7A turbofan engines containing thirteenth stage compressor disk, P/N 657913, fourteenth stage compressor disk, P/N 657914, fifteenth stage compressor disk, P/N 657915, and sixteenth stage compressor disk, P/N 657916.

To ensure adequate life limit margin, remove from service thirteenth, fourteenth, fifteenth, and sixteenth stage compressor disks prior to exceeding the revised life limit listed below.

Disk part No.	Previous life limit (cycles)	Revised life limit (cycles)
657913	15,000	8,500
657914	15,000	8,500
657915	15,000	8,500
657916	15,000	8,500

Issued in Burlington, Massachusetts, on

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.75-12180 Filed 5-8-75;8:45 am]

[14 CFR Part 39]

[Docket No. 75-WE-31-AD]

LITTON SYSTEMS, INC. LTN-72 INERTIAL NAVIGATION SYSTEMS

Proposed Airworthiness Directives

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Litton Systems, Inc. LTN-72 inertial navigation systems. Although installations of the LTN-72 inertial navigation system provide a course deviation warning upon loss of power, the system does not provide the failure warning indication required by FAR Part 37.115 for loss of power, which could result in the inability

of the flight crew to immediately recognize a compass system failure due to loss of system power. Since this condition is likely to exist in all unmodified LTN-72 inertial navigation systems which use the 72-0 program, the proposed airworthiness directive would require that all LTN-72 inertial navigation systems be modified in accordance with Litton Systems Inc., Service Bulletin No. 34-72-80 dated February 20, 1975.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of Regional Counsel, FAA Western Region: Attention: Airworthiness Rules Docket, PO. Box 92007, Worldway Postal Center, Los Angeles, California 90009. All communications received on or before June 16, 1975, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

LITTON SYSTEMS, INC., AERO PRODUCTS DIVISION. Applies to all LTN-72 inertial navigation systems installed on various airplane models, certificated in all categories, including, but not limited to, McDonnell Douglas DC-8 and DC-10 airplanes and Boeing 707 and 747 airplanes.

Compliance required as indicated prior to January 1, 1976 unless already accomplished.

To provide the required failure warning indication of power loss, accomplish Litton Service Bulletin No. 34-72-80, dated February 20, 1975, or later FAA-approved revision, or an equivalent installation approved by the Chief, Aircraft Engineering Division, FAA Western Region.

Issued in Los Angeles, Calif., on May 1, 1975.

LYNN L. HINK,
Acting Director,
FAA Western Region.

[FR Doc.75-12181 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-23]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Rhinelander, Wisconsin.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration official may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new instrument approach procedure has been developed to the Rhinelander Oneida County Airport and the instrument approach procedure to Drott Airport, Tomahawk, Wisconsin has been cancelled. These changes require an amendment of the Rhinelander, Wisconsin, control zone and transition area.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.171 (40 FR 354), the following control zone is amended to read:

RHINELANDER, WIS.

Within a 5-mile radius of Rhinelander-Oneida County Airport (Latitude 45°37'54" N., Longitude 89°27'35" W.); within 2½ miles each side of the Rhinelander VORTAC 229° radial extending from the 5-mile radius zone to 7 miles southwest of the VORTAC; and within 2½ miles each side of the Rhinelander VORTAC 322° radial extending from the 5-mile radius zone to 6 miles northwest of the VORTAC; and within 2 miles each side of the Rhinelander VORTAC 058° radial extending from the 5-mile radius zone to 7 miles northeast of the VORTAC.

In § 71.181 (40 FR 441), the following transition area is amended to read:

RHINELANDER, WIS.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Rhinelander-Oneida County Airport (Latitude 45°37'54" N., Longitude 89°-27'35" W.).

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

Issued in Des Plaines, Ill. on April 21, 1975.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.75-12188 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-24]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Sheridan, Indiana.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

A new instrument approach procedure has been developed for the Sheridan Airport, Sheridan, Indiana. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Sheridan, Indiana.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (40 FR 441), the following transition area is added:

SHERIDAN, IND.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Sheridan Airport (Latitude 40°10'38" N., Longitude 86°13'58" W.); within 2.5 miles either side of the 019° bearing from the airport, extending from the 5-mile radius to 6 miles north excluding the portion which overlies the Zionsville, Indiana transition area.

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

Issued in Des Plaines, Ill., on April 23, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.75-12187 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-25]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Carmi, Illinois.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new instrument approach procedure has been developed for the Carmi Municipal Airport, Carmi, Illinois. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Carmi, Illinois.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

CARMI, ILL.

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the Carmi Municipal Airport (Latitude 38°06'00" N., Longitude 88°09'00" W.); and within 3 miles either side of the 177° bearing from the airport extending from the 5.5 mile radius area to 8 miles from the airport.

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

Issued in Des Plaines, Ill., on April 21, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.75-12186 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-26]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Park Rapids, Minnesota.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new public instrument approach procedure has been developed for the Park Rapids Municipal Airport, Park Rapids, Minnesota. Accordingly, it is necessary to alter the Park Rapids transition area to adequately protect the aircraft executing the approach procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (40 FR 441), the following transition area is amended ot read:

PARK RAPIDS, MINN.

That airspace extending upward from 700 feet above the surface within a 6½ mile radius of Park Rapids Municipal Airport (Latitude 46°53'53" N., Longitude 95°04'08" W.); within 3 miles each side of the 132° bearing from the airport extending from the 6½ mile radius area to 8 miles southeast of the airport; within 3 miles each side of the 320° bearing from the airport extending from the 6½ mile radius area to 8 miles northwest of the airport; and that airspace extending upward from 1200 feet above the surface within 4½ miles southwest and 9½ miles northeast of the 132° bearing from the airport extending from the airport to 18½ miles southeast; within 4½ miles northeast and 9½ miles southwest of the 320° bearing from the airport extending from the airport to 18½ miles northwest.

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

Issued in Des Plaines, Ill., on April 21, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.75-12185 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-27]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Standish, Michigan.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

A new instrument approach procedure has been developed for the Standish City Airport, Standish, Michigan. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Standish, Michigan.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (40 FR 441), the following transition area is added:

STANDISH, MICH.

That airspace extending upward from 700 feet above the surface within a six-mile radius of the Standish City Airport (Latitude 43°58'48" N., Longitude 83°58'25" W.).

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

Issued in Des Plaines, Ill., on April 23, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.75-12184 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-28]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Paris, Illinois.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new instrument approach procedure has been developed for the Edgar County Airport, Paris, Illinois. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Paris, Illinois.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (40 FR 441), the following transition area is added:

PARIS, ILL.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Edgar County Airport (Latitude 39°-42'02" N., Longitude 87°39'57" W.); and within 3 miles either side of the 072° bearing from the airport extending from the 5-mile-radius area to 8 miles from the airport.

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

Issued in Des Plaines, Ill., on April 21, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.75-12183 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-29]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Lincoln, Illinois.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new standard instrument approach procedure has been developed for the Logan County Airport. Accordingly, it is necessary to alter the Lincoln, Illinois, transition area to adequately protect the aircraft executing the approach procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (40 FR 441), the following transition area is amended to read:

LINCOLN, ILL.

That airspace extending upward from 700 feet above the surface within a five-mile radius of the Logan County Airport (Latitude 40°09'38" N., Longitude 89°20'07" W.); within 2½ miles each side of the Capitol, Illinois VORTAC 040° radial extending from the five-mile radius area to 17 miles northeast of the VORTAC; within 3 miles each side of the 047° bearing from the airport extending from the 5-mile radius area to 8 miles northeast of the airport.

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

Issued in Des Plaines, Ill., on April 23, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc. 75-12182 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-30]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Zionsville, Indiana.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

A new standard instrument approach procedure has been developed for the Terry Airport, Zionsville, Indiana. Accordingly, it is necessary to alter the Zionsville transition area to adequately protect the aircraft executing the new approach procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (40 FR 441), the following transition area is amended to read:

ZIONSVILLE, IND.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Indianapolis Terry Airport (Latitude 40°02'08" N., Longitude 86°15'18" W.); within 2 miles either side of the 359° bearing extending from the airport to 6 miles north.

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

Issued in Des Plaines, Ill., on April 23, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.75-12190 Filed 5-8-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-32]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Shelbyville, Illinois.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 9, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A standard instrument approach procedure has been developed for the Shelby County Airport. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this approach procedure by designating a transition area at Shelbyville, Illinois.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (40 FR 441), the following transition area is added:

SHELBYVILLE, ILL.

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Shelby County Airport (Latitude 39°24'30" N., Longitude 88°50'45" W.); and within 3 miles either side of the 186° bearing from the Shelby County Airport extending from the 5.5-mile radius area to 8 miles south of the airport.

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

Issued in Des Plaines, Ill. on April 24, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.75-12189 Filed 5-8-75;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Parts 1500, 1509]

NON-FULL-SIZE BABY CRIBS

Banning of Hazardous Articles and Establishment of Safety Requirements

The purpose of this document is to propose regulations banning hazardous non-full-size baby cribs and establishing safety requirements for non-full-size baby cribs (16 CFR 1500.18(a)(14) and Part 1509).

Section 2(f)(1)(D) of the Federal Hazardous Substances Act (15 U.S.C. 1261) provides for the classification of any toy or other article intended for use by children as a hazardous substance upon a determination by regulation, in accordance with section 3(e)(1) of the act (15 U.S.C. 1262), that it presents a mechanical hazard. Section 2(q)(1)(A) of the act provides that such toy or article is also a banned hazardous substance. "Mechanical hazard" is defined by section 2(s) of the act, and banned toys and other banned children's articles are listed in 16 CFR 1500.18.

BACKGROUND

In the FEDERAL REGISTER of November 21, 1973 (38 FR 32129), the Commission promulgated banning and safety-requirement regulations for full-size baby cribs (16 CFR 1500.18(a)(13) and Part 1508). Under-size, over-size, specialty, and portable baby cribs were not covered by that promulgation because it was necessary to gather additional technical data pertaining only to such cribs to supplement the accumulated data applicable to all baby cribs.

The Commission's National Electronic Injury Surveillance System (NEISS) estimates that during FY-74 approximately 8,900 injuries associated with cribs occurred requiring medical care in hospital emergency rooms. NEISS also estimates that 103 infants were hurt in accidents involving portable cribs during the same period.

Commission staff in-depth investigations of 136 FY-74 accidents associated with cribs reveal that most of the injuries associated with crib design are caused by three types of accidents: Falling from the crib (102 cases), entrapment of body part (12 cases), and striking crib part either inside or outside of the crib (16 cases). Four of the 136 cases resulted in the victim's death.

In addition, a review of 163 death certificates reveals that widely spaced crib slats and improperly fitting mattresses present serious hazards. In several cases, hangings were caused by head entrapment between slats and the wedging of the head between the crib sides and the mattress.

The regulations proposed below are intended to prevent or reduce crib design-related deaths and injuries. The requirements concerning the size of spaces between component parts should prevent or reduce the occurrence of hanging and wedging deaths and many of the injuries. The requirements affecting rail height, ledges, construction, and components should also prevent or reduce crib design-related accidents.

TECHNICAL REQUIREMENTS

The following rationale supports the technical requirements contained in proposed Part 1509 below:

1. *Crib-side height dimension of 12.7 centimeters (5 inches) when crib side is in its lowest position and mattress support is in its highest position.* Most mattresses supplied with or intended for non-full-size cribs are 2 inches or less thick. The intent of the above requirement is to provide a minimum of 3 inches clearance from the mattress top. This will give approximately 5 inches total clearance from the mattress support. To ensure that mattresses having a proper thickness are purchased and used, a warning label is required informing the consumer of the appropriate dimensions for a replacement or original mattress.

2. *Crib-side height dimension of 55.9 centimeters (22 inches) when crib side is in its highest position and mattress support is in its lowest position.* NEISS injury data show that 72 percent of crib-related accidents occur to children under 2 years of age. Therefore, anthropometric data for 18-month-old children were used as the basis for determining the minimum crib-side height of 22 inches. The data show that the center of gravity in 18-month-old children is between 1.73 and 2.58 inches below the top of a 22 inch high crib-side when the child stands on a 2 inch thick non-compressed mattress. However, since any mattress compresses under a child's weight, the margin of safety is increased because of the lowered center of gravity.

3. *Between slats dimension of 6 centimeters (2⅜ inches).* A University of Michigan crib slat study ("Selected Infant Anthropometry Crib Slat Sub-Study," December 18, 1972) was conducted on small infants, ages 2½ to 6½ months, who present the greatest risk of slipping feet-first through crib slats. The study indicates that the above spacing is appropriate for the infant's protection.

4. *Loading wedge.* The loading wedge test is designed to ensure a sufficient amount of lateral structural rigidity in crib slats. To measure this rigidity, a specific force is applied to two adjacent slats and the resulting deflection is measured. A deflection of one-eighth of an inch is believed to be the maximum allowable for purposes of preventing children from passing through the slats.

a. *Size of block A.* Based on anthropometric data, the 2⅜ inch dimension is intended to simulate the buttock depth of a 5th percentile child, as determined by the previously mentioned study. The 4-inch dimensions are intended to ensure

that the crib slats conform to the 2⅜ inch requirements for a reasonable vertical distance.

b. *Size of block B.* This has a 2½-inch width dimension to allow for the additional ⅛-inch deflection permitted in the requirement. Block B is shorter than block A by three-fourths of an inch to account for tissue compressibility when the slats exert a force on the infant.

5. *Application of the loading wedge with a 9-kilogram (20-pound) force.* The intent of this requirement is to prevent crib slats from spreading apart and permitting an infant to fall through the open space. A 10-pound force applied laterally and perpendicularly to each slat is intended to simulate the approximate force applied by an infant attempting to pass through the slats.

6. *Locking and latching devices.* NEISS has reported a substantial number of injuries due to children unlatching the crib sides. To prevent such incidents, a two-motion latching device is required. Most infants exposed to cribs lack the physical coordination to open or detach such two-motion devices. A 10-pound release force is believed to be sufficient to accomplish the same goal.

7. *Limited use of wood screws.* Wood screws are known to lose their effective attaching ability when repeatedly inserted and removed from wood components. Wood screws alone, therefore, should not be used in key structural elements that could cause collapse of the article in the event of a hardware failure. Hardware items that derive their strength from metal-to-metal contact do not have this failure potential.

8. *Smooth and free from splinters.* Since splinters present the potential for injury by puncture and/or laceration, components should be free from such hazards.

9. *Free from splits and cracks.* The structural integrity of cribs is derived from the strength of wood components and attached hardware. A crack or split could lead to loss of strength and a subsequent failure.

10. *No toeholds.* NEISS has reported a substantial number of climb-out accidents. The Commission concludes that many of these accidents can be prevented by the elimination of toeholds. Any projection wider than three-eighths of an inch presents a potential toehold for a child to use as a climbing device.

11. *Maximum gap between the mattress and the side of the crib.* NEISS has reported a number of suffocations resulting from entrapment of the infant's head between the mattress and the crib due to an inappropriate size mattress. The ½-inch gap limitation when the mattress is centered and the 1-inch gap limitation when the mattress is placed against the perimeter of the crib is intended to reduce the possibility of such sufflocations and allows for the general compressibility of mattresses and the possibility that the mattress will not be centered in the crib.

Conclusion and Proposal

The Commission has therefore determined that certain non-full-size baby cribs, because of mechanical hazards associated with their design and manufacture, present an unreasonable risk of personal injury or illness from asphyxiation, strangulation, falls, and collisions with the furniture and consequently should be banned from interstate commerce.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended 80 Stat. 1304–05, 83 Stat. 187–89; (15 U.S.C. 1261, 1262)) and under authority vested in the Commission by the Consumer Product Safety Act (sec. 30(a), 86 Stat. 1231; (15 U.S.C. 2079(a))), the Commission proposes to amend Title 16, Chapter II, Subchapter C, by adding a new paragraph (a)(14) to § 1500.18 and by adding a new Part 1509 as follows (although without proposed change, the introductory text of § 1500.18(a) is included below for context):

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(14) Any non-full-size baby crib (as defined in § 1509.2 of this chapter) that is introduced into interstate commerce on or after the date 120 days after publication of the final regulation in the Federal Register, and that does not comply with the requirements of Part 1509 of this chapter.

* * * * *

PART 1509—REQUIREMENTS FOR NON-FULL-SIZE BABY CRIBS

Sec.

1509.1 Scope of Part 1509.
1509.2 Definitions.
1509.3 Crib-side height.
1509.4 Spacing of unit components.
1509.5 Component-spacing test apparatus.
1509.6 Component-spacing test method.
1509.7 Hardware.
1509.8 Construction and finishing.
1509.9 Mattresses.
1509.10 Assembly instructions.
1509.11 Identifying marks, caution statement, and compliance declaration.
1509.12 Recordkeeping.

Authority: Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended, 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262).

§ 1509.1 Scope of Part 1509.

This Part 1509 sets forth the requirements whereby non-full-size baby cribs, as defined in § 1509.2, are not banned articles under § 1500.18(a)(14) of this chapter. For purposes of compliance with this part the metric figures shall be used. The English approximations are provided in parentheses for convenience and information only.

§ 1509.2 Definitions.

For the purposes of this Part 1509:

(a) "Crib" or "baby crib" means a bed designed to provide sleeping accommodations for an infant.

(b) "Full-size baby crib" means a crib that (1) is intended for use in the home and (2) is within a range of ±5.1 centimeters (±2 inches) of the interior length and width dimensions specified for full-size baby cribs in §§ 1508.1(a) and 1508.3 of this chapter.

(c)(1) "Non-full-size baby crib" means a crib that (i) is intended for use in or around the home, hospitals, other institutions, for travel, and other purposes and (ii) exceeds either of the tolerances for a full-size baby crib specified in §§ 1508.1(a) and 1508.3. Mesh/net or nonrigidly constructed baby cribs, cradles, car beds, baby baskets, and bassinets are not subject to the provisions of § 1500.18(a)(14) of this chapter and this Part 1509.

(2) "Non-full-size baby crib" includes, but is not limited to, the following:

(i) *Portable crib.* A non-full-size baby crib designed so that it may be folded or collapsed, without disassembly, to occupy a volume substantially less than the volume it occupies when it is used.

(ii) *Crib-pen.* A non-full-size baby crib the legs of which may be removed or adjusted to provide a play pen or play yard for a child.

(iii) *Specialty crib.* An unconventionally shaped (circular, hexagonal, etc.) non-full-size baby crib incorporating a special mattress or other unconventional components.

(iv) *Undersize crib.* A non-full-size baby crib with dimensions less than either or both of the interior length and width dimensions of a full-size baby crib as defined in paragraph (b) of this section (that is, less than 64.3 centimeters (25⅜ inches) wide and/or less than 126.3 centimeters (49¾ inches) long).

(v) *Oversize crib.* A non-full-size baby crib with dimensions exceeding either or both of the interior length and width dimensions of a full-size baby crib as defined in paragraph (b) of this section (that is, greater than 77.7 centimeters (30⅝ inches) wide and/or greater than 139.7 centimeters (55 inches) long).

§ 1509.3 Crib-side height.

(a) With the mattress support in its highest adjustable position and the crib side in its lowest adjustable position, the vertical distance from the upper surface of the mattress support to the upper surface of the crib side and/or end panel shall not be less than 12.7 centimeters (5 inches).

(b) With the mattress support in its lowest adjustable position and the crib side in its highest adjustable position, the vertical distance from the upper surface of the mattress support to the upper surface of the crib side and/or end panel shall not be less than 55.9 centimeters (22 inches).

§ 1509.4 Spacing of unit components.

(a) *Uniformly spaced components.* The distance between adjacent, uniformly spaced components (such as slats, spindles, and/or corner posts) shall not be greater than 6 centimeters (2⅜ inches). The distance between any such adjacent components shall not exceed 6.3 centimeters (2½ inches) at any point when subjected to the test procedure specified in § 1509.6.

(b)(1) *Nonuniformly spaced components.* The distance between adjacent nonuniformly spaced components (such as slats, spindles, and/or corner posts) shall preclude passage of block A, specified in § 1509.5(b), when inserted in any orientation.

(2) The spacing between any such adjacent components shall preclude passage of block B, specified in § 1509.5(c), when inserted in any orientation immediately above and below the loading wedge specified in § 1509.5(a) while the components are being subjected to the test procedure specified in § 1509.6.

§ 1509.5 Component-spacing test apparatus.

(a) *Loading wedge.* The loading wedge shall be a right triangular prism constructed of a smooth, rigid material conforming to measurements shown in Figure 1.

(b) *Block A.* Block A shall be a rectangular block, constructed of a smooth, rigid material, measuring 6 centimeters wide by 10 centimeters high by 10 centimeters long (2⅜ inches wide by 4 inches high by 4 inches long).

(c) *Block B.* Block B shall be a rectangular block, constructed of a smooth, rigid material, measuring 6.3 centimeters wide by 8.2 centimeters high by 8.2 centimeters long (2½ inches wide by 3¼ inches high by 3¼ inches long).

§ 1509.6 Component-spacing test method.

The apex of the wedge (see § 1509.5 (a)) shall be placed midway between two vertical components and midway between the uppermost and lowermost horizontal surfaces of the crib side. A 9-kilogram (20-pound) tensile force shall be applied to the wedge perpendicular to the plane of the crib side.

§ 1509.7 Hardware.

(a) The hardware in a non-full-size baby crib shall be designed and constructed to eliminate pinching, bruising, lacerating, crushing, amputating and/or other potentials for injury.

(b) Non-full-size baby cribs shall incorporate locking or latching devices for dropsides, or folding sides or end panels. These devices shall require either a minimum force of 4.5 kilograms (10 pounds) for activation or at least two distinct actions to release them.

(c) Woodscrews shall not be used in the assembly of any components that must be removed by the consumer in the normal disassembly of a non-full-size baby crib.

§ 1509.8 Construction and finishing.

(a) All wood surfaces of non-full-size baby cribs shall be smooth and free from splinters.

(b) All wood parts of non-full-size baby cribs shall be free from splits, cracks, or other defects that might lead to structural failure.

(c) Ends and sides of non-full-size baby cribs shall have no horizontal bar, ledge, projections, or other surface accessible to the child inside the crib that could be used as a toehold (any ledge or projection with a depth dimension greater than 1 centimeter (⅜ inch) located less than 40.6 centimeters (16 inches) above the mattress support in its lowest position when the crib side is in its highest position).

§ 1509.9 Mattresses.

(a)(1) *Mattress thickness.* A mattress supplied with a non-full-size crib shall, in a noncompressed state, have a thickness that will provide a minimum effective crib-side height dimension of at least 50.8 centimeters (20 inches) as measured from the upper surface of the mattress to the upper surface of the crib side and/or end panel. For this measurement, the crib side shall be in its highest adjustable position and the mattress support in its lowest adjustable position.

(2) A mattress supplied with a non-full-size baby crib shall, in a noncompressed state, have a thickness that will provide a minimum effective crib-side height dimension of at least 7.6 centimeters (3 inches) as measured from the upper surface of the mattress to the upper surface of the crib side and/or end panel. For this measurement, the crib side shall be in its lowest adjustable position and the mattress support in its highest adjustable position.

(b) *Mattress dimensions.* The dimensions of a mattress supplied with a non-full-size baby crib shall be such that the mattress, when inserted in the center of the crib, in a noncompressed state at any of the adjustable positions of the mattress support, shall not leave a gap of more than 1.3 centimeters (½ inch) at any point between the perimeter of the mattress and the perimeter of the crib. When the mattress is placed against the perimeter of the crib the resulting gap shall not exceed 2.6 centimeters (1 inch).

§ 1509.10 Assembly instructions.

Unassembled non-full-size baby cribs shall be accompanied by detailed instructions that shall:

(a) Include an assembly drawing;

(b) Include a list and description of all parts and tools required for assembly;

(c) Include a full-size diagram of the required bolts and other fasteners;

(d) Be so written that an unskilled person can assemble the crib without making errors that would result in improper and unsafe assembly;

(e) Include cautionary statements concerning the secure tightening and maintaining of bolts and other fasteners;

(f) Contain a cautionary statement that when a child's height reaches 35 inches, the child should be placed in a youth bed; and

(g) Contain a warning relative to mattress size for the non-full-size baby crib that specifies the dimensions of any mattress to be used with the crib as determined under § 1509.9.

§ 1509.11 Identifying marks, caution statement, and compliance declaration.

(a) Non-full-size baby cribs shall be clearly marked to indicate:

(1) The name and place of business (city and State) of the manufacturer, importer, distributor, and/or seller; and

(2) A model number, stock number, catalog number, item number, or other symbol expressed numerically, in code or otherwise, such that only cribs of identical construction, composition, and dimensions shall bear identical markings.

(b) The following caution statement shall appear on an inside surface of a non-full-size baby crib in a type size of at least ⅛ inch:

(1) For rectangular cribs:

CAUTION: Any mattress used in this crib must be at least ____ inches long by ____ inches wide and not more than ____ inches thick.

The blanks are to be filled with dimensions complying with § 1509.9 (a) and (b).

(2) For nonrectangular cribs:

CAUTION: Check proper fit of mattress. Should be not more than ____ inches thick. The maximum gap between mattress and inside of crib border (or edge) should be no more than 1 inch.

The blank is to be filled in with a dimension complying with § 1509.9(a).

(3) The dimensions to be inserted in the blanks in the caution statements in paragraph (b) (1) and (2) of this section shall be determined by the manufacturer according to the provisions of § 1509.9. The markings shall appear in block letters, shall contrast sharply with the background (by color, projection, and/or indentation), and shall be clearly visible and legible.

(c) Except for markings required under paragraphs (d) and (e) of this section, markings on non-full-size baby cribs shall be of a permanent nature such as paint-stenciled, die-stamped, molded, or indelibly stamped directly thereon or permanently affixed, fastened, or attached thereto by means of a tag, token, or other suitable medium. The markings shall not be readily removable or subject to obliteration during normal use of the article or when the article is subjected to reasonably foreseeable damage or abuse.

(d) The retail cartons of non-full-size baby cribs shall clearly indicate:

(1) The name and place of business (mailing address including ZIP code) of the manufacturer, importer, distributor, and/or seller; and

(2) The model number, stock number, catalog number, item number, or other symbol described in paragraph (a)(2) of this section.

(e) All non-full-size baby cribs and their retail cartons shall bear a conspicuous label stating that the article conforms to applicable regulations promulgated by the Consumer Product Safety Commission. The label need not be permanently attached to the article and carton nor is any particular wording required for the statement. The label on the article must be conspicuous under normal conditions of retail display. All non-full-size baby cribs and their retail cartons introduced into interstate commerce for a period of 2 years after the effective date of this Part 1509 must bear such label.

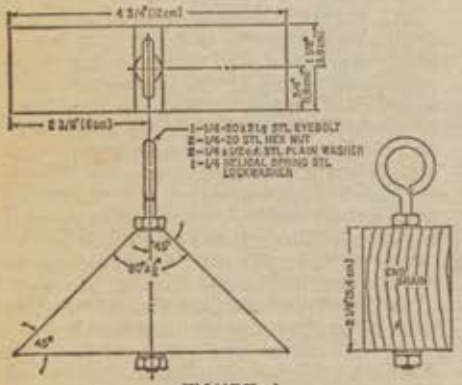
§ 1509.12 Recordkeeping.

The manufacturer or importer shall keep and maintain for 3 years after production or importation of each lot or other identifying unit of non-full-size baby cribs, records of sale and distribution. These records shall be made available upon request at reasonable times to any officer, employee, or agent acting on behalf of the Consumer Product Safety Commission. The manufacturer or importer shall permit such officer, employee, or agent to inspect and copy such records, to make such inventories of stock as he or she deems necessary, and to otherwise verify the accuracy of such records.

Interested persons are invited to submit, on or before July 8, 1975, written comments regarding this proposal. Comments received after this date will be considered to the extent practicable. Comments and any accompanying data or material should be submitted, preferably in five 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: May 2, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.



FIGURE–I

[FR Doc.75-12079 Filed 5-8-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 33, 35]

[FRL 366-7]

MINIMUM STANDARDS FOR PROCUREMENT UNDER EPA GRANTS

Subagreements

Notice is hereby given that the Environmental Protection Agency proposes to amend its general grant regulations to incorporate minimum standards for procurement under grants and to amend its State and local assistance grant regulations to incorporate policies and procedures governing procurement of personal and professional services under grants for construction of treatment works.

On August 7, 1973, the Environmental Protection Agency published proposed amendments to Part 30 (38 FR 21342), implementing certain portions of Office of Management and Budget Circular A–102 (now General Services Administration Federal Management Circular 74–7). Interim general grant regulations for all EPA grants (Part 30) had been published in the FEDERAL REGISTER on November 27, 1971 (36 FR 22716). Both these documents contained policies and procedures governing procurement by grantees under grants awarded by EPA. Deleted from Part 30 which was published as final rules on May 8, 1975, were the policies and procedures governing procurement by grantees. Those policies and procedures have been expanded and are here being proposed as Part 33, Subagreements. Part 33 does not apply to subagreements under grants for construction of treatment works.

Part 35 (State and Local Assistance) already includes regulations governing construction contracts under grants for construction of treatment works (§ 35.938). A new section (§ 35.937), Contracts for personal and professional services, is now being proposed and contains provisions similar to those in Part 33 governing negotiated procurements. The principal new provisions are limited to the first eight subsections. In addition, minor changes to §§ 35.938 and 35.939 necessitated by the proposal of § 35.937 are also being proposed.

It would have been possible to considerably reduce the volume of the amendments to Part 35 by utilizing extensive cross referencing to Part 33. However, we believe that State and local governments and consulting engineers can be better assured of meeting all applicable requirements for construction grants if such requirements were located in a single Part of the regulations.

Part 33 defines minimum standards as guidance to grantees concerning a satisfactory procurement system. Specific areas of guidance include standards of conduct, grantor/grantee responsibilities, subagreement approval requirements, procurement by formal advertising, procurement by negotiation (including negotiation authorizations, competition requirements, price, cost and profit considerations, contract award, architectural or engineering services, small purchases), required contract provisions and protests against award. Part 33 and § 35.937 further provide that a contract shall not be awarded on a cost-plus-a-percentage-of-cost or a percentage-of-construction-cost basis.

Interested parties and government agencies are encouraged to submit written comments, views, or data to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before June 9, 1975 will be considered prior to the promulgation of final regulations.

It is therefore proposed to add Part 33 and amend Part 35 of Title 40, Code of Federal Regulations, in the manner set forth below.

Dated: May 2, 1975.

JOHN QUARLES,
Acting Administrator.

Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended by adding a new Part 33, reading as follows:

PART 33—SUBAGREEMENTS

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33.625-6 Patents; data; copyrights.
33.625-7 Notice and assistance regarding patent and copyright infringement.
33.625-8 Records.
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33.650 Requirements applicable to construction.
33.650-1 Bonding and insurance.
33.650-2 Contract Work Hours and Safety Standards Act.
33.650-3 Davis-Bacon and related statutes.
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33.700 Grantee responsibility.
33.705 EPA responsibility.
33.710 Time limitations.
33.715 Deferral of procurement action.
33.720 Extensions of time.
33.725 Enforcement.

AUTHORITY: The provisions of this Part 33 are issued under the authorities cited in § 30.101.

§ 33.001 Applicability and scope.

(a) This part sets forth policies and minimum standards for procurement systems of grantees under EPA grants, except that procurement under grants for construction of treatment works is covered by §§ 35.937, 35.938 and 35.939 of this Subchapter. The provisions of this Part 33 constitute a part of the EPA general grant regulations and procedures codified as Part 30 of this title.

(b) A subagreement is a written agreement between a grantee and a third party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personal and professional services and purchase orders.

§ 33.005 Definitions.

All terms used in this Part which are not defined herein shall have the meaning given to them in § 30.135 of this Subchapter.

Subpart A—Policy

§ 33.100 Grantee procurement systems.

Grantees may use their own procurement systems provided that procurements made under an EPA grant adhere to the minimum standards set forth in this Part.

§ 33.105 Competition.

It is the policy of the Environmental Protection Agency to encourage free and open competition for project work performed by contract.

§ 33.110 Profits.

Only fair and reasonable profits may be earned by contractors in subagreements under EPA grants. See § 33.510-5 for discussion of profits under subagreements.

§ 33.115 Type of contract.

Grantees shall utilize fixed price subagreements whenever possible. The cost reimbursement types of contract (e.g., cost-plus-fixed-fee, cost-plus-incentive-fee, etc.) may be utilized if the cost of contract performance cannot be adequately estimated for fixed price purposes. However, the cost-plus-a-percentage-of-cost and the percentage-of-construction-cost types of contract shall not be used for any grantee procurement (see §§ 33.405, 33.505). Each cost reimbursement contract must clearly establish a cost ceiling which the contractor may not exceed without formally amending the contract.

§ 33.120 Grantee responsibility.

The grantee is responsible for the administration and successful accomplishment of the project for which EPA grant assistance is awarded. The grantee is responsible for the settlement and satisfaction of all contractural and administrative issues arising out of subagreements entered into under the grant (except as provided in § 33.125 below). This includes (but is not limited to) issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other related procurement matters.

§ 33.125 EPA responsibility.

Generally, EPA is responsible only for reviewing grantee compliance with Federal requirements applicable to a grantee's procurement (see § 33.120). However, where specifically provided in this Part, EPA is responsible for making the determination concerning compliance with Federal requirements.

§ 33.130 Small and minority business.

Positive efforts shall be made by grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds.

§ 33.135 Privity of contract.

Neither the Environmental Protection Agency nor the United States shall be a party to any subagreement (including contracts or subcontracts) of a grantee, or to any solicitation or request for proposals therefor (see §§ 33.615 and 33.625-1 for the required solicitation statement and contract provision).

§ 33.140 Disputes.

Only an EPA grantee may initiate and prosecute an appeal under the disputes provision of a grant with respect to its subagreements thereunder for its own name and benefit (see Subpart J of Part 30 of this Subchapter). Neither a contractor nor a subcontractor of a grantee may prosecute an appeal under the disputes provisions of a grant in its own name or interest.

Subpart B—General

§ 33.200 Federal procurement regulations.

Requirements applicable to direct Federal contracts shall not be applicable to subagreements under grants except to the extent that those or similar requirements may be stated in this Subchapter.

§ 33.205 General requirements.

Subagreements must comply with the following general requirements:

(a) Must be necessary for and directly related to the accomplishment of the project work (grantees shall avoid purchasing unnecessary or duplicative items);

(b) Must be in the form of a bilaterally executed written agreement (except for small purchases);

(c) Must be for monetary or in-kind consideration; and

(d) May not be in the nature of a grant or gift.

§ 33.210 Documentation.

(a) Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(b) Procurement documentation required by § 30.805 (Records) of this Subchapter and this Part 33, including a copy of each subagreement, must be retained by the grantee or contractors of the grantee for the period of time specified in § 30.805 and is subject to all the requirements of § 30.805. A copy of each subagreement must be furnished to the Project Officer upon request.

§ 33.215 State and local law.

(a) Where project work is accomplished through subagreements, such subagreements shall be governed by the applicable requirements of State, territorial, and local laws and ordinances, and the procurement system or procedures of the grantee (including institutional requirements), to the extent that such requirements do not conflict with Federal laws and meet the minimum standards of this Part 33.

(b) State or local laws, ordinances, regulations or procedures which are designed or operated to give local or in-State bidders or proposers preference over other bidders or proposers shall not be employed in evaluating bids or proposals for subagreements under a grant.

§ 33.220 Required approvals.

(a) A grantee must secure prior written approval of the Project Officer for the following procurement actions:

(1) All subagreements in excess of $100,000, each amendment to a subagreement in excess of $100,000, and the cost/price analyses of negotiated subagreements in excess of $100,000 (see § 33.510–4 for discussion of price and cost considerations);

(2) Utilization of the force account method in lieu of subagreement for any construction activity in excess of $10,000 unless the force account method is stipulated in the grant agreement (as provided in § 30.645 of this Subchapter).

(b) In granting written approval, the Project Officer must assure that the proposed procurement complies with EPA policies set forth in this Part, including the policy regarding free and open competition.

§ 33.225 Limitations on contract award.

The grantee shall not award any contract and the Project Officer may not approve award of any contract:

(a) To any person or organization which does not meet the responsibility standards set forth in § 30.340–2 of this Subchapter;

(b) If any portion of the contract work will be performed at a facility listed by the Director, EPA Office of Federal Activities, in violation of the antipollution requirements of the Clean Air Act and the Federal Water Pollution Control Act, as set forth in § 30.420–3 of this Subchapter and 40 CFR Part 15;

(c) To any person or organization which is ineligible pursuant to the conflict of interest requirements of § 30.420–4 of this Subchapter.

§ 33.230 Project changes.

A contractor must notify the grantee of all proposed project changes. Certain changes require notification to the Project Officer by the grantee pursuant to § 30.900 of this Subchapter. A contractor may not implement any project changes without the prior approval of the grantee. In granting such approvals, the grantee shall ensure compliance with the procedures for the approval and funding of project changes pursuant to §§ 30.900–1 through 30.900–4, and all related prior approval requirements such as those set forth in 40 CFR 40.145(b).

§ 33.235 Eligible costs.

Costs incurred under subagreements which are not awarded or administered in compliance with this Part 33 shall not be eligible costs.

Subpart C—Code or Standards of Conduct

§ 33.300 Grantee responsibility.

(a) The grantee must maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in the conduct of project work, including procurement and the expending of project funds. As a minimum, the grantee must exert diligent effort to ensure that its officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. The grantee must avoid personal or organizational conflicts of interest or noncompetitive procurement practices which restrict or eliminate competition or otherwise restrain trade.

(b) To the extent permissible by State or local law or formal institutional requirements and procedures, the grantee must ensure that penalties, sanctions, or other adequate disciplinary actions are applied for project-related violations of law or of such code or standards of conduct by either the grantee officers, employees, or agents, or by contractors or their agents.

(c) The grantee must inform the Project Officer in writing of each violation of law or code or standards of conduct by its officers, employees, contractors, or by their agents, and of the prosecutive or disciplinary action taken by the grantee with respect to such infractions, and must cooperate with Federal officials with respect to any Federal prosecutive or disciplinary actions instituted with respect to such infractions.

§ 33.310 EPA responsibility.

EPA shall cooperate with the grantee with respect to its disciplinary or prosecutive actions taken with respect to any apparent project-related violations of law or of the grantee's code or standards of conduct.

§ 33.315 Fraud and other unlawful or corrupt practices.

All procurements under grants are covered by the provisions of § 30.245 of this Subchapter relating to fraud and other unlawful or corrupt practices.

Subpart D—Procurement by Formal Advertising

§ 33.400 Applicability.

This Subpart is applicable to all procurement by formal advertising. Formal advertising means procurement by competitive bids and awards as described below and shall be the required method of procurement unless negotiation pursuant to Subpart E is necessary to accomplish sound procurement.

§ 33.405 Type of contract.

Each formally advertised subagreement must be a fixed price (lump sum or unit price or a combination of the two) contract.

§ 33.410 Procedures.

Formal advertising shall be conducted in accordance with the following procedures.

§ 33.410–1 Adequate public notice and solicitation of bids.

The grantee will cause adequate public notice to be given of the solicitation by publication in newspapers or journals of general circulation beyond the grantee's locality (Statewide, generally), inviting bids and stating the method by which bidding documents may be obtained and/or examined.

§ 33.410–2 Adequate time for preparing bids.

Adequate time, generally not less than 30 days, must be allowed between the date when public notice pursuant to § 33.410–1 is first published and the date by which bids must be submitted.

§ 33.410–3 Adequate bidding documents.

A reasonable number of bidding documents (invitations for bid) shall be prepared by the grantee and shall be furnished upon request on a first-come, first-serve basis. A complete set of bidding documents shall be maintained by the grantee and shall be available for inspection and copying by any party. Such bidding documents shall include:

(a) A complete statement of work to be performed, including drawings and specifications, where appropriate, and the required completion schedule (drawings and specifications may be made available for inspection instead of being furnished);

(b) The terms and conditions of the contract to be awarded, including, where appropriate, payment, delivery schedules, point of delivery, and acceptance criteria;

(c) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;

(d) Responsibility requirements or criteria which will be employed in evaluating bidders (however, responsibility requirements should not unreasonably restrict competition);

(e) The solicitation statement required pursuant to § 33.615 of this Part;

(f) The prevailing wage determination required pursuant to § 33.650–3 of this Part, if applicable; and

(g) A copy of Subparts D (Procurement by Formal Advertising), F (Required Provisions) and G (Protests Against Award) of this Part.

§ 33.410–4 Nonrestrictive specifications.

Invitations for bids shall include a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(NOTE: Section 204 of the Federal Water Pollution Control Act contains a more stringent requirement regarding nonrestrictive specifications which is applicable only to grants for construction of treatment works. See § 35.935–2 of this Subchapter.)

§ 33.410–5 Bid guarantee.

For construction contracts exceeding $100,000, each bidder must furnish a bid guarantee equivalent to five percent of the bid price. For all other contracts, the grantee shall require such guarantees

as it normally requires in its own procurement.

§ 33.410–6 Sealed bids.

The grantee shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.

§ 33.410–7 Amendments to bidding documents.

If a grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the amendments shall be communicated in writing to all firms who have obtained bidding documents in time to be considered prior to the bid opening time. When appropriate, the period for submission of bids shall be extended.

§ 33.410–8 Bid modifications.

A firm which has submitted a bid shall be allowed to modify or withdraw its bid prior to the time of bid opening.

§ 33.410–9 Public opening of bids.

The grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

§ 33.410–10 Award to the low, responsive, responsible bidder.

(a) After bids are opened, they shall be evaluated by the grantee in accordance with the methods and criteria set forth in the bidding documents.

(b) Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder within the time specified in the invitation for bid or any extension of time granted.

(c) If award is intended to be made to a firm which did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed not responsive or nonresponsible.

(d) If the proposed award requires EPA Project Officer approval, the subagreement shall not be executed until approval has been obtained (in accordance with § 33.220).

Subpart E—Procurement by Negotiation

§ 33.500 Applicability.

This subpart provides minimum standards for grantee negotiation of subagreements (i.e., award of contracts by any method other than procurement by formal advertising) which are applicable to all negotiated subagreements in excess of $10,000.

§ 33.502 Authorization

Negotiation of subagreements by the grantee is authorized if it is impracticable and infeasible to use formal advertising. All negotiated procurement shall be conducted in a manner to provide to the maximum practicable extent open and free competition. Generally, procurements may be negotiated by the grantee if any of the following conditions are applicable:

(a) Public exigency will not permit the delay incident to formally advertised procurement (e.g., an emergency procurement).

(b) The aggregate amount involved does not exceed $10,000 (see § 33.520 for small purchases).

(c) The material or service to be procured is available from only one person or entity. If the procurement is expected to aggregate more than $10,000, the grantee must document its file with a justification of the need for noncompetitive procurement, and provide such documentation to the Project Officer on request.

(d) The procurement is for personal or professional services or for any service to be rendered by a university or other educational institution.

(e) No responsive, responsible bids at acceptable price levels have been received after formal advertising.

(f) The procurement is for material or services where the prices are established by law.

(g) The procurement is for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, or for technical or specialized supplies requiring substantial initial investment to manufacture.

(h) The procurement is for experimental, developmental or research services.

§ 33.505 Type of contract.

The preferred type of negotiated contract is the fixed price type. However, the cost reimbursement types of contract (e.g., cost-plus-fixed-fee, cost-plus-incentive-fee, etc.) may be utilized if the cost of contract performance cannot be adequately estimated for fixed price purposes. The cost-plus-percentage-of-cost (including salary multiplier) and the percentage-of-construction-cost types of contract may not be utilized. Each cost reimbursement contract must clearly establish a cost ceiling which the contractor may not exceed without formally amending the contract.

§ 33.510 Procedures.

§ 33.510–1 Adequate public notice and requests for proposals.

(a) Adequate public notice must be given of the request for proposals for negotiated procurements anticipated to exceed $10,000 except where rates or prices are fixed by law or regulation or where a single source has been justified (see § 33.502(c)). Such notice of the request for proposals should be published in professional journals, newspapers, or publications of general circulation beyond the grantee's locality (Statewide, generally), and through posted public notices, or written notification directed to interested persons, firms, or professional organizations inviting proposals and stating the method by which request for proposal documents may be obtained or examined. Sources which request an opportunity to submit proposals, and which are not otherwise barred by law or regulation, shall be promptly furnished a copy of the request for proposal and shall be permitted to submit a proposal in response thereto.

(b) Requests for proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals must inform offerors of all evaluation factors (in accordance with §§ 33.510–3 and 33.515(b)) and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized).

(c) The request for proposal must clearly state the time and place for submission of proposals and must include a copy of Subparts E (Procurement by Negotiation), F (Required Provisions) and G (Protests Against Award) of this part.

§ 33.510–2 Submission of proposals.

All proposals must be supported by appropriate documentation to support the reasonableness of estimated costs or evidence of reasonable prices and other necessary matters.

§ 33.510–3 Evaluation factors.

A documented evaluation of proposals must be made solely on the basis of the technical and other evaluation criteria announced in the request for proposals and, as appropriate, the evaluation factors set forth below:

(a) The quality of the items or work, or of the same or similar items or work previously procured, with particular regard to the satisfaction of minimum project needs;

(b) Specialized experience and technical competence of key personnel who perform the work;

(c) Prices quoted, and consideration of other prices for the same or similar items or work (see § 33.5104 below);

(d) The business reputations, capabilities, responsibilities and past performance of the respective persons or firms who submit proposals;

(e) Delivery requirements;

(f) Capacity to perform work within required time limits;

(g) Contractor awareness of social, economic and geographic factors relevant to the project;

(h) The nature and extent of subcontracting;

(i) The existing and potential workload of the prospective contractor;

(j) The desirability of distributing procurement equitably among qualified firms;

(k) Requirements for the avoidance of personal and organizational conflicts of interest (as set forth in 40 CFR 30.410–4); and

(l) Capability to explore and develop innovative or advanced techniques or designs.

§ 33.510–4 Price and cost considerations.

(a) *General.* It is the policy of EPA that the cost or price of all subagreements must be considered. However, the grantee shall perform a formal cost or price analysis and prepare a written summary of findings for all negotiated subagreements in excess of $100,000 prior to execution of the subagreement. Project

Officer approval of the analysis is required prior to the execution of any negotiated subagreement in excess of $100,000 by the grantee (in accordance with § 33.220).

(b) *Price analysis.* Price analysis is the process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis is used when the goods or services required lend themselves to price comparison and may be accomplished in various ways including the following:

(1) The comparison of the price quotations submitted;

(2) The comparison of prior quotations and contract prices with current quotations for the same or similar end items;

(3) The comparison of prices set forth in published price lists issued on a competitive basis, published market price commodities, and similar indicia, together with discount or rebate arrangements;

(4) The comparison of proposed prices with estimates of cost independently developed by personnel within the activity; or

(5) The comparison of ratios (dollars per square foot, per hour, per drawing, and so forth) to highlight major deviations from past buys.

(c) *Cost analysis.* (1) In those cases where there is less than adequate price competition, such as in single source procurement or in procurements where technical competition is the principal, selection factor, a detailed analysis of the selectee's cost estimate and backup cost or pricing data is required as a substitute for price comparison.

(2) Cost analysis includes the appropriate verification of cost data, the evaluation of specific elements of costs, and the projection of these data to determine the effect on prices of such factors as:

(i) The necessity for certain costs;

(ii) The reasonableness of amounts estimated for the necessary costs;

(iii) Allowances for contingencies;

(iv) The basis used for allocation of overhead costs; and

(v) The appropriateness of allocations of particular overhead costs to the proposed contract.

(3) Appropriate consideration should be given to 40 CFR Part 30 Subpart F, which contains general cost principles and procedures for the determination and allowability of costs under grants.

(4) Among the evaluations that should be made where the necessary data are available are comparisons of a contractor's or offeror's current estimated costs with:

(i) Actual costs previously incurred by the contractor or offeror;

(ii) The contractor's or offeror's last prior cost estimate for the same or a similar item with a series of his prior estimates;

(iii) Current cost estimates from other possible sources; and

(iv) Prior estimates of historical costs of other contractors manufacturing the same or similar items.

(5) Forecasting future trends in costs from historical cost experience is of primary importance. An adequate cost analysis must include consideration of future trends in costs when reasonably determinable.

(6) In addition to the elements of cost, the amount of profit shall be set forth separately in the cost analysis.

§ 33.510–5 Profit.

It is the policy of EPA that profit—i.e., the net proceeds obtained by deducting all eligible elements of cost (direct and indirect) from the price—on a subagreement and each amendment to a subagreement under a grant be sufficient to attract contractors who possess talents and skills necessary to the accomplishment of project objectives, and to stimulate efficient and expeditious completion of the project. Where effective price competition is lacking, or where cost analysis is performed, the estimate of profit should be analyzed as are all other elements of price. The objective of negotiations shall be the exercise of sound business judgment including a fair and reasonable profit based on the firm's assumption of risk and input to total performance and not merely the application of a predetermined percentage factor. For example, the ratio of profit to cost should normally be less for amendments and change orders than for initial contract agreements.

§ 33.510–6 Negotiation.

(a) Written or oral interviews should be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered (except as provided in § 33.515(c) for architectural or engineering services).

(b) Each proposer with whom negotiations are conducted shall be given reasonable opportunity (with a common cut-off date) to support, clarify, correct, improve, or revise its proposal.

(c) Information shall not be conveyed to one or more proposers which would give them a competitive advantage.

§ 33.510–7 Award of contract.

(a) After the close of negotiations, the grantee shall award the contract to the proposer whose proposal offers the greatest advantage for the project—technical, economic and other factors considered.

(b) An unsuccessful offeror shall be notified at the earliest practicable time that its offer has not been selected for award.

(c) Upon written request of an unsuccessful offeror, the grantee shall disclose the reason(s) for rejection.

(d) The grantee must develop and retain adequate records of the basis for selection for negotiation and award.

(e) The grantee shall secure the written approval of the Project Officer of all subagreements in excess of $100,000 and their cost analyses prior to execution of the subagreements.

§ 33.515 Procurement of architectural or engineering services.

(a) Architectural or engineering services are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operation and maintenance manuals, and other related services.

(b) Candidates will be evaluated on the basis of competence and qualification for the type of service required.

(c) Not less than three candidates must be selected and ranked for negotiation of contracts, unless after good faith effort to solicit proposals in accordance with § 33.510–1 of this Part, three or fewer qualified candidates respond, in which case all qualified candidates must be selected and ranked for negotiation. The ranking should be accomplished by an objective process, such as the appointment of a board or committee which includes technical experts. Oral or written interviews should be conducted with proposers and information derived therefrom shall be treated on a confidential basis, except as required to be disclosed to EPA pursuant to § 33.510–4 (Cost and price considerations).

§ 33.520 Small purchases.

(a) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed $10,000. The small purchase limitation of $10,000 applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should properly be grouped together.

(b) Small purchases shall be accomplished by negotiation, except when otherwise required by State or local law or where it is clearly in the best interest of the project to accomplish such purchases by more formal methods. Reasonable competition shall be obtained.

(c) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like may be utilized in the interest of minimizing paperwork. Retention in the purchase files of written quotations received, or references to printed price lists used, will suffice as the record supporting the price paid.

Subpart F—Required Provisions

§ 33.600 General.

Each subagreement in excess of $10,000 must adequately define the scope of project work to be performed by the contractor for the grantee and must include adequate provisions to define a sound and complete agreement. All such

subagreements must include the applicable provisions set forth in §§ 33.625–1 through 33.625–10 and, in addition, contracts for construction of facility improvement must include the applicable provision of §§ 33.650–1 through 33.650–5.

§ 33.615 Required solicitation statement.

Bidding documents (invitations for bids), in the cases of formally advertised procurements, or requests for proposals, or negotiated procurements, must include the following statement:

Any contract or contracts awarded under this (invitation for bids or request for proposals) are expected to be funded in part by a grant from the United States Environmental Protection Agency. This procurement will be subject to regulations contained in 40 CFR Subchapter B, and particularly Part 33 thereof. Neither the United States nor the United States Environmental Protection Agency is, nor will be, a party to this (invitation for bids or request for proposals) or any resulting contract.

§ 33.625 Required subagreement provisions.

§ 33.625–1 Privity of contract.

Each subagreement in excess of $10,000 must include the following or substantially similar provision:

This contract is funded in part by a grant from the U.S. Environmental Protection Agency. This contract is subject to regulations contained in 40 CFR Subchapter B and particularly Part 33 thereof. Neither the United States nor the U.S. Environmental Protection Agency is a party to this contract.

§ 33.625–2 Amendment.

Each subagreement in excess of $10,000 must contain adequate provision for amendment of work within the scope of the contract by the grantee.

§ 33.625–3 Termination; suspension.

Each subagreement in excess of $10,000 must contain adequate provisions for termination of all or any part of contract performance for default or for convenience by the grantee, or for suspension of all or any part of contract performance by agreement or by the grantee, including the manner by which the termination or suspension will be effected and the basis for settlement.

§ 33.625–4 Remedies.

Each subagreement in excess of $10,000 must contain adequate contractual provisions or conditions to allow for administrative, contractual, or legal remedies in instances where grantees or contractors violate or breach contract terms or conditions, and must provide for such damages, sanctions and penalties as may be appropriate.

§ 33.625–5 Employment practices.

Each subagreement in excess of $10,000 must contain a provision that the contractor shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under any project, program, or activity receiving assistance from EPA, and that the contractor shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

§ 33.625–6 Patents; data; copyrights.

(a) Each subagreement in excess of $10,000 shall contain a provision to the effect that the contractor is subject to the duties of the grantee relating to rights in data and copyrights contained in 40 CFR 30.530.

(b) Each subagreement in excess of $10,000 involving experimental, developmental, research or demonstration work shall contain a provision to the effect that the contractor is subject to the duties of the grantee relating to rights to inventions and patents contained in 40 CFR 30.515.

§ 33.625–7 Notice and assistance regarding patent and copyright infringement.

Each subagreement in excess of $10,000 must contain a clause substantially similar to that set forth in the grant agreement entitled "Notice and Assistance Regarding Patent and Copyright Infringement."

§ 33.625–8 Records.

Each subagreement in excess of $10,000 must contain a provision requiring the contractor to maintain records of contract performance as defined in § 30.805 of this Subchapter, and make these records available for inspection, audit and copying by the grantee, EPA, the Comptroller General of the United States, the Department of Labor, or any authorized representative, to the extent and for the same length of time as is set forth with respect to grantee records in § 30.805 of this Subchapter.

§ 33.625–9 Access.

Each subagreement in excess of $10,000 must contain a provision to ensure that the Project Officer and any authorized representative of EPA, the Comptroller General of the United States or the Department of Labor, shall at all reasonable times during the period of EPA grant support and until three years following final settlement have access to the facilities, premises and records (as defined in § 30.805) of the contractor related to the project. In addition, any person designated by the Project Officer shall have access, upon reasonable notice to the grantee by the Project Officer, to visit the facilities and premises related to the project.

§ 33.625–10 Executive Order 11738.

Each subagreement in excess of $100,000 must contain a provision whereby the contractor or subcontractor agrees to comply with all applicable regulations issued pursuant to Sec. 306 of the Clean Air Act or sec. 508 of the Federal Water Pollution Control Act (See 40 CFR Part 15 and 40 CFR 30.420–3).

§ 33.625–11 Contingent fees.

Each subagreement in excess of $10,000 shall contain a prohibition against contingent fees as follows:

The Contractor warrants that no person or company has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees; nor has the contractor paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee, any fee, commission, contribution, donation, percentage, gift, or any other consideration, contingent upon, or resulting from award of this contract. For any breach or violation of this provision, the Owner shall have the right to terminate this agreement without liability and, at his discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any other damages, and shall be responsible for reporting the details of such breach or violation to the proper legal authorities, where and when appropriate.

§ 33.650 Requirements applicable to construction.

Where the subagreement is for construction, or for facility improvement or repair, it must also contain the following provisions, as applicable.

§ 33.650–1 Bonding and insurance.

(a) For each such contract in excess of $100,000, the contractor must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. (Each bidder for such contracts must furnish a bid guarantee equivalent to 5 percent of the bid price; see § 33.410–5.) Construction contracts of $100,000 or less shall be subject to State, local, and customary requirements relating to bid guarantees and performance and payment bonds.

(b) Contractors should obtain such construction insurance (e.g., fire and extended coverage, workmen's compensation, public liability and property damage, and "all risk" builders' risk) as is customary and appropriate.

§ 33.650–2 Contract Work Hours and Safety Standards Act.

Where applicable, all contracts awarded by grantees and subcontracts awarded by contractors of grantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330), as supplemented by the Department of Labor regulations (29 CFR Part 5). Under sec. 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked

in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

§ 33.650–3 Davis-Bacon and related statutes.

When required by the Federal grant program legislation, all construction contracts awarded by grantees and all subcontracts awarded by contractors of grantees in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a et seq., 276c), as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract must be conditioned upon acceptance of the wage determination. All suspected or reported violations must be reported to the grantee and to the EPA Project Officer.

§ 33.650–4 Copeland Act.

All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. All suspected or reported violations must be reported to the grantee and to the EPA Project Officer.

§ 33.650–5 Equal employment opportunity.

Each subagreement in excess of $10,000 must include provisions in compliance with Executive Order No. 11246 as amended by Executive Order No. 11375 and regulations issued thereunder (40 CFR Part 8).

Subpart G—Protests Against Award

§ 33.700 Grantee responsibility.

The grantee is responsible for conducting project procurement in accordance with applicable requirements of State, territorial, or local laws or ordinances, as well as the specific requirements of Federal law or this Part directly affecting the procurement, and for the initial resolution of complaints based upon alleged violations of these Federal requirements. If a written complaint is made to the EPA Project Officer concerning an alleged violation of Federal law or this Part concerning procurement by an EPA grantee, the complaint will be referred to the grantee for resolution. The grantee must promptly determine each such complaint upon its merits permitting the complaining party, as well as any other interested party who may be adversely affected, to state in writing or at a conference the basis for their views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties (by certified mail, return receipt requested), a written summary of its determination, substantiated by a legal opinion (and accompanied by an engineering report, where construction is involved), providing a justification for its determination. See § 33.710 for applicable time limitations.

§ 33.705 EPA responsibility.

A party adversely affected by an adverse determination of a grantee made pursuant to § 33.700 concerning an alleged violation of a specific requirement of Federal law or this Part directly affecting a grantee's procurement may request the individual designated by the Administrator as the EPA Protest Officer to review such adverse determination, subject to the time limitation set forth in § 33.710. A copy of the written adverse determination and supporting justification shall be transmitted to the Project Officer with the request for review, together with a statement of the specific reasons why the proposed grantee procurement action would violate Federal requirements. The EPA Protest Officer will afford both the grantee and the complaining party, as well as any other interested party who may be adversely affected, an opportunity to present the basis for their views in writing or at a conference, and he shall promptly state in writing the basis for his determination of the protest. If the grantee proposes to award a formally advertised contract or to approve award of a specified sub-item under such a contract to a bidder other than the apparent low bidder, the grantee will bear the burden of proving that its determination concerning responsiveness of the low bid is in accordance with Federal law and this Subchapter. If the basis for the grantee's determination is a finding that the low bidder is not responsible, the grantee must establish and substantiate the basis for its determination and must establish that such determination has been made in good faith. The written determination by the EPA Protest Officer shall be promptly furnished to the grantee and to the complainant and shall be final as to Agency action except with respect to appeal rights of the grantee under the disputes provision of the grant (see Part 30, Subpart J of this Subchapter).

§ 33.710 Time limitations.

A written protest should be made pursuant to § 33.700 as early as possible during the procurement process. A protest against award of a contract by a grantee must be mailed (certified mail, return receipt requested) or delivered to the Project Officer as soon as possible, but in no event later than the fifth working day after receipt of notice of nonselection, or, if no notice is received, the fifth working day after the complainant first learns of the action it desires to protest. A protest against a post-award procurement action of a grantee must be mailed (certified mail, return receipt requested) or delivered to the Project Officer as soon as possible, but in no event later than the fifth working day after the procurement action is taken by the grantee or the fifth working day after the complainant first learns of the action it desires to protest, whichever occurs later. A request for review by the EPA Protest Officer pursuant to § 33.705 must be received by the Project Officer within five working days after the complaining party received the grantee's adverse determination.

§ 33.715 Deferral of procurement action.

Where the grantee has received a written complaint pursuant to § 33.700, it must defer the protested procurement action (for example, defer its issuance of solicitation, bid opening date, contract award or notice to proceed under the contract) for ten days after mailing or delivery of any written adverse determination. Where the Project Officer has received a written protest pursuant to § 33.705, he must notify the grantee promptly and the grantee must defer its protested procurement action until after it receives the determination by the EPA Protest Officer. If a determination is made by either the grantee or the EPA Protest Officer which is favorable to the complainant, the grantee's procurement action (for example, contract award) must be taken in accordance with such determination.

§ 33.720 Extensions of time.

The filing of a protest by a bidder shall constitute an extension of the period for acceptance of his bid and his bid bond(s), if any, until 10 working days after final determination of his protest. The grantee must seek to obtain similar extensions from other affected bidders.

§ 33.725 Enforcement.

Noncompliance with the provisions of this Subpart affecting procurement may result in (a) total or partial termination of the grant pursuant to § 30.815 of this Subchapter, (b) ineligibility for grant assistance which could otherwise be awarded under this Subchapter, or (c) disallowance of project costs incurred in violation of the provisions of this Subpart or applicable Federal laws, as determined by the Protest Officer. The

grantee may appeal adverse determinations by the EPA Protest Officer in accordance with the disputes provisions of this Subchapter (see 40 CFR Part 30 Subpart J).

Part 35 of Title 40 of the Code of Federal Regulations is proposed to be amended by deleting §§ 35.938 through 35.939 and adding new §§ 35.937 through 35.939, which sections shall read as follows:

Sec.
35.937 Contracts for personal and professional services.
35.937-1 Type of contract.
35.937-2 Public announcement.
35.937-3 Evaluation criteria.
35.937-4 Ranking and selection of candidates for architectural or engineering services.
35.937-5 Negotiation.
35.937-6 Price and cost considerations.
35.937-7 Profit.
35.937-8 Award of contract.
35.937-9 Required solicitation and subagreement provisions.
35.937-10 Subagreement payments—professional services.
35.937-11 Applicability to existing contracts.
35.938 Construction contracts or grantees.
35.938-1 Applicability.
35.938-2 Performance by contract.
35.938-3 Type of contract.
35.938-4 Formal advertising.
35.938-5 Negotiation of contract amendments.
35.938-6 Subagreement payments — construction, materials and equipment.
35.939 General procurement requirements.
35.939-1 Negotiation of subagreements.
35.939-2 Code or standards of conduct.
35.939-3 Small purchases.
35.939-4 Protests against award.

§ 35.937 Contracts for personal and professional services.

In the procurement of personal and professional services, grantees may use their own procurement systems and procedures which meet applicable requirements of State, territorial or local laws and ordinances to the extent that such systems and procedures do not conflict with Federal laws, regulations or policies. The applicable provisions of §§ 35.937 through 35.937-11 apply to all subagreements of grantees for personal and professional services where the aggregate amount of services involved is expected to exceed $10,000.

(a) *Policy.* Facilities planning (Step 1), project design work (Step 2), or administration or management of (Step 3) project work may be performed by negotiated procurement of engineering, planning, architectural, accounting, fiscal, legal, or related services, as appropriate. The proper award and performance of contracts for such services is of crucial importance for the optimum design and construction of treatment works in accordance with the policies set forth in Pub. L. 92-500, Federal Management Circular 74-7, and in this subpart. It is the policy of the Federal Government to encourage public announcement of the requirements for personal and professional services. Contracts for such services shall be negotiated with candidates selected on the basis of demonstrated competence and qualifications for the type of professional services required and at a fair and reasonable price. All negotiated procurement shall be conducted in a manner to provide to the maximum practicable extent open and free competition.

(b) *Definitions.* As used in §§ 35.937 through 35.937-12 the following words and terms shall have the meaning set forth below:

(1) Architectural or engineering services are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operation and maintenance manuals, and other related services.

(2) Subagreement is a written agreement between a grantee and third party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personal and professional services and purchase orders. Subagreements must be necessary for and directly related to the accomplishment of the project work; must be in the form of a bilaterally executed written agreement; must be for monetary or in-kind consideration; and may not be in the nature of a grant or gift.

§ 35.937-1 Type of contract.

The preferred type of negotiated contract is the fixed price type. However, the cost reimbursement types of contract (e.g., cost-plus-fixed-fee, cost-plus-incentive-fee, etc.) may be utilized if the cost of contract performance cannot be adequately estimated for fixed price purposes. The cost-plus-percentage-of-cost (including salary multiplier) and the percentage - of - construction - cost types of contract may not be utilized. Each cost reimbursement contract must clearly establish a cost ceiling which the contractor may not exceed without formally amending the contract.

§ 35.937-2 Public announcement.

(a) Adequate public notice must be given of the request for proposals for negotiated procurements with an anticipated price in excess of $10,000 except where single source procurement is permitted pursuant to § 35.937-11. Such notice of request for proposals should be published in professional journals, newspapers, or publications of general circulation beyond the grantee's locality (Statewide, generally), and through posted public notices, or written notification directed to interested persons, firms, or professional organizations inviting proposals and stating the method by which request for proposal documents may be obtained or examined. Sources which request an opportunity to submit proposals, and which are not otherwise barred by law or regulation, shall be promptly furnished a copy of the request for proposal and shall be permitted to submit a proposal in response thereto.

(b) Requests for proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal properly. the request for proposals must include the solicitation statement required pursuant to § 35.937-9(a) and must inform offerors of all evaluation criteria (as stated in § 35.937-3) and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized).

(c) The request for proposal must clearly state the time and place for submission of proposals.

§ 35.937-3 Evaluation criteria.

(a) The grantee shall review submissions from eligible firms received in response to public notice of a particular project and shall uniformly evaluate the responding firms. Information shall not be conveyed to one or more candidates which would give them a competitive advantage.

(b) Criteria which must be considered in the evaluation and ranking of candidates for selection for negotiation of a contract shall as a minimum include:

(1) Specialized experience and technical competence of the candidate or firm and its personnel (including a joint venture or association) in connection with the type of services required.

(2) Past record of performance on contracts with the grantee, other government agencies or public bodies, and with private industry, including such factors as control of costs, quality of work, and ability to meet schedules;

(3) Capacity of the candidate to perform the work (including any specialized services) within the time limitations;

(4) Geographic location of the candidate and its familiarity with the area in which the project is located;

(5) Proposed method to accomplish the work required, including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and designs;

(6) Volume of work previously awarded to the candidate by the grantee with the object of effecting an equitable distribution of work among qualified firms; and

(7) Avoidance of personal and organizational conflicts of interest.

§ 35.937-4 Ranking and selection of candidates for architectural or engineering services.

Not less than three candidates must be selected and ranked for negotiation of contracts, unless after good faith effort to solicit proposals in accordance with § 35.937-2, three or fewer qualified candidates respond, in which case all qualified candidates must be selected and ranked for negotiation. The ranking

should be accomplished by an objective process, such as the appointment of a board or committee which includes technical experts. Oral or written interviews should be conducted with proposers, and information derived therefrom shall be treated on a confidential basis, except as required to be disclosed to EPA pursuant to § 35.937–6 (Cost and price considerations).

§ 35.937–5 Negotiation.

Grantees are responsible for negotiation of contracts. This function may be performed by the grantee directly or by a person or firm retained for the purpose. Contract negotiations may include the services of technical, legal, audit or other specialists to the extent deemed appropriate. Negotiations shall be directed toward:

(a) Making certain that the candidate has a clear understanding of the essential requirements;

(b) Assuring that the candidate will make available the necessary personnel and facilities to accomplish the work within the required time;

(c) Assuring that the candidate will provide the required technical services in accordance with regulations and criteria established for the project; and

(d) Reaching mutual agreement on the provisions of the contract, including a fair and reasonable price for the required work determined in accordance with the cost and profit considerations set forth in §§ 35.937–6 and 35.937–7.

§ 35.937–6 Price and cost considerations.

(a) *General.* It is the policy of EPA that the cost or price of all subagreements must be considered. For each subagreement expected to exceed $100,000, each proposer selected for negotiation shall submit to the grantee adequate documentation to enable the grantee to perform appropriate review of proposed costs or prices as described in paragraphs (b) and (c) of this section. The grantee, after reviewing the data, shall submit the proposer's data, his findings and the proposed subagreement to the Project Officer for review. The Project Officer must approve the cost or price analysis prior to the award of the contract to assure compliance with appropriate procedures.

(b) *Cost analysis.* (1) In those cases where technical competition is the principal selection factor, a detailed analysis of the selectee's cost estimate and backup cost or pricing data is required.

(2) Cost analysis includes the appropriate vertification of cost data, the evaluation of specific elements on costs, and the projection of these data to determine the effect on prices of such factors as:

(i) The necessity for certain costs;

(ii) The reasonableness of amounts estimated for the necessary costs;

(iii) Allowances for contingencies;

(iv) The basis used for allocation of overhead costs; and

(v) The appropriateness of allocations of particular overhead costs to the proposed contract.

(3) Appropriate consideration should be given to § 35.940, which contains general cost principles and procedures for the determination and allowability of costs under grants.

(4) Among the evaluations that should be made where the necessary data are available and the level of effort merits such evaluations are comparisons of a contractor's or offeror's current estimated costs with:

(i) Currently approved (certified) rates (direct and indirect) based on recent Federal, State or local analysis or audit utilizing the allowable cost principles of § 35.940.

(ii) Actual costs previously incurred by the contractor or offeror;

(iii) The contractor's or offeror's last prior cost estimate for the same or a similar item or with a series of his prior estimates;

(iv) Current cost estimates from other possible sources; and

(v) Prior estimates of historical costs of other contractors performing services of a similar nature.

(5) Forecasting future trends in costs from historical cost experience is of primary importance. An adequate cost analysis must include consideration of future trends in costs when reasonably determinable.

(6) In addition to the elements of cost, the amount of profit shall be set forth separately in the cost analysis.

(c) *Price analysis.* Price analysis is the process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis is used when the services required lend themselves to price comparison.

§ 35.937–7 Profit.

It is the policy of EPA that profit—i.e., the net proceeds obtained by deducting all eligible elements of cost (direct and indirect) from the price—on a subagreement and each amendment to a subagreement under a grant be sufficient to attract contractors who possess talents and skills necessary to the accomplishment of project objectives, and to stimulate efficient and expeditious completion of the project. Where cost analysis is performed, the estimate of profit should be analyzed as are all other elements of price. The objective of negotiations shall be the exercise of sound business judgment including a fair and reasonable profit based on the firm's assumption of risk and input to total performance and not merely the application of a predetermined percentage factor. For example, the ratio of profit to cost should normally be less for amendments and change orders than for initial contract agreements.

§ 35.937–8 Award of contract.

(a) After the close of negotiations, the grantee shall award the contract to the proposer whose proposal achieves the best technical product at a reasonable price as set forth in §§ 35.937–3, 35.937–5 and 35.937–6.

(b) An unsuccessful offeror shall be notified at the earliest practicable time that its offer has not been selected for award.

(c) Upon written request of an unsuccessful offeror, the grantee shall disclose the reason(s) for rejection.

(d) The grantee must develop and retain adequate records of the basis for selection for negotiation and award.

(e) The grantee shall secure written approval from the EPA Project Officer of all subagreements or amendments thereto in excess of $100,000 and their cost analyses prior to execution of the subagreement or amendment to assure compliance with appropriate procedures.

§ 35.937–9 Required solicitation and subagreement provisions.

Each subagreement must adequately define the scope of project work to be performed by the contractor for the grantee and must include adequate provisions to define a sound and complete agreement. All such subagreements must include the applicable provisions set forth in paragraph (b).

(a) *Required solicitation statement.* Requests for proposals must include the following statement:

> Any contract or contracts awarded under this request for proposals are expected to be funded in part by a grant from the United States Environmental Protection Agency. This procurement will be subject to regulations contained in 40 CFR 35.937 and 35.939. Neither the United States nor the United States Environmental Protection Agency is nor will be a party to this request for proposals or any resulting contract.

(b) *Required subagreement provisions.*

(1) *Privity of contract.* Each subagreement must include the following or substantially similar provision:

> This contract is funded in part by a grant from the U.S. Environmental Protection Agency. This contract is subject to regulations contained in 40 CFR 35.937 and 35.939. Neither the United States nor the U.S. Environmental Protection Agency is a party to this contract.

(2) *Amendment.* Each subagreement must contain adequate provision for amendment of work within the scope of the contract by the grantee.

(3) *Termination; suspension.* Each subagreement must contain adequate provisions for termination of all or any part of contract performance for default or for convenience by the grantee, or for suspension of all or any part of contract performance by agreement or by the grantee, including the manner by which the termination or suspension will be effected and the basis for settlement.

(4) *Remedies.* Each subagreement must contain adequate contractual provisions or conditions to allow for administrative, contractual, or legal remedies in instances where grantees or contractors violate or breach contract terms or

conditions, and must provide for such damages, sanctions, and penalties as may be appropriate.

(5) *Employment practices.* Each subagreement must contain a provision that the contractor shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under any project, program, or activity receiving assistance from EPA, and that the contractor shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

(6) *Patents; data; copyrights.*—(i) Each subagreement shall contain a provision to the effect that the contractor is subject to the duties of the grantee relating to rights in data and copyrights contained in 40 CFR 30.530.

(ii) Each subagreement involving experimental, developmental, research or demonstration work shall contain a provision to the effect that the contractor is subject to the duties of the grantee relating to rights to inventions and patents contained in 40 CFR 30.515.

(7) *Notice and assistance regarding patent and copyright infringement.* Each subagreement must contain a clause substantially similar to that set forth in the grant agreement entitled "Notice and Assistance Regarding Patent and Copyright Infringement."

(8) *Records.* Each subagreement must contain a provision requiring the contractor to maintain records of contract performance as defined in § 30.805 of this Subchapter and make these records available for inspection, audit and copying by the grantee, EPA, the Comptroller General of the United States, or any authorized representative, to the extent and for the same length of time as is set forth with respect to grantee records in § 30.805 of this subchapter.

(9) *Access.* Each subagreement must contain a provision to ensure that the Project Officer and any authorized representative of EPA or the Comptroller General of the United States shall at all reasonable times during the period of EPA grant support and until three years after final settlement have access to the facilities, premises and records, as defined in § 30.805, of the contractor related to the project. In addition, any person designated by the Project Officer shall have access, upon reasonable notice to the grantee by the Project Officer, to visit the facilities and premises related to the project.

(10) *Executive Order 11738.* Each subagreement in excess of $100,000 must contain a provision whereby the contractor or subcontractor agrees to comply with all applicable regulations issued pursuant to Section 306 of the Clean Air Act and Section 508 of the Federal Water Pollution Control Act.

(11) *Contingent fees.* Each subagreement shall contain a prohibition against contingent fees as follows:

The Contractor warrants that no person or company has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees; nor has the contractor paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee, any fee, commission, contribution, donation, percentage, gift, or any other consideration, contingent upon, or resulting from award of this contract. For any breach or violation of this provision, the Owner shall have the right to terminate this agreement without liability and, at his discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any other damages, and shall be responsible for reporting the details of such breach or violation to the proper legal authorities, where and when appropriate.

§ 35.937–10 Subagreement payments—professional services.

Full and prompt payment should be made by grantees and contractors for eligible costs incurred as work proceeds under contracts for personal and professional services under an EPA grant. Grantees and contractors should not as a matter of policy withhold payment for eligible contract costs for professional services unless it is determined that the professional service contractor has failed to comply with contract objectives, terms, conditions, or reporting requirements. Withholding should be limited to only that amount necessary to assure contract compliance.

§ 35.937–11 Applicability to existing contracts.

(a) In some cases a negotiated subagreement may have been executed prior to the effective date of these regulations to cover work under more than one step of a grant. Such contracts already in existence may not have included a firm and definitive scope of work or a firm price for the later steps.

(1) When the scope of work has been sufficiently defined to negotiate a firm, contractual agreement, including a firm price, for subsequent phases of the work at the time of the initial negotiation, all phases covered by the firm agreement may proceed under that contract.

(2) When the scope of work is not sufficiently defined to negotiate a firm contractual agreement, including a firm price, for each phase of the work at the time of the initial negotiation, the grantee must, prior to moving into subsequent phases, either

(i) Renegotiate the contract in accordance with §§ 35.937–5 (Negotiation), 35.937–6 (Price and cost considerations) and 35.937–7 (Profit), or

(ii) Announce the subsequent phases and negotiate a contract with the successful proposer.

(3) The provisions of subparagraph (2) above shall apply to all negotiated contracts for personal and professional services spanning more than one step if the subsequent phases are made firm after the effective date of this regulation, even if the firm contract for the first phase was executed prior to that date.

(4) The announcement provision in subparagraph (2) above shall not apply to a grantee who desires to utilize the engineering firm which performed the pre-design or the design work under step 1 or step 2 of the grant for services during construction under step 3.

(b) When a single treatment works is segmented into two or more step 3 projects, and if the step 2 work is accordingly segmented so that the initial contract for preparation of construction drawing and specifications does not cover the entire treatment works to be built under one grant, the grantee need not announce the requirement for architectural or engineering services for subsequent segments of design work under one grant. The grantee may use the same engineering firm that was selected for the initial segment of step 2 work for subsequent segments if he desires to do so. All other appropriate provisions of these sections, including cost analysis and negotiation of price, will apply to each segment of work.

§ 35.938 Construction contracts of grantees.

§ 35.938–1 Applicability.

This section applies to contracts awarded by grantees for any Step 3 project except personal and professional service contracts.

§ 35.938–2 Performance by contract.

It is the policy of the Environmental Protection Agency to encourage free and open competition with regard to project work performed by contract. The project work shall be performed under one or more contracts awarded by the grantee to private firms, except for force account work authorized by § 35.935–2.

§ 35.938–3 Type of contract.

Each contract shall be a fixed price (lump sum or unit price or a combination of the two) contract, unless the Regional Administrator gives advance written approval for the grantee to use some other method of contracting. The cost-plus-a-percentage-of-cost method of contracting shall not be used.

§ 35.938–4 Formal advertising.

Each contract shall be awarded by means of formal advertising, unless negotiation is permitted in accordance with § 35.939–1. Formal advertising shall be in accordance with the following:

(a) *Adequate public notice.* The grantee will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation beyond the grantee's locality (Statewide, generally), inviting bids on the project work, and stating the method by which bidding documents may be obtained and/or examined. Where the estimated prospective cost of Step 3 construction is ten million dollars or more, such notice must generally be published in trade journals of Nationwide distribution. The grantee should in addition solicit bids directly from bidders if it maintains a bidders list.

(b) *Adequate time for preparing bids.* Adequate time, generally not less than 30 days, must be allowed between the date when public notice pursuant to paragraph (a) of this section is first published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when such notice is first published.

(c) *Adequate bidding documents.* A reasonable number of bidding documents (invitations for bid) shall be prepared by the grantee and shall be furnished upon request on a first-come, first-serve basis. A complete set of bidding documents shall be maintained by the grantee and shall be available for inspection and copying of any part. Such bidding documents shall include:

(1) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule. (Drawings and specifications may be made available for inspection instead of being furnished.);

(2) The terms and conditions of the contract to be awarded;

(3) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;

(4) Responsibility requirements or criteria which will be employed in evaluating bidders; *Provided,* That an experience requirement or performance bond may not be utilized unless adequately justified under the particular circumstances by the grantee;

(5) The following statement:

Any contract or contracts awarded under this Invitation for Bids are expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is or will be a party to this Invitation for Bids or any resulting contract;

and

(6) A copy of § 35.938 and § 35.939.

(d) *Sealed bids.* The grantee shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.

(e) *Amendments to bidding documents.* If a grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the amendments shall be communicated in writing to all firms who have obtained bidding documents in time to be considered prior to the bid opening time; when appropriate, the period for submission of bids shall be extended.

(f) *Bid modifications.* A firm which has submitted a bid shall be allowed to modify or withdraw its bid prior to the time of bid opening.

(g) *Public opening of bids.* Grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

(h) *Award to the low responsive, responsible bidder.* (1) After bids are opened, they shall be evaluated by the grantee in accordance with the methods and criteria set forth in the bidding documents.

(2) Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder.

(3) If award is intended to be made to a firm which did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed not responsive or nonresponsible.

(4) State or local laws, ordinances, regulations or procedures which are designed or operated to give local or in-State bidders preference over other bidders shall not be employed in evaluating bids.

§ 35.938–5 Negotiation of contract amendments.

(a) Amendments to formally advertised, fixed price, construction contracts, including change order amendments, shall be negotiated utilizing the provisions of § 35.937–5 (Negotiation), § 35.937–6 (Price and cost considerations) and § 35.937–7 (Profit).

(b) Related work shall not be split into two amendments or change orders merely to keep it under $100,000 and thereby avoid the requirements of paragraph (a). For change orders which include both additive and deductive items:

(1) If any single item (additive or deductive) exceeds $100,000, the requirements of paragraph (a) shall be applicable.

(2) If no single additive or deductive item has a value of $100,000, but the total price of the change order is over $100,000, the requirements of paragraph (a) shall be applicable.

(3) If the total of additive items of work in the change order exceed $100,000 or the total of deductive items of work in the change order exceed $100,000 and the net price of the change order is less than $100,000, the requirements of paragraph (a) shall apply.

§ 35.938–6 Subagreement payments—construction, materials and equipment.

(a) It is EPA policy that, except as may be otherwise provided by State law, full and prompt payment should be made by grantees and contractors for eligible construction, material, and equipment costs incurred under a contract under an EPA construction grant.

(b) Maximum partial payments—payment for partial delivery and acceptance of contractors—would be made by grantees and contractors for items (including manufactured items such as pipe):

(1) Which have been delivered to the construction site, or which are stockpiled in the vicinity of the construction site;

(2) Where title is vested in the grantee, and

(3) when acceptance is made by the grantee, its authorized representative, or contractor.

It is the grantee's responsibility through its representatives and contractors to insure that items for which partial payments have been made are adequately insured and are protected through appropriate security measures. Costs of such insurance and security are allowable costs in accordance with § 35.940.

(c) Progress payments—payment made for work on undelivered items as such work progresses—for specifically manufactured items or equipment may be made by the grantee or contractor only under the following circumstances:

(1) When so stated in the contract specification by the grantee's consulting engineer for major equipment or items specifically manufactured for the project (and not for off-the-shelf or catalog items or equipment not requiring special manufacture);

(2) Where a fabrication period of more than nine months between beginning of work and the first delivery is anticipated; and

(3) Where a substantial amount of predelivery expenditures that will materially impact working funds of the contractor or subcontractor are anticipated.

(d) Withholding full and prompt payment of construction, material, and equipment contracts shall be limited to the following:

(1) withholding of up to 10 percent of the payment claimed until work is 50 percent complete;

(2) after work is 50 percent complete, reduction of the withholding to 5% of the dollar value of all work satisfactorily completed to date, provided that the contractor is making satisfactory progress and there is no specific cause for greater withholding;

(3) when the work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below 5 percent to only that amount necessary to assure completion.

(4) The grantee may reinstate the full 10% withholding if such withholding is necessary to insure completion of the contract objectives, terms, conditions, or reporting requirements.

(e) The grantee will accept a cash bond or irrevocable letter of credit if offered in lieu of cash withholding under (d)(2) or (d)(3). "Irrevocable letter of credit" shall be construed to constitute a letter from a bank or other lending institution irrevocably guaranteeing the availability of requisite funds: i.e., irrevocable line of credit for the purpose in question. "Cash bond" shall constitute an acceptable bond, purchased by the contractor, to cover the withholding stipulated in the contract document. Such an instrument is similar to a performance and payment bond but serving a different purpose, namely contractual withholding. A "cash bond" may also be in the form of immediately negotiable (1) bonds or notes of the United States of America, or obligations, the payment of which is guaranteed by the United

States of America, or (2) bonds or notes of any State, or (3) bonds of any political subdivision of any State.

(f) Each contract shall include appropriate provision regarding partial and progress payments. The text of such clause must be acceptable to the Regional Counsel.

(g) Pursuant to § 30.620–3 of this Subchapter, a grantee who delays disbursement of grant funds will be required to credit to the United States all interest earned on those funds.

§ 35.939 General procurement requirements.

§ 35.939–1 Negotiation of subagreements.

(a) Procurement by formal advertising is the preferred method of contracting; however, negotiation of subagreements by the grantee is authorized if it is impracticable and infeasible to use formal advertising. All negotiated procurement shall be conducted in a manner to provide to the maximum practicable extent open and free competition. Generally, procurements may be negotiated by the grantee if any of the following conditions are applicable:

(1) Public exigency will not permit the delay incident to formally advertised procurement (e.g., an emergency procurement).

(2) The aggregate amount involved does not exceed $10,000 (see § 35.939–3 for small purchases).

(3) The material or service to be procured is available from only one person or entity. If the procurement is expected to aggregate more than $10,000, the grantee must document its file with a justification of the need for noncompetitive procurement, and provide such documentation to the Project Officer on request.

(4) The procurement is for personal or professional services or for any service to be rendered by a university or other educational institution.

(5) No responsive, responsible bids at acceptable price levels have been received after formal advertising.

(6) The procurement is for materials or services where the prices are established by law.

(7) The procurement is for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, or for technical or specialized supplies requiring substantial initial investment for manufacture.

(8) The procurement if for experimental, developmental or research services.

(b) When negotiation of subagreements is authorized pursuant to (a) above, such subagreements shall be negotiated utilizing the applicable provisions of §§ 35.937 through 35.937–11.

§ 35.939–2 Code or standards of conduct.

(a) The grantee must maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in the conduct of project work, including procurement and the expending of project funds. As a minimum, the grantee must exert diligent effort to ensure that its officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. The grantee must avoid personal or organizational conflicts of interest or noncompetitive procurement practices which restrict or eliminate competition or otherwise restrain trade.

(b) To the extent permissible by State or local law or formal institutional requirements and procedures, the grantee must ensure that penalties, sanctions, or other adequate disciplinary actions are applied for project-related violations of law or of such code or standards of conduct by either the grantee officers, employees, or agents, or by contractors or their agents.

(c) The grantee must inform the Project Officer in writing of each violation of law or code or standards of conduct, by its officers, employees, contractors, or by their agents, and of the prosecutive or disciplinary action taken by the grantee with respect to such infractions, and must cooperate with Federal officials with respect to any Federal prosecutive or disciplinary actions instituted with respect to such infractions. Pursuant to § 30.245 of this Subchapter, the Project Officer must notify the Director, EPA Security and Inspection Division, of all such notifications from the grantee.

(d) EPA shall cooperate with the grantee with respect to its disciplinary or prosecutive actions taken with respect to any apparent project-related violations of law or of the grantee's code or standards of conduct.

(e) All procurements under grants are covered by the provisions of § 30.245 of this Subchapter relating to fraud and other unlawful or corrupt practices.

§ 35.939–3 Small purchases.

(a) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed $10,000. The small purchase limitation of $10,000 applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should properly be grouped together.

(b) Small purchases shall be accomplished by negotiation, except when otherwise required by State or local law or where it is clearly in the best interest of the project to accomplish such purchases by more formal methods. Reasonable competition shall be obtained.

(c) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like may be utilized in the interest of minimizing paperwork. Retention in the purchase files of written quotations received, or references to printed price lists used, will suffice as the record supporting the price paid.

§ 35.939–4 Protests against award.

(a) *Grantee responsibility.* The grantee is responsible for conducting project procurement in accordance with applicable requirements of State, territorial, or local laws or ordinances, as well as the specific requirements of Federal law or this subchapter directly affecting the procurement (for example, the nonrestrictive specification requirement of § 35.935–2(b) or the equal employment opportunity requirement of § 35.935–6) and for the initial resolution of complaints based upon alleged violations of these Federal requirements. If complaint is made to the Regional Administrator concerning an alleged violation of Federal law or this subchapter concerning procurement under a grant for construction of treatment works, the complaint will be referred to the grantee for resolution. (The provisions of § 30.245 of this subchapter relating to fraud and other unlawful or corrupt practices also apply.) The grantee must promptly determine each such complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected, to state in writing or at a conference the basis for their views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties (by certified mail, return receipt requested), a written summary of its determination, substantiated by a legal opinion (and accompanied by an engineering report where step 3 construction is involved), providing a justification for its determination. See paragraph (c) of this section for applicable time limitations.

(b) *Regional Administrator responsibility.* A party adversely affected by an adverse determination of a grantee made pursuant to paragraph (a) of this section, concerning an alleged violation of a specific requirement of Federal law or this subchapter directly affecting a grantee's procurement may request the Regional Administrator to review an adverse determination, subject to the time limitation set forth in paragraph (c) of this section. A copy of the written adverse determination and supporting justification shall be transmitted with the request for review, together with a statement of the specific reasons why the proposed grantee procurement action would violate Federal requirements. The Regional Administrator will afford both the grantee and the complaining party, as well as any other interested party who may be adversely affected, an opportunity to present the basis for their views in writing or at a conference, and he shall promptly state in writing the basis for his determinations of the protest. If the grantee proposes to award a formally advertised contract or to approve award of a specified sub-item under such contract to a

bidder other than the apparent low bidder, the grantee will bear the burden of proving that its determination concerning responsiveness of the low bid is in accordance with Federal law and this subchapter. If the basis for the grantee's determination is a finding that the low bidder is not responsible, the grantee must establish and substantiate the basis for its determination and must establish that such determination has been made in good faith. The written determination by the Regional Administrator shall be promptly furnished to the grantee and to the complainant and shall be final as to Agency action except with respect to appeal rights of the grantee under the disputes provision of the grant (see Part 30 Subpart J of this subchapter). (The provisions of § 30.245 of this Subchapter relating to fraud and other unlawful or corrupt practices also apply.)

(c) *Time limitations.* Complaints should be made pursuant to paragraph (a) of this section as early as possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the procurement process; *Provided*, That a complaint authorized by paragraph (a) of this section must be mailed (by certified mail, return receipt requested) or delivered no later than the fifth working day after receipt of notice of nonselection or, if no notice is received, the fifth working day after the complainant first learns of the action it desires to protest. A protest against a post-award procurement action of a grantee must be mailed (certified mail, return receipt requested) or delivered to the Regional Administrator as soon as possible, but in no event later than the fifth working day after procurement action is taken by the grantee or the fifth working day after the complainant first learns of the action it desires to protest, whichever occurs later. A request for review by the Regional Administrator pursuant to paragraph (b) of this section must be received by the Regional Administrator within one week after the complaining party received the grantee's adverse determination.

(d) *Deferral of procurement action.* Where the grantee has received a written complaint pursuant to paragraph (a) of this section, it must defer the protested procurement action (for example, defer the issuance of solicitations, bid opening date, contract or award or notice to proceed under the contract) for ten days after mailing or delivery of any written adverse determination. Where the Regional Administrator has received a written protest pursuant to paragraph (b) of this section, he must notify the grantee promptly and the grantee must defer its protested procurement action until after it receives the determination by the Regional Administrator. If a determination is made by either the grantee or the Regional Administrator which is favorable to the complainant, the grantee's procurement action (for example, contract award) must be taken in accordance with such determination.

(e) *Extensions of time.* The filing of a protest by a bidder shall constitute an extension of the period for acceptance of his bid and his bid bond(s), if any, until 10 working days after final determination of his protest. The grantee must seek to obtain similar extensions from other affected bidders.

(f) *Enforcement.* Noncompliance with the provisions of this subchapter affecting procurement will result in (1) total or partial termination of the grant pursuant to § 35.950, (2) ineligibility for grant assistance which could otherwise be awarded under this subchapter or (3) disallowance of project costs (see § 35.940–2(j)) incurred in violation of the provisions of this subchapter or applicable Federal laws, as determined by the Regional Administrator. The grantee may appeal adverse determinations by the Regional Administrator in accordance with the disputes provision of this subchapter (see 40 CFR Part 30 Subpart J).

[FR Doc.75-12237 Filed 5-8-75;8:45 am]

[40 CFR Part 180]

[FRL 370-5; OPP-300004]

CERTAIN INERT INGREDIENTS IN PESTICIDE FORMULATIONS

Exemption From Requirement of Tolerance

The Administrator of the Environmental Protection Agency has received requests to exempt certain additional inert (or occasionally active) ingredients in pesticide formulations from tolerance requirements under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act.

The data submitted with the requests have been reviewed, as well as the history of use and available information on the chemistry and toxicity of these substances. It has been determined that these substances are useful as adjuvants and do not pose a hazard to the environment when used in accordance with good agricultural practice. The proposed regulation will protect the public health.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, on or before June 9, 1975, that this proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 423, East Tower, 401 M Street, SW, Washington, DC 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting the document. The comments must be received on or before June 9, 1975, and should bear a notation indicating the subject (OPP-300004). All written comments filed pursuant to this notice will be available for public inspection in the Office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)))

Dated: May 1, 1975.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

It is proposed that Part 180, Subpart D, § 180.1001, be amended by alphabetically inserting the following new items in paragraphs (c), (d), and (e).

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* *
Almond shells		Solid diluent and carrier.
* * *	* * *	* *
Coconut shells		Solid diluent and carrier.
* * *	* * *	* *
Wood flour	Derived from wood free of chemical preservatives.	Solid diluent and carrier.
* * *	* * *	* *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* *
Dipotassium hydrogen phosphate		Buffering agent.
* * *	* * *	* *
Potassium dihydrogen phosphate		Buffering agent.
* * *	* * *	* *
Sodium molybdate		Plant nutrient.
* * *	* * *	* *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* *
α-Oleoyl-ω(oleoyloxy)poly (oxyethylene) derived from α-hydro-ω-hydroxypoly (oxyethylene), molecular weight 600.		Emulsifier, defoaming agent.
* * *	* * *	* *

[FR Doc.75-12012 Filed 5-8-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 210, 239, 249]

[Release Nos. 33-5579, 34-11353, 35-18940]

INTERIM FINANCIAL STATEMENTS

Alternative Proposals Regarding Disclosure

In Securities Act Release No. 5549 dated December 19, 1974 and published at 40 FR 1079, January 6, 1975, notice was given of proposals to increase disclosure of interim results by registrants.

Interested persons were invited to submit written comments regarding the proposals on or before March 15, 1975. Numerous comments were received and, as might be expected, various views were expressed with respect to the usefulness, practicability and cost of the information proposed to be required.

The proposal which elicited the greatest amount of comment was the proposed amendment to Regulation S–X (17 CFR Part 210) which would require certain limited quarterly data to be included in a footnote to financial statements for the year. This inclusion would have the effect of involving independent public accountants with quarterly data and it was this effect which was most criticized by commentators.

The Commission has carefully considered the comments received. It continues to believe that the proposed disclosures of quarterly data in connection with financial statements covering longer periods may be necessary and appropriate for the proper protection of investors in that it would enable them to assess the trend of business operations and to understand the seasonal characteristics of a reporting entity. It also believes that the involvement of independent public accountants in the interim reporting process would improve the quality of the interim reporting systems of registrants and hence the reliability and consistency of interim reports.

The letters of comment received have stressed the additional cost of public accounting services that would be incurred if the Commission's original proposal to include the proposed footnote in audited financial statements is adopted and have expressed the view that benefits to be gained would not be commensurate with these costs.

The Commission is mindful of the cost to registrants of its proposals and it recognizes its responsibility to weigh with care the costs and benefits which result from its rules. Whenever it is possible for the Commission to achieve its objective of protection of investors through approaches which minimize costs to registrants, it attempts to do so.

Accordingly, the Commission has concluded that it is appropriate to invite comments on specific alternative proposals to those set forth in its prior release. The Commission believes that these proposals may accomplish its desired objectives at a lesser cost to registrants. The earlier proposals are still being considered and are not withdrawn, but the proposals set forth herein should be considered as possible alternatives to certain portions of those proposals. The Commission specifically invites comments on the cost to registrants of these alternative proposals.

These proposals would permit the footnote which includes limited quarterly data to be labeled "unaudited"; would expand the note requirement to include data for full quarters in any stub period income statements presented; would specify the limited review procedures which independent public accountants would be expected to follow when they are associated with this unaudited note by reporting on the financial statements in which it is included; would permit (but not require) independent public accountants to be associated with data on Form 10–Q (17 CFR 249.308a) when they have performed certain specified review procedures; would permit registrants who do not meet the current financial tests for using the less costly registration Form S–7 (17 CFR 239.26) to use this form if their independent accountants have been associated with the three most recently filed Form 10–Q's; and would require the chief financial officer of the registrant to sign Form 10–Q. These proposals are discussed in more detail below.

In addition, because significant questions have been raised concerning the desirability of involvement by independent public accountants in the interim reporting process and because a number of commentators indicated a wish to make a personal presentation on the issues, the Commission has determined to hold a hearing on the subject as well as to receive comments on alternative proposals. The hearing, which is ordered in Securities Exchange Act Release No. 11354 (40 F.R.) issued today, will permit interested parties to express their opinions on any aspects of interim reporting.

Interim financial data in notes to annual financial statements. Release 33–5549 proposes to amend Regulation S–X to require disclosure of selected quarterly financial data in notes to annual financial statements. The release states: "The Commission is not prepared, however, to have this footnote designated as 'unaudited.'"

Commentators have suggested that this approach would be costly. Some also contend that the distinction between auditing the interim data in a note as contemplated in the release and auditing each interim period as a separate period, which is stated not to be contemplated, would not be understood. One suggestion for dealing with this problem is to allow the required footnote to be designated as "unaudited" but require that some review procedures be applied to the data by independent public accountants. Under this suggestion, the required review procedure would have to be articulated either by the accounting profession as an element of generally accepted auditing standards or by the Commission as part of its rules.

The Commission believes that this suggestion may have merit. Accordingly, in this release the Commission specifically proposes to modify proposed Rule 3–16(v) of Regulation S–X (17 CFR 210.3–16(v)) to allow the note required by that rule to be designated as unaudited. Further, it is proposed to amend Rule 2–02 of Regulation S–X (17 CFR 210.2–02) to specify review procedures which should be carried out when financial statements upon which the auditor is reporting contain a note required by Rule 3–16(v) which is designated as "unaudited."

Finally, the proposed rule is modified to call for data with respect to full quarters within the two most recent fiscal years and any subsequent interim period for which income statements are presented. The existing proposal refers only to the two most recent years. The modification is proposed in recognition of the importance of the quarterly components of an interim stub period (nine months, for example) presented in a prospectus.

If these amendments are adopted, it is expected that the accountant's report would not require specific reference to the note or to the procedures carried out unless the procedures have not been performed or the auditor concludes that the data included in the note to financial statements do not fairly present the information they purport to show in conformity with generally accepted accounting principles.

Review of financial data in Form 10–Q. Release 33–5549 does not propose to require timely involvement of independent accountants with interim reporting. However, that release expressed the view that such involvement is desirable and noted that the New York Stock Exchange endorsed the involvement of auditors with interim reporting in its 1973 White Paper. Several commentators have suggested that interim involvement might appropriately be required in some instances.

The Commission is presently considering the degree to which auditor involvement in interim financial reporting should be encouraged or required and it is also considering the types of procedures which an auditor might carry out.

In this release, it is proposed to amend Form 10–Q under the Securities Exchange Act of 1934 to allow, but not require, auditor involvement with the information in the Form 10–Q. As proposed, the amendments would set forth the nature of the procedures which an independent public accountant might carry out with respect to the financial statement data required in the form; add a statement on the facing page to indicate whether the independent public accountant has performed these procedures; and add an instruction to file as an exhibit a letter from the independent public accountant if he is represented to have reviewed the statements.

The identified review procedures would not constitute an examination in accordance with generally accepted auditing standards and the auditor performing them would not be in a position to express an opinion on the interim financial statements. Rather, the procedures are designed to bring to the auditor's attention significant matters to which his objectivity and knowledge of financial reporting may be applied. Thus, while the data would not have the added credibility which might be provided by an audit, it is believed that auditor involvement in the interim reporting process by application of these procedures would result in enhanced reliability of such data. This would be of substantial benefit to the public investor who must rely on this information.

The proposed Form 10–Q amendments also separate the requirements for financial statements from the requirement for a narrative analysis by management and require the signature of the principal financial officer of the registrant. The proposed requirement for the quarterly report to be signed by the registrant's principal financial officer would emphasize the responsibility of this officer for the representations explicit and implicit in the filing. This seems appropriate since the major elements of a quarterly report are financial. Such signature would not relieve other corporate officers of their responsibilities.

Conditions for use of Form S–7 (17 CFR 239.26) and Form S–16 (17 CFR 239.27). The proposed amendments to Form 10–Q do not require that the financial statement data therein be reviewed by an independent public accountant. The proposed amendment of Regulation S–X, however, would require that interim data be reviewed (but not audited) on a retrospective basis because of its inclusion in an unaudited footnote. Thus, even if the data were not reviewed by an independent public accountant on a timely basis, they would ultimately be reviewed retrospectively.

In the belief that timely review of interim data should be encouraged because of its significance to investors, the Commission proposes to liberalize the conditions for use of Form S–7 so that registrants not presently qualified to use this simplified registration form may use it if their quarterly reports have been reviewed prior to filing. Essentially, the proposal is to broaden the availability of the form to include registrants who have taken the voluntary step of providing investors with additional assurance regarding the reliability of their current interim financial reports. Thus, registrants which could not meet the existing three-year reporting, default, net income and dividend requirements could use the form if the financial statements included in Form 10–Q have been indicated as reviewed by an independent public accountant for each of the three preceding quarterly periods for which such forms were required to be filed, and if the registrant has filed all reports required to be filed under section 13 of the 1934 Act during the twelve months preceding the filing of the registration statement.

Form S–16 presently may be used by any issuer eligible to use Form S–7 for registration of offerings of certain outstanding securities for the account of someone other than the issuer and for registration of securities underlying outstanding convertible securities or warrants, under certain conditions. It is proposed to allow Form S–16 to be available to any issuer meeting the proposed liberalized requirements for Form S–7 for registration of securities underlying outstanding convertible securities or warrants, under certain conditions. However, as proposed, Form S–16 would not be available for secondary offerings for the account of someone other than the issuer unless the issuer met the existing requirements for Form S–7 including the three-year reporting, default, net income and dividend requirements. The Commission specifically invites comments on whether the Form S–16 should be made available for registration of such secondary offerings of the securities of any issuer which meets the liberalized Form S–7 requirements, and, if so, under what conditions.

Other comments. It should be noted that if the financial statement data in Form 10–Q were reviewed on a timely basis, the need for review of the footnote to annual financial statements would not be eliminated. However, the procedures performed on a timely basis for the first three quarters would not need to be repeated at year end, so the effort necessary at year end would be greatly reduced. In such a situation, the independent public accountant's review at year end would concentrate largely on the fourth quarter and the events and adjustments which are reflected in that quarter.

Commission action. The Commission hereby proposes amendments to §§ 210.2–02, 210.3–16, 249.308a (Form 10–Q), 239.26 (Form S–7), and 239.27 (Form S–16), all of 17 CFR Ch. II, as shown in the attached text of the proposed amendments. Appendix A, which follows the text of the amendments proposed in this release, contains an integration of these amendments with the amendments proposed in Release 33–5549 that would not be affected by the alternative proposals.

The proposed amendments would be adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; sections 12, 13, 15(d) and 23(a) (15 U.S.C. 78*l*, 78m, 78o(d), 78w) of the Securities Exchange Act of 1934; and sections 5(b), 14 and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935.

All interested persons are invited to submit written comments on the proposals on or before June 18, 1975. Persons who wish to have their comments considered in connection with the hearings on this subject ordered in Release 34–11354 should submit their comments in advance of the hearing which is scheduled for June 2, 1975. The communications should be addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should be referenced to File No. S7–542. All comments will be available for public inspection.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

APRIL 17, 1975.

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

Part 210 (Regulation S–X) is proposed to be amended to add a new paragraph (e) to § 210.2–02 and to revise proposed paragraph (v) of § 210.3–16 (40 FR 1079), as given below.

§ 210.2–02 Accountants' reports.

* * * * *

(e) *Association with unaudited note covering interim financial data.* If the financial statements covered by the accountant's report designate as "unaudited" the note required by § 210.3–16 (v), the accountant shall carry out the following procedures with respect to the data therein:

(1) Obtain by inquiry an understanding of the internal accounting control concerning the flow of transactions through the accounting system and the manner of recording, classifying and summarizing transactions for the purpose of preparing interim financial statements. Identify any differences between the methods of accumulating and classifying data for interim and annual purposes and consider the effects, if any, of such differences upon quarterly information.

(2) Make an analytical review of the interim financial data which underlie the financial data presented pursuant to § 210.3–16(v) by performing the following procedures:

(i) Make a systematic comparison of the actual results for each interim period with anticipated results for that period, with the results for the immediately preceding interim period and with the results for the corresponding interim period in the previous fiscal year. Obtain explanations of any unusual changes.

(ii) Identify the relationships between different components of the interim financial data for each interim period which, absent unusual transactions, could be expected to conform to a predictable pattern. Obtain explanations of material variations from this pattern.

(iii) Compare adjusting entries at the end of each interim period with those at the current and prior year ends for consistency in the types of matters for which adjustments are made.

(3) Make inquiries of officials who have responsibility for financial and accounting matters concerning the following:

(i) The accounting treatment afforded significant, new or unusual transactions or events that occurred within each interim period;

(ii) The consistency of accounting principles applied in each interim period compared to prior periods and any changes in accounting principles or practices that occurred during each interim period under review;

(iii) The current status of items that were previously accounted for on the basis of tentative, preliminary or inconclusive data; and

(iv) Any events subsequent to the date of each interim period which may have had an effect on the data included with respect to such periods.

(4) Consider whether the interim data presented conform to the requirements of generally accepted accounting principles, paying particular attention to any new pronouncements by authoritative bodies affecting financial reporting practices.

(5) Read the minutes of meetings of shareholders, boards of directors and other appropriate corporate committees for matters that could relate to the interim results or disclosure of financial information.

(6) Consider all of the information that comes to his attention through the performance of any work relating to his examination of the registrant's annual financial statements that could affect the interim data presented or the related disclosure.

(7) Inquire into, and perform such procedures as are appropriate with respect to, matters that come to his attention as a result of the foregoing procedures that lead him to believe that the data presented in the interim financial statements are not fairly presented in conformity with generally accepted accounting principles.

If, as a result of following these procedures, the independent accountant concludes that the data included in the unaudited footnote do not fairly present the information which they purport to show in conformity with generally accepted accounting principles, he should so state in a separate paragraph of his report.

§ 210.3–16 General notes to financial statements. (See Release No. AS–4.)

* * * * *

(v) *Disclosure of selected quarterly financial data in notes to annual financial statements.* (The original proposed amendment is contained in Release Nos. 33–5549, 34–11142 and 35–18718 (40 FR 1079).)

(1) Disclosure shall be made in a note to financial statements of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each full quarter within the two most recent fiscal years and subsequent interim period for which income statements are presented.

(2) When the data supplied in paragraph (v)(1) of this section vary from the amounts previously reported on the Form 10–Q (17 CFR 249.308a) filed for any quarter, reconcile the amounts given with those previously reported describing the reason for the difference.

(3) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(4) Where this note is part of financial statements which are presented as audited, it may be designated "unaudited."

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

I. Sections 239.26 (Form S–7) and 239.27 (Form S–16) are proposed to be amended to revise General Instruction A in each form and to add new subsections A(g) and A(b) in Forms S–7 and S–16, respectively, as given below.

§ 239.26 Form S–7, for registration under the Securities Act of 1933 of securities of certain issuers to be offered for cash.

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form S–7.* Any registrant which meets the conditions of paragraphs (a) and (c) and also the conditions of either paragraphs (b), (d), (e) and (f) or of paragraph (g) may use this form for registration under the Securities Act of 1933 of any securities which are offered for cash by or on behalf of the registrant or any other person, in a rights offering or otherwise:

* * * * *

(g) The registrant has been subject to the reporting requirements of Section 13 of the Exchange Act for at least twelve months, has filed all reports required to be filed under that section during the twelve months preceding the filing of the registration statement and the financial statements included in Form 10–Q have been indicated as reviewed by an independent public accountant for each of the three preceding quarterly periods for which such forms were required to be filed.

§ 239.27 Form S–16, optional form for registration of certain offerings of outstanding securities and for offerings to holders of certain convertible securities or for offerings to holders of certain outstanding warrants.

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form S–16.* (a) Form S–16 may be used for registration under the Securities Act of 1933 of the following securities of any issuer which at the time of filing the registration statement meets the requirements of subparagraphs (a) through (f) of paragraph A, Rule as to Use of Form S–7, of the General Instructions to Form S–7:

(1) Outstanding securities to be offered for the account of any person other than the issuer, if securities of the same class are listed and registered on a national exchange or are quoted on the automated quotation system of a national securities association;

(2) Securities to be offered upon the conversion of outstanding convertible securities of the issuer of the securities to be offered, or of an affiliate of such issuer, provided no commission or other remuneration is paid for soliciting the conversion of the convertible securities; or

(3) Securities to be offered upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, provided no commission or other remuneration is paid for soliciting the exercise of such warrants.

(b) Form S–16 may be used for registration under the Securities Act of 1933 of the securities described in subparagraphs (2) and (3) of subparagraph (a) above by any issuer which at the time of filing the registration statement meets the requirements of subparagraphs (a), (c) and (g) of paragraph A, Rule as to Use of Form S–7, of the General Instructions to Form S–7.

(c) (Existing (b) redesignated as (c).)

* * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

I. Section 249.308a (Form 10–Q) of Part 249 is proposed to be amended to add a new item to the facing sheet, to further revise proposed revisions of Instruction H and add new paragraph (k), to further revise proposed revisions of redesignated Instruction I and L, and to add a new subsection to the Signatures section, as given below.

§ 249.308a Form 10–Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

Facing sheet of the form. The following new item would be added at the end of the sheet:

Indicate by check mark whether the financial statements required by Instruction H have been reviewed by an independent public accountant. YES __ NO __ (See Instruction H.)

* * * * *

INSTRUCTIONS (The original proposed amendments of following instructions are contained in Release Nos. 33–5549, 34–11142 and 35–18718 [40 FR 1079].)

* * * * *

H. *Financial statements.* (a) The registrant shall furnish an income statement, balance sheet and statement of source and application of funds following the general form of presentation set forth in Regulation S–X (17 CFR Part 210), except that Rules 3–08 and 3–16 (17 CFR 210.3–08 and 2.10.3–16), and other requirements which call for detailed footnote disclosure and the presentation of schedules shall not apply other than as required by (g) below. A company in the promotional or development stage to which paragraph (b) of Rule 5A–01 of Article 5A of Regulation S–X (17 CFR 210.5A–01) is applicable shall furnish the information specified in Rules 5A–02, 5A–03, 5A–04 and 5A–06 of Regulation S–X (17 CFR 210.5A–02, 210.5A–03, 210.5A–04 and 210.5A–06) in lieu of the above financial statement requirements.

(b) The financial statements shall be provided for periods set forth below:

(1) The income statement shall be presented for the most recent fiscal quarter, for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for corresponding periods of the preceding fiscal year.

(2) The balance sheet shall be presented as of the end of the most recent fiscal quarter and for the end of the corresponding period of the preceding fiscal year.

(3) The statement of source and application of funds shall be presented for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year.

(c) * * *

(d) If, during the current period specified in (b) above, the registrant or any of its consolidated subsidiaries entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(e) In case the registrant has disposed of any significant portion of its business or has acquired a significant amount of assets in a transaction treated for accounting purposes as a purchase, during any of the periods

covered by the report, the effect thereof on revenues and net income—total and per share—for all periods shall be disclosed. In addition, where a material business combination accounted for as a purchase has occurred during the current fiscal year, disclosure shall be made of the results of operations for the current year up to the date of the end of the most recent fiscal quarter (and for the comparable period in the preceding year) on a pro forma basis as though the companies had combined at the beginning of the period being reported on. This pro forma information should as a minimum show revenue, income before extraordinary items and the cumulative effect of accounting changes, such income on a per share basis and net income.

(f) The financial statements to be included in this report shall be prepared in conformity with the standards of accounting measurement set forth in Accounting Principles Board Opinion No. 28 and any amendments thereto adopted by the Financial Accounting Standards Board. In addition to meeting the reporting requirements for accounting changes specified therein, the registrant shall state the date of any change and the reasons for making it. In addition, a letter from the registrant's independent accountants shall be filed as an exhibit indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(g) Furnish any material information necessary to make the information called for not misleading. Such information might include an explanation of significant changes in commitments and contingent liabilities from those reported in previous Forms 10–K or 10–Q and significant events occurring during or subsequent to the interim period being reported on or new arrangements with creditors.

(h) and (i) * * *

(j) (Original paragraph (j) is redesignated as Instruction I, paragraph (b); original paragraph (k) is redesignated (j).) If appropriate, the income statement shall show earnings per share and dividends per share applicable to common stock, and the basis of the earnings per share computation shall be stated together with the number of shares used in the computation. The registrant shall file as an exhibit a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly set forth in the report.

(k) The financial information included in accordance with this instruction need not be reviewed by an independent public accountant. However, if an affirmative response is given to the statement on the facing sheet regarding whether the financial statements required by this instruction have been reviewed by an independent public accountant, such response will be regarded as a representation that the following procedures, as a minimum, have been performed by an independent public accountant:

(1) Obtain by inquiry an understanding of the internal accounting control concerning the flow of transactions through the accounting system and the manner of recording, classifying and summarizing transactions for the purpose of preparing interim financial statements. Identify any differences between the methods of accumulating and classifying data for interim and annual purposes and consider the effects, if any, of such differences upon quarterly information.

(2) Make an analytical review of the interim financial data which underlie the financial statements presented pursuant to this instruction by performing the following procedures.

(i) Make a systematic comparison of the actual results with anticipated results for the current period, with the results for the immediately preceding interim period and with the results for the corresponding interim period in the previous fiscal year. Obtain explanations of any unusual changes.

(ii) Identify the relationships between different components of the interim financial data which, absent unusual transactions, could be expected to conform to a predictable pattern. Obtain explanations of material variations from this pattern.

(iii) Compare adjusting entries at the end of the interim period with those at the prior year end for consistency in the types of matters for which adjustments are made.

(3) Make inquiries of officials who have responsibility for financial and accounting matters concerning the following:

(i) The accounting treatment afforded significant, new or unusual transactions or events that occurred within the period;

(ii) The consistency of accounting principles applied in the period compared to prior periods and any changes in accounting principles or practices that occurred during the period under review;

(iii) The current status of items that were previously accounted for on the basis of tentative, preliminary or inconclusive data; and

(iv) Any events subsequent to the date of the interim financial statements which may have an effect on the data included in those statements.

(4) Read the interim financial statements to determine whether the accounting reflected therein conforms with the requirements of generally accepted acounting principles, paying particular attention to any new pronouncements by authoritative bodies affecting financial reporting practices.

(5) Read the minutes of meetings of shareholders, boards of directors and other appropriate corporate committees for matters that could relate to the interim results or disclosure of financial information.

(6) Consider all of the information that comes to his attention through the performance of any work relating to his examination of the registrant's annual financial statements that could affect the interim data presented or the related disclosure.

(7) Inquire into, and perform such procedures as are appropriate with respect to, matters that come to his attention as a result of the foregoing procedures that lead him to believe that the data presented in the interim financial statements are not fairly presented in conformity with generally accepted accounting principles.

Where such a positive response is given on the facing sheet, there shall be included as an exhibit a letter from the independent public accountant indicating that he has performed the procedures set forth in this form and stating whether or not he has adjustments or additional disclosures to propose with respect to the financial statements presented. Where this letter indicates that the independent accountant does have adjustments or additional disclosures to propose, the registrant shall furnish an additional letter as an exhibit which explains the reasons why such adjustments and disclosures have not been made.

I. *Other Financial Information.* (Existing Instruction I is redesignated as Instruction J.)

(a) The registrant shall provide a narrative analysis of the results of operations for the periods presented following the guidelines set forth in Guide 1 of "Guides for Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934 (39 FR 31894)."

(b) (Formerly Instruction H, paragraph (j).) The registrant may furnish any additional information related to the periods being reported on which, in the opinion of management, is of significance to investors, such as the seasonality of the company's business, major uncertainties currently facing the company, significant accounting changes under consideration and the dollar amount of backlog of firm orders. In addition, the registrant shall indicate whether any Form 8–K was filed reporting any material unusual charges or credits to income during the most recently completed fiscal quarter or whether any Form 8–K was filed during that period reporting a change in independent accountants.

J. *Filing of Other Statements in Certain Cases.* (Formerly Instruction I) * * *

K. *Sales of Unrestricted Securities (Debt or Equity)* (Formerly Part C) * * *

L. *Signature and Filing of Report.* (Formerly Instruction J.)

Eight copies of the report shall be filed with the Commission. At least one copy of the report shall be filed with each exchange on which any class of securities of the registrant is listed and registered. At least one copy of the report filed with the Commission and one copy filed with each such exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial officer of the registrant. Copies not manually signed shall bear typed or printed signatures.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Registrant)

Date----------

(Signature)*

Pursuant to the requirements of the Securities Exchange Act of 1934, this quarterly report has been signed below by the principal financial officer of the registrant on the date indicated.

(Signature)	(Title)	(Date)

APPENDIX A—PROPOSED AMENDMENTS INTEGRATED WITH AMENDMENTS PROPOSED IN RELEASE 33–5549

In order to facilitate an understanding of the amendments proposed in this release, the following material integrates the amendments proposed herein with the amendments proposed in Release No. 33–5549 that would not be affected by the alternative proposals. The Commission is not reproposing the material proposed in Release No. 33–5549, and its inclusion here should not be interpreted to mean that the Commission has reached any final conclusion with respect to its adoption. It is presented for purposes of analysis and understanding only.

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND INVESTMENT COMPANY ACT OF 1940

I. PART 210. (Regulations S–X)

Section 210.2—02. *Accountants' reports.*

* * * * *

*Print name and title of the signing officer under his signature.

(e) *Association with unaudited note covering interim data.* If the financial statements covered by the accountant's report designate as "unaudited" the note required by § 210.3-16(v), the accountant shall carry out the following procedures with respect to the data therein:

(1) Obtain by inquiry an understanding of the internal accounting control concerning the flow of transactions through the accounting system and the manner of recording, classifying and summarizing transactions for the purpose of preparing interim financial statements. Identify any differences between the methods of accumulating and classifying data for interim and annual purposes and consider the effects, if any, of such differences upon quarterly information.

(2) Make an analytical review of the interim financial data which underlie the financial data presented pursuant to § 210.3-16(v) by performing the following procedures:

(i) Make a systematic comparison of the actual results for each interim period with anticipated results for that period, with the results for the immediately preceding interim period and with the results for the corresponding interim period in the previous fiscal year. Obtain explanations of any unusual changes.

(ii) Identify the relationships between different components of the interim financial data for each interim period which, absent unusual transactions, could be expected to conform to a predictable pattern. Obtain explanations of material variations from this pattern.

(iii) Compare adjusting entries at the end of each interim period with those at the current and prior year ends for consistency in the types of matters for which adjustments are made.

(3) Make inquiries of officials who have responsibility for financial and accounting matters concerning the following:

(i) The accounting treatment afforded significant, new or unusual transactions or events that occurred within each interim period;

(ii) The consistency of accounting principles applied in each interim period compared to prior periods and any changes in accounting principles or practices that occurred during each interim period under review;

(iii) The current status of items that were previously accounted for on the basis of tentative, preliminary or inconclusive data; and

(iv) Any events subsequent to the date of each interim period which may have an effect on the data included with respect to such periods.

(4) Consider whether the interim data presented conform to the requirements of generally accepted accounting principles, paying particular attention to any new pronouncements by authoritative bodies affecting financial reporting practices.

(5) Read the minutes of meetings of shareholders, boards of directors and other appropriate corporate committees for matters that could relate to the interim results or disclosure of financial information.

(6) Consider all of the information that comes to his attention through the performance of any work relating to his examination of the registrant's annual financial statements that could affect the interim data presented or the related disclosure.

(7) Inquire into, and perform such procedures as are appropriate with respect to, matters that come to his attention as a result of the foregoing procedures that lead him to believe that the data presented in the interim financial statements are not fairly presented in conformity with generally accepted accounting principles.

If, as a result of following these procedures, the independent accountant concludes that the data included in the unaudited footnote do not fairly present the information which they purport to show in conformity with generally accepted accounting principles, he should so state in a separate paragraph of his report.

* * * * *

Section 210.3-16. *General notes to financial statements.* (*See Release AS-4.*)

* * * * *

(v) *Disclosure of selected quarterly financial data in notes to annual financial statements.* (1) Disclosure shall be made in a note to financial statements of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(2) When the data supplied in (1) above vary from the amounts previously reported on the Form 10-Q (17 CFR 249.308a) filed for any quarter, reconcile the amounts given with those previously reported describing the reason for the difference.

(3) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(4) Where this note is part of financial statements which are presented as audited, it may be designated "unaudited."

* * * * *

STATEMENT OF SOURCE AND APPLICATION OF FUNDS. (ARTICLE 11A)

Section 210.11A-01. Application of §§ 210.-11A-01 to 210.11A-02. This article shall be applicable to statements of source and application of funds filed pursuant to requirements in registration and reporting forms under the Securities Act of 1933 and the Securities Exchange Act of 1934.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

II. Section 239.26. Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers to be offered for cash.

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form S-7.* Any registrant which meets the conditions of paragraphs (a) and (c) and also the conditions of either paragraphs (b), (d), (e) and (f) or of paaragraph (g) may use this form for registration under the Securities Act of 1933 of any securities which are offered for cash by or on behalf of the registrant or any other person, in a rights offering or otherwise:

* * * * *

(g) The registrant has been subject to the reporting requirements of section 13 of the Exchange Act for at least twelve months, has filed all reports required to be filed under that section during the twelve months preceding the filing of the registration statement and the financial statements included in Form 10-Q have been indicated as reviewed by an independent public accountant for each of the three preceding quarterly periods for which such forms were required to be filed.

III. Section 239.27. *Form S-16, optional form for registration of certain offerings of outstanding securities and for offerings to holders of certain convertible securities or for offerings to holders of certain outstanding warrants.*

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form S-16.* (a) Form S-16 may be used for registration under the Securities Act of 1933 of the following securities of any issuer which at the time of filing the registration statement meets the requirements of subparagraphs (a) through (f) of paragraph A, Rule as to Use of Form S-7, of the General Instructions to Form S-7:

(1) Outstanding securities to be offered for the account of any person other than the issuer, if securities of the same class are listed and registered on a national exchange or are quoted on the automated quotation system of a national securities association;

(2) Securities to be offered upon the conversion of outstanding convertible securities of the issuer of the securities to be offered, or of an affiliate of such issuer, provided no commission or other remuneration is paid for soliciting the conversion of the convertible securities; or

(3) Securities to be offered upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, provided no commission or other remuneration is paid for soliciting the exercise of such warrants.

(b) Form S-16 may be used for registration under the Securities Act of 1933 of the securities described in subparagraphs (2) and (3) of subparagraph (a) above by any issuer which at the time of filing the registration statement meets the requirements of subparagraphs (a), (c) and (g) of paragraph A, Rule as to Use of Form S-7, of the General Instructions to Form S-7.

(c) (Existing (b) redesignated as (c).) * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

IV. Section 240.13a-13. Quarterly Reports on Form 10-Q. [Amended].

(a), (b) (1), (c) and (d) * * *

(b) (2) (Deleted).

(b) (3), (4) and (5) redesignated as (b) (2), (3) and (4), respectively.

V. Section 240.13a-15. Quarterly Reports of Certain Real Estate Companies on Form 7-Q [Deleted].

Section 240.13a-15 is deleted.

VI. § 240.15d-13. Quarterly Reports on Form 10-Q. [Amended].

(a), (b) (1), (c) and (d) * * *

(b) (2) (Deleted).

(b) (3), (4) and (5) redesignated as (b) (2), (3) and (4), respectively.

VII. Section 240.15d-15. Quarterly Reports of Certain Real Estate Companies on Form 7-Q. [Deleted].

Section 240.15d-15 is deleted.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

VIII. Section 249.308a. *Form 10-Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.*

Facing sheet of the form. The following new item would be added at the end of the sheet:

"Indicate by check mark whether the financial statements required by Instruction H have been reviewed by an independent public accountant. YES__ NO__ (See Instruction H.)"

* * * * *

INSTRUCTIONS

* * * * *

H. *Financial Statements.* (a) The registrant shall furnish an income statement, balance sheet and statement of source and application of funds following the general form of presentation set forth in Regulation S–X (17 CFR Part 210), except that Rules 3–08 and 3–16 (17 CFR 210.3–08 and 210.3–16), and other requirements which call for detailed footnote disclosure and the presentation of schedules shall not apply other than as required by (g) below. A company in the promotional or development stage to which paragraph (b) of Rule 5A–01 of Article 5A of Regulation S–X (17 CFR 210.5A–01) is applicable shall furnish the information specified in Rules 5A–02, 5A–03, 5A–04 and 5A–06 of Regulation S–X (17 CFR 210.5A–02, 210.5A–03, 210.5A–04 and 210.5A–06) in lieu of the above financial statement requirements.

(b) The financial statements shall be provided for periods set forth below:

(1) The income statement shall be presented for the most recent fiscal quarter, for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for corresponding periods of the preceding fiscal year.

(2) The balance sheet shall be presented as of the end of the most recent fiscal quarter and for the end of the corresponding period of the preceding fiscal year.

(3) The statement of source and application of funds shall be presented for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year.

(c) * * *

(d) If, during the current period specified in (b) above, the registrant or any of its consolidated subsidiaries entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(e) In case the registrant has disposed of any significant portion of its business or has acquired a significant amount of assets in a transaction treated for accounting purposes as a purchase, during any of the periods covered by the report, the effect thereof on revenues and net income—total and per share—for all periods shall be disclosed. In addition, where a material business combination accounted for as a purchase has occurred during the current fiscal year, disclosure shall be made of the results of operations for the current year up to the date of the end of the most recent fiscal quarter (and for the comparable period in the preceding year) on a pro forma basis as though the companies had combined at the beginning of the period being reported on. This pro forma information should as a minimum show revenue, income before extraordinary items and the cumulative effect of accounting changes, such income on a per share basis and net income.

(f) The financial statements to be included in this report shall be prepared in conformity with the standards of accounting measurement set forth in Accounting Principles Board Opinion No. 28 and any amendments thereto adopted by the Financial Accounting Standards Board. In addition to meeting the reporting requirements for accounting changes specified therein, the registrant shall state the date of any change and the reasons for making it. In addition, a letter from the registrant's independent accountants shall be filed as an exhibit indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(g) Furnish any material information necessary to make the information called for not misleading. Such information might include an explanation of significant changes in commitments and contingent liabilities from those reported in previous Forms 10–K or 10–Q and significant events occurring during or subsequent to the interim period being reported on or new arrangements with creditors.

(h) and (i) * * *

(j) If appropriate, the income statement shall show earnings per share and dividends per share applicable to common stock and the basis of the earnings per share computation shall be stated together with the number of shares used in the computation. The registrant shall file as an exhibit a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly set forth in the report.

(k) The financial information included in accordance with this instruction need not be reviewed by an independent public accountant. However, if an affirmative response is given to the statement on the facing sheet regarding whether the financial statements required by this instruction have been reviewed by an independent public accountant, such response will be regarded as a representation that the following procedures, as a minimum, have been performed by an independent public accountant:

(1) Obtain by inquiry an understanding of the internal accounting control concerning the flow of transactions through the accounting system and the manner of recording, classifying and summarizing transactions for the purpose of preparing interim financial statements. Identify any differences between the methods of accumulating and classifying data for interim and annual purposes and consider the effects, if any, of such differences upon quarterly information.

(2) Make an analytical review of the interim financial data which underlie the financial statements presented pursuant to this instruction by performing the following procedures:

(i) Make a systematic comparison of the actual results with anticipated results for the current period, with the results for the immediately preceding interim period and with the results for the corresponding interim period in the previous fiscal year. Obtain explanations of any unusual changes.

(ii) Identify the relationships between different components of the interim financial data which, absent unusual transactions, could be expected to conform to a predictable pattern. Obtain explanations of material variations from this pattern.

(iii) Compare adjusting entries at the end of the interim period with those at the prior year end for consistency in the types of matters for which adjustments are made.

(3) Make inquiries of officials who have responsibility for financial and accounting matters concerning the following:

(i) The accounting treatment afforded significant, new or unusual transactions or events that occurred within the period;

(ii) The consistency of accounting principles applied in the period compared to prior periods and any changes in accounting principles or practices that occurred during the period under review;

(iii) The current status of items that were previously accounted for on the basis of tentative, preliminary or inconclusive data; and

(iv) Any events subsequent to the date of the interim financial statements which may have an effect on the data included in those statements.

(4) Read the interim financial statements to determine whether the accounting reflected therein conforms with the requirements of generally accepted accounting principles, paying particular attention to any new pronouncements by authoritative bodies affecting financial reporting practices.

(5) Read the minutes of meetings of shareholders, boards of directors and other appropriate corporate committees for matters that could relate to the interim results or disclosure of financial information.

(6) Consider all of the information that comes to his attention through the performance of any work relating to his examination of the registrant's annual financial statements that could affect the interim data presented or the related disclosure.

(7) Inquire into, and perform such procedures as are appropriate with respect to, matters that come to his attention as a result of the foregoing procedures that lead him to believe that the data presented in the interim financial statements are not fairly presented in conformity with generally accepted accounting principles.

Where such a positive response is given on the facing sheet, there shall be included as an exhibit a letter from the independent public accountant indicating that he has performed the procedures set forth in this form and stating whether or not he has adjustments or additional disclosures to propose with respect to the financial statements presented. Where this letter indicates that the independent accountant does have adjustments or additional disclosures to propose, the registrant shall furnish an additional letter as an exhibit which explains the reasons why such adjustments and disclosures have not been made.

I. *Other Financial Information.* (Existing Instruction I is redesignated as Instruction J.)

(a) The Registrant shall provide a narrative analysis of the results of operations for the periods presented following the guidelines set forth in Guide 1 of "Guides for Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934.

(b) The registrant may furnish any additional information related to the periods being reported on which, in the opinion of management, is of significance to investors, such as the seasonality of the company's business, major uncertainties currently facing the company, significant accounting changes under consideration and the dollar amount of backlog of firm orders. In addition, the registrant shall indicate whether any Form 8–K was filed reporting any material unusual charges or credits to income during the most recently completed fiscal quarter or whether any Form 8–K was filed during that period reporting a change in independent accountants.

J. *Filing of Other Statements in Certain Cases.* (Formerly Instruction I.) * * *

K. *Sales of Unregistered Securities (Debt or Equity).* (Formerly Part C.)

The information called for herein shall be given as to each "security" as defined in Section 2(1) of the Securities Act of 1933. If the information called for has been previously reported on another form, it may be incorporated by a specific reference to the previous filing.

Give the following information as to all securities of the registrant sold by the registrant during the fiscal quarter, which were not registered under the Securities Act of

1933, in reliance upon an exemption from registration provided by section 4(2) of that Act. Include sales of the registrant's reacquired securities as well as new issues, securities issued in exchange for property, services or other securities, and new securities resulting from the modification of outstanding securities:

(1) Give the date of sale and the title and amount of the registrant's securities sold;

(2) Give the market price on the date of sale, if applicable;

(3) Give the names of the brokers, underwriters or finders, if any. As to any securities sold but which were not the subject of a public offering, name the persons or identify the class of persons to whom the securities were sold;

(4) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts, brokerage commissions, or finder's fees. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant;

(5) Indicate the section of the Act or rule of the Commission under which exemption from registration was claimed, and state briefly the facts relied upon to make the exemption available; and

(6) State whether the securities have been legended and stop-transfer instructions given in connection therewith, and, if not, state the reasons why not.

L. *Signature and Filing of Report.* (Formerly Instruction J.)

Eight copies of the report shall be filed with the Commission. At least one copy of the report shall be filed with each exchange on which any class of securities of the registrant is listed and registered. At least one copy of the report filed with the Commission and one copy filed with each such exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial officer of the registrant. Copies not manually signed shall bear typed or printed signatures.

A. *Summarized Financial Information*

Existing Part A to be deleted.

B. *Capitalization and Stockholders' Equity*

Existing Part B to be deleted.

C. *Sales of Unregistered Securities (Debt or Equity)*

Part C is proposed to be general instruction J.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Registrant)

Date----------

(Signature) *

Pursuant to the requirements of the Securities Exchange Act of 1934, this quarterly report has been signed below by the principal financial officer of the registrant on the date indicated.

(Signature)	(Title)	(Date)

[FR Doc.75-12319 Filed 5-8-75;8:45 am]

* Print name and title of the signing officer under his signature.

[17 CFR Part 270]

[Release No. IC-8775, File No. S7-562]

REGISTERED SEPARATE ACCOUNTS ISSUING VARIABLE ANNUITY CONTRACTS

Proposed Exemption

Notice is hereby given that the Securities and Exchange Commission has under consideration the adoption of Rule 22d-3 (17 CFR 270.22d-3) under section 22(d) of the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a-22 (d)) to exempt registered separate accounts issuing variable annuity contracts from section 22(d) of the Act subject to certain conditions as described below, and the adoption of an amendment to Rule 0-1(e) (17 CFR 270.0-1(e)) under the Act to make certain conditions set forth in that rule applicable to proposed Rule 22d-3. Rule 22d-3 and the amendment to Rule 0-1(e) would be adopted by the Commission pursuant to the authority granted the Commission by sections 6(c), 38(a), and 22(d) of the Act (15 U.S.C. 80a-6(c), 80a-37(a), 80a-22(d)).

Section 6(c) provides that the Commission by rule, regulation, or order may exempt any person or transaction or any class of persons or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 38(a) of the Act authorizes the Commission to issue such rules as are necessary or appropriate to the exercise of the powers conferred upon it in the Act.

Proposed Rule 22d-3. Section 22(d) of the Act prohibits a registered investment company, its principal underwriter, or a dealer from selling any redeemable security issued by such registered investment company to any person except at a public offering price described in the prospectus. The Commission has previously adopted Rules 22d-1 [1] and 22d-2 [2] to codify certain administrative interpretations of section 22(d) and certain orders for exemption from the restrictions on variations in the sales load on redeemable securities.

At the request of Congress, the Commission conducted a study of the possible consequences of the repeal of section 22(d). The Commission determined not to recommend the repeal of section 22(d). However, on November 4, 1974, the Commission announced a comprehensive program to revise the laws and regulations affecting the distribution of shares of open-end investment companies, including mutual funds and variable annuities.[3] The Commission's program was based on a report, "Mutual Fund Distribution and section 22(d) of the Investment Company Act of 1940," ("Report") prepared by its Division of Investment Management Regulation. This is the third in a series of releases implementing that program.[4] One of the recommendations in the Report was that a rule be adopted exempting the sale of variable annuity contracts from section 22(d) (See pages 102-3 of the Report). The Commission now proposes to adopt such a rule.

The rule would provide an exemption from section 22(d) to permit variations of the sales load and certain other charges in the sale of variable annuities, subject to the conditions described below. One of the purposes of the proposed rule is to eliminate the need for filing applications for certain types of exemptions from section 22(d) which have been granted with respect to numerous issuers of variable annuity contracts.[5] Moreover, the Commission believes that section 22(d) has little relevance to the marketing of variable annuities because: (1) The uniform sales charge requirement is unnecessary because variable annuity contracts are typically sold through employees of the sponsoring insurance company, and (2) it is unlikely that a secondary dealer market in variable annuity contracts would develop since such contracts are generally not assignable, and, even if they were, they do not lend themselves to public trading since they are based upon the continuing life of a particular individual. Nevertheless, the rule would also permit retail price competition in the sale of variable annuity contracts to the extent that such competition is not prohibited by state law.

In order to prevent investors from being unfairly discriminated against, the proposed rule requires that all price variations and the manner in which such variations are determined be disclosed in the prospectus and that any such variations be justifiable on the basis of differences in costs or services,

[1] Investment Company Act Release No. 2798, December 2, 1958 (23 FR 9601). Paragraph (b) of Rule 22d-1 was subsequently amended by Investment Company Act Release No. 6347, February 8, 1971 (36 FR 2965). Rule 22d-1 was further amended by Investment Company Act Release No. 8569, November 4, 1974 (39 FR 40281).

[2] Investment Company Act Release No. 8235, February 20, 1974 (39 FR 8320).

[3] Investment Company Act Release No. 8570, November 4, 1974.

[4] The first such release was Investment Company Act Release No. 8568 (Securities Act Release No 5536), November 4, 1974 (39 FR 39868), announcing the adoption of an amendment to Rule 134 relating to investment company advertising. The second such release was Investment Company Act Release No. 8569, November 4, 1974 (39 FR 40281), announcing the adoption of an amendment to Rule 22d-1 to permit quantity discounts and other reductions in, or eliminations of, the sales load for certain group purchases of investment company securities.

[5] See, for example, Investment Company Act Release No. 6261, November 30, 1970 (35 FR 18566).

and not be unfairly discriminatory against any person."

Commission action. Part 270 of Chapter II of the Code of Federal Regulations is proposed to be amended by adding a new § 270.22d–3.

As proposed § 270.22d–3 would read as follows:

§ 270.22d–3 Exemption from section 22(d) for certain registered separate accounts.

A registered separate account, any principal underwriter for such account, any dealer in contracts issued by such account and any insurance company maintaining such account shall be exempted from section 22(d) to the extent necessary to permit the sale of such contracts by such persons at prices which reflect variations in the sales load or in any administrative charge or other deductions from the purchase price of a variable annuity contract: *Provided, however,* That (a) the prospectus discloses the circumstances, if any, in which such variations may be available and describes as precisely as possible the manner in which such variations are determined, and (b) any such variations are justifiable on the basis of differences in costs or services and are not unfairly discriminatory against any person.

Amendment to Rule 0–1(e). Rule 0–1(e), which was adopted by the Commission in Investment Company Act Release No. 5738, July 10, 1969 (34 FR 12695) defines the term "separate account." It also establishes certain conditions to the availability of exemptive rules which were adopted at the same time. These conditions include a requirement that the separate account be legally segregated, that its assets be maintained at specific levels, and that a specified portion of these assets shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct. The Commission proposes to amend this rule to make it applicable to proposed Rule 22d–3.

Commission action. Part 270 of Chapter II of the Code of Federal Regulations is proposed to be amended by amending § 270.0–1(e).

As amended the pertinent portions of § 270.0–1(e) would read as follows:

§ 270.0–1 Definition of terms used in this part.

* * * * *

(e) Definition of separate account and conditions for availability of exemption under §§ 270.14a–2, 270.15a–3, 270.16a–1, 270.22d–3, 270.22e–1, 270.27a–1, 270.27a–2, 270.27a–3, 270.27c–1, and 270.32a–2.

* * * * *

(2) As conditions to the availability of exemptive rules 14a–2, 15a–3, 16a–1, 22d–3, 22e–1, 27a–1, 27a–2, 27a–3, 27c–1, and 32a–2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and, at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

All interested persons are invited to submit their views and comments on the proposed adoption of Rule 22d–3 and amendment of Rule 0–1(e). Written statements of views and comments with respect to the proposed Rule and amendment should be submitted to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 on or before June 9, 1975 and should refer to File No. S7–562. All such communications will be available for public inspection.

(Secs. 6(c), 22(d), 38(a): 54 Stat. 800, 823, 841; (15 U.S.C. 80a–6(c), 80a–22(d), 80a–37(a)))

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

APRIL 30, 1975.

[FR Doc.75–12318 Filed 5–8–75;8:45 am]

[17 CFR Parts 230, 239, 240, 249]

[Release Nos. 33–5581 and 34–11374; File S7–561]

FUTURE ECONOMIC PERFORMANCE

Projections

The Securities and Exchange Commission today published for comment a series of rule and form proposals intended to implement the "Statement by the Commission on the Disclosure of Projections of Future Economic Performance" [1] and to provide for the more timely filing of Form 8–K under the Securities Exchange Act of 1934 ("Exchange Act") to disclose changes in control of a registrant and certain projections. The Commission does not intend to require a registrant to publicly disclose its projections. Rather, the proposals integrate public projections into the disclosure system of the federal securities laws.[2]

Under the Securities Act of 1933 ("Securities Act"), the proposals include a proposed amendment to Rule 405 (17 CFR 230.405), "Definition of 'projection;' proposed Rule 132 (17 CFR 230.132), "Definition of 'untrue statement of a material fact' as used in certain sections of the Act" in relation to projections; and proposed amendments to Forms S–1 (17 CFR 239.11), S–7 (17 CFR 239.26), S–8 (17 CFR 239.16b), S–9 (17 CFR 239.22) and S–14 (17 CFR 239.23), which in certain situations would require projections previously made public to be filed or allow new projections to be filed on those forms.

Under the Exchange Act, the proposals include a proposed amendment to Rule 12b–2 (17 CFR 240.12b–2), "Definition of 'projection;'" proposed Rule 3b–6 (17 CFR 240.3b–6), "Definition of 'untrue statement of a material fact,' 'manipulative, deceptive or fraudulent device, contrivance, act, or practice,' and 'false or misleading with respect to any material fact' as used in certain sections and rules under the Act" in relation to projections; and proposed amendments to Forms 8–K (17 CFR 249.308) and 10–K (17 CFR 249.310), which in certain situations would provide for the furnishing of projections in reports on those forms. Proposed amendments to Rules 14a–3 (17 CFR 240.14a–3) and 14c–3 (17 CFR 240.14c–3) would require that projections filed in a registrant's Form 10–K be included in the registrant's annual report to security holders. An amendment to rule 14a–9 (17 CFR 240.14a–9) has also been proposed which would amend paragraph (a) of the note to that rule as it relates to predictions of "earnings." Also included are proposed amendments to rules 13a–11 (17 CFR 240.13a–11) and 15d–11 (17 CFR 240.15d–11) and to Form 8–K which would separate Form 8–K into two parts and would require that report to be filed within ten days after a projection event or a change in control of the registrant has occurred.

This release contains a general discussion of the background, purpose and general effect of the proposals to assist in a better understanding of their provisions. A brief synopsis of each proposal is included and several examples are provided to illustrate how the proposals would apply, if adopted. However, attention is directed to the proposals themselves for a more complete understanding.

BACKGROUND AND PURPOSE

On November 1, 1972, the Commission announced a public rule making proceeding relating to the use, both in filings

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[1] Securities Act Release No. 5362, Securities Exchange Act Release No. 9984 (February 2, 1973) (38 FR 7220).

[2] As noted in the Commission's "Statement by the Commission on the Disclosure of Projections of Future Economic Performance," the proposed disclosure system for projections is not intended to apply to tax shelter investments since these involve different considerations.

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[*] Any variations in the sales load would have to be based upon differences in selling costs or services, and any variations in the administrative or other charges would have to be based upon differences in the costs or services with respect to which such charges are imposed. We recognize that, in practice, a precise separation of sales-related and administrative charges may be difficult. See Report at 132. However, we do not contemplate that a showing of such a precise separation would have to be made as long as the differences in charges corresponded as nearly as practicable to actual differences in the relevant costs or services. In addition, it should be noted that the Commission has proposed an amendment to the Statement of Policy which would permit variable annuities to disclose the combined effects of all charges based upon hypothetical investment experience. Investment Company Act Release No. 8438 (Securities Act Release No. 5516), July 30, 1974 (39 FR 30051).

with the Commission and otherwise, of estimates, forecasts or projections of economic performance by issuers whose securities are publicly traded. (Securities Exchange Act Release No. 9844, November 1, 1972) (37 FR 23850). These hearings were ordered by the Commission for the purpose of gathering information relevant to a reassessment of Commission policies relating to disclosure of projected sales and earnings. The Division of Corporation Finance, in conducting the public hearings from November 10 to December 12, 1972, received testimony from fifty-three witnesses, including representatives of publicly held corporations, the securities industry, the academic community, the self-regulatory organizations, and the accounting and legal professions. In addition, letters from over two hundred interested persons were received and made a part of the public record.

Information gathered at the hearings reinforced the Commission's own observation that management's assessment of a company's future performance is information of significant importance to the investor, that such assessment should be able to be understood in light of the assumptions made, and that such information should be available, if at all, on an equitable basis to all investors. The hearings also revealed widespread dissatisfaction with the fact that there are no guidelines or standards that the issuer, the financial analyst or the investor can rely on in issuing or interpreting projections. In addition, public comment indicated that there were many issuers who were opposed to being required to issue public projections.

On February 2, 1973, the Commission released a "Statement by the Commission on the Disclosure of Projections of Future Economic Performance" ("February 1973 Statement") (38 FR 7220). The Commission noted that it did not intend to require a company to publicly disclose its projections and that its long standing policy was generally not to permit projections to be included in prospectuses and reports filed with the Commission. However, on the basis of the information obtained through the hearings and on the basis of staff recommendations and its experience in administering the securities laws, the Commission determined that changes in its policies with regard to use of projections would assist in the protection of investors and would be in the public interest. The Commission recognized that projections were widespread in the securities markets and were relied upon in the investment process. The Commission noted that persons invest with the future in mind and the market value of a security reflects the judgments of investors about the future economic performance of the issuer. Thus projections are sought by all investors, whether institutional or individual. The Commission expressed concern, however, that all investors do not have equal access to this significant information. Because of widespread public interest in this area and because of its importance to investors, the Commission determined that it was the appropriate time to take action in this area, to recognize the realities of the situation, and to take the lead in developing standards and guidelines that will enable all issuers to understanding their responsibilities and all investors to have equal access to projection information. Accordingly, the Commission released its tentative conclusions regarding the use of projections.

The February 1973 Statement also announced that the Commission had directed its Division of Corporation Finance to prepare specific releases and rule and form changes necessary to implement the Commission's plan to integrate projections into the disclosure system. The proposals contained in this release represent the first steps in that plan.

General Description

In summary, the proposals are intended to integrate public projections into the disclosure system of the federal securities laws. Proposed rules under both Acts would define a "projection." Proposed rules under the Exchange Act would provide for filing a report on Form 8-K under the Exchange Act when a registrant has furnished a projection to any person, with certain exceptions including private financing, preliminary negotiations with underwriters, business combinations and government agencies which have afforded non-public treatment to the projections. A report on Form 8-K would also be required when the registrant has reason to believe that its public projections, no longer have a reasonable basis or the registrant has determined to cease disclosing or revising projections.

A Form 8-K could be filed, at the registrant's option, if it had disassociated itself from a projection made by another person. However, the registrant would not be required by any of the proposals to disassociate itself from a projection made by another person.

Other proposals would separate Form 8-K into two parts and would provide for the filing of Part I, which would require a report of a projection or a change in control of the registrant, within ten days of such event. Part II would contain the remainder of existing Form 8-K and would be subject to the same filing requirements as the present Form 8-K.

Proposed amendments to Form 10-K under the Exchange Act and Forms S-1, S-7, S-8, S-9 and S-14 under the Securities Act would require the registrant to furnish in the report or registration statement those projections previously filed or required to be filed with the Commission covering year-end results for the registrant's last fiscal year together with comparisons with corresponding historical results. A registration statement would also have to include any projections for the registrant's current and/or next fiscal year if they had been filed or were required to have been filed. Any registrant that had made projections for its last or current fiscal year or any future period which were filed or required to be filed would be required to either provide projections for at least six months of the current fiscal year or for the full fiscal year in its report on Form 10-K or explain why it had determined to cease disclosing projections. The proposals would permit a registrant to commence disclosing projections in the annual report of Form 10-K or registration statement only if the registrant had a history of filing reports under the Exchange Act and budgeting experience and such projections and related disclosure met the standards set forth in proposed Rule 3b-6 under the Exchange Act or proposed Rule 132 under the Securities Act, respectively.

To alleviate the concerns of registrants regarding the possible liability for disclosing projections, proposals under both Acts would provide a "safe harbor" by defining the circumstances under which a projection would be deemed not to be an untrue or misleading statement of a material fact or a manipulative, deceptive, or fraudulent device, contrivance, act or practice as those terms are used in the various liability provisions of the federal securities laws. In general, these proposed rules would establish certain criteria with respect to the issuer of securities to which the projection pertains and with respect to the projection itself.

Proposed amendments to Rules 14a-3 and 14c-3 would require that all projection information contained in the Form 10-K other than exhibits be included also in the registrant's annual report to security holders. Finally, a proposed amendment to the note to Rule 14a-9 under the Exchange Act would amend paragraph (a) of the note which refers to predictions of "earnings" as possibly misleading in certain situations.

Synopsis of the Proposals

Definition of "Projection"

Proposed amendments to Rule 405 under the Securities Act and to Rule 12b-2 under the Exchange Act define a "projection" to be a statement made by an issuer regarding material future revenues, sales, net income or earnings per share of the issuer, expressed as a specific amount, range of amounts $1.80 to $2.20) or percentage variation from a specific amount ($2.20 plus or minus 10 percent or "an increase of 10 percent over last year"), or a confirmation by an issuer of any such statement made by another person. A note has been provided to explain that the definition is not intended to include announcements made to the public regarding preliminary results of periods ended but not yet reported. A second note indicates that statements that another person's projection is "in the ballpark," "attainable" or "on target" are examples of a confirmation.

The proposed definitions do not contain a definition of the term "material." Any such statement relating to the issuer's total future revenues, sales, net income or earnings per share would be material; a statement relating to the sales or revenues of a subsidiary or of a particular line of business might be material, depending on the facts. Although Rules 405 and 12b-2 presently contain

definitions of "material" which would be applicable to the proposed definitions of a projection, the Commission invites comments on whether specific percentage tests of materiality should be adopted for projections and, if so, what percentage would be appropriate.

DEFINITION OF FRAUDULENT AND MISLEADING

The Commission is aware that one of primary deterrents to a rational and open disclosure system for projections is the fear of liability for projections which are not achieved. Accordingly, the Commission has proposed Rule 132 under the Securities Act and Rule 3b–6 under the Exchange Act defining the circumstances under which a projection shall be deemed not to be an untrue or misleading statement of a material fact or a manipulative, deceptive or fraudulent device, contrivance, act or practice as those terms are used in the various liability provisions of the Acts.

The Commission does not believe that projections are per se misleading or fraudulent. However, the Commission does believe that the "safe harbor" afforded by the proposed rules should be limited to those situations where there is the greatest likelihood of a reasonable projection. The proposed rules attempt to define such situations. It is important to note that the determination as to compliance with the criteria would be based on the facts at the time the projection was disclosed and would not be dependent upon whether or not the projection was achieved. The Commission emphasizes that projections would not necessarily be misleading if they failed to meet the standards of the safe harbor rules. The particular facts and circumstances must be carefully examined in each case.

Issuer Criteria: In general, under the proposed safe harbor rules the issuer must have been subject to the reporting requirements of the Exchange Act for at least three years and have filed all reports required to be filed during the preceding twelve months or must be an insurance company which has filed the annual statement required by section 12(g)(2)(G)(i) of the Exchange Act for the preceding three years. In addition, the issuer must have prepared budgets for internal use for its last three fiscal years. The Commission believes that these criteria may provide some assurance that the issuer has had sufficient experience in reporting publicly and in budgeting so that it has a reasonable basis for making public projections.

It should be noted that the proposed rules do not require the issuer to have a history of earnings as was suggested in the February 1973 Statement. The Commission believes that an earnings standard is not necessary in view of the requirements regarding budgeting experience and may lead to undesirable results when a registrant is in a loss position. However, the Commission specifically invites comments as to the desirability of including an earnings standard in the safe harbor rules or a standard based on the size of the registrant as measured by, for example, its total assets.

Projection Criteria: The proposed rules set forth seven criteria for the projection which generally relate to its preparation, form and manner of disclosure and review. The projection must have been prepared with reasonable care by qualified personnel and carefully reviewed and approved by management at the appropriate levels and must have a reasonable factual basis and represent management's good faith judgment. Certain of these criteria have generally been considered by courts as requirements concerning the preparation of publicly disclosed projections.

As to form, the projection must relate at a minimum to sales or revenues, net income and fully diluted earnings per share; must be expressed as an exact figure, a reasonable variation from an exact figure, or a reasonable range of figures; and must be limited to the registrant's current fiscal year, or if the projection is disclosed after the end of the second quarter, to the current fiscal year and all or any portion of the next fiscal year. It should be noted that for purposes of these rules a ten percent variation or range not exceeding ten percent from the midpoint ($1.80–$2.20) would be deemed reasonable and that the registrant would have the burden of establishing the reasonableness of any variation or range which exceeded the ten percent limitation.

When disclosed, the projection must be identified as a projection and be accompanied by a statement which (1) discloses the material assumptions underlying the projection, (2) cautions that there can be no assurance that the projection will be achieved since its ultimate achievement is dependent upon the occurrence of the specified assumptions, and (3) indicates that the projection has been prepared on the basis of the specified assumptions and is consistent with the accounting principles expected to be used by the registrant. The Commission believes that these disclosures are necessary and appropriate to provide investors with a basis to evaluate the projections in light of the assumptions made by the registrant and to put investors on notice that projections are only estimates of what could happen if the particular set of assumptions actually materializes.

Finally, the proposed rules set forth certain disclosure and reporting standards if the registrant represents that the projection has been reviewed by any person other than an officer, director or employee. Such representations would have to be accompanied by a statement which discloses whether or not the reviewer is independent and where a copy of the reviewer's report relating to the projection may be obtained. If the reviewer is represented to be "independent," he must be in fact independent. The standards for independence would be determined by reference to Regulation S–X although the reviewers need not be public accountants. To alleviate certain concerns of accountants, a note has been added to the rules indicating that any certified public accountant or public accountant reviewing or rendering a report on a projection will not thereby be deemed not independent with respect to the financial statements of the issuer. If the reviewer is not represented to be independent, any material relationship between the reviewer or its affiliates and the issuer or its affiliates, which then exists or is understood to be contemplated or which has existed at any time during the previous two years, shall be disclosed together with the amount of compensation received or to be received as a result of such relationship.

The reviewer's report would have to contain: (1) A statement as to whether or not he is independent; provided that if he is not represented to be independent, any material relationship between him or his affiliates and the issuer or its affiliates, which then exists or is understood to be contemplated or which has existed at any time during the previous two years, shall be disclosed together with the amount of compensation received or to be received as a result of such relationship; (2) a statement of his qualifications to render such review and report; (3) a statement of the scope of his examination and the methods and procedures followed in such examination; (4) a statement that he is not giving assurances that the projection will be achieved; and (5) a statement that (i) the projection has been compiled on the basis of the assumptions made by the registrant and is consistent with the accounting principles expected to be used by the registrant; (ii) the material assumptions underlying the projection are internally consistent and not unreasonable; (iii) the methods and procedures employed by the registrant in arriving at the projection are not unreasonable; and (iv) such methods and procedures have been applied in a consistent manner.

The Commission indicated in its February 1973 Statement that it would not allow any statement of third party certification or verification of projection information to be disclosed in filings with the Commission. The Commission noted, however, that it would reconsider this position if generally accepted principles or policies concerning such verification were developed. Since 1973 progress has been made toward the development of standards regarding the preparation and presentation of projections. Moreover, efforts are being made toward the development of standards for auditor involvement with projections.[3] In light of these developments

[3] Preparation and presentation standards have been suggested in AICPA Exposure Draft of February 24, 1975, "Presentation and Disclosure of Financial Forecasts," and AICPA "Guidelines for Systems for the Preparation of Financial Forecasts." The Auditing Standards Division of the AICPA is presently studying the auditor's role with respect to projections.

and the Commission's belief that investors would benefit from a review of projections, the Commission has included the concept of a "review" in the proposed rules. The Commission believes that if a registrant discloses that its projection has been reviewed the "safe harbor" rules should be available only if there has been compliance with the standards set forth above.

Parts I and II. The Commission believes that projection information and information about changes in control of the registrant should be reported to the Commission on a timely basis. Therefore, the Commission is proposing to divide the report on Form 8–K under the Exchange Act into two parts. Part I would require reporting of events within ten days of the event. As proposed, Part I would contain two items: "Projections," and existing Item 1 of Form 8–K, "Changes in Control of Registrant." It appears that projections, if they are to be reported at all, should be reported on a timely basis since one of the primary purposes of requiring that they be filed on the Form 8–K is to increase their availability. As for changes in control, the Commission believes that that information is of significance and that it should be reported promptly, particularly in the light of Congressional concern as evidenced in the Williams Act.[4]

Part II of the proposed two-part Form 8–K would contain all the existing items of Form 8–K other than "Changes in Control of Registrant," and would have to be filed within ten days after the end of the month in which the event occurred, as is now required for Form 8–K. General Instruction B to the Form would be amended to reflect the division into two parts and the filing requirements.

In addition to dividing the Form into two parts, it is also proposed to amend the facing sheet of Form 8–K to call for the registrant's state or other jurisdiction of organization, Commission file number, IRS Employer Identification No., and telephone number. The registrant would also be required to indicate by check mark which part of the report was being filed.

Proposed Item A of Part I: Projections. Proposed Item A of Part I would require a registrant to file Part I of Form 8–K to report any one of four events relating to projections: (a) the furnishing of a projection to any person, with certain exceptions set forth in Instruction 1; (b) revision of a projection; (c) furnishing of projections to a government agency which has not afforded the projections non-public treatment; and (d) a determination to cease disclosing or revising projections. A registrant would also be able, but not be required, to use proposed Item A to report any disassociation from a projection prepared by a person not acting on behalf of the registrant. These proposals are intended to achieve a more even and timely availability of projections that a registrant has chosen to make public.

Proposed Paragraph (a). Under proposed paragraph (a) of proposed Item A, the registrant would have to file Part I if the registrant had furnished projections to any person other than a government agency or other than in connection with certain transactions or to certain persons described in Instruction 1 to the item.

The information that would have to be filed would include: (1) a statement of the projection, including the time period covered by the projection, (2) a statement which (i) discloses the material assumptions underlying the projection; (ii) cautions that there can be no assurance that the projection will be achieved since its ultimate achievement is dependent upon the occurrence of the specified assumptions, and (iii) indicates whether the projection has been prepared on the basis of the specified assumptions and whether it is consistent with the accounting principles expected to be used by the registrant, and (3) a statement of the circumstances in which the projection was furnished including the date it was furnished and the manner in which it was communicated. In addition, if the registrant represents to anyone, other than in connection with transactions or to the persons described in Instruction 1, that a projection furnished in response to proposed paragraph (a) has been reviewed by anyone other than an officer, director or employee, the registrant must provide such persons' name and address and must file his report, if any, as an exhibit to Form 8–K.

Proposed Paragraph (b). Proposed paragraph (b) requires the registrant to file Part I of Form 8–K if the registrant has reason to believe that any projection previously made public no longer has a reasonable basis. The registrant must either provide a revised projection, including the information required by paragraph (a) of Item A, or provide an explanation of why it cannot furnish a revised projection. The Commission's February 1973 Statement indicated that a registrant should be required to update projections on a regular basis; this would not be required under the proposed rules. Rather, the registrant would have to determine whether a revision were necessary whenever a material assumption underlying the initial projection changed materially.

The proposed requirement for revising a projection is now dependent on the registrant's assessment of the reasonableness of the basis for the public projection. It should be noted that a report under proposed paragraph (b) would not necessarily be required if, for example, material changes in assumptions occur which have offsetting effects on the overall projection. The Commission specifically invites comments as to whether a report should be required in this situation. The Commission also specifically invites comments on whether a percentage test for materiality of revisions is appropriate. For example, it might be provided that a revision be filed whenever the registrant has reason to believe that its current projection of actual results will be a certain percentage above or below the public projection.

Proposed Paragraph (c). Under proposed paragraph (c) the registrant must furnish the name and location of any government agency, foreign or domestic, to which it has furnished a projection, unless that agency has afforded the projection non-public status. The registrant would also have to describe the circumstances in which it furnished the projection and describe any differences between the projection and any filed with the Commission. However, the registrant would not be required to file the projection information itself.

Proposed Paragraph (d) If a registrant has previously filed a projection with the Commission and subsequently determines to cease disclosing or revising projections, proposed paragraph (d) would require the registrant to briefly describe the reasons for such determination. This proposal is intended to permit a registrant to exit from the disclosure system for projections.

Proposed Paragraph (e) Under proposed paragraph (e), if a registrant has disassociated itself from any projection prepared by a person or persons not acting on behalf of the registrant, the registrant may, at its option, furnish: (1) a brief statement of the projection and the reasons for such disassociation and (2) a brief description of the circumstances in which the disassociation was made, including the manner in which it was communicated. The Commission does not intend at this time to specify when a registrant has an affirmative obligation to disassociate itself from another person's projections.

Proposed Instructions Proposed Instruction 1 to Item A indicates that the item shall not apply to projections which have been retained internally or which have been furnished in connection with the following transactions or to the following persons: (a) a transaction not involving any public offering within the meaning of section 4(2) of the Securities Act; (b) a commercial loan transaction; (c) preliminary negotiations or agreements between the registrant and any underwriter or among underwriters who are or are to be in privity of contract with the registrant; (d) preliminary negotiations regarding a proposed business combination or a proposed acquisition or disposition of a significant amount of assets; (e) a person to review such projections; (f) a government agency, foreign or domestic, which has afforded nonpublic treatment to the projections; or (g) registrant's counsel or accountants in connection with their work for the registrant.

Notwithstanding the foregoing exceptions, however, proposed Item A would apply to projections furnished that are part of a plan or scheme to evade the requirements of Item A. A note has also

[4] Section 13(d)(1) of the Exchange Act requires a statement to be filed with the Commission within ten days of the acquisition of more than five percent of any registered class of securities.

been added to warn registrants that they should caution persons who receive nonpublic projections about the anti-fraud provisions of the federal securities laws, particularly Rule 10b–5 under the Exchange Act.

Proposed Instruction 2 to Item A indicates that information contained in any published statement may be incorporated by reference in answer or partial answer to any paragraph of this item. However, any such published statement must be filed as an exhibit to the report on Form 8–K.

Proposed Exhibits. Two new exhibits are proposed to be added to the list of exhibits to Form 8–K. The first requires the filing of any published statements containing the information furnished in answer to Item A of Part I together with any related material submitted in connection with the particular publication. The second requires the filing of any report furnished by a person reviewing the projections as required by Item A of Part I.

The proposed amendments to the existing exhibits to Form 8–K would change the references in accordance with the proposed amendments to renumber the existing items of Form 8–K under Part II of the report.

RULES 13A–11 AND 15D–11

The proposed amendments to Rules 13a–11 and 15d–11 under the Exchange Act would remove from the rules the specific statements as to the time for filing Form 8–K. As proposed, the rules would make reference to the periods specified in General Instruction B to Form 8–K for the filing of the different Parts of the report.

FORM 10–K

The proposed addition of Item 2A to Form 10–K under the Exchange Act is intended to require public projections for the last fiscal year to be compared with actual results and to require projections for the current year if they have been provided for the past year, the current year or a future period. The Commission believes that the comparison of past projections with actual results would be valuable to investors in assessing the reliability of the registrant's projections and also that any registrant that has filed projections for the past year or for any current or future year should provide them for the current year or explain why it cannot. In addition, the proposed amendments would allow registrants that meet the filing and budgeting criteria of paragraph (a) of the safe harbor rule (proposed Rule 3b–6) to project for the first time in their Form 10–K if they do so in conformity with the safe harbor rule.

Proposed Paragraph (a): Under proposed paragraph (a) of Item 2A, the registrant would have to furnish all projections previously filed or required to be filed with the Commission covering year-end results for the registrant's last fiscal year. A statement of the material assumptions underlying each projection should also be included if not previously filed. If any projection had been revised, the registrant would be required to briefly describe the reasons for each material revision. The registrant would also be required to present its most recent projections for the fiscal year covered by the report in comparative form with corresponding historical results. Where a projection differed from the corresponding historical result by a factor of ten percent or more, the registrant would have to set forth the material reasons for such difference. The Commission believes that this comparison would provide a basis to evaluate the probable reliability of the registrant's subsequent projections.

Proposed Paragraph (b): If a registrant made projections for the last fiscal year, the current year or any future period that were filed or required to be filed, and has not determined to cease disclosing projections, proposed paragraph (b) would require the registrant to furnish projections for at least six months of its current fiscal year or for the full year or to explain why it cannot do so. If the registrant furnished a projection, it would be required to furnish at a minimum projections of sales or revenues, earnings and fully diluted earnings per share. The Commission believes that situations may occur in which it would be misleading to disclose projections of one of these items without disclosing projections of the others. For example, a registrant may be experiencing increasing sales while its earnings are deteriorating due to greater increases in its operating costs. In this situation it would be misleading to disclose only a sales projection.

The registrant would also be required to include a statement which (1) discloses the material assumptions underlying its projections, (2) cautions that there can be no assurance that the projections will be achieved since their ultimate achievement is dependent upon the occurrence of the specified assumptions, and (3) indicates whether the projections have been prepared on the basis of the specified assumptions and whether they are consistent with the accounting principles expected to be used by the registrant.

If the responses to proposed paragraph (b) revise projections previously filed or are revised projections previously filed, the registrant would have to set forth the reasons for each material revision. The requirement is intended to cover situations where the registrant uses Form 10–K to revise projections already made public or where the registrant has already made public revised projections for its current fiscal year.

Proposed Paragraph (c): In the event the registrant is not required to furnish projections under proposed paragraph (b), the registrant may furnish projections for its current fiscal year in its report on Form 10–K only in accordance with proposed paragraph (c). Under that paragraph, the registrant must meet the requirements of paragraph (a) of the safe harbor rule (proposed Rule 3b–6). In addition, if such a registrant determines to furnish previously undisclosed projections in its report on Form 10–K, the registrant must set them forth in conformity with paragraph (b) of proposed Rule 3b–6. The Commission believes that a report on Form 10–K should not be the initial vehicle for an issuer to enter the disclosure system for projections unless the registrant meets the filing and budgeting criteria of the proposed safe harbor rule and the projections and related disclosure meet the standards proposed in that rule.

Proposed Paragraph (d): If the registrant has disclosed to any person other than in connection with the same types of transactions or to the same persons described in proposed Instruction 1 to Form 8–K that any projection furnished in response to proposed Item 2A has been reviewed by anyone other than an officer, director or employee, the registrant would have to provide the reviewer's name and address and file a copy of his report, if any, as an exhibit to Form 10–K.

Proposed Instructions as to Exhibits. Proposed Exhibit D would require the filing of any report required by Item 2A(d).

RULES 14a–3 AND 14c–3

Rule 14a–3 of the proxy rules under the Exchange Act presently requires that certain information be contained in the annual report to security holders that must be provided by issuers with securities registered pursuant to Section 12 of the Exchange Act. The proposed amendment to that rule would require that all projection information, other than exhibits, contained in the registrant's report on Form 10–K also be included in the annual report to security holders. The Commission believes that this information, if it is to be provided in the Form 10–K, is of such interest to security holders that it should also be sent directly to them in the annual report. A comparable provision is proposed to be added to Rule 14c–3.

RULE 14a–9

The proposed amendment to the note to Rule 14a–9 of the proxy rules under the Exchange Act would amend paragraph (a) of the note which presently refers to predictions of future earnings as possibly misleading in certain situations. In light of the various other proposals, the Commission believes that this note should be amended to omit the reference to earnings.

FORMS S–1, S–7, S–8, S–9 AND S–14

The proposed amendments to Forms S–1, S–7, S–8, S–9 and S–14 under the Securities Act would require inclusion of projections in the registration statements when a registrant has filed or is required to have filed a projection with the Commission. Registrants also would be permitted to use a registration statement to commence filing projections provided that the registrant meets the

filing and budgeting criteria of paragraph (a) of the safe harbor rule (proposed Rule 132) and the projections are set forth in conformity with that rule. Identical items are proposed under each form with the exception of the proposed amendment to Form S–14 which refers to requirements of Form S–1.

Proposed Paragraph (a): Under paragraph (a) of the proposed items, the registrant would have to furnish all projections for (1) year-end results for its last fiscal year, (2) its current year, or (3) any future period, which have been or are required to have been filed with the Commission. The registrant would be required to furnish a description of revisions and a comparison with historical results indentical to those called for under Form 10–K (see discussion above concerning proposed paragraph (a) to Item 2A of Form 10–K). In addition, if projections were disclosed for the current year or future periods, a statement disclosing the material assumptions underlying the projections and containing cautionary language would have to be included.

Proposed Paragraph (b): If the registrant has furnished projections for the current year or any future period to any government agency, foreign or domestic, which has not afforded non-public treatment to the projections, proposed paragraph (b) would require the registrant to give the name and location of the agency and the circumstances under which the projection was furnished, and to describe any material differences from any projections filed with the Commission.

Proposed Paragraph (c): Under proposed paragraph (c), if the registrant represents in the registration statement that any projection included in the registration statement has been reviewed by anyone other than an officer, director, or employee of the registrant, the reviewer's report would have to be filed as an exhibit and his consent obtained.

Proposed Paragraph (d): A registrant could include previously undisclosed projections for its current or next fiscal year in the registration statement only in accordance with proposed paragraph (d). That paragraph would require the registrant to meet the requirements of paragraph (a) of the safe harbor rule (proposed Rule 132) and to set forth the projections in conformity with the safe harbor rule.

As with Form 10–K, the Commission believes that the registrant should not commence disclosing projections in these registration statements unless the registrant meets the filing and budgeting criteria of the proposed safe harbor rule and the projections and related disclosures meet the standards proposed in that rule.

Proposed Instructions. Any report called for by proposed paragraph (c) would have to be filed as an exhibit to the registration statement.

Operation of Proposals

The Commission is mindful of the cost to registrants of its proposals and it recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the cost to registrants of the proposals published in this release, if adopted.

If adopted, the proposals would operate prospectively only since there are now no requirements for furnishing projections in reports on Forms 8–K or 10–K under the Exchange Act or in filings on Forms S–1, S–7, S–8, S–9 or S–14 under the Securities Act. Accordingly, a filing requirement relating to projections would not be triggered by projections that were disclosed prior to the effective date of the rules.

To illustrate how the proposals would apply if adopted, the Commission has prepared the following examples. These examples are not all-inclusive, but are representative of situations which might occur under the proposed rules.

Example I—Mandatory Filing Requirements

A. *Facts.* Y Company is subject to the reporting requirements of Section 13 of the Exchange Act. In response to an analyst's telephone inquiry on April 15, 1975, the financial vice-president of the company states that Y Company expects to have earnings of $6.00 per share for the year ended December 31, 1975.

B. *Filing Requirements.* 1. This statement triggers the filing requirements of Item A of Part I of Form 8–K. Accordingly, Y Company must file a report on Form 8–K within ten days (before April 25, 1975) containing a statement of the projection, the material assumptions underlying the projection, and the circumstances in which the projection was disclosed.

2. Y Company has now entered the disclosure system for projections and has these obligations: (a) It must file a report on Form 8–K when it has reason to believe that the projection no longer has a reasonable basis. (b) It must include the projection in its 1975 annual report on Form 10–K, and compare it with actual results for the year. (c) It must also include projections for the first six months of 1976 or for the entire year in its 1975 annual report on Form 10–K unless the company chooses to exit from the disclosure system for projections. (d) It must include the projection in any registration statement on Forms S–1, S–7, S–8, S–9 or S–14 filed during 1975 or 1976; provided that if such registration statement is filed during 1976, the projection must be compared with actual results for 1975. (e) It must include the projection information required by Form 10–K in its annual report to shareholders if the company is subject to the proxy rules.

3. Y Company may exit from the disclosure system in the following ways: (a) It may file a report on Form 8–K stating that it has determined to cease disclosing projections and explaining the reasons for such determination. (b) It may state in its annual report on Form 10–K that it has determined to cease disclosing projections, in which event the company need not furnish projections for its current fiscal year in the report on Form 10–K. (c) It may state in a registration statement on Form S–1, S–7, S–8, S–9 or S–14 that the company has determined to cease disclosing projections.

Example II—Independent Review

A. *Facts* Assume that the financial vice-president in the previous example had also stated that the $6.00 per share projection had been reviewed by Y Company's auditors.

B. *Disclosure Requirements* In addition to the requirements noted in Example I above, Y Company must also disclose that it had made this representation regarding a review by an independent person. This disclosure would be required in the Form 8–K, Form 10–K and also in any registration statement filed on Forms S–1, S–7, S–8, S–9 and S–14 if such registration statement repeated the representation. If Y Company's auditors furnished a report concerning the projection, such report must be filed as an exhibit to the report or registration statement and the auditors' consent must be filed as part of the registration statement.

Example III—Revision of Projection

A. *Facts* On September 19, 1975 officers of Y Company in Example I learn that one of the assumptions underlying the projection will not materialize and they believe that this will materially affect the projection.

B. *Filing Requirements* Y Company must file a report on Form 8–K within 10 days (before September 29, 1975) containing a revised projection. If Y Company is unable to furnish a revised projection because, for example, it is not able to quantify the effect of the change in the assumption, Y Company must still file the report on Form 8–K and furnish an explanation of the reasons for its inability to furnish a revised projection and a description of the change in the assumption underlying the $6.00 projection.

Example IV—Permissive Filings

A. *Facts* X Company has been subject to the reporting requirements of section 13 of the Exchange Act for three years and has filed all reports required to be filed thereunder during the preceding 12 months. In addition, X Company has prepared budgets for internal use during each of its last three fiscal years.

B. *Permissive Filings* Since X Company has a history of reporting and budgeting experience, X Company may include previously undisclosed projections in a report on Form 10–K or in a registration statement filed on Forms S–1, S–7, S–8, S–9 or S–14. However, X Company must then present its projections in conformity with the "safe harbor" rules which require the furnishing of projections of sales or revenues, net income and fully diluted earnings per share expressed as an exact figure, a reasonable variation from an exact figure or a reasonable

range of figures and limited to X Company's current fiscal year, or if the projections are disclosed after the end of the company's second quarter, to the current fiscal year and the next fiscal year. In addition, X Company must disclose the material assumptions underlying the projections. Finally, if X Company includes a representation that the projections have been reviewed by any person other than an officer, director or employee of the company, any report by such person must be filed as an exhibit to the report or registration statement and such person's consent must be filed as part of the registration statement.

EXAMPLE V—CONFIRMATION OF PROJECTION

A. *Facts* C Company is subject to the reporting requirements of Section 13 of the Exchange Act. On May 15, 1975, an analyst telephones the president of C Company to talk about C Company's future prospects. The analyst tells the president that he has concluded that C Company will have earnings of $8.00 per share for the year ended December 31, 1975. The president replies "that's in the ballpark."

B. *Filing Requirements.* This statement is a projection because it is a confirmation by C Company of a statement regarding future earnings per share of C Company. Since the president by confirming the analyst's projection has furnished a projection to the analyst, C Company must file a report of Form 8-K within 10 days (before May 25, 1975) containing a statement of the projection, the material assumptions underlying the projection, and the circumstances in which the projection was disclosed. Thus, C Company must file a report on Form 8-K tem for projections and is subject to the same requirements noted in Example I for Y Company.

The Commission hereby proposes for comment proposed Rule 132 pursuant to section 19(a) of the Securities Act, proposed amendments to Rule 405 and to Forms S-1, S-7, S-8, S-9 and S-14 pursuant to Sections 7, 10 and 19(a) of the Securities Act, proposed Rule 3b-6 pursuant to section 23(a) of the Exchange Act and proposed amendments to Rules 12b-2, 13a-11, 14a-3, 14a-9 and 15d-11 and to Forms 8-K and 10-K pursuant to Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act. All interested persons are invited to submit their views and comments on the foregoing proposals to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before June 30, 1975. Such communications should refer to File No. S7-561. All such communications will be available for public inspection.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

APRIL 28, 1975.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 8, 49 Stat. 1375, 1379; secs. 201, 202, 68 Stat. 685, 686; secs. 3-6, 78 Stat. 565-574; secs. 1-3, 82 Stat. 454, 455; sec. 28(c), 84 Stat. 1435; secs. 1-5, 84 Stat. 1497; 15 U.S.C. 77g, 77k, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a).)

The text of the rule and form proposals are as follows:

§ 240.12b-2 Definitions.

* * * * *

Projection. A "projection" is a statement made by an issuer regarding material future revenues, sales, net income or earnings per share of such issuer, expressed as a specific amount, range of amounts or percentage variation from a specific amount, or a confirmation by an issuer of any such statement made by another person.

NOTE 1: This definition does not include announcements to the public regarding preliminary results of periods ended but not yet reported.

NOTE 2: A confirmation includes, for example, statements that another person's projection is "in the ballpark," "attainable," or "on target."

* * * * *

§ 240.3b-6 Definition of "untrue statement of a material fact," "manipulative, deceptive or fraudulent device, contrivance, act or practice" or "false or misleading with respect to any material fact" as used in certain sections and rules under the Act.

A projection by an issuer as defined in Rule 12b-2 under the Act shall be deemed not to be an "untrue statement of a material fact" as that term is used in section 14(e) of the Act and Rule 10b-5 under the Act or a "manipulative," "deceptive" or "fraudulent," "device," "contrivance," "act" or "practice" as those terms are used in sections 10(b), 14(e) and 15(c) of the Act or "false or misleading with respect to any material fact" as that term is used in sections 18(a) and 32 of the Act and Rule 14(a)(9) under the Act, whether or not the projection is achieved, if at the time the projection was disclosed.

(a) *The issuer of securities to which the projection pertains*—(1) Has securities registered pursuant to section 12 of the Securities Exchange Act of 1934, has been subject to the reporting requirements of section 13 of that Act for a period of at least three years and has filed all the reports required to be filed thereunder during the preceding 12 months; or has registered securities pursuant to the Securities Act of 1933, has been subject to the reporting requirements of section 15(d) of the Securities Exchange Act of 1934 for a period of at least three years and has filed all the reports required to be filed thereunder during the preceding 12 months; or is an insurance company which has filed the annual statement required by section 12(g)(2)(G)(i) of the Securities Exchange Act of 1934 for the preceding three years; and

(2) Has prepared budgets for internal use for its last three fiscal years; and

(b) *The projection*—(1) Has been prepared with reasonable care by qualified personnel and carefully reviewed and approved by management at the appropriate levels;

(2) Has a reasonable factual basis and represents management's good faith judgment;

(3) Relates at a minimum to sales or revenues, net income and fully diluted earnings per share;

(4) Is expressed as an exact figure, a reasonable variation from an exact figure, or a reasonable range of figures; for purposes of this subsection, a 10 percent variation or range not exceeding 10 percent from the midpoint shall be deemed reasonable;

NOTE 1: The registrant has the burden of establishing the reasonableness of any variation or range which exceeds the above 10 percent limitation.

NOTE 2: The following is an example of a range not exceeding 10 percent from the midpoint: "Earnings of $1.80 to $2.20 per share."

(5) Is limited to the registrant's current fiscal year or, if the projection is disclosed after the end of the second quarter, to the current fiscal year and the next fiscal year;

(6) Is identified as a projection and accompanied by a statement which (i) discloses the material assumptions underlying the projection; (ii) cautions that there can be no assurance that the projection will be achieved since its ultimate achievement is dependent upon the occurrence of the specified assumptions; and (iii) indicates that the projection has been compiled on the basis of the specified assumptions and is consistent with the accounting principles expected to be used by the registrant.

(7) Is not represented to have been reviewed by any person other than an officer, director or employee of the issuer unless:

(i) Such representation is accompanied by a statement which discloses (1) whether or not such person is independent and (2) where a copy of such person's report relating to the projection may be obtained.

(A) If represented to be independent, such person shall be in fact independent of the issuer. Independence shall be determined by reference to the criteria set forth for public accountants in Rule 2-01 of Regulation S-X; but the independent person need not be a public accountant.

NOTE: Any certified public accountant or public accountant reviewing or rendering a report on a projection will not thereby be deemed not independent with respect to the financial statements of the issuer.

(B) If such person is not represented to be independent, any material relationship between such person or its affiliates and the issuer or its affiliates, which then exists or is understood to be contemplated or which has existed at any time during the previous two years shall be disclosed together with the amount of compensation received or to be received as a result of such relationship. (ii) Such person has furnished a report to the issuer which shall contain:

(A) a statement as to whether or not such person is independent; provided

that if such person is not represented to be independent, any material relationship between such person or its affiliates and the issuer or its affiliates, which then exists or is understood to be contemplated or which has existed at any time during the previous two years, shall be disclosed together with the amount of compensation received or to be received as a result of such relationship.

(B) a statement of such person's qualifications to render such review and report;

(C) a statement of the scope of such person's examination and the methods and procedures followed in such examination;

(D) a statement that such person is not giving assurances that the projection will be achieved; and

(E) a statement by such person that:

(1) the projection has been compiled on the basis of the assumptions made by the registrant and is consistent with the accounting principles expected to be used by the registrant;

(2) the material assumptions underlying the projections are internally consistent and not unreasonable;

(3) the methods and procedures employed by the registrant in arriving at the projection are not unreasonable; and

(4) such methods and procedures have been applied in a consistent manner.

* * * * *

§ 240.13a–11 Current reports on Form 8–K.

(a) Except as provided in paragraph (b) of this section, every registrant subject to rule 13a–1 shall file a current report on Form 8–K if any of the events specified in that form occurs, unless substantially the same information as that required by Form 8–K has been previously reported by the registrant. Current reports shall be filed within the period specified for the appropriate Part in General Instruction B to Form 8–K.

* * * * *

§ 240.15d–11 Current reports on Form 8–K.

(a) Except as provided in paragraph (b) of this section, every registrant subject to rule 15d–1 shall file a current report on Form 8–K if any of the events specified in that form occurs, unless substantially the same information as that required by Form 8–K has been previously reported by the registrant. Current reports shall be filed within the period specified for the appropriate part in General Instruction B to Form 8–K.

* * * * *

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(4) * * *

(ii) The report shall contain the information, other than the exhibits, required by Item 2A, "Projections," of Form 10–K.

* * * * *

§ 240.14c–3 Annual report to be furnished security holders.

* * * * *

(a) * * *

(4) * * *

(ii) The report shall contain the information, other than the exhibits, required by Item 2A, "Projections," of Form 10–K.

* * * * *

§ 240.14a–9 False or misleading statements.

* * * * *

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

(a) Predictions as to specific future market values, or dividends.

* * * * *

§ 230.405 Definitions of terms.

* * * * *

Projection. A "projection" is a statement made by an issuer regarding material future revenues, sales, net income or earnings per share of such issuer, expressed as a specific amount, range of amounts or percentage variation from a specific amount, or a confirmation by an issuer of any such statement made by another person.

NOTE 1: This definition does not include announcements to the public regarding preliminary results of periods ended but not yet reported.

NOTE 2: A confirmation includes, for example, statements that another person's projection is "in the ballpark," "attainable," or "on target."

* * * * *

§ 230.132 Definition of "untrue statement of a material fact" as used in certain sections of the Act.

A projection by an issuer as defined in Rule 405 under the Act shall be deemed not to be an "untrue statement of a material fact" as that term is used in sections 11, 12(2) and 17(a)(2) of the Act, whether or not the projection is achieved, if at the time the projection was disclosed:

(a) *The issuer of securities to which the projection pertains*—(1) Has securities registered pursuant to section 12 of the Securities Exchange Act of 1934, has been subject to the reporting requirements of section 13 of that Act for a period of at least three years and has filed all the reports required to be filed thereunder during the preceding 12 months; or has registered securities pursuant to the Securities Act of 1933, has been subject to the reporting requirements of section 15(d) of the Securities Exchange Act of 1934 for a period of at least three years and has filed all the reports required to be filed thereunder during the preceding 12 months; or is an insurance company which has filed the annual statement required by Section 12(g)(2)(G)(i) of the Securities Exchange Act of 1934 for the preceding three years; and

(2) Has prepared budgets for internal use for its last three fiscal years; and

(b) *The projection*—(1) Has been prepared with reasonable care by qualified personnel and carefully reviewed and approved by management at the appropriate levels;

(2) Has a reasonable factual basis and represents management's good faith judgment;

(3) Relates at a minimum to sales or revenues, net income and fully diluted earnings per share;

(4) Is expressed as an exact figure, a reasonable variation from an exact figure, or a reasonable range of figures; for purposes of this subsection, a 10 percent variation or range not exceeding 10 percent from the midpoint shall be deemed reasonable;

NOTE 1: The registrant has the burden of establishing the reasonableness of any variation or range which exceeds the above 10 percent limitation.

NOTE 2: The following is an example of a range not exceeding 10 percent from the midpoint: "Earnings of $1.80 to $2.20 per share."

(5) Is limited to the registrant's' current fiscal year, or if the projection is disclosed after the end of the second quarter, to the current fiscal year and the next fiscal year;

(6) Is identified as a projection and accompanied by a statement which (i) discloses the material assumptions underlying the projection, (ii) cautions that there can be no assurance that the projection will be achieved since its ultimate achievement is dependent upon the occurrence of the specified assumptions, and (iii) indicates the projection has been compiled on the basis of the specified assumptions and is consistent with the accounting principles expected to be used by the registrant.

(7) Is not represented to have been reviewed by any person other than an officer, director or employee of the issuer unless:

(i) Such representation is accompanied by a statement which discloses (1) whether or not such person is independent and (2) where a copy of such person's report relating to the projection may be obtained.

(A) If represented to be independent, such person shall be in fact independent of the issuer. Independence shall be determined by reference to the criteria set forth for public accountants in Rule 2–01 of Regulation S–X; but the independent person need not be a public accountant.

NOTE: Any certified public accountant or public accountant reviewing or rendering a report on a projection will not thereby be deemed not independent with respect to the financial statements of the issuer.

(B) If such person is not represented to be independent, any material relationship between such person or its affiliates and the issuer or its affiliates, which then exists or is understood to be contemplated or which has existed at any time during the previous two years shall be disclosed together with the amount of

compensation received or to be received as a result of such relationship.

(ii) Such person has furnished a report to the issuer which shall contain:

(A) a statement as to whether or not such person is independent; provided that if such person is not represented to be independent, any material relationship between such person or its affiliates and the issuer or its affiliates, which then exists or is understood to be contemplated or which has existed at any time during the previous two years, shall be disclosed together with the amount of compensation received or to be received as a result of such relationship.

(B) a statement of such person's qualifications to render such review and report;

(C) a statement of the scope of such person's examination and the methods and procedures followed in such examination;

(D) a statement that such person is not giving assurances that the projection will be achieved; and

(E) a statement by such person that:

(1) the projection has been compiled on the basis of the assumptions made by the registrant and is consistent with the accounting principles expected to be used by the registrant;

(2) the material assumptions underlying the projections are internally consistent and not unreasonable;

(3) the methods and procedures employed by the registrant in arriving at the projection are not unreasonable; and

(4) such methods and procedures have been applied in a consistent manner.

* * * * *

NOTE: Copies of the proposed amendments to Forms 8-K, 10-K, S-1, S-7, S-8, S-9 and S-14 have been filed with the Office of the FEDERAL REGISTER as part of this document. Additional copies will be available on request from the Securities and Exchange Commission, Washington, D.C. 20549.

Form Attachment 1

[As proposed to be amended]

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of organization)

(Commission file number) (IRS Employer Identification No.)

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code_____

Indicate by check mark which Part of the Report is being filed.

Part I

Date(s) of Event(s) Reported

Part II

_____, 19____

Month Of

Form Attachment

GENERAL INSTRUCTIONS

A. (No change)

B. Events to be Reported (Addition Underlined)

A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items of this form. *For events specified in Part I, the report is to be filed within ten days after the occurrence of the event. For events specified in Part II,* the report is to be filed within ten days after the close of each month during which an event occurs. However, if substantially the same information as that required by this form has been previously *filed* by the registrant, an additional report of the information on this form need not be made. The term "previously *filed*" is defined in Rule 12b-2.

C-F (No change).

Part I

INFORMATION TO BE INCLUDED IN PART I OF REPORT

(See General Instruction B)

Item A. Projections.

(a) *Projections of Revenues, Sales, Net Income or Earnings Per Share*

If the registrant furnishes a projection to any person, except a government agency, furnish the following information:

NOTE: See paragraph (c) of this item and paragraph (f) of Instruction 1 to this item for requirements when projections are furnished to government agencies.

(1) A statement of the projection including the time period covered by the projection.

(2) A statement which (i) discloses the material assumptions underlying the projection; (ii) cautions that there can be no assurance that the projection will be achieved since its ultimate achievement is dependent upon the occurrence of the specified assumptions; and (iii) indicates whether the projection has been compiled on the basis of the specified assumptions and whether it is consistent with the accounting principles expected to be used by the registrant.

Form Attachment 3

(3) A statement of the circumstances in which the projection was furnished including the date it was furnished and the manner in which it was communicated.

(4) If the registrant has represented to any person, other than in connection with a transaction or to a person described in Instruction 1, that a projection furnished in response to this item has been reviewed by any person other than an officer, director or employee of the registrant, give such person's name and address, and file such person's report, if any, as an exhibit to this report.

(b) *Revision of Projection.* If the registrant has reason to believe that any projection previously filed or required to be filed with the Commission no longer has a reasonable basis, furnish a revision of the projection including the information required by paragraph (a) above; provided that if the registrant is unable to furnish a revised projection, the registrant shall set forth a brief explanation of the reasons for its inability to furnish the revision together with a brief description of material changes, if any, in the material assumptions underlying such projection.

(c) *Government Agencies.* If the registrant has furnished a projection to any government agency, foreign or domestic, other than the Commission, give the name and location of such agency and describe the circumstances under which the projection was furnished. If the projections furnished to such agency are materially different from any projection filed with the Commission, briefly describe such differences.

NOTE: See paragraph (f) of Instruction 1 to this item.

(d) *Determination to Cease Disclosing or Revising Projections.* If the registrant has previously filed a projection with the Commission and subsequently determines to cease disclosing or revising projections, briefly describe the reasons for such determination.

Form Attachment—4

(e) *Disassociation from Projection of Other Person.* If the registrant has disassociated itself from any projection prepared by a person or persons not acting on behalf of the registrant, the registrant may, at its option, furnish the following information:

(1) A brief statement of the projection and the reasons for such disassociation.

(2) A brief description of the circumstances in which the disassociaton was made, including the manner in which it was communicated.

Instructions. 1. This item shall not apply to projections which have been retained internally or which have been furnished in connection with a transaction or to a person listed below:

(a) a transaction not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(b) a commercial loan transaction;

(c) preliminary negotiations or agreements between the registrant and any underwriter or among underwriters who are or are to be in privity of contract with the registrant;

(d) preliminary negotiations regarding a proposed business combination or a proposed acquisition or disposition of a significant amount of assets;

(e) a person for purposes of reviewing such projections;

(f) a government agency, foreign or domestic, which has afforded non-public treatment to the projections; or

(g) the registrant's accountants or counsel in connection with their work for the registrant.

(h) Notwithstanding the above, this item shall apply to projections furnished as part of a plan or scheme to evade the requirements of this item.

Form Attachment 5

NOTE: Registrants should caution persons who receive non-public projections about the antifraud provisions of the federal securities laws, particularly Rule 10b-5 under the Act.

2. Information contained in any published statement may be incorporated by reference in answer or partial answer to any paragraph of this item.

NOTE: Any such published statement must be filed as an exhibit to this report. See Item 1 of list of exhibits to this report.

Item B. Changes in Control of Registrant. (No change from existing Item 1 of Form 8-K.)

Part II

INFORMATION TO BE INCLUDED IN PART II OF REPORT

(See General Instruction B)

Item 1. Acquisition or Disposition of Assets.

(No change from existing Item 2 of Form 8-K.)

Item 2. Legal Proceedings.

(No change from existing Item 3 of Form 8-K.)

Item 3. Changes in Securities.

(No change from existing Item 4 of Form 8-K.)

Item 4. Changes in Security for Registered Securities.

(No change from existing Item 5 of Form 8-K.)

Item 5. Defaults Upon Senior Securities.

(No change from existing Item 6 of Form 8-K except that underlined below.)

Instruction. This item need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 6. Increase in Amount of Securities Outstanding.

(No change from existing Item 7 of Form 8-K.)

Item 7. Decrease in Amount of Securities Outstanding.

(No change in existing Item 8 of Form 8-K except that underlined below.)

Instruction. Instruction 1 to *Item 6 of Part II* shall also apply to this item. This item need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, decreases resulting from the conversion of securities or decreases resulting from the payment of indebtedness at maturity.

Item 8. Options to Purchase Securities.

(No change from existing Item 9 of Form 8-K.)

Item 9. Extraordinary Item Charges and Credits, Other Material Charges and Credits to Income of an Unusual Nature, Material Provisions for Loss, and Restatements of Capital Share Account.

(No change from existing Item 10 of Form 8-K.)

Item 10. Submission of Matters to a Vote of Security Holders.

(No change from existing Item 11 of Form 8-K.)

Item 11. Changes in Registrant's Certifying Accountant.

(No change from existing Item 12 of Form 8-K.)

Item 12. Other Materially Important Events.

(No change from existing Item 13 of Form 8-K.)

Item 13. Financial Statements and Exhibits.

(No change from existing Item 14 of Form 8-K.)

SIGNATURES

(No change.)

FINANCIAL STATEMENTS OF BUSINESSES ACQUIRED

(No change except that underlined below.)

Form Attachment 7

1. *Businesses for Which Statements are Required.*

The financial statements specified below shall be filed for any business the succession to which or the acquisition of an interest in which is required to be described in answer to Item *1 of Part II.*

Exhibits (Parts I and II)

(Additions Underlined)

1. Copies of *any published statements containing the information furnished in answer to Item A of Part I together with any related material submitted in connection with the particular publication.*

2. *Copies of any report furnished pursuant to Item A(a)(4) of Part I.*

3. Copies of any plan of acquisition or disposition described in answer to Item *1 of Part II*, including any plan of reorganization, readjustment, exchange, merger, consolidation or succession in connection therewith.

4. Copies of the amendments to all constituents instruments and other documents described in answer to Item *3 of Part II.*

5. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item *6 of Part II.*

6. Copies of any plan pursuant to which the options referred to in answer to Item *8 of Part II* were granted, or if there is no such plan, specimen copies of the options.

7. Copies of the text of any proposal described in answer to Item *10 of Part II.*

8. Copies of any material amendments to the registrant's charter or by-laws, not otherwise required to be filed.

9. Letters from the registrant and the independent accountants furnished pursuant to Item *11 of Part II.*

10. Reports from the independent accountants furnished pursuant to Item *9 of Part II.*

* * * * *

Form Attachment 8

Proposed Amendment to Form 10-K.

Item 2A. *Projections.* (a) Furnish all projections filed or required to be filed with the Commission covering the year-end results for the fiscal year covered by this report. Include a statement of the material assumptions underlying each projection, if not previously filed.

Instructions. 1. If any such projection was revised, briefly describe the reasons for each material revision.

2. The most recent projections for the fiscal year covered by this report should be presented in comparative form with the corresponding historical results. Where a projection differs from the corresponding historical result by a factor of 10 percent or more, set forth the material reasons for such difference. If the projection was expressed as a range, the percentage difference shall be measured from the endpoints of such range.

(b) If the registrant made projections for the last fiscal year, the current year or any future period that were filed or required to be filed with the Commission, and has not determined to cease disclosing projections, the registrant shall furnish projections for at least the first six months of the current fiscal year or for the full fiscal year, whether or not previously filed. Include at a minimum projections of sales or revenues, net income and fully diluted earnings per share. Also include a statement which (i) discloses the material assumptions underlying the projections; (ii) cautions that there can be no assurance that the projections will be achieved since their ultimate achievement is dependent upon the occurrence of the specified assumptions; and (iii) indicates whether the projections have been compiled on the basis of the specified assumptions and whether they are consistent with the accounting principles expected to be used by the registrant. If the registrant has determined to cease disclosing projections, set forth the reasons for such determination.

Instruction. If the responses to this paragraph revise projections previously filed with the Commission or are revised projections previously filed with the Commission, set forth the reasons for each material revision.

Form Attachment 9

(c) If the registrant is not required to furnish projections under paragraph (b) of this item, the registrant may furnish projections for its current fiscal year only if the registrant meets the requirements of paragraph (a) of Rule 3b-6 under the Act. If such registrant determines to furnish such projections in this report, the registrant shall set forth such projections in conformity with Rule 3b-6.

(d) If the registrant represents or has represented, other than in connection with a transaction or to a person specified in the Instruction to this paragraph, that any projection furnished in response to this item has been reviewed by any person other than an officer, director or employee of the registrant, so state, give such person's name and address, and file such person's report, if any, as an exhibit to this report.

Instruction. This paragraph shall not apply to representations made internally or those made in connection with a transaction or to a person listed below:

(a) transactions not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(b) commercial loan transactions;

(c) preliminary negotiations or agreements between the registrant and any underwriter or among underwriters who are or are to be in privity of contract with the registrant;

(d) preliminary negotiations regarding a proposed business combination or a proposed acquisition or disposition of a significant amount of assets; or

(e) a government agency, foreign or domestic, which has afforded the related projections non-public treatment; or

(f) the registrant's accountants or counsel in connection with their work for the registrant.

(g) Notwithstanding the above, this paragraph shall apply to representations made as part of a plan or scheme to evade the requirements of this paragraph.

Form Attachment 10

Proposed Amendments to: 1. Form S-1 and S-7—Item 6A—Projections; 2. Form S-3—Item 19A—Projections; 3. Form S-9—Item 3A—Projections.

(NOTE. These items are proposed under the specified forms but are not repeated to avoid unnecessary duplication.)

(a) Furnish all projections filed or required to be filed with the Commission covering (1) year-end results for the registrant's last fiscal year, (2) its current year, or (3) any future period.

Instructions. 1. If any such projection was revised briefly describe the reasons for each material revision.

2. The most recent projections for the last fiscal year should be presented in comparative form with the corresponding historical results. Where a projection differs from the corresponding historical result by a factor of ten percent or more, set forth the material reasons for such difference. If the projection was expressed as a range, the percentage difference shall be measured from the end points of such range.

3. If the projections for the current year or any future period are furnished, include a statement which (i) discloses the material assumptions underlying the projections; (ii) cautions that there can be no assurance that the projections will be achieved since their ultimate achievement is dependent upon the occurrence of the specified assumptions; and (iii) indicates whether the projections have been compiled on the basis of the specified assumptions and whether

they are consistent with the accounting principles expected to be used by the registrant.

(b) If the registrant has furnished projections for the current year or any future period to any government agency, foreign or domestic, other than the Commission, give the name and location of such agency and describe the circumstances under which the projections were furnished. If projections furnished to such agency are materially different from any projections filed with the Commission, briefly describe such differences.

Instruction. This item does not apply to any projections which have been afforded non-public treatment by the government agency.

(c) Any registrant that meets the requirements of paragraph (a) of Rule 18, under the Act may include previously undisclosed projections for its current or next fiscal year if they are set forth in conformity with Rule 132.

Form Attachment 11

(d) If the registrant represents in the registration statement that any projection furnished in response to this item has been reviewed by any person other than an officer, director or employee of the registrant, such person's manually signed and dated report regarding the projection shall be filed as an exhibit to this registration statement and such person's consent shall be filed as part of the registration statment.

Proposed Amendment to Form S-14.

* * * * *

Item 1. Information Required by Proxy or Information Rules.

(a) If the registrant or other person which is a party to the transaction in which the securities to be registered are to be issued, is required to solicit proxies pursuant to Section 14(a), or to furnish information to security holders pursuant to Section 14(c), of the Securities Exchange Act of 1934 in regard to the transaction, the prospectus shall contain the information required to be included in, and may be in the form of, such proxy or information statement *and shall also contain, where applicable, the information required to be furnished under Item 6A of Form S-1 under the Securities Act of 1933.*

(b) [No change.]

(c) [No change.]

Items 2-6. (No change.)

Form Attachment 12

Instructions as to Exhibits

Form S-1

1-13 (No. change.)

14 Copies of any report called for by Item 6A(d).

Form S-7

1-5 (No change.)

6 Copies of any report called for by Item 6A(d).

Form S-8

1-7 (No change.)

8 Copies of any report called for by Item 19A(d).

Form S-9

1-5 (No change.)

6 Copies of any report called for by Item 3A(d).

Form S-14

1-6 (No change.)

7 Copies of any report called for by Item 6A(d) of Form S-1 under the Securities Act of 1933.

[FR Doc.75-12321 Filed 5-8-75;8:45 am]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

[20 CFR Parts 901, 902]

ENROLLMENT OF ACTUARIES; ACCESS TO RECORDS

Proposed Procedures and Requirements

Notice is hereby given that the regulations set forth below are proposed to be prescribed by the Joint Board for the Enrollment of Actuaries.

The proposed Part 901 establishes the requirements for eligibility to perform actuarial services under the Employee Retirement Income Security Act of 1974, Pub. L. 93-406. The proposed rules set forth enrollment procedures and the requirements for eligibility to be enrolled before January 1, 1976. In addition, the proposed rules set forth rules of conduct for enrolled actuaries.

The proposed Part 902, which is designed to comply with the requirements of the Freedom of Information Act, Pub. L. 93-502, provides for access by the public to information created or maintained by the Joint Board for the Enrollment of Actuaries. They provide for publication of certain documents in the FEDERAL REGISTER and public inspection of records. They also provide procedures for making a request for records of the Joint Board, for appeal of an initial or appellate administrative determination to deny such a request, and the schedule of fees for search and duplication of records.

Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing to the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, D.C. 20220, by May 29, 1975. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should notify the Executive Director, Joint Board, at the above address or telephone (Washington, D.C.) 202-634-5071, by May 29, 1975, of that desire and of the length of time requested for such comments. A public hearing on the provisions of such proposed regulations will be held on Monday, June 2, and if necessary, Tuesday, June 3, 1975, beginning at 9:30 a.m., e.d.t., in Conference Room N3437 A&B, New Department of Labor Building 200 Constitution Avenue, NW., Washington, D.C. The Chairman, Joint Board, reserves the right to limit the length of presentations at the hearing. The proposed regulations are to be issued under the authority contained in section 3042, Subtitle C of Title 3 of the Employee Retirement Income Security Act of 1974. (88 Stat. 1002, 29 U.S.C. 1241, 1242.)

Title 20, CFR, is hereby revised by the addition to Chapter VIII, entitled Joint Board for the Enrollment of Actuaries, of a new Part 901, entitled Regulations Governing the Performance of Actuarial Services under the Employee Retirement Income Security Act of 1974, as set forth below. In addition, such Title is hereby revised by the addition to Chapter VIII of a new Part 902, entitled Rules Regarding Availability of Information, as also set forth below.

The new Part 901 of Chapter VIII of Title 20, CFR, reads as follows:

PART 901—REGULATIONS GOVERNING THE PERFORMANCE OF ACTUARIAL SERVICES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec.

901.0 Scope.

Subpart A—Definitions and Eligibility To Perform Actuarial Services

901.1 Definitions.
901.2 Eligibility to perform actuarial services.

Subpart B—Enrollment of Actuaries

901.10 Application for enrollment.
901.11 Enrollment procedures.
901.12 Eligibility for enrollment of individuals applying for enrollment before January 1, 1976.
901.13 Eligibility for enrollment of individuals applying for enrollment on or after January 1, 1976. [Reserved.]

Subpart C—Rules of Conduct for Enrolled Actuaries

901.20 Rules of conduct in the performance of actuarial services.

Subpart D—Suspension and Termination of Enrollment [Reserved]

Subpart E—General Provisions

901.40 Special orders.

AUTHORITY: Sec. 3042, Subtitle C, title 3, Employee Retirement Income Security Act of 1974. (88 Stat. 1002, 29 U.S.C. 1241, 1242).

§ 901.0 Scope.

This part contains rules governing the performance of actuarial services under the Employee Retirement Income Security Act of 1974, hereinafter also referred to as ERISA. Subpart A of this part sets forth definitions and eligibility to perform actuarial services; Subpart B of this part sets forth rules governing the enrollment of actuaries; Subpart C of this part sets forth rules of conduct to which enrolled actuaries must adhere; Subpart D of this part is reserved and will set forth rules applicable to suspension and termination of enrollment; and Subpart E of this part sets forth general provisions.

Subpart A—Definitions and Eligibility To Perform Actuarial Services

§ 901.1 Definitions.

As used in this part, the term:

(a) "Actuarial experience" means the performance or direct supervision of services involving the application of principles of probability and compound interest to determine the present value of payments to be made upon the fulfillment of certain specified conditions and/or the occurrence of certain specified events.

(b) "Responsible actuarial experience" means actuarial experience involving:

(1) Significant participation in the determination that the methods and assumptions adopted and the procedures followed are appropriate in the light of all pertinent circumstances, and

(2) Demonstration of a thorough understanding of the principles and alternatives involved.

(c) "Responsible pension actuarial experience" means responsible actuarial experience involving valuations of the liabilities of pension plans, wherein the performance of such valuations requires the application of principles of life contingencies and compound interest in the determination, under one or more standard actuarial cost methods, of such of the following as may be appropriate in the particular case:

(1) Normal cost.

(2) Accrued liability.

(3) Payment required to amortize a liability or other amount over a period of time.

(4) Actuarial gain or loss.

(d) "Applicant" means a person who has filed an application to become an enrolled actuary.

(e) "Enrolled actuary" means an individual who has satisfied the standards and qualifications as set forth in this part and who has been approved by the Joint Board (or its designee) to perform actuarial services.

(f) "Actuarial services" means performance of actuarial valuations and preparation of any actuarial reports required or submitted under ERISA or regulations thereunder.

§ 901.2 Eligibility to perform actuarial services.

(a) *Enrolled actuary.* Subject to the rules of conduct set forth in Subpart C of this part, any individual who is a duly enrolled actuary as defined in § 901.1(e) may perform actuarial services except as provided in paragraphs (b) and (c) of this section.

(b) *Government officers and employees.* No officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, may perform actuarial services if such services would be in violation of 18 U.S.C. 205. No Member of Congress or Resident Commissioner (elect or serving) may perform actuarial services if such services would be in violation of 18 U.S.C. 203 or 205.

(c) *Former government officers and employees*—(1) *Personal and substantial participation in the performance of actuarial services.* No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall perform actuarial services or aid or assist in the performance of actuarial services, in regard to particular matters, involving a specific party or parties, in which the individual participated personally and substantially as such officer or employee.

(2) *Official responsibility.* No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall, within 1 year after his employment has ceased, perform actuarial services in regard to any particular matter involving a specific party or parties which was under the individual's official responsibility as an officer or employee of the Government at any time within a period of 1 year prior to the termination of such responsibility.

Subpart B—Enrollment of Actuaries

§ 901.10 Application for enrollment.

(a) *Form.* An applicant for enrollment shall file with the Executive Director of the Joint Board a properly executed application on a form or forms specified by the Joint Board.

(b) *Additional information.* The Joint Board or Executive Director, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to written or oral examination under oath or otherwise. The Executive Director shall, upon written request, afford an applicant the opportunity to be heard with respect to his application for enrollment.

(c) *Denial of application.* If the Joint Board proposes to deny an application for enrollment the Executive Director shall advise the applicant in writing of the proposed denial and the reasons therefor. The applicant may, within 30 days from the date of the written proposed denial, file a written appeal therefrom, together with his reasons in support thereof, to the Joint Board. The Joint Board may afford an applicant the opportunity to be heard. A decision on the appeal shall be rendered by the Joint Board as soon as practicable. In the absence of an appeal within the aforesaid 30 days, the proposed denial shall, without further proceeding, constitute a final decision of denial by the Joint Board.

§ 901.11 Enrollment procedures.

(a) *Enrollment.* The Joint Board shall enroll each applicant it determines has met the requirements of these regulations. Each enrollment shall be valid for a period of five years from its date or the date of any renewal thereof. Subject to the provisions of Subpart D of this part, an enrollment shall, upon application made not more than six months before the date of its expiration, be automatically renewed for a period of five years from such date.

(b) *Enrollment certificate.* The Joint Board (or its designee) shall issue a certificate of enrollment to each actuary who is duly enrolled under this part.

(c) *Rosters.* The Executive Director shall maintain rosters of all actuaries who are duly enrolled under this part and of all individuals whose enrollment has been suspended or terminated.

§ 901.12 Eligibility for enrollment of individuals applying for enrollment before January 1, 1976.

(a) *In general.* To qualify as an enrolled actuary an applicant must fulfill the requirements set forth in paragraph (b) of this section and, in addition, the requirements set forth in paragraphs (c), (d) or (e) of this section.

(b) *Qualifying experience.* Within a 15 year period immediately preceding the date of application, an applicant shall have completed either:

(1) A minimum of 36 months of responsible pension actuarial experience, or

(2) A minimum of 60 months of responsible actuarial experience, including at least 24 months of responsible pension actuarial experience.

(c) *Qualifying formal education.* Prior to filing an application, the applicant shall have satisfied one of the following educational requirements:

(1) Received a bachelor's or higher degree from an accredited college or university, such degree having been granted after the completion of a course of study in which the major area of concentration was actuarial science, or

(2) Received a bachelor's or higher degree from an accredited college or university, such degree having been granted after the completion of a course of study in which the major area of concentration was mathematics, statistics, or computer science, including at least 6 semester hours or 9 quarter hours of courses in life contingencies and/or courses requiring use of life contingencies.

(d) *Organizational qualification.* (1) Before March 1, 1975, the applicant shall have attained one of the following classes of affiliation or qualification in one of the following organizations:

(i) Member of the American Academy of Actuaries,

(ii) Fellow or Member of the American Society of Pension Actuaries,

(iii) Fellow or Member of the Conference of Actuaries in Public Practice,

(iv) Fellow or Associate of the Society of Actuaries, or

(v) A class attained by examination in any other actuarial organization in the United States or elsewhere if the Joint Board determines that the subject matter included in such examination, complexity of questions, and the minimum acceptable qualifying score are at least comparable to examinations administered by any of the above organizations before March 1, 1975; or

(2) On or after March 1, 1975, the applicant shall have attained one of the classes of qualification specified in paragraph (d)(1) of this section, the attainment of such qualification having been by examination under requirements determined by the Joint Board to be of not lower standards than the requirements for qualification before March 1, 1975.

(e) *Board examination.* The applicant shall have completed, to the satisfaction of the Joint Board, an examination prescribed by the Joint Board in actuarial

mathematics and methodology related to pension plans.

(f) *Disreputable conduct.* The applicant may be denied enrollment if it is found that he/she has engaged in any disreputable conduct including the following:

(1) Commission at any time after his/her eighteenth birthday of any offense referred to in section 411 of ERISA, or commission of any other offense involving violation of a fiduciary or trust relationship.

(2) Submission of a false or misleading answer on an application for enrollment to perform actuarial services or in any oral or written information submitted in connection therewith knowing the same to be false or misleading.

(3) Other conduct evidencing dishonesty or breach of trust.

§ 901.13 Eligibility for enrollment of individuals applying for enrollment on or after January 1, 1976. [Reserved]

Subpart C—Rules of Conduct for Enrolled Actuaries

§ 901.20 Rules of conduct in the performance of actuarial services.

In the performance of actuarial services with respect to plans to which ERISA applies:

(a) *In general.* An enrolled actuary shall not undertake any actuarial assignment for which he/she does not have appropriate training or experience.

(b) *Professional duty.* An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes or has reasonable grounds for believing may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.

(c) *Advice or explanations.* An enrolled actuary shall provide to the plan administrator upon appropriate request, supplemental advice and/or explanation relative to any report signed or certified by such enrolled actuary.

(d) *Conflicts of interest.* Without regard to Part 4 of Title I of ERISA and section 4975 of the Internal Revenue Code of 1954, as amended, in any situation in which there is or may arise a conflict of interest involving actuarial services, the enrolled actuary shall not perform such actuarial services except after full disclosure has been made to all directly interested parties.

(e) *Calculations, recommendations or assumptions.* The enrolled actuary shall exercise due care, skill, prudence and diligence to ensure that:

(1) The data used in any actuarial calculations are sufficient and reliable, the actuarial assumptions are reasonable in the aggregate, and the actuarial cost method is appropriate,

(2) The calculations on the aforementioned basis are accurately carried out, and

(3) The report and/or recommendations to the plan administrator duly reflect the results of the calculations.

(f) *Report or certificate.* An enrolled actuary shall include in any report or certificate stating actuarial costs or liabilities, a statement or reference describing or clearly identifying the data, any inadequacies therein and the implications thereof, and the actuarial methods and assumptions employed.

(g) *Disclosure of compensation.* Without regard to Part 4 of Title I of ERISA and section 4975 of the Internal Revenue Code of 1954, as amended, an enrolled actuary shall provide to the plan administrator a complete and timely record of the amounts and sources of all direct and indirect compensation that is or may be received by him/her or his/her firm or employer from any person other than the plan administrator in relation to any assignment the enrolled actuary or his/her firm or employer has undertaken for such plan administrator or for any employer contributing to the plan, excluding any gain to an insurance company as the result of issuing contracts.

Subpart D—Suspension and Termination of Enrollment [Reserved]

Subpart E—General Provisions

§ 901.40 Special orders.

The Joint Board reserves the power to issue such special orders as it may deem proper in any cases within the scope of this part.

PART 902—RULES REGARDING AVAILABILITY OF INFORMATION

The new Part 902 of Chapter VIII of Title 20, CFR, reads as follows:

Sec.
902.1 Scope.
902.2 Definitions.
902.3 Published information.
902.4 Access to records.
902.5 Appeal.

AUTHORITY: Sec. 3042, Subtitle C, Title 3, Employee Retirement Income Security Act of 1974. (88 Stat. 1002, 29 U.S.C. 1241, 1242).

§ 902.1 Scope.

This part is issued by the Joint Board for the Enrollment of Actuaries (the "Joint Board") pursuant to the requirements of section 552 of Title 5 of the United States Code, including the requirements that every Federal agency shall publish in the FEDERAL REGISTER, for the guidance of the public, descriptions of the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

§ 902.2 Definitions.

(a) *"Records of the Joint Board."* For purposes of this Part, the term "records of the Joint Board" means rules, statements, opinions, orders, memoranda, letters, reports, accounts and other papers containing information in the possession of the Joint Board that constitute part of the Joint Board's official files.

(b) *"Unusual Circumstances."* For purposes of this part, "unusual circumstances" means, but only to the extent reasonably necessary for the proper processing of the particular request:

(1) The need to search for and collect the requested records from other establishments that are separate from the Joint Board's office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

§ 902.3 Published information.

(a) *Federal Register.* Pursuant to sections 552 and 553 of Title 5 of the United States Code, and subject to the provisions of § 902.5, the Joint Board publishes in the FEDERAL REGISTER for the guidance of the public, in addition to this part, descriptions of its organization and procedures, substantive rules of general applicability, and, as may from time to time be appropriate, statements of general policy, and interpretations of general applicability.

(b) *Other published information.* From time to time, the Joint Board issues statements to the press relating to its operations.

(c) *Obtaining published information.* If not available through the Government Printing Office, published information released by the Joint Board may be obtained without cost from the Executive Director of the Joint Board ("The Executive Director").

§ 902.4 Access to records.

(a) *General rule.* All records of the Joint Board, including information set forth in section 552(a)(2) of Title 5 of the United States Code, are made available to any person, upon request, for inspection and copying in accordance with the provisions of this section and subject to the limitations stated in section 552(b) of Title 5 of the United States Code. Records falling within such limitations may nevertheless be made available in accordance with this section to the extent consistent, in the judgment of the Chairman of the Joint Board (the "Chairman"), with the effective performance of the Joint Board's statutory responsibilities and with the avoidance of injury to a public or private interest intended to be protected by such limitations.

(b) *Obtaining access to records.* Records of the Joint Board subject to this section are available by appointment for public inspection of copying during regular business hours on regular business days at the office of the Executive Director. Every request for access to such records, other than published records described in § 902.3, shall be submitted in writing to the Executive Director, shall state the name and address of the person requesting such access, and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty.

(c) *Fees.* A fee at the rate of $5.00 per hour for the time required to locate such records, plus ten cents per standard page for any copying thereof, shall be paid by

any person requesting records other than published records described in § 902.3. In addition, the cost of postage and any packaging and special handling shall be paid by the requester. Documents shall be provided without charge or at a reduced charge where the Chairman determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

(d) *Actions on requests.* The Executive Director shall within ten days (excepting Saturdays, Sundays and legal public holidays) determine whether to comply with such requests for records and shall immediately notify in writing the person making such request of such determination and the reason therefor, and of the right of such person to appeal any adverse determination, as provided in § 902.5. In unusual circumstances, the time limit for the determination may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which the determination is expected to be dispatched. No such notice shall specify a date that will result in an extension of more than ten working days.

(e) *Deletion of identifying details.* Before any records are made available under § 902.4(a), any identifying details, the disclosure of which would be an unwarranted invasion of personal privacy, shall be deleted by the Executive Director and justification therefor shall be made in writing.

§ 902.5 Appeal.

(a) Any person denied access to records requested under § 902.4, may within thirty days after notification of such denial file a written appeal to the Joint Board. The appeal shall provide the name and address of the appellant, the identification of the records denied, and the dates of the original request and its denial.

(b) The Joint Board shall act upon any such appeal within twenty days (excepting Saturdays, Sundays and legal public holidays) of its receipt, unless for unusual circumstances the time for such action is deferred, subject to § 902.4(b), for not more than ten days. If action upon any such appeal is so deferred, the Joint Board shall notify the requester of the reasons for such deferral and the date on which the final reply is expected to be dispatched. If it is determined that the appeal from the initial denial shall be denied (in whole or in part), the requester shall be notified in writing of the denial, of the reasons therefor, of the fact the Joint Board is responsible for the denial, and of the provisions of section 552(a)(4) of Title 5 of the United States Code for judicial review of the determination.

(c) *Time extensions.* Any extension or extensions of time under §§ 902.4(d) and 902.5(b) shall not cumulatively total more than ten days (excepting Saturdays, Sundays and legal public holidays). If an extension is invoked in connection with an initial determination under § 902.4(d), any unused days of such extension may be invoked in connection with the determination on appeal under § 902.5(a) by written notice from the Joint Board.

Approved for publication in the FEDERAL REGISTER.

Dated: May 8, 1975.

DONALD S. GRUBBS, Jr.,
DONALD S. GRUBBS, Jr.,
Chairman, Joint Board for Enrollment of Actuaries.

[FR Doc.75-12471 Filed 5-8-75;10:07 am]

notices

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

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

FIREARMS

Granting of Relief

Notice is hereby given that pursuant to 18 U.S.C., section 925(c), the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

Bailey, Stephen A., 14 Maple Street, Dexter, Maine, convicted on June 1, 1972, in the Superior Court of Penobscot County, Maine.

Callis, Donald R., Sr., Apt 5-F, South 8th Street, Thomas Rolfe Court, Hopewell, Virginia, convicted on March 30, 1972, in the Circuit Court of the County of Chesterfield, Virginia.

Cappello, Vincent R., 105 Cleveland Avenue, Bridgeport, Connecticut, convicted on May 28, 1974, in the United States District Court, New Haven, Connecticut.

Conway, Harold V., 1317 North 57th Street, Milwaukee, Wisconsin, convicted on June 22, 1964, and on October 26, 1965, in the Circuit Court, Criminal Division, Milwaukee County, Wisconsin.

Cranmer, Kenneth Dale, 1204 Green Street, Chillicothe, Missouri, convicted on June 7, 1972, in the Circuit Court of Livingston County, Missouri.

Cross, Joseph L., 1419 S. Martinson, Wichita, Kansas, convicted on August 30, 1972, in the Sedgwick County District Court, Wichita, Kansas.

Dandridge, Jerald Lynn, 627 North Bishop, #2, Dallas, Texas, convicted on September 6, 1963, in the Criminal District Court, Dallas County, Texas.

Davis, Joshlah, Jr., 3487 Guthrie Street, Apt. #202, Hammond, Indiana, convicted on January 9, 1970, in the United States District Court, Northern District of Indiana.

Gensburg, Otto Arthur, Route 1, Box 110, Columbia, South Dakota, convicted on May 24, 1934, in the Circuit Court, Fifth Judicial Circuit, South Dakota; on November 1, 1947, in the Superior Court, State of Washington, County of Yakima, Washington; and on May 1, 1958, in the Justice Court, Ukiah Judicial District, County of Mendolino, California.

Hamilton, Richard, 1828 Azalea, Munster, Indiana, convicted on October 25, 1965, in the Criminal Court of Lake County, Indiana.

Harkins, Henry E., 66 South Florida Street, Buckhannon, West Virginia, convicted on January 28, 1972, in the United States District Court for the Northern District of West Virginia.

Harrington, Ace Allen, 6320 Marywood, Lansing, Michigan, convicted on or about November 20, 1969, in the Circuit Court, Eaton County, Michigan.

Herrell, Harlan D., 1905 Plymouth Street, New Holstein, Wisconsin, convicted on May 26, 1970, in the United States District Court for the Eastern District of Wisconsin.

Joyner, Alvin Lee, Sr., 5836 Madsen Circle, Oregon, Wisconsin, convicted on June 3, 1971, in the Dane County Circuit Court, Wisconsin.

Libauskas, Thomas M., 14625 Center Avenue, Harvey, Illinois, convicted on June 30, 1955, and on November 6, 1957, in the Criminal Court, Lake County, Indiana.

McMillan, John H., Reverend, 119-30 144th Street, South Ozone Park, New York, convicted on October 14, 1963, in the County Court of Suffolk County, New York.

Madison, John L., 2412 Behrman Highway, New Orleans, Louisiana, convicted on May 1, 1931, on March 16, 1937, and on March 18, 1952, in the Criminal District Court, Parish of Orleans, Louisiana.

Moore, Harold Irving, 209 Country Park Road, Greensboro, North Carolina, convicted on June 8, 1972, in the United States District Court, Middle District of North Carolina.

Neil, Victor Earl, 1327 Appleton, Box 223, Parsons, Kansas, convicted on September 10, 1954, in the District Court, Labette County, Kansas; and on January 16, 1968, in the District Court, Montgomery County, Kansas.

Oxholm, John M., RR #1, Box 20, Vergennes, Vermont, convicted on November 6, 1947, in a General Court Material, United States Navy.

Paar, Gary L., Route #1, Alma Center, Wisconsin, convicted on October 31, 1966, in the District Court for Jackson County, Wisconsin.

Pearson, Otis, 814 Fairview Avenue, Lima, Ohio, convicted on March 24, 1969, Court of Common Pleas, Allen County, Ohio.

Plumb, Rodney L., 1606 N. Florida, Joplin, Missouri, convicted on April 10, 1972, in the Jasper County Circuit Court, Missouri.

Powers, Kenneth E. Padanaram Village, RR #1, Box 478, Williams, Indiana, convicted on September 15, 1969, in the Allen County Circuit Court, Indiana.

Reinecke, Howard Edwin, 3800 Bucks Bar Road, Placerville, California, convicted on or about July 27, 1974, in the United States District Court, District of Columbia.

Rodenz, James M., Route #1, Stewartville, Minnesota, convicted on October 14, 1971, in the District Court, Third Judicial District, Mower County, Minnesota.

Sayne, Glenn E., Route #1, Rockford, Tennessee, convicted on December 9, 1960, in the United States District Court, Knoxville, Tennessee.

Shields, Albert F., Route #1, Box 951, Pensacola, Florida, convicted on July 13, 1953, in the Court of Record, Escambia County, Florida.

Sims, Marvin Howard, 17810 Ash Way, Alderwood Manor, Washington, convicted on August 14, 1951, in the Superior Court of the State of Washington in and for the County of Snohomish.

Sims, Warren LeRoy, RD #2, Box 137A, Orange Hill Road, Athens, Pennsylvania, convicted on December 2, 1941, in the State Superior Court, San Diego County, California; on January 8, 1943, in a General Court Martial, United States Army; and on August 19, 1938, in the District Court of Dewey County, Oklahoma.

Smith, Robert, 12113 South Yale, Chicago, Illinois, convicted on April 3, 1964, Circuit Court, Cook County, Illinois.

Sorenson, John C., 3267 Blackstone Avenue, St. Louis Park, Minnesota, convicted on December 1, 1967, in the Fourth Judicial District Court, County of Hennepin, Minnesota.

Sprinkles, Joe, R.R. #4, Box 16, Pineville, Kentucky, convicted on May 9, 1932, on May 11, 1942, on April 3, 1951, and on November 11, 1957, in the United States District Court, London, Kentucky; and on June 21, 1945, and on November 6, 1946, in the Knox County Circuit Court, Barboursville, Kentucky.

Thomas, Joseph James, 738 James Court, West Bend, Wisconsin, convicted on September 11, 1970, in the Waukesha County Circuit Court, Wisconsin.

Tyler, David T., 12250 Viejo Camino, Atascadero, California, convicted on March 19, 1956, in the Superior Court, Orange County, California.

Whitfield, Wallace, 2275 Randall Avenue, Apt 4B, Bronx, New York, convicted on October 19, 1960, in the Bronx County Court, New York.

Williams, Robert Arnold, P.O. Box 155, Coalville, Utah, convicted on July 22, 1970, in the United States District Court, District of Utah.

Signed at Washington, D.C. this 30th day of April 1975.

REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.75-12287 Filed 5-8-75;8:45 am]

Office of the Secretary

[Public Debt Series—No. 13-75]

TREASURY NOTES OF SERIES E-1978

Supplement to Department Circular

MAY 7, 1975.

The Secretary of the Treasury announced on May 6, 1975, that the interest rate on the notes described in Department Circular—Public Dept Series—No. 13-75, dated May 2, 1975, will be 7⅝ percent per annum. Accordingly, the

notes are hereby redesignated 7⅝ percent Treasury Notes of Series E–1978. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

DAVID MOSSO,
Deputy Fiscal Assistant Secretary.

[FR Doc.75–12461 Filed 5–8–75;9:26 am]

DEPARTMENT OF DEFENSE

Department of the Army

BALLISTIC MISSILE DEFENSE ADVANCED TECHNOLOGY CENTER

Closed Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), an announcement is made of the following committee meeting:

Name of Committee: Ballistic Missile Defense Technology Advisory Panel.
Dates of Meeting: 28 through 30 May 1975.
Place: BMD Advanced Technology Center, 106 Wynn Drive, Huntsville, Alabama 35807.
Time: 0800–1630 hours on dates indicated above.
Proposed Agenda:
I. Introduction and Objectives of Panel.
II. Overview of BMD Operating Regimes and Related Programs.
III. Advanced Technology for Conventional Terminal Defense.
IV. New Terminal Defense Systems Concepts.
V. SLBM Defense Technology.
VI. CONUS Based Midcourse Defense Technology.
VII. Space Based Systems Technology.
VIII. Technology Applications Program.
IX. Subpanel Discussions on Special Topics.
X. Observations and Recommendations of Panel Members.

2. This meeting is closed to the public since the agenda consists of BMDATC's on-going and future programs which are classified as SECRET or higher defense information pursuant to Executive Order 11652 (dated March 8, 1972); and therefore, do fall within the policies analogous to those recognized in section 552(b)(1) of Title 5, U.S.C., and national security does require that the details of these programs be withheld.

3. Dated: May 5, 1975.

By authority of the Secretary of the Army.

FRED R. ZIMMERMAN,
Lt. Colonel, U.S. Army,
Chief, Plans Office, TAGO.

[FR Doc.75–12292 Filed 5–8–75;8:45 am]

Office of the Secretary

ACQUISITION ADVISORY GROUP

Establishment, Organization and Functions

Correction

In FR Doc. 75–10592, appearing on page 17862 of the issue of Wednesday, April 23, 1975, a line reading, "interrelationships of the Office of the", should be inserted between the 19th and 20th lines of the third paragraph of the document.

DDR&E HIGH ENERGY LASER REVIEW GROUP AIR FORCE LASER REVIEW TEAM

Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, dated October 6, 1972, notice is hereby given that closed meetings of the DDR&E High Energy Laser Review Group Air Force Laser Review Team will be held on Thursday through Saturday, May 29–31, 1975, at Kirtland Air Force Base, New Mexico.

The subject matter of the meetings is classified in accordance with subparagraph (1) of section 552(b) of Title 5 of the U.S. Code.

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

MAY 6, 1975.

[FR Doc.75–12235 Filed 5–8–75;8:45 am]

DDR&E HIGH ENERGY LASER REVIEW GROUP (HELRG), JOINT MEETINGS OF SUBPANELS ON LASER HARDENED MATERIALS AND STRUCTURES AND VULNERABILITY AND EFFECTS

Closed Meetings

Pursuant to the provisions of Section 10 of Pub. L. 92–463, dated October 6, 1972, notice is hereby given that closed meetings of the DDR&E High Energy Laser Review Group Subpanels on Laser Hardened Materials and Structures and Vulnerability and Effects will be held on Monday through Thursday, July 7–10, 1975 in the San Jose, California area.

The subject matter of the meetings is classified in accordance with subparagraph (1) of section 552(b) of Title 5 of the U.S. Code.

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

MAY 6, 1975.

[FR Doc.75–12234 Filed 5–8–75;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

ADVISORY COMMITTEE ON COAL MINE SAFETY RESEARCH

Reestablishment

This notice is published in accordance with the provisions of 5 U.S.C. 552(a)(1), and the Federal Advisory Committee Act (Pub. L. 92–463). Pursuant to section 14 (a)(1) 86 Stat. 770, Pub. L. 92–463 and the determination of the Solicitor of the Department of the Interior dated October 8, 1974, the Advisory Committee on Coal Mine Safety Research, a statutory committee whose establishment was directed by section 102 of the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 91–173; 30 U.S.C. 812), expired on January 5, 1975. The Advisory Committee on Coal Mine Safety Research is reestablished as a nonstatutory advisory committee. Its establishment is specifically authorized by statute and its utilization is in the public interest in connection with the performance of duties imposed on the Department of the Interior by law. The charter reestablishing the committee is published below.

Dated: April 30, 1975.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

(A) *Official designation.* The Advisory Committee on Coal Mine Safety Research.

(B) *Objectives and scope of activities.* The Advisory Committee shall consult with, and make recommendations to, the Secretary of the Interior on matters involving or relating to coal mine safety research. The Secretary shall consult with, and consider the recommendations of, such committee in the conduct of such research.

(C) *Time required for the committee to carry out its purposes.* In view of the goals and purposes of the committee, it will be expected to continue beyond the foreseeable future. However, its continuation will be subject to biennial review and renewal as required by section 14 of Public Law 92–463.

(D) *Official to whom the committee reports.* The Secretary of the Interior.

(E) *Agency responsible for support.* Assistant Secretary—Energy and Minerals, U.S. Department of the Interior.

(F) *Duties and authority for committee functions.* "The advisory committee shall consult with, and make recommendations to, the Secretary on matters involving or relating to coal mine safety research." (83 Stat. 748).

(G) *Estimated annual operating costs.* $70,000 and two man years.

(H) *Estimated number and frequency of meetings.* The committee normally meets four or five times a year for periods of 1 or 2 days.

(I) *Termination date.* The committee shall terminate on December 31, 1976, unless prior to that time the Secretary determines that its renewal is necessary and in the public interest.

(J) *Committee membership.* The Secretary shall appoint the chairman and members to the Advisory Committee on Coal Mine Safety Research. Membership shall be composed of the Director of the National Bureau of Standards, Department of Commerce, or his delegate, with the consent of the Directors; the Director of the National Science Foundation, or his delegate, with the consent of the Director; and such other persons as the Secretary may appoint who are knowledgeable in the field of coal mine safety research. The chairman of the committee and a majority of the persons appointed by the Secretary shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government. Also included will be representatives from minerals-oriented universities, the public,

and non-profit research organizations. The Executive Secretary of the committee shall be a fulltime, salaried, Federal Civil Service employee selected by the Assistant Secretary—Energy and Minerals. He shall be responsible for the recordkeeping and reporting requirements according to the Office of Management and Budget guidelines and Departmental directives in Chapter 2, Part 308 of the Department of the Interior Manual.

(K) *Allowances.* Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including travel time) during which they are performing committee business away from their homes or regular places of employment, entitled to compensation of $100.00 per day, and shall, notwithstanding the limitations of sections 5703 and 5704 of Title 5 United States Code, be fully reimbursed for travel, subsistence, and related expenses. Expenses for the operation of this committee shall be borne by the official designated in paragraph (E).

(L) *Specific statutory authority.* (30 U.S.C. 812.)

Dated: April 30, 1975.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

[FR Doc.75-12293 Filed 5-8-75;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

ADVISORY COMMITTEE ON EAST-WEST TRADE

Open Meeting

A meeting of the Advisory Committee on East-West Trade will be held 9 a.m. Wednesday, June 11, 1975, in Room 4830, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Committee was established to advise the Department, through the Deputy Assistant Secretary for East-West Trade, on ways to facilitate and coordinate the expansion of two-way trade with countries having centrally planned economies.

Agenda items are as follows:

Morning Session 9 a.m.–12 noon

1. Review of outstanding items discussed at previous meetings.
2. Discussion of over-all Committee aims and activities.
3. Presentation of problem areas for future Committee consideration.
4. Review of items submitted by the public.

Afternoon Session 1 p.m.–3:30 p.m.

5. Review of items submitted by Committee members.
6. Discussion of Eximbank activities.
7. Commentary and discussion by a distinguished scholar.

The meeting will be open to public observation, and within the limits of time available a period will be set aside for oral comments or questions by the public which do not exceed 5 minutes. More extensive questions or comments should be submitted in writing before May 30. Other public statements may be submitted at any time before or after the meeting.

Approximately 20 seats will be available to the public (including 5 seats reserved for media representatives) on a first-come first-served basis.

Copies of minutes will be available upon request 30 days after the meeting.

Persons who wish to attend the meeting should contact Robert Frothingham, III, Liaison Officer, Trade Development Assistance Division, Office of East-West Trade Development, Bureau of East-West Trade, Domestic and International Business Administration, Washington, D.C. 20230, telephone (202) 967-3353.

Dated: May 5, 1975.

ARTHUR T. DOWNEY,
Deputy Assistant Secretary for East-West Trade.

[FR Doc.75-12305 Filed 5-8-75;8:45 am]

National Bureau of Standards

VISITING COMMITTEE

Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. III, 1973), notice is hereby given that the NBS Visiting Committee will meet in Lecture Room B of the Administration Building at the National Bureau of Standards in Gaithersburg, Maryland, beginning at 9 a.m. Tuesday, June 10; and in Room 5855 of the Department of Commerce, Washington, D.C., beginning at 9 a.m. Wednesday, June 11.

The purpose of the meeting is for the NBS Visiting Committee to review the activities of the National Bureau of Standards in order to report to the Secretary of Commerce concerning the efficiency of the Bureau's scientific work and the condition of its equipment, as required by law.

The NBS Visiting Committee is composed of five members, prominent in the fields of science and technology, appointed by the Secretary of Commerce.

The agenda for the meeting on June 10 and 11 will consist of general briefings on NBS activities including presentations on joint Issue Studies undertaken by the Bureau and the Visiting Committee.

A limited number of seats will be available to observers. Persons desiring to attend the meeting are requested to contact Ms. Elaine D. Bunten, Office of Programs, National Bureau of Standards, Washington, D.C. 20234, telephone (301) 921-3591.

Dated: May 5, 1975.

RICHARD W. ROBERTS,
Director.

[FR Doc.75-12193 Filed 5-6-75;9:58 am]

National Oceanic and Atmospheric Administration

BROOKFIELD ZOO

Issuance of Permit for Marine Mammals

On February 26, 1975, notice was published in the FEDERAL REGISTER (40 FR 8238) that an application had been filed with the National Marine Fisheries Service by Brookfield Zoo, Chicago Zoological Park, Brookfield, Illinois 60513, for a Public Display Permit to take one (1) Atlantic bottlenosed dolphin (*Tursiops truncatus*).

Notice is hereby given that, on May 5, 1975, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit for the above described taking to Brookfield Zoo, Chicago Zoological Park, subject to certain conditions set forth therein. The Permit is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, and in the Offices of the Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702, and the Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: May 5, 1975.

ROBERT F. HUTTON,
Acting Director, National Marine Fisheries Service.

[FR Doc.75-12266 Filed 5-8-75;8:45 am]

UNIVERSITY OF CALIFORNIA

Receipt of Application for Scientific Research Permit

Notice is hereby given that the following applicant has applied in due form for a permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals.

Dr. Gerald L. Kooyman, Associate Research Physiologist, University of California, San Diego, Scripps Institution of Oceanography, P.O. Box 1529, La Jolla, California 92037, to take six (6) California sea lions (*Zalophus californianus*), six (6) harbor seals (*Phoca vitulina*), six (6) Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), twenty-five (25) Weddell seals (*Leptonychotes weddelli*) and six (6) Ross seals (*Ommatophoca rossi*), for the purpose of scientific research.

The California sea lions will be taken either by the Applicant or a professional collector, from coastal areas of central or southern California, or may be from stranded animals placed into the care of the Applicant for the purpose of nursing them back to health. The harbor seals will be taken by a professional collector from Izembek Lagoon, Alaska. The white-sided dolphins will be taken from coastal areas of central and southern California by Mr. John Hall of the University of California at Santa Cruz. The California sea lions, harbor seals, and white-sided dolphins will be maintained in captivity in any of three facilities at Scripps Institution of Oceanography, including: (1) a rectangular tank, 40 feet

long, 15 feet wide and 8 feet deep; (2) a circular tank, 25 feet in diameter and 8 feet deep; and (3) a ring tank, 108 feet outside diameter, 80 feet inside diameter and 8 feet deep.

The Ross seals will be taken in the Ross Sea sector of Antarctica. The Weddell seals will be taken in the area of McMurdo Sound, Antarctica. In both cases, the seals will be taken on the ice by means of large nets, and then transported by sled or helicopter to the laboratory at McMurdo Sound. Following completion of the research activities, these seals will be released near the site of their capture.

The proposed research is intended to provide a better understanding of the relationship of lung structure to function, and may aid in developing rational diagnosis treatment of pulmonary illnesses in marine mammals. The research will also clarify the energetic requirements of different marine mammals under natural conditions and the efficiency of different methods of hydrodynamic propulsion.

The proposed research will include the following activities:

(1) Lung structure and function of California sea lions, harbor seals and Pacific white-sided dolphins, involving the mechanical properties of the respiratory systems of these species, and the gas exchanging properties of the lungs, at various pressures. This aspect of the proposed research is a continuation of research currently being conducted under a permit issued during 1974 (39 FR 20407, June 10, 1974).

(2) Ventilation and gas exchange in California sea lions, harbor seals, Pacific white-sided dolphins and Weddell seals, involving the characteristics of gas movement in and out of the lungs and oxygen consumption of trained animals undergoing exercise, or in the case of Weddell seals, freely diving animals;

(3) Comparative behavior of Ross and Weddell seals, involving the placement of instruments on the backs of seals of both species to record the depths and durations of dives, and the removal of blood samples from Weddell seals in order to assess physiological changes resulting from driving activities.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Documents submitted in connection with this application are available in the Office of the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, and the Offices of the Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and the Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801.

Concurrent with the publication to this notice in the FEDERAL REGISTER, the Secretary of Commerce is sending copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written views or data, or requests for a public hearing on this application should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before June 9, 1975. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this Notice in support of this application are summaries based upon information supplied by the Applicant and, therefore, do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: May 5, 1975.

ROBERT F. HUTTON,
Associate Director for Resource Management, National Marine Fisheries Service.

[FR Doc.75-12268 Filed 5-8-75;8:45 am]

FISHERMEN'S MARKETING ASSOCIATION OF WASHINGTON

Receipt of Application

Notice is hereby given that the following has applied to take marine mammals incidental to the course of commercial fishing operations as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

The Fishermen's Marketing Association of Washington, 4215 21st Avenue NW., Seattle, Washington 98199, has applied for a general permit, category 1, "Towed or Dragged Gear."

Copies of the application are available for review as follows: Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, (AC 202/634-7283) and the Regional Director, National Marine Fisheries Service, Seattle, Washington (AC 206/442-7575).

Interested parties may submit written views on this application on or before June 6, 1975, to the Director, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: May 5, 1975.

ROBERT F. HUTTON,
Associate Director for Resource Management National Marine Fisheries Service.

[FR Doc.75-12271 Filed 5-8-75;8:45 am]

MARINE MAMMALS

Notice of Receipt of Application for Scientific Research Permit

Notice is hereby given that the following applicant has applied in due form for a permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals.

Dr. Robert L. Brownell, Jr., Research Collaborator, Department of Vertebrate Zoology, National Museum of Natural History, Smithsonian Institution, Washington, D.C. to take, by tagging, up to 150 fin whales (*Balaenoptera physalus*), 225 sei whales (*Balaenoptera borealis*), 300 Bryde's whales (*Balaenoptera edeni*), 600 minke whales (*Balaenoptera acutorostrata*) and 450 sperm whales (*Physeter catodon*) over a period of three years in the western south Atlantic Ocean.

The tagging of minke whales will be the major objective of this research. The project is designed in response to the expressed need for information by the Scientific Committee of the International Whaling Commission, which must make recommendations of sustainable yields based on the status of whale stocks. The cruises will be aboard the National Science Foundation research vessel Hero. Two foreign research organizations will also participate in this research, the Arctic Biological Station Environment Canada, and the Far Seas Fisheries Research Laboratory of Japan. The animals will be tagged by means of Discovery marks. Minke whales and larger calves of the other species will be tagged with a mark measuring 13 cm long and 0.8 cm in diameter which is fired from a 410-gauge shotgun. The other species will be tagged with a mark measuring 23 cm long and 1.6 cm in diameter which is fired from a 12-gauge shotgun. The marks are recovered when the animal is processed after being killed in a whaling operation. Sighting and behavioral observations are to be a major part of this research. Previous estimates of minke whale populations in the Antarctic made by commercial concerns have varied from 70,000 (in 1970) to over 299,000 (in 1974). The Applicant states that these estimates are based entirely on sighting data taken on the summer feeding grounds. Is is the intent of this work to provide independent population estimates of the stocks of this species. A high incidence of tag return is expected in that the northern limit of the minke whales is fished by a Brazilian land station and the stock is harvested in its southern limits by pelagic Japanese whalers.

The other species of whales would be tagged as they might be available during the course of the cruises for minke whales. Sightings of all species of marine mammals will be recorded. The fin, sei and sperm whales are listed as endangered under the Endangered Species Act of 1973. The Applicant has filed an application for a permit under that statute concurrent with this request.

Documents submitted in connection with this application are available in the Office of the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

Concurrent with the publication of this notice in the FEDERAL REGISTER, the Secretary of Commerce is sending copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written views or data, or requests for a public hearing on this application should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before June 9, 1975. The holding of

such a hearing is at the discretion of the Director.

All statements and opinions contained in this notice in support of this application are summaries based upon information supplied by the Applicant and, therefore, do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: May 5, 1975.

ROBERT F. HUTTON,
Associate Director for Resource Management, National Marine Fisheries Service.

[FR Doc.75-12267 Filed 5-8-75;8:45 am]

MYSTIC MARINELIFE AQUARIUM

Surrender; Issuance of Permit for Marine Mammal

On February 26, 1974, notice was published in the FEDERAL REGISTER (39 FR 7477) that on February 20, 1974 a permit was issued to Mystic Marinelife Aquarium, P.O. Box 190, Mystic, Connecticut 06355 to take three pilot whales (*Globicephala macrorhyncha*) for public display. On February 25, 1975, Mystic Marinelife Aquarium voluntarily surrendered this permit to take three Pacific pilot whales.

On October 4, 1974, notice was published in the FEDERAL REGISTER (39 FR 35829) that an application had been filed with the National Marine Fisheries Service by Mystic Marinelife Aquarium, P.O. Box 190, Mystic, Connecticut 06355, to take two (2) pilot whales (*Globicephala melaena*) or (*Globicephala macrorhyncha*) or two (2) beluga (belukha) whales (*Delphinapterus leucas*) or one (1) killer whale (*Orcinus orca*) for the purpose of public display. The application was for the maximum of two (2) whales of the species noted or a maximum of one (1) killer whale.

Notice is hereby given that, on April 30, 1975, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit to Mystic Marinelife Aquarium to take either two pilot whales or two beluga whales for public display.

Mystic Marinelife Aquarium was denied a permit to take one (1) killer whale (*Orcinus orca*) on the basis that holding a single individual marine mammal of a species such as killer whales would not be conducive to the good health and well-being of that animal. The Permit is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235; the Office of the Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and the Office of the Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

Dated: April 30, 1975.

JACK W. GEHRINGER,
Acting Director, National Marine Fisheries Service.

[FR Doc.75-12270 Filed 5-8-75;8:45 am]

PORTLAND ZOOLOGICAL GARDENS

Issuance of a Permit for Marine Mammals

On February 24, 1975, notice was published in the FEDERAL REGISTER (40 FR 8240), that an application had been filed with the National Marine Fisheries Service by the Portland Zoological Gardens, 4055 SW. Canyon Road, Portland, Oregon 97221, to take up to ten harbor seals (*Phoca vitulina richardii*) for the purpose of public display.

Notice is hereby given that on April 30, 1975 and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit to Portland Zoological Gardens, subject to certain conditions set forth therein. The Permit is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235 and in the Office of the Regional Director, National Marine Fisheries Service, Northwest Region, Lake Union Building, 1700 Westlake Avenue North, Seattle, Washington 98109.

Dated: April 30, 1975.

ROBERT F. HUTTON,
Acting Director, National Marine Fisheries Service.

[FR Doc.75-12265 Filed 5-8-75;8:45 am]

SENECA PARK ZOO

Receipt of Application for Marine Mammal Permit

Notice is hereby given that the following applicant has applied in due form for a permit to take marine mammals for public display as authorized by the Marine Mammal Protection Act of 1972 and the Regulations Governing the Taking and Importing of Marine Mammals.

Seneca Park Zoo, 2222 St. Paul Street, Rochester, New York 14621, to take two (2) California sea lions (*Zalophus californianus*) for public display.

The sea lions will be taken from the California Channel Islands by a professional collector during the period of November to April.

The animals will be held in indoor and outdoor pools each measuring 24 feet long by 14 feet 8 inches wide and 4 feet 11 inches deep. Haul-out areas are available to the animals in each of the pools.

The Seneca Park Zoo is a non-profit component of the County of Monroe, New York. Some 300,000 visitors a year are recorded. The Zoo's Director has 13 years experience with captive sea lions. A staff zoologist has 6 years experience with the care and maintenance of sea lions.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the California sea lions requested.

Documents submitted in connection with the above application are available for review at the following locations: Office of the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235; Office of the Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and the Office of the Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Concurrent with the publication of this notice in the FEDERAL REGISTER, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Interested parties may submit written data or views, or requests for a public hearing on this application to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this notice. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in ths notice in support of this application are those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: May 5, 1975.

ROBERT F. HUTTON,
Associate Director for Resource Management, National Marine Fisheries Service.

[FR Doc.75-12269 Filed 5-8-75;8:45 am]

Office of the Secretary

CTAB PANEL ON SULFUR OXIDE CONTROL TECHNOLOGY

Meeting Cancellation

This is to announce that the planned meeting of the CTAB Panel on Sulfur Oxide Control Technology which was scheduled for May 14, 1975 in the Main Commerce Building, Washington, D.C. will not be held. The meeting was announced on page 16869 of the April 15, 1975 issue of the FEDERAL REGISTER. The meetings announced on the same page of the FEDERAL REGISTER for May 15 and 16, 1975, are not affected by this announcement.

Dated: May 5, 1975.

BETSY ANCKER-JOHNSON, Ph.D.

[FR Doc.75-12304 Filed 5-8-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

CAREER EDUCATION PROGRAM

Funding Criteria

On pages 11928–11930 of the FEDERAL REGISTER of March 14, 1975 there was published a Notice of proposed rulemaking which set forth criteria to be used in evaluating applications for grants to State and local educational agencies, institutions of higher education, and other nonprofit agencies and organizations under section 406(f)(1) of the Education Amendments of 1974, Pub. L. 93-380 (20 U.S.C. 1865(f)(1)). Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed criteria.

One comment was received. The commenter expressed concern that the proposed criteria would exclude the participation of adults in State adult basic education, high school diploma, and high school equivalency programs in the Career Education Program. No such exclusion is intended by these funding criteria. Applications from eligible applicants for career education exemplary projects which serve adults in adult basic education, high school diploma, and high school equivalency programs may be submitted. Adults in such programs are frequently served in high school and postsecondary educational settings, and provisions for exemplary projects in these or other settings are provided for in the funding criteria. Because this concern is addressed in the previously published proposed funding criteria, no change in these criteria is necessary. The proposed criteria are hereby adopted without change as set forth below.

Effective date. The notice of proposed rulemaking was transmitted to Congress on March 10, 1975 pursuant to section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)). The time period set forth therein for congressional action has expired without such action having been taken. Therefore these criteria shall become effective on May 9, 1975.

(Catalog of Federal Domestic Assistance Programs: 13.554 Career Education Program)

Dated: April 22, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: May 5, 1975.

STEPHEN KURZMAN,
Acting Secretary of Health, Education, and Welfare.

CAREER EDUCATION PROGRAM

FUNDING CRITERIA

A. *Scope and purpose.* These funding criteria govern the selection of applications from State and local educational agencies, institutions of higher education, and other nonprofit agencies and organizations for purposes of carrying out activities designed to improve the implementation of career education.

(20 U.S.C. 1865)

B. *Eligible applicants.* The following categories of agencies and organizations are eligible for grants pursuant to these funding criteria:

(1) State educational agencies;
(2) Local educational agencies;
(3) Institutions of higher education; and
(4) Other nonprofit agencies and organizations.

(20 U.S.C. 1865(b)(1))

C. *Definitions.* As used in these funding criteria: "Career education" means an education process designed to:

(1) Increase the relationship between schools and society as a whole;

(2) Provide opportunities for counseling, guidance and career development for all children;

(3) Relate the subject matter of the curricula of schools to the needs of persons to function fully in society;

(4) Extend the concept of the education process beyond the school into the area of employment and the community;

(5) Foster flexibility in attitudes, skills, and knowledge in order to enable persons to cope with accelerating change and obsolescence;

(6) Make education more relevant to employment and functioning in society; and

(7) Eliminate any distinction between education for vocational purposes and general or academic education.

(20 U.S.C. 1865(d))

"Handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

(20 U.S.C. 1401)

"State educational agency" means the State Board of Education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools; or, if there is no such agency or officer, an agency or officer designated by the Governor or by State Law.

(20 U.S.C. 1141(h))

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. The term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(20 U.S.C. 1141(g))

"Institution of higher education" or "institution" means an educational institution in any State which meets the requirements set forth in section 1201(a) of the Higher Education Act of 1965 as amended.

(20 U.S.C. 1141(a))

D. *Required application data.* Projects funded pursuant to these funding criteria must be designed to contribute to one of the following purposes to:

(1) Effect incremental improvements in K-12 career education through one or a series of exemplary projects;

(2) Demonstrate the most effective methods and techniques in career education in such settings as the senior high school, the community college, or in institutions of higher education;

(3) Demonstrate the most effective methods and techniques in career education for such special segments of the population as handicapped, minority, low income, or female youth;

(4) Demonstrate the most effective methods and techniques for the training and retraining of persons for conducting career education programs; and

(5) Communicate career education philosophy, methods, program activities, and evaluation results to career education practitioners and to the general public.

Each application for assistance under these funding criteria must set forth a detailed plan which includes:

(i) Identification of the purpose to which the application is addressed (If the applicant chooses to participate in more than one purpose, a separate application will be required for each purpose.);

(ii) Identification of the specific setting(s) in which the proposed activities will be carried out, and the need for such activities;

(iii) Specification of prior career education activities, if any, which the applicant has carried out with the population and in the setting(s) covered by the proposal, including data bearing on evaluation of effectiveness of such prior activities;

(iv) A description of career education processes, techniques, and materials developed in previous projects supported under the National Institute of Education, under Parts C, D, and I of the Vocational Education Act, and under other appropriate sources, which the applicant proposes to utilize in this proposed project;

(v) An operational plan describing, in detail, exactly how the applicant proposes to achieve the specific purpose addressed in the application and explaining the exemplary nature of the proposed procedures;

(vi) Specific learner outcomes expected to result from activities carried out under the application;

(vii) A specific plan to be utilized in evaluating the effectiveness of activities carried out under the application, including specification of the criteria to be utilized in assessing effectiveness and the evaluation instruments to be applied;

(viii) A description of applicant or other additional resources, if any, to be contributed to the proposed activities to supplement funds received pursuant to those funding criteria; and

(ix) A plan for disseminating information to others during the course of the project and at the conclusion of the project grant period.

E. *Application review criteria.* Criteria will be utilized by the reviewers in reviewing formally transmitted applications. Segments or a segment of the application must address each criterion area. Each criterion is weighted and includes the maximum score that can be given to a segment of an application in relation to the criteria. The criteria and maximum weights for each criterion are as follows:

Criteria	*Maximum score*
(1) *Evidence of need.* The application clearly demonstrates the need for its proposed activities in terms of the purpose it seeks to attain and the population(s) it seeks to serve.....	10
(2) *Objectives.* The objectives of the proposed project are sharply defined, clearly stated, capable of being attained by the proposed procedures, and capable of being measured.....	10

Criteria	Maximum score
(3) *Operational plan.* The application clearly describes the prior career education activities which the applicant has carried out, if any, as well as career education processes, techniques, and materials developed in previous projects supported by the National Institute of Education and other agencies and sources, and explains how this prior work will be utilized in implementing the proposed project. A specific description is provided of the activities proposed for each major step in the project. The time required for each activity, and the period of the project it covers, is clearly chartered in the operational plan	25
(4) *Evaluation Plan.* Provision is made for adequate evaluation of the effectiveness of the project and for determining the extent to which the objectives are accomplished	20
(5) *Exemplary Nature of Project.* The plan clearly calls for a model that, if successfully attained, holds high promise of serving as one that others could profit by emulating. The activities hold promise of being useful in other projects or programs for similar educational purposes	15
(6) *Personnel.* The personnel with committed major responsibilities for the proposed activities have the necessary qualifications and experience to assure successful completion of the activities	15
(7) *Budget.* The size, scope, and duration of the project are reasonable and the estimated cost is reasonable in relation to anticipated results	10

F. *Allowable costs.* (1) Allowable costs under grants awarded pursuant to these funding criteria shall be determined in accordance with cost principles set forth in Appendix B, C, or D (as applicable) to subchapter A of Title 45, Code of Federal Regulations (the Office of Education's General Provisions Regulations) and the restriction that funds supplied under grants may not be used to pay regular salaries of State career education staff. (2) It is expected that grants will generally not exceed $200,000, although each application will be judged on the basis of the proposed activities.

G. *Project duration.* (1) Projects will normally be one year in duration. However, applicants should make a realistic estimate of the amount of time needed to implement the proposed project activities. Where this estimate indicates that more or less than one year is necessary, the operational plan and budget should reflect this. (2) With respect to funded projects of more than one year duration, it is anticipated that generally an initial grant will be awarded for the first year of the project. A continuation grant will support the activities proposed for any remaining time period. Decisions for refunding will be made on the basis of the extent to which the grantee has satisfactorily performed under the first grant period and will be contingent upon the availability of funds. For continuations, the following will be necessary:

(i) A determination by the Office of Education that such continuation would be in the best interest of the government; and

(ii) Execution of a revised notification of grant award acceptable to the Office of Education and the grantee.

(20 U.S.C. 1865)

[FR Doc.75-12299 Filed 5-8-75;8:45 am]

POSTSECONDARY EDUCATION COMPREHENSIVE STATEWIDE PLANNING GRANTS PROGRAM

Allocation Formula and Program Guidelines

On Pages 11016 and 11017 of the FEDERAL REGISTER of March 10, 1975, there was published a notice of proposed allocation formula and program guidelines which set forth both the formula to be used in allocating the fiscal year 1975 funds available for the Postsecondary Education Comprehensive Statewide Planning Grants Program among the State Postsecondary Education Commissions and certain guidelines to be followed in preparing grant proposals. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed allocation formula and program guidelines.

No objections have been received and the proposed allocation formula and program guidelines are hereby adopted without change and are set forth below.

Effective date. The notice of proposed rulemaking was transmitted to Congress on March 5, 1975, pursuant to section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)). The time period set forth therein has expired without such action having been taken. Therefore, this allocation formula and these program guidelines shall become effective on May 9, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.550: State Postsecondary Education Commissions)

Dated: April 23, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: May 5, 1975.

STEPHEN KURZMAN,
Acting Secretary of Health, Education, and Welfare.

Pursuant to the authority contained in Title XII, Section 1203, of the Higher Education Act of 1965, as amended (20 U.S.C. 1142b), notice is hereby given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, issues the allocation formula and program guidelines set forth below for the Postsecondary Education Comprehensive Statewide Planning Grants Program.

1. *Allocation formula.* Such funds as may become available for grant awards during fiscal year 1975 under the Postsecondary Education Comprehensive Statewide Planning Grants Program will be used to fund State Commission activities during the period from July 1, 1975 through June 30, 1976.

Such funds will be allocated in the following manner among those State Postsecondary Education Commissions which have filed the required information concerning establishment with the Office of Education and which have applied for funds:

(a) Fifty percent of the funds available or such percentage as will ensure that no State Commission receives less than was received for fiscal year 1974, whichever is greater, will be distributed equally among all such State Commissions.

(b) The balance of the funds available will be distributed on the basis of the ratio of the population of a postsecondary age, namely 18 to 58 (14 to 54 in the 1970 census), in a given state to the total population of a postsecondary age in all States with such Commissions.

2. *Program guidelines.* Grants made under these provisions must be used by a State Commission to conduct comprehensive inventories of, and studies with respect to, all public and private postsecondary educational resources in the State, including planning necessary for such resources to be better coordinated, improved, expanded, or altered so that all persons within the State who desire, and who can benefit from, postsecondary education may have an opportunity to do so. Such comprehensive studies and inventories should be of such a nature as will assist the State Commission in planning for:

(a) Maximizing the development of human resources within the State through encouragement of student entrance to postsecondary education and the provision to the students of needed guidance, counseling and financial assistance;

(b) Providing comprehensive postsecondary education programs and services;

(c) Achieving efficient operation and orderly growth;

(d) Providing the fullest possible financial support together with efficient use of resources;

(e) Attracting and retaining qualified faculty and professional personnel; and

(f) Providing adequate and appropriate facilities and instructional equipment and securing efficiency in their use.

[FR Doc.75-12298 Filed 5-8-75;8:45 am]

Food and Drug Administration

[DESI 10367; Docket No. FDC-D-635; NDA 10-367, etc.]

CERTAIN ANTIINFECTIVE DRUG PREPARATIONS CONTAINING CHLORQUINALDOL AND HYDROCORTISONE; OR TRICLOBISONIUM CHLORIDE AND HYDROCORTISONE

Withdrawal of Approval of New Drug Applications

Correction

In FR Doc. 75-10536 appearing at page 17867 in the issue of Wednesday, April 23, 1975 the number in the second line of the document reading "10637" should read "10367".

[FAP 5B3049]

UNION CARBIDE CORP.

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 5B3049) has been filed by Union Carbide Corp., River Rd., Bound Brook, NJ 08805, proposing that § 121.2514 *Resinous and polymeric coatings* (21 CFR 121.2514) be amended to provide for the safe use of vinyl chloride-vinylidene chloride-2, 3-epoxypropyl methacrylate copolymers as components of coatings intended to 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. 4-65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: May 1, 1975.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

[FR Doc.75-12226 Filed 5-8-75;8:45 am]

Social Security Administration

SUPPLEMENTAL SECURITY INCOME STUDY GROUP

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Supplemental Security Income Study Group will hold a meeting on Tuesday, June 3, 1975, from 9 a.m. to 5 p.m., and Wednesday, June 4, 1975, from 9 a.m. to 5 p.m. The meeting will be held in Room 960 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland. The meeting is open to the public.

Further information on the Study Group may be obtained from Nelson Sabatini, Executive Secretary of the Study Group, Room 933 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-2530. Members of the public planning to attend should send written notice of intent to the Executive Secretary.

(Catalog of Federal Domestic Assistance Program Number 13.807, Supplemental Security Income for the Aged, Blind, and Disabled)

Dated: May 6, 1975.

NELSON SABATINI,
Executive Secretary, Supplemental Security Income Study Group.

[FR Doc.75-12289 Filed 5-8-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

WORKING GROUP FOR NAVIGATION SYSTEM ACCURACY

Meeting

Notice is hereby given that the Working Group for Navigation System Accuracy will hold a meeting beginning at 12 p.m., c.d.t., June 9 and 10, in Room 206C of the Aviation Records Building at the FAA Aeronautical Center in Oklahoma City, Oklahoma. The following agenda item is scheduled for this meeting.

Discussion. Review of navigation system accuracies as related to fix accuracies and obstacle clearance requirements presently specified in the TERPS Handbook. This review will include discussion of papers relevant to navigation system accuracy and definition of areas where there is a consensus that obstacle clearance is inadequate.

All those interested in attending the meeting should contact Earnest E. Callaway, Chairman, Working Group for Navigation System Accuracy, Federal Aviation Administration, Flight Inspection National Field Office, P.O. Box 25082, Oklahoma City, Oklahoma 73125, Telephone: (405) 686-4164. The meeting will be open to the public.

Issued in Washington, D.C. on April 30, 1975.

JAMES A. FORGAS,
Chairman, U.S. Terminal Instrument Procedures (TERPS) Advisory Committee.

[FR Doc.75-12191 Filed 5-8-75;8:45 am]

Federal Railroad Administration

[FRA Waiver Petition Docket No. RSFC-74-6; Notice 2]

NORFOLK AND WESTERN RAILWAY CO.

Waiver of Periodic Lubrication

On October 22, 1974, the Federal Railroad Administration (FRA) published a notice in the FEDERAL REGISTER (39 FR 37526) that the Norfolk and Western Railway Company (N&W) had petitioned the FRA for permission to continue a test program in which some 13,000 low mileage open top hopper cars will be operated for a period not to exceed eight years without compliance with present periodic lubrication requirements of FRA regulations (49 CFR 215.99).

The Railroad Safety Board of the FRA, after reviewing all of the information submitted in connection with this proceeding, has granted a waiver of the applicable requirements of FRA regulations. In reaching this decision the Railroad Safety Board specifically found that granting the waiver was in the public interest and consistent with railroad safety.

The N&W has recently requested to amend the above mentioned petition to include an additional 2,000 hopper cars. These cars, some of which are still in the construction stage, bear N&W reporting marks in the series between 138001 and 140000. These cars would all be subject to the same test conditions previously described.

Interested persons are invited to participate in this proceeding by submitting written data, views or comments. FRA has previously provided an opportunity for oral comment on this proceeding and does not presently intend to schedule another opportunity for oral comment in this proceeding.

All communications should identify the Docket Number (FRA Waiver Petition Number RSFC-74-6) and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before June 15, 1975 will be considered by the Federal Railroad Administration before final action is taken. Comments received after that date will be considered so far as practicable. All comments received will be available, both before and after the closing date for communications, for examination by interested persons during regular business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

(Sec. 202, 84 Stat. 971, (45 U.S.C. 431); § 1.49(n), regulations of the Office of the Secretary of Transportation, 49 C.F.R. 1.49(n))

Issued in Washington, D.C. on May 2, 1975.

DONALD W. BENNETT,
Chief Counsel.

[FR Doc.75-12192 Filed 5-8-75;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket Nos. 26776, 25062, 25043, 25044, 24995; Order 75-5-24]

CHARTER AUTHORITY OF CANADIAN FOREIGN AIR CARRIERS

Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of May 1975.

By Order 74-11-154 the Board delegated authority to the Director, Bureau of Operating Rights, to issue foreign air carrier permits to 57 Canadian air carriers, listed in Appendix A of that Order, authorizing charter operations between the United States and Canada pursuant to the Nonscheduled Air Service Agreement executed May 8, 1974 by the Governments of Canada and the United States. The permits were to be issued upon evidence of compliance with cer-

tain requirements [1] of the Federal Aviation Act. For the interim, the Board granted waivers of certain regulations to the Canadian carriers so as to authorize them to perform charter services contemplated by the Agreement under their existing permits. The waivers were to be in effect for 60 days from the date of Order 74-11-154.

Subsequently, by Order 75-1-136, the Board extended the waivers to March 31, 1975 for those carriers not issued new permits by January 31, 1975. In so doing, the Board stated that upon the expiration of the extended time period it would proceed to cancel the existing permits of those carriers that were still not in compliance with the requirements as specified.[2]

The extended time period has now expired. Therefore, the Board believes it appropriate to proceed to cancel the permits of those carriers not in compliance with the specified requirements.

In view of the foregoing, the Board tentatively finds and concludes that the foreign air carrier permits of those carriers listed in Appendix A of this order should be canceled, and that, unless objections are received within 30 days from the date of adoption of this Order, the Board should make such tentative findings and conclusions final and submit to the President, for his approval, a final order canceling said permits.

Accordingly, it is ordered, That: 1. All interested persons are hereby directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein, and which would, subject to the approval of the President, cancel the foreign air carrier permits held by the carriers listed in Appendix A of this Order;

2. Any interested person having objection to the issuance, without hearing, of an order making final the tentative findings and conclusions stated herein shall file a statement of objections supported by evidence within 30 days of adoption of this Order. If any evidentiary hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings; [3]

3. If timely and properly supported objections are filed, further consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board: *Provided*, That the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein if it determines that there are no factual issues presented that warrant the holding of an evidentiary hearing;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. Copies of this Order shall be served upon the carriers listed in Appendix A of this Order, the Departments of State and Transportation, and the Ambassador of Canada.

This Order will be published in the FEDERAL REGISTER and will be transmitted to the President of the United States.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

APPENDIX A

Air Windsor Limited.[a]
Canadian Voyageur Airlines Limited.[a]
Commuter Air Services Ltd.[a b]
Great Lakes Airlines Limited.[a]
Ontario Central Airlines Limited.[a]
Prince Edward Flying Club.[a]
St. Catherines Flying Club.[a]
Waterloo-Wellington Flying Club.[a]
West Coast Air Services Ltd.[a]

[FR Doc.75-12291 Filed 5-8-75;8:45 am]

[Docket Nos. 27423, 27425, 26310; Order 75-5-21]

OZARK AIR LINES, INC.

Supplemental Order of Investigation and Suspension

Issued under delegated authority May 5, 1975.

The Board, by Order 75-2-31 of February 6, 1975, suspended and instituted an investigation of provisions excluding poisonous snakes and other poisonous reptiles from carriage and establishing a 200-pound per piece limit on animal shipments proposed by Ozark Air Lines, Inc.

The suspension period of the proposed provisions will expire before the investigation of their lawfulness can be concluded and final order made.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.15, it is found that the proposed provisions should be suspended for an additional 90-day period.

Accordingly, it is ordered, That: 1. The suspension period of the provisions in Rule Nos. 19(A)(1) and 19(A)(4) applicable to the carrier OZ on 8th Revised Page 10-C of Airline Tariff Publishing Company, Agent, Tariff C.A.B. No. 96 is extended to and including August 5, 1975; and

2. Copies of this order be filed with the tariff and served upon the American Association of Zoological Parks and Aquariums, Ozark Air Lines, Inc., and the Zoological Action Committee, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within three days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-12290 Filed 5-8-75;8:45 am]

[Docket No. 21866-4; Order 75-4-138]

DOMESTIC PASSENGER-FARE INVESTIGATION, PHASE 4—JOINT FARES

Order To Show Cause

Correction

In FR Doc. 75-11679 appearing at page 19523 in the issue of Monday, May 5, 1975, in the first column on page 19524, the paragraph immediately under footnote [8] should be printed in 7½ point type, and should be inserted immediately under the third complete paragraph in this column.

[Docket No. 26494, Agreement C.A.B. 25030 R-1 and R-2; Order 75-4-95]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Transpacific Proportional Fares

Correction

In FR Doc. 75-10602, appearing at page 17868 of the issue of Wednesday, April 23, 1975, the Order number should read as set forth in the brackets above.

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Availability

Environmental impact statements received by the Council on Environmental

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[1] Specifically, the requirements are that the carrier: (1) Has been granted by the Federal Aviation Administration the Operating Specifications required under Part 129 of the Federal Aviation Regulations, or other appropriate aircraft operating authority; (2) has designated in writing pursuant to section 1005(b) of the Federal Aviation Act an agent upon whom service of all notices and process and all orders, decisions, and requirements of the Board and the Secretary of Transportation may be made for and on behalf of such carrier; (3) has filed with the Board a signed counterpart of CAB Agreement 18900; and (4) has in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under the permit, and liability insurance with respect to passengers sufficient to cover the obligations assumed in CAB Agreement 18900 (the evidence of such insurance to be in the form specified in the proposed new permits).

[2] See footnote 1, supra.

[3] Since provision is made for the filing of objections to this order, petitions for reconsideration of this order will not be entertained.

[a] Permit grants authority to conduct casual, occasional or infrequent nonscheduled individually ticketed or individually way-billed air services with aircraft under 12,500 pounds.

[b] In a diplomatic note dated January 21, 1975, the Government of Canada withdrew the designation of Commuter Air Services Ltd. pursuant to the Nonscheduled Air Service Agreement between the United States and Canada. In addition, the note stated that this company has ceased operations and had its operating licenses canceled.

[c] Permit grants authority for charter flights only.

Quality from April 28th through May 2nd, 1975. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines the minimum period for public review and comment on draft environmental impact statements in forty-five (45) days from this FEDERAL REGISTER notice of availability. (June 24, 1975) The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available at cost from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

DEPARTMENT OF AGRICULTURE

Contact: David Ward, Acting Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 331-E, Administration Building, Washington, D.C. 20250, 202-447-3853.

FOREST SERVICE

Draft

Southern Chilkat Study Area, Tongass National Forest, Alaska, April 30: The proposed action involves, in part, the harvest of old growth timber within portions of the southern Chilkat Mountains of the Chatham Area, Tongass National Forest. Such management activity will require the development of both permanent and temporary roads, logging camps and log transfer points in an area that is now essentially roadless. The proposed action does not recommend the establishment of a wilderness study area. Timber harvest activity may increase surface soil erosion and alter wildlife habitat and migration patterns. (ELR Order No. 50649.)

Final

Latouche Island Timber Sale, Alaska, April 28: The statement concerns a timber sale in approximately 180 acres of the southeast side of Latouche Island, near Cordova, Alaska. The harvest would span two years and would consist of four clearcut units totaling approximately 90 acres. Total volume is expected to be 2,780 MBF. The sale will result in the construction of 2,240 feet of road (56 pages). Comments made by: EPA, HUD, COE, DOI, one private company and one citizen. (ELR Order No. 50630.)

Portage-Twelve Mile Timber Sale, Tongass National Forest, Alaska, April 28: The statement concerns the proposed harvesting of approximately 80 million board feet of mature Sitka spruce, western hemlock, and yellow cedar from approximately 2,600 acres in the vicinity of Portage Bay. A permanent road system would be built through the area. Timber would be harvested from 37 clearcut units over a seven year period, temporarily degrading the aesthetic value. Comments made by: AHP, DOC, HUD, DOI, DOT, EPA, State and local agencies. (ELR Order No. 50635.)

SOIL CONSERVATION SERVICE

Draft

McNairy-Cypress Creek Watershed Project, McNairy County, Tenn., April 30: The statement concerns a project for watershed protection and flood control for the McNairy-Cypress Creek Watershed. Included in the project are plans for 20 impounding structures, one of which will provide Selmer with industrial water and recreational water. Adverse effects include: the decrease of wildlife habitat resulting from land use; change of crop or idle land to pasture; loss of 2,265 acres of wildlife habitat; loss of one barn and the modification or relocation of three bridges, 2,400 feet of paved gravel road; and decreasing the quality of forest land and fish habitat. (ELR order No. 50645.)

Final

Kahaluu Watershed Project, Honolulu County, Hawaii, April 28: Proposed is a watershed protection, flood prevention, and recreation project in Honolulu. Project measures will include land treatment, a debris basin, and a 28 acre multipurpose lagoon. In addition, the lower reaches of Waihee, Kahaluu, and Ahuimanu Streams will be enlarged and lined with concrete. The local governments will construct a recreational park at the lagoon. Adverse impact will include the loss of some aquatic habitat, and the displacement of 21 homes and 4 businesses (125 pages). Comments made by: USAF, COE, EPA, DOC, USCG, HEW, DOI, State and local agencies, and private organizations. (ELR order No. 50628.)

Kinder Watershed Project, Allen and Jefferson Davis Counties, La., April 28: The statement refers to a proposed protection protection project for 32,900 acres of the Kindu Watershed. Project measures will include land treatment, channel work, weirs, and control structures. Adverse impact will include the introduction of 1,310 tons of sediment to the Calcasieu River during construction; the loss of timber on 237 acres; the disturbance of 150 acres of cropland, 187 acres of wooded channel banks, and 123 acres of forest land; and the disturbances of sixty acres of wetland. Comments made by: COE, DOI, DOT, EPA, and State agencies. (ELR order No. 50625.)

Brillion Watershed Project, Calumet County, Wis., April 28: Proposed is a watershed protection and flood prevention project on the 13,811 acre watershed. Project measures will include land treatment, dams, and sediment pools. Approximately 90 acres of land will be committed to the project; another 131 acres may be inundated during flooding. Comments made by: COE, HEW, DOI, DOT, EPA, AHP, and State agencies. (ELR Order No. 50632.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-967-4335.

MARITIME ADMINISTRATION

Draft

Vessels for Offshore Oil and Gas Drilling, May 2: The statement concerns a proposal to guarantee the obligations (notes, bonds, etc.) including interest, that are obtained in the private market by US citizens for the construction in United States shipyards of offshore oil and gas drilling vessels under Title XI Program. The program is intended to encourage new construction or modernization of American merchant vessels. The environmental impacts will be those associated with offshore oil and gas production: risk of accidental or chronic oil spillage and the release of oily waste water resulting from operational procedures. (ELR Order No. 50661.)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attn: DAEN-PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6861.

Draft

Marco Island, Deltona Corp. Permit, Collier County, Fla., April 28: The statement concerns the consideration of dredge and fill permit applications by Deltona Corporation for the purpose of developing a water recreation-oriented retirement and second-home community and resort center. A total of 18.2 million cubic yards of material will be excavated and used as fill material to create upland areas. The proposal would result in the loss of about 2,200 acres of mangroves and the destruction or disruption of the associated biota and a decline in total natural productivity would not be reclaimed. In addition, a total of 735 acres of bay bottom would be excavated with destruction of the benthic communities inhabiting the area. (ELR Order No. 50634.)

Geneseo Local Flood Protection, Henry County, Ill., May 2: The recommended plan consists of constructing shore lengths of levee channel realignment, ponding areas, a new highway bridge, raising of an existing roadway, and filling a portion of the abandoned creek channel to protect property along Geneseo Creek from 100-year floods. Construction of these measures will be detrimental to biological species in the area. (Rock Island District.) (ELR Order No. 50664.)

Iowa River Flood Protection Project, Iowa County, Iowa, April 28: The proposed action consists of increasing the height of 20,030 feet of existing levee and construction 4,260 feet of new levee on the east, north and west sides of Marengo, Iowa. The project will also include improvements in the interior drainage system, two sandbag closures and two levee road ramps. Adverse impacts include slightly increased Iowa River flood levels, short-term increases in air and noise pollution, possible archeological site disturbance, and imposition of some limits to developable land. (Rock Island District.) (ELR Order No. 50624.)

Redmond Dam & Reservoir, Marion and Council Grove, Lyon and Coffey Counties, Kans., May 2: The statement concerns a project for operation and maintenance of John Redmond Dam and Reservoir, Marion and Council Grove Lakes, Kansas. The activities would consist of reservoir regulation, flood control, management of land resources and facilities, management of leases, easements and other outgrants, and project management and maintenance activities. Adverse impacts include soil erosion and/or compaction due to heavy recreational use, traffic in unauthorized areas, and alterations of the natural environment through recreational development and other minor construction activities. (Tulsa District.) (ELR Order No. 50663.)

White Lake Harbor, Mitigation of Shore Damage, Muskegon County, Mich., April 28: Proposed is a project to mitigate shore damage that is partly attributable to federal navigation structures at White Lake Harbor. The plan entails establishment of five beach nourishment supply sites. Sediment accumulations in the mouth of the harbor will serve as the unpolluted source of material. The dredging and disposition of sand for the project will cause local benthos damage, temporary increases in noise, night time nuisance light, exhaust emissions discharge, and associated detraction in the recreational and aesthetic qualities of the area. (Detroit District.) (ELR Order No. 50626.)

Parker Lake, Muddy Boggy Creek, Coal County, Okla., May 1: Proposed is a project for flood control, recreation, and water supply consisting of a rolled earthfill embankment, a grated conduit, a limited service spillway, access roads, and project buildings. The lake conservation pool will cover 6,110

acres of land, and an additional 3,510 acres will be subject to periodic inundation. Creation of the lake will eliminate the stream-oriented recreation in the project area. The absence of flooding the flood plain will also encourage changes in land uses and disrupt natural biotic communities. Three of the 24 archeological sites located in the project area will be permanently inundated. The project will displace 7 families. (ELR Order No. 50657.)

Berry's Creek Embankment and Facilities, Bergen County, N.J., April 30: The statement concerns the issuance of a permit to the New Jersey Sports and Exposition Complex to construct an embankment and other facilities in the Hackensack Meadowlands, adjacent to Berry's Creek. Approximately 35 acres of mercury contaminated marsh will be permanently lost due to the activities within Berry's Creek Tidal Marsh. Development of the sports complex will result in increased economic development of the area along with increased noise and air pollution from the traffic volume and parking facility. The elimination of some marsh area would necessitate a change in the habitat of native terrestrial wildlife and birds that are resident or transient through the area. (New York District) (196 pages). (ELR Order No. 50650.)

FEDERAL POWER COMMISSION

Contact: Dr. Richard F. Hill, Acting Advisor on Environmental Quality, 441 G Street NW., Washington, D.C. 20426, 202-386-6084.

Final

Refugio-Waha Project, Docket CP73-260, several counties in Texas, May 2: Proposed is the issuance of a certificate to the El Paso Natural Gas Company for the construction and operation of certain facilities necessary for the transportation of new natural gas supplies from a Transco pipeline in Refugio County to El Paso's main system near Coyanosa. Project measures will include 418.5 miles of 24 inch pipeline, 5 compressor stations, and appurtenant facilities. There would be impact on "man, wildlife, vegetation, soil, water and air quality, and noise levels'" (161 pages). Comments made by: HEW, USDA, COE, USCG, AEC, DOC, DOI, HUD, and EPA. (ELR Order No. 50659.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director of Environmental Affairs, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202-343-4161.

Final

Denver Federal Center, Lakewood, Jefferson County, Colo., April 30: The proposed project provides for major repairs and alterations which will be undertaken at the Denver Federal Center, Lakewood, Jefferson County, for its continued use in providing adequate housing for Federal agencies. There will be construction inconveniences (25 pages). Comments made by: AHP, NTHP, DOC, USDA, COE, HUD, EPA, DOI, State, and local agencies. (ELR Order No. 50646.)

Soviet Embassy Complex, District of Columbia, April 28: Proposed is the construction of the five-building Soviet Embassy Complex on a 12.5-acre site in the Glover Park Neighborhood of Northwest Washington, D.C. The project is part of a bilateral agreement between the U.S. and U.S.S.R. providing for the reciprocal exchange of 85-year leasehold interests for embassy sites in both Washington and Moscow. Construction and associated disruption are expected to occur continuously over a 32-month period. Comments made by: EPA, HUD, GAO, DOI, COE, USDA, local agencies, organizations, and concerned citizens. (ELR Order No. 50636.)

General Services Administration is withdrawing the Draft Environmental Impact Statement #EMO-75001, Internal Revenue Service—Midwest Service Center, Kansas City, Kansas. GSA is reevaluating the entire Federal space situation in the Kansas City Metropolitan area and is reconsidering the project to determine the most beneficial method of providing for the requirements of the IRS-MSC.

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7258, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

SECTION 104(H)

Draft

Court Street Widening Project, Reading, Berks County, Pa., April 28: Proposed is the widening of a section of Court Street (between Thorn and North Streets) to complete the Service System necessitated by the Downtown East Urban Renewal Project and Penn Square. The project will require the demolition of two buildings and the relocation of one family Construction disruption will result. (ELR Order No. 50637.)

Northeast Industrial Area Development, Reading, Berks County, Pa., April 28: The statement concerns a 50 acre industrial renewal project in the Northeast section of Reading. The City will acquire land, install storm and sanitary sewers, water lines, improve roads, and provide street lighting and trees. Private development of the land would then be encouraged. The major adverse effects are those associated with an increase in storm runoff and the expected increase in vehicular traffic within and adjacent to the project area. (ELR Order No. 50638.)

Housing Programs and Projects, Berks County, Pa., April 28: The statement concerns a housing rehabilitation program intended to improve the City of Reading through enforcement of existing codes and through the provision of about 200 new rehabilitation loans with grants supplemented by public rehabilitation. The project will require the rehabilitation of 50 units and the demolition of 75 units. Adverse impacts include the displacement of residents of the demolished homes temporary change in land use, and economic impact to residents and landowners who will be required to comply with existing codes. (ELR Order No. 50639.)

Draft

11th and Penn Residential Development, Reading, Berks County, Pa., April 28: The statement concerns a proposal for the city of Reading to purchase a one acre tract of land, located at 11th and Penn Streets which is currently owned by the State of Pennsylvania. While the site is presently leased by the Reading Parking Authority for a parking lot, it would be sold to a private developer for a residential development project of approximately 100 units. The units would house mid to upper income families. (ELR Order No. 50640.)

Parks and Recreation Project, Reading, Berks County, Pa., April 28: Proposed is the upgrading of 22 existing parks and playgrounds and the development of new parks in Reading in hopes of arresting the migration of residents to the suburbs. The improvements made to existing parks will result in increased traffic in the immediate areas of the parks and the disruption of construction. (ELR Order No. 50641.)

Near Northwest Neighborhood Improvement, Reading, Berks County, Pa., April 28: The statement concerns a program for improvement of Near Northwest neighborhood which includes the improvement of existing streets, the extension of storm sewers, the addition and replacement of street lights, and the addition of street trees and green spaces. Construction disruption will result. (ELR Order No. 50642.)

Physical Environment Projects, Reading, Berks County, Pa., April 28: The statement concerns a proposal for the enhancement of the physical environment of the City of Reading which includes: the planting of street trees along 20 blocks; the lighting of about 60 blocks; the replacement, repair and upgrading of deteriorated sections of the City's storm sewer and water service system; and the rebuilding and repaving of 30 streets. The new facilities require long-term maintenance. (ELR Order No. 50643.)

Final

Santa Monica Community Development, Los Angeles County, Calif., April 28: The statement concerns a Community Development Block Grant Proposal for Santa Monica, California to renovate the Santa Monica Pier, prepare a site for future senior citizen housing, provide an elevator for City Hall and five public restrooms in the city's three parks and develop administrative and planning capacities for the city's newly created Housing Authority. Adverse impacts include dislocation of residents from the site of the planned Senior Citizens' Center and construction disruption. (ELR Order No. 50633.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF SPORTS FISHERIES AND WILDLIFE

Final

Proposed Tamarac Wilderness Area, Becker County, Minn., May 1: The proposal recommends 2,065 acres of the Tamarac National Wildlife Refuge be designated as wilderness within the National Wilderness Preservation System. Wilderness designation would commit the area to the forces of nature and remove some future management options (44 pages). Comments made by: DOT, DOI. (ELR Order No. 50654.)

Turnbull National Wildlife Refuge, Spokane County, Wash., May 2: Proposed is the continued operation, maintenance and development of the Turnbull National Wildlife Refuge, including the acquisition of 2,795.5 acres of additional lands. The action would result in continued protection of a relatively undisturbed section of natural environment (66 pages). Comments made by: USDA, EPA, DOI, Washington State Clearinghouse. (ELR Order No. 50665.)

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Richard Chais, Supervisory Attorney Advisor for the Environmental Staff, Room 2370, 12th St. and Constitution Ave. NW., 202-343-2086.

Final

Commuter Train Fare Raise, Illinois Central Gulf Railroad, Illinois, April 29: The Illinois Central Gulf Railroad proposes to increase its electric train commuter fares by an average of 29% for rail passenger service between the City of Chicago and the terminal of its lines at 91st Street, Blue Island, and Richton Park, as well as between all intermediate stations. Approximately 11% of ICG ridership will be diverted to alternate modes of transportation increasing traffic in the area by 2.3%. Increased noise and air pollution will result (90 pages). Comments made by: EPA, DOI, Illinois Central Gulf Railroad Co. (ELR Order No. 50644.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. A. Giambusso, Director of Division of Reactor Licensing, P-722, NRC, Washington, D.C. 20555, 301-492-7373.

Draft

Davis-Besse Nuclear Power Station, Unit 1 Operation, Ottawa County, Ohio, May 1: The proposed action is the issuance of an operating license to the Toledo Edison Company and the Cleveland Electric Illuminating Company for the startup and operation of the Davis-Besse Nuclear Power Station Unit 1. The station will have a capacity to produce 2772 MWt and 906 MWe. The cooling tower blowdown and service water which the station discharges to Lake Erie, via a submerged jet, will be heated as much as 20 degrees above ambiant. Approximately 3345 curies per year of gaseous radioactive wastes may be discharged into the atmosphere. (ELR Order No. 50658.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Draft

Marion Municipal Airport, Grant County, Ind., April 28: Proposed is a project for the 5-phase improvement of the Marion Municipal Airport. Phase 1, to be completed by 1978, includes plans to acquire 200 acres of land, construct a taxiway, two hangars, a service drive and parking lot, perimeter fencing, a runway and lighting, and Phase 1 of the terminal building. The land acquisition will displace 7 families. The project will also result in increased air and noise pollution, relocation of Bell Creek, and the partial clearing of approximately 4 acres. (ELR Order No. 50631.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

Haleakala Highway (FAP Route 37) Maui County, Hawaii, April 28: The proposed improvement of the Haleakala Highway extends from the intersection of Halimaile Road to the junction of Highway FAS 377, a length of approximately 3 miles. The improvement of the present 2-lane road would require the clearing of approximately 40 to 50 acres of land and would displace as many as 7 families and 6 businesses. The project would also encourage community growth. (ELR Order No. 50629.)

Skipanon Bridge, S.H. 105, Warrenton, Clatsop County, Oreg., May 1: The proposed project will remodel or replace the Skipanan River Bridge at Warrenton. The existing bridge, containing a floatout span, has been found to be in violation of the original 1916 Federal permit which required fast-opening bascule bridge, opening on demand. Three alternatives and a no action alternative are proposed. Construction would involve repeated disturbance to the river streambed during construction. Long term alteration of upstream river use patterns, with potential for increased water pollution from boating and development activities may occur (85 pages). (ELR Order 50656.)

L.R. 1015 and L.R. 69 Relocation, Westmoreland County, Pa., April 30: The proposed North-South Expressway provides for the construction of a multi-lane, limited access highway approximately 13 miles in length extending from the proposed interchange of existing U.S. Traffic Route 119 and relocated Traffic Route 119 between New Stanton and Youngwood to the existing interchange of Traffic Routes 22 and 66 near Delmont. The highway will displace an unspecified number of homes and businesses and will require farm land for the right-of-way. Construction disruption will result (68 pages). (ELR Order No. 50647.)

Highway Improvements, Charlotte Amalie, Virgin Islands, April 28: Proposed is the improvement of the highway from Veteran's Drive to Centerline Road at the top of Raphune Hill in Charlotte Amalie, St. Thomas Island. The 4-lane, divided highway will stretch approximately 2.5 to 3 miles in length and will displace from 8 to 18 families and businesses, including the U.S. Coast Guard Headquarters building and docking site. Major changes upon the rural landscape will cause increased rates of storm runoff, greater potential for soil erosion, loss of vegetative cover, and disruption of wildlife activities. Filling of the harbor will mean an irreversible commitment of harbor surface area. (ELR Order No. 50627.)

S.T.H. 32, Sheridan Road, Kenosha County, Wis., May 2: Proposed is the improvement of a one-mile segment of Sheridan Road (S.T.H. 32) in the City of Kenosha from 91st Street to a point a few hundred feet south of 83rd Street. The project will entail removing a two-lane 30 foot pavement and constructing a pair of 40-foot pavements separated by a 30-foot median and a curb and gutter system. The project will displace two businesses and six families. (ELR Order No. 50662.)

Final

SR 20, Nevada County, Calif., May 1: The proposal involves the construction of a new freeway facility 5.8 miles long between Penn Valley and Grass Valley. Initially 2 lanes will be built for 4.6 miles, and 4 lanes for 1.2 miles. Several interchanges will be constructed. There will be some adverse impact on the plant and animal life in this region caused by the increased accessibility provided by the project (103 pages). Comments made by: EPA, DOT, DOI, COE, HUD, USDA, HEW, USAF, and State and local agencies. (ELR Order No. 50653.)

S.R. 234, Dougherty County, Ga., May 2: The project consists of widening a four mile section of S.R. 234 from two to four lanes. The project will extend from U.S. 19 west to Beattie Road. Four businesses may be displaced and an unspecified amount of land acquired for right of way. Section 4(f) land from Baldwin Park will be acquired (123 pages). Comments made by: HUD, DOI, USDA, DOC, EPA, and State agencies. (ELR Order No. 50660.)

FAP Route 22 (Illinois Route 21), Milwaukee Ave., Cook County, Ill., May 1: Proposed is the improvement of a 1.36 mile section of FAP 22 (Illinois Route 22) Milwaukee Avenue from Sanders Road to Grave Avenue from a 2-lane facility to a 4-lane facility with a 16 foot median. Also included is a separate storm sewer system for draining the highway right-of-way and the channelization of major intersections. The statement includes a 4(f) determination concerning 0.084 acres of the Cook County Forest Preserve District (3 volumes). Comments made by: EPA, USDA, DOI, OEO, HEW, and State agencies. (ELR Order No. 50652.)

U.S. 6, Davenport, Scott County, Iowa, April 30: The proposed project involves the reconstruction of 1.9 miles of U.S. 6 to a 4 lane divided highway. Adverse impacts are the use of agricultural land for right-of-way, the destruction of some wildlife habitat, increased noise levels, and possible water pollution during construction (109 pages). Comments made by: HEW, HUD, USDA, DOI, EPA, COE, and State and local agencies. (ELR Order No. 50648.)

Guthrie Avenue (U.S. 29), Polk County, Iowa, May 1: The proposed project is the construction of 3,010 feet of a four-lane viaduct and approaches on Guthrie Avenue, Des Moines. The project will displace 6 families and 1 business. Increases in noise and air pollution levels will occur. Comments made by: HUD, USDA, DOI, COE, USCG, and State and local agencies. (ELR Order No. 50651.)

Northeast Freeway and North-South Freeway, Richland County, S.C., May 1: The project proposes the construction of a portion of the North-South Freeway and a portion of the Northeast Freeway. Total length of the project is 1 mile. The North-South segment will displace 35 houses, 15 businesses, and 30 apartment units, while, the Northeast portion of the project will displace 1 business, and 15 apartment units. Noise and air pollution levels will increase. Comments made by: COE DOI, EPA, and State agencies. (ELR Order No. 50655.)

GARY L. WIDMAN,
General Counsel.

[FR Doc.75-12236 Filed 5-8-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 370-6; OPP-32000/246]

RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) 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. This policy provides that EPA will, upon receipt of every application for registration, 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-31, East Tower, 401 M Street SW., Washington DC 20460.

On or before July 8, 1975, any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after October 21, 1972, is being used to support an application described in this notice, (c) desires to assert a claim for compensation under section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Information Coordination Section, Technical Services Division (WH-569), Office of Pesticide Programs, 401 M Street, SW, Washington DC 20460. Every such claimant must include, at a minimum, the information listed in the interim policy of November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy will be processed to completion in accordance with existing procedures. Applications submitted under 2(c) of the interim policy cannot be made final until the 60 day

period has expired. If no claims are received within the 60 day period, the 2(c) application will be processed according to normal procedure. However, if claims are received within the 60 day period, the applicants against whom the 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 July 8, 1975.

Dated: May 1, 1975.

JOHN B. RITCH, Jr.,
Director,
Registration Division

APPLICATIONS RECEIVED (OPP-32000/246)

EPA File Symbol 5667-OA. Barrett Chemical Co., H & Luzerne Sts., Philadelphia PA 19124. BARRETT'S DISINFECTANT CLEANER NO. 11. Active Ingredients: Didecyl dimethyl ammonium chloride 4.5%; Tetrasodium ethylenediamine tetraacetate 2.0%; Sodium carbonate 1.0%; Sodium metasilicate, anhydrous 0.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA File Symbol 106-AL. Brulin & Co., Inc., PO Box 270-B, Indianapolis IN 46206. BRULIN DISINFECTANT CLEANER #6 (NEW FORMULA). Active Ingredients: Isopropanol 11.10%; Potassium 4-chloro-2-benzylphenate 4.15%; Potassium p-tertiary-amylphenate 3.08%; Potassium o-phenylphenate 2.75%; Tetrasodium ethylene diamine tetraacetate 0.60%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 4313-LO. Carroll Co., 2900 W. Kingsley Rd., Garland TX 75041. CARROSOL BRAND FOAMING DISINFECTANT CLEANER. Active Ingredients: n-alkyl (C14 60%, C16 30%, C12 5%, C18 5%) dimethyl benzyl ammonium chlorides 0.1%); n-alkyl (C12 68%, C14 32%) dimethyl ethylbenzyl ammonium chlorides 0.1%; Tetrasodium ethylenediamine tetraacetate 1.6%; Sodium Metasilicate 0.25%; Essential Oils 0.2%. Method of Support: Application proceeds under 2(c) of interim policy. PM31

EPA File Symbol 36845-R. Connolly R & D Associates, 10 Linda St., Parsippany NJ 07054. TICK AND FLEA SOAP FOR DOGS. Active Ingredients: Pyrethrins 0.050%; Technical Piperonyl Butoxide (Equivalent to 0.080% (butylcarbityl) (6-propylpiperonyl) ether and 0.020% related compounds) 0.100%; N-Octyl bicycloheptene dicarboximide 0.166%; Petroleum Distillate 0.240%; Anhydrous Soap 83.000%. Method of Support: Application proceeds under 2(c) of interim policy. PM17

EPA File Symbol 11371-U. GAC Janitorial Supplies, Inc., dba Blue Line, 2501 Commercial St., San Diego CA 92113. C-B-K CONCENTRATED BUG KILLER. Active Ingredients: Pyrethrins 0.150%; Piperonyl butoxide technical (Equivalent to 0.24% (butylcarbityl) (6-propylpiperonyl) ether and 0.06% related compounds) 0.300%; N-octyl bicycloheptene dicarboximide 0.500%; Petroleum distillate 99.050%. Method of Support: Application proceeds under 2(c) of interim policy. PM17

EPA File Symbol 33561-E. Hercules Inc., 910 Market St., Wilmington DE 19899. HERCULES MICROBIOCIDAL COMPOUND MB 125. Active Ingredients: 2,2-Dibromo-3-Nitrilopropionamide 20%. Method of Support: Application proceeds under 2(c) of interim policy. PM34

EPA File Symbol 33561-G. Hercules Inc., 910 Market St., Wilmington DE 19899. HERCULES MICROBIOCIDAL COMPOUND MB 127. Active Ingredients: 2,2-Dibromo-3-Nitrilopropionamide 5%. Method of Support: Application proceeds under 2(c) of interim policy. PM34

EPA File Symbol 35930-G. Jude® Chemical Specialities, PO Box 5491, Lenexa KS 66215. JCS-10 DISINFECTANT-SANITIZER-DEODORIZER. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 35084-R. MG Scientific Gases, Div. of MG Technical Products, Inc., 1100 Harrison Ave., Kearny NJ 07029. STERILIZING GAS ETHYLENE OXIDE. Active Ingredients: Ethylene Oxide 12%. Method of Support: Application proceeds under 2(c) of interim policy. PM33

EPA File Symbol 8123-TL. Frank Miller & Sons, 13831 S. Emerald Ave., Chicago IL 60627. WATER COOLING TOWER ALGAECIDE. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(c) of interim policy. PM33

EPA File Symbol 28761-R. Producers Grain Corp., PO Box 4107, Amarillo TX 79107. P. G. C INSECTICIDAL MINERAL. Active Ingredients: Ronnel (0, 0-dimethyl 0-(2,4,5,-trichlorophenyl phosphorothioate) 6%. Method of Support: Application proceeds under 2(c) of interim policy. PM15

EPA File Symbol 10710-A. Purdy Products Inc., 1526 N. 31st St., Milwaukee WI 53208. TROPHY NO-BAC C AND S. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.25%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 2.25%; Sodium Carbonate 3.00%; Tetrasodium ethylenediamine tetraacetate 1.00%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 4977-RNR. Southeastern Chemical Corp., PO Box 1026, Orangeburg SC 29115. ATOMIC ENDRIN-GUTHION EC. Active Ingredients: Endrin (Hexachloroepoxyoctahydro - endo, endo - dimethanonaphthalene) 17.96%; 0,0-Dimethyl S-[4-oxo-1,2,3-benzotriazin - 3(4H) - ylmethyl] phosphorodithioate 11.23%; Xylene 65.81%. Method of Support: Application proceeds under 2(c) of interim policy. PM15

EPA File Symbol 10350-A. 3M Co., New Business Ventures Div., Water Pollution Control Systems, 3M Center, St. Paul MN 55101. 3M BRAND GROUTING COMPOUND WITH ROOT REPELLENT. Active Ingredients: 2,6 - dichlorobenzonitrile 0.10%. Method of Support: Application proceeds under 2(c) of interim policy. PM25

EPA File Symbol 2724-ETN. Starbar (Thuron Indus., Inc.), 12200 Denton Dr., Dallas TX 75234. STARBAR WETTABLE POWDER CATTLE DRENCH. Active Ingredients: Crufomate (4-tert-butyl - 2 - chlorophenyl methyl methylphosphoramidate) 60.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM15

EPA File Symbol 2724-ETR. Starbar (Thuron Indus., Inc.), 12200 Denton Dr., Dallas TX 75234. STARBAR CATTLE BOLUS. Active Ingredients: Crufomate (4-tert-butyl-2-chlorophenyl methyl methylphosphoramidate) 46.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM15

EPA File Symbol 33286-E. X-L Laboratories, Inc., 1687 NE 58th Ave., Des Moines IA 50313. SODIUM HYPOCHLORITE (10%). Active Ingredients: Sodium Hypochlorite 10%. Method of Support: Application proceeds under 2(c) of interim policy. PM34

CORRECTED ITEMS

The following are corrections to lists of Applications Received published in the FEDERAL REGISTER.

EPA File Symbol 4313-LT. Carroll Co., 2900 W. Kingsley Rd., Garland TX 75041. MINTO DET DISINFECTANT. Active Ingredients: Isopropanol 22.72% (originally published as 22.7%); Ortho-benzyl-para-chlorophenol 3.58%; methyl salicylate 2.00%. Method of Support: Application proceeds under 2(c) of interim policy. PM32 (40 FR 14361)

EPA File Symbol 4450-GL. Chemex Industries Inc., PO Box 5072, Tampa FL 33605. CHEMEX YARD & PATIO INSECTICIDE FOGGER. Active Ingredients: (5-Benzyl-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 0.250%; Related compounds 0.034%. Method of Support: Application proceeds under 2(c) of interim policy (originally published as 2 (2)). PM17 (40 FR 14979)

EPA File Symbol 11497-A. Enviro Chem. Corp. PO Box 29113, Dallas TX 75229. BIO-MINT DISINFECTANT. Active Ingredients: Isopropyl Alcohol 25.50% (originally published as Isopropl); Soap 6.00%; o-Benzyl-p-Chlorophenol 4.50%; Methyl-Salicylate 3.00%; Pine Oil 1.60%) (originally published as 1.6%). Method of Support: Application proceeds under 2(c) of interim policy. PM 32 (40 FR 14979)

[FR Doc.12013 Filed 5-8-75;8:45 am]

FEDERAL ENERGY ADMINISTRATION

MOTOR GASOLINE

Guidelines for Evaluation of Applications for Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets

The Federal Energy Administration hereby gives notice of guidelines to be used by FEA in evaluating applications for assignment of suppliers and base period uses to new gasoline retail sales outlets. The guidelines are set forth below and will provide a basis for consistent application of FEA's regulatory provisions with respect to new retail sales outlets of motor gasoline.

May 6, 1975, Washington, D.C.

ERIC J. FYGI,
Acting General Counsel.

APPENDIX

GUIDELINES FOR EVALUATION OF APPLICATIONS FOR ASSIGNMENT OF SUPPLIER AND BASE PERIOD USE TO NEW GASOLINE RETAIL SALES OUTLETS

1. *Scope.* Numerous questions have been raised as to the procedures and substantive criteria which FEA should apply to applications for assignment of suppliers and base period use for new gasoline retail sales outlets. These guidelines are intended to provide guidance as to how such applications

should be handled both procedurally and substantively under current FEA regulations. In particular, these guidelines will discuss the identification of and service of notice to possible aggrieved parties as required by 10 CFR § 205.33 and the evaluation of applications to determine whether to assign a supplier and, if so, how to determine the assigned base period use pursuant to 10 CFR §§ 205.35 and 211.12(e).

2. *Notice to Aggrieved Parties.* (a) *General.* The procedural regulations and criteria applicable to all applications for assignment of suppliers and base period use are set out in Subpart C of Part 205. Section 205.34 requires that the applicant file an application which not only contains various facts regarding the request, but also the "names and addresses of all affected persons (if reasonably ascertainable)," and "[t]he identification of any persons who will be aggrieved by the FEA action sought, including potential suppliers."

Section 205.33(a) provides that FEA *shall* serve notice on any person readily identifiable by the FEA as one who will be aggrieved by the FEA action and *may* serve notice on any other person that written comments will be accepted if filed within 10 days of service of the notice. . . . (Emphasis added.)

The word "aggrieved" is defined in § 205.2 as describing or meaning "a person with an interest sought to be protected under the FEAA or EPAA who is adversely affected by an order or interpretation issued by the FEA or a State Office."

Thus it is the responsibility of the applicant under § 205.34(b) to supply FEA with a list of potentially aggrieved persons, but the burden is on FEA under § 205.33(a) to serve notice of the application on such aggrieved parties. Moreover, FEA "may serve notice on any person. . . ." (Emphasis added.)

(b) *Identification of Aggrieved Parties.* The applicant's task of identifying potentially aggrieved persons is not as difficult as it might seem. In most cases this information is known to the applicant because suppliers opening new sites often have made sophisticated studies of the size of the trading area and the competitors located within it before their application is submitted. As a general rule, in the case of a new station located in a typical residential neighborhood, all retail sales outlets, particularly small and independent refiner-operated outlets and all branded and non-branded independent marketer-operated outlets, located within a mile radius of that station should be presumed to be "aggrieved persons" within the meaning of the notice requirements. The geographical trading area affected might be somewhat larger in rural neighborhoods and somewhat smaller in urban neighborhoods. Moreover, because of the peculiarities of traffic flow, an affected trading area might be longer in one direction than another. But, even though it is not possible to prescribe rigid rules for the determination of the perimeters of the trading area, in most cases the FEA's discretion in this area should be freely exercised so long as the general rule of erring on the side of over-inclusion is followed.

It is not necessary that notice be served on other persons also identified by the applicant but not located in the trading area of the proposed new station—even though they might otherwise be affected because their supplies might be reduced—since the administrative burdens of doing so greatly outweigh the minimal effect which comments received from such persons would have on the decision.

(c) *Method of Providing Notice.* Notice should be individually served upon any person identified by the applicant as an aggrieved party and located in the trading area of the proposed new station using the form of notice provided in Attachment A. In addition, FEA should arrange, using imprest funds, for the publication of a notice in local newspapers of general circulation in the market area to be served by the proposed retail sales outlet. The notice should also be substantially in the form of Attachment A to these guidelines and should be published on at least two separate occasions at least one week apart. This procedure should serve to provide notice to those persons not readily identified by the applicant as aggrieved persons and satisfies FEA's independent responsibility to identify and notify aggrieved persons.

(d) *Information in Notice.* It is not necessary to disclose in the notice any of the information contained in the application except (i) the applicant's name and address, (ii) the location of the station for which application is made, and (iii) an approximation of the base period use sought by the applicant. Only an approximation of the amount being applied for should be given because in some cases applicants have claimed that the actual amount is proprietary information arrived at after a thorough and highly confidential marketing survey of the area, the disclosure of which would inform the applicant's competitors of the applicant's strategy of market expansion. While such information may not in fact be the type of proprietary information protected from disclosure, there is at least a colorable argument that it is. In any event, the problem can be readily avoided by providing in the notice only an approximation of the actual amount. For example, if the amount applied for is 1,000,000 gallons per year, it could be described as "a high volume station having an aggregate base period use in excess of 800,000 gallons per year." Such a description would give potentially aggrieved parties adequate notice of the relative size of the station and at the same time avoid the unnecessary disclosure of possibly confidential competitive information.

(e) *Comment Period, Hearings and Conferences.* Subpart C of Part 205 requires FEA to give aggrieved parties 10 days from service of the notice in which to file written comments. FEA may also make an independent investigation of facts alleged in the application or comments and may rely on information obtained from any source. (*See* § 205.35.) A conference and hearing are both discretionary with the agency. (*See* § 205.35 and Subpart M of Part 205.) A conference with only the applicant in attendance is the recommended means of obtaining additional information if the application and the written comments still leave some unresolved issues. A hearing should be used only rarely and in exceptional circumstances, since most of the information relevant to the application can best be conveyed only in writing.

(f) *Timeliness of FEA Action and Interim Supplies.* FEA is required to act upon an application for assignment of a specified supplier within 90 days after its receipt. Failure to act during such period may be considered by the applicant as a denial from which an appeal may be taken. (*See* § 205.37.)

It is sometimes difficult, however, to evaluate an application properly within the 90-day period. Moreover, the applicant may need prompt action because the station is idle, perhaps at great expense to the applicant. In such cases it is possible for FEA office to issue an order granting a temporary assignment until such time as a full evaluation of the application for a permanent assignment can be completed. (See also discussion below concerning retail sales outlets which operate using surplus products.) The procedures for issuing such temporary orders are found in § 205.39.

As indicated in that section, a temporary assignment can be made "upon application." This does not mean that the applicant must expressly apply for a temporary as well as a permanent assignment. Since an application for a temporary assignment need contain no more information than that required for a permanent assignment, the filing of two applications is unnecessary. Thus, when an application for a permanent assignment has been made and it is apparent from the circumstances that a temporary assignment is warranted pending a final decision and is not objected to by the applicant, the application on file for a permanent assignment may be treated as an application for temporary assignment as well as for a permanent assignment.

An order granting a temporary assignment can be effective for only 60 days and cannot be renewed. The temporary order must contain an express finding that circumstances do not permit issuance of an assignment onphase with the usual processing of permanent assignment orders. *See* § 205.39(b).

3. *Substantive Criteria Applicable to Assignment of Supplier and Base Period Use.* (a) *General.* The procedural regulations set forth in § 205.35(b) the criteria applicable to the evaluation of applications for assignment of a supplier and new base period use. These criteria restate the criteria set forth in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973 applicable to FEA's overall duties in promulgating and applying the Mandatory Petroleum Allocation and Price Regulations.

Like the criteria of section 4(b)(1) of the EPAA, the various criteria of § 205.35(b) are to be applied only "to the maximum extent possible." As applied to a particular set of circumstances, these criteria may not only be difficult to apply but also conflicting. As the courts have said in applying the various goals of section 4(b)(1),

> [t]he goals are inherently inconsistent, and no regulation could promote all of them at the same time. Congress recognized this in saying that the regulations shall provide for them 'to the maximum extent practicable.' A balancing of goals is required, and Congress has left the details of this balancing to the Federal Energy Administration. *Union Oil Co. v. FEA*, —— F. Supp. ——, Fed. Energy Guidelines ¶ 26,007, at p. 26,098 (C.D. Cal. 1974); *see also Air Trans. Ass'n of America v. FEA*, 382 F. Supp. 437 (D.C. 1974).

Thus, FEA should be guided by the criteria of § 205.35(b) but have considerable discretion in balancing one against the other.

While it is inappropriate to prescribe precise rules for the application of these criteria to assignments of suppliers and establishment of new base period uses in all circumstances, nevertheless some general principles may be prescribed.

(b) *Whether to Assign a Supplier/Purchaser Relationship.*

Three of the criteria which must be taken into account in deciding whether to assign the new outlet a supplier are whether granting the application in question would promote "economic efficiency;" minimize "economic distortion, inflexibility, and unnecessary interference with market mechanisms;" and promote the equitable distribution of petroleum products at equitable prices among all regions of the country and segments of the industry. (*See* § 205.35(b)(1)(viii), (ix), and (vi).) These three criteria together can be read as stating that even within the context of the regulatory program, free market forces should be allowed to function to the extent possible. Thus, in the absence of other countervailing considerations, FEA should start with a strong but

rebuttable presumption in favor of assigning a supplier/purchaser relationship for a proposed new retail sales outlet. In particular cases there might also be other relevant criteria favoring the application, such as the maintenance of public services and agricultura loperations. (*See* § 205.35(1) (ii) and (iii).)

A possible countervailing consideration may be the preservation of a competitively viable independent section of the industry.

Thus, in each case the facts must be reviewed to determine whether the general presumption in favor of granting the application should be overriden or sustained by a weighing of these other countervailing considerations.

(i) *Effect on Supplier's Other Purchasers.* Attention should be paid to the effect of any assignment upon the supplier's other customers, particularly the supplier's branded and non-branded independent purchasers. If the assignment will significantly lower the supplier's allocation fraction below one (1.0) then the assignment should be questioned. In general, if the assignment can be expected to reduce the supplier's most recently reported allocation fraction by more than one percentage point (0.010), the reduction may be significant and would warrant especially careful assessment of the supplier's future supply position.

(ii) *Effect on Independent Competitors.* In evaluating applications, the comments solicited from independent and small refiners and branded and non-branded independent marketers operating stations within the same trading area as any new station which will not be operated by an independent marketer or small or independent refiner should be carefully reviewed to determine whether or not granting of the application may seriously jeopardize the competitive viability of small and independent refiners and branded and non-branded independent marketers.

The existence of substantial evidence that granting the application would result in probable severe and irreversible damage to the existing independent segment in the proposed market may be the basis for denial of an application. Such evidence would not consist of a showing of probable financial impairment to a particular independent marketer, but rather would require evidence that the volume of business enjoyed by the independent segment in that marketplace would probably be substantially and permanently reduced.

Although these judgments are extremely difficult to make, FEA cannot ignore clear and compelling evidence that the operation of a new retail sales outlet which is not operated by an independent marketer will so dominate a trading area as to substantially impair the competitive viability of independent marketers. Generally such evidence is not present if: (1) independent marketers in the trading area can remain competitively viable by relying upon customers who will patronize such stations because of the availability of supplementary products and services not provided by the new station; (2) there are other large volume/low profit margin stations in the trading area or in other nearby trading areas, and the presence of such stations has not impaired the competitive viability of independent marketers; [1] and (3) there is a reasonable prospect of considerable growth in demand within the trading area so that the new station, notwithstanding its advantages, will not necessarily acquire most of its business at the expense of the other stations in the area.

This is not meant to be an exhaustive listing of the kinds of evidence that would sustain the granting of such an application notwithstanding a showing of adverse impact upon the various aggrieved parties. Indeed, given the rebuttable presumption in favor of granting such applications in any event, the burden is on those opposing the application to make a clear and convincing showing that the competitive viability of the independent marketing sector within the trading area will be substantially impaired by the opening of a new station which is not to be operated by an independent marketer. This showing is not made merely by a showing of financial harm to, or even of impending bankruptcy by, one or more independent marketers. Finally, such a showing cannot rest upon unsubstantiated assertions or mere speculation. There must be evidence of the specific adverse impacts of the new station's opening before FEA can perform the analysis outlined above and conclude that the application must be denied.

(iii) *Consideration of Applications for Retail Sales Outlets to be Built in the Future.* FEA has encouraged operators of potentially new retail sales outlets to apply for FEA assignment of a supplier/purchaser relationship and a base period use prior to construction of the new outlet. (*See* § 211.12(e).) This policy was established to prevent any hardship which might result from a failure to obtain an assigned supplier or base period use following the operator's expenditure of construction funds and assumption of other obligations connected with the proposed new retail sales outlet. Consequently, consideration of an application should not be delayed because a retail sales outlet is not currently operational or may not become operational before the expiration date of the EPAA. Approvals of such applications may be conditioned upon the retail sales outlets being operational within a certain period of time. Of course, such assignments should be made effective only upon the retail sales outlet's becoming operational.

(iv) *New Retail Sales Outlets Operating Solely on Supplies of Surplus Product.* In some cases new retail sales outlets are being operated with gasoline purchased from suppliers which have certified their gasoline to be surplus product as permitted by § 211.10 (g). Such retail sales outlets, however, are new suppliers as defined by § 211.10(e) which must receive FEA approval before they commence operations. Such approval should ordinarily be freely granted to gasoline retail sales outlets provided it is made clear that such approvals do not create a supplier/purchaser relationship between the retail sales outlet and the supplier of the surplus product and does not establish a base period use for the retail sales outlet. Approvals pursuant to § 211.10(e)(2) need not be conditioned upon application for a supplier and an assigned base period use. Operators of new retail sales outlets under § 211.10(e)(2) should understand, however, that unless they have been assigned a supplier and a base period use pursuant to § 211.12(e), they have no future claim to a supplier or a pro rata share of available supplies in a period when there is no surplus product.

(c) *Assignment of Base Period Use.* Once a decision to assign a supplier/purchaser relationship for a new retail sales outlet is made, FEA must determine the appropriate base period use to be assigned the retail sales outlet. As a general rule, the average base period use for retail sales outlets of a similar size (number of pumps) and nature (full service, gas only, self service, car wash, etc.) in the same market area will be the appropriate assigned base period use. Thus, for example, a station of a particular size and type should receive a base period use approximately equal to other stations of the same kind in the market area. When a new type of station is constructed in a market area, it should receive an allocation commensurate with the relative treatment of the new type of station compared to existing types in the nearest market area where such comparisons may be made.

The delineation of the market area will vary in each case, and ultimately will be determined by FEA. There can be no hard and fast criteria, but some general guidelines may be observed:

(i) In a city over 25,000 population, the market area to be considered should be the area within a one-mile radius of the proposed new outlet.

(ii) In a suburban area (housing developments, shopping centers, apartments) the market area to be considered should be the area within a two-to-three-mile radius of the proposed new outlet, depending upon the density of recent growth and traffic pattern characteristics in the area.

(iii) On a non-urban arterial highway with full control of access, the market area should include the area within one-fourth mile of the access point at the proposed location of the new outlet and the next two access points in each direction from the proposed location of the new outlet.

(iv) On a non-urban arterial highway with uncontrolled access or partially controlled access, the market area should include five miles in either direction along the highway.

(v) On a through street or through highway in a rural area, the market area should be that area within a five mile radius of the proposed new outlet.

(vi) In a town under 25,000 population, the market area should be a two mile radius from the proposed outlet.

As used in the above guidelines, the following terms have the following meanings:

"Arterial highway" means a highway primarily for through traffic, usually on a continuous route.

"Full control of access" means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections.

"Partially controlled access" means that the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

"Through street or through highway" means every highway or portion thereof at the entrance to which vehicular traffic from intersecting highways is required by law to stop or yield before entering or crossing and where appropriate signs are erected as provided by law unless entry or crossing is made on the proper indication of traffic control.

"Uncontrolled access" means that the authority having jurisdiction over a highway, street, or road, does not limit the number of points of ingress or egress except through the exercise of control over the placement and the geometrics of connections as necessary for the safety of the travelling public.

ATTACHMENT A

NOTICE

Pursuant to 10 CFR § 205.33(a), this is to notify you that _____

[1] The FEA must consider, however, whether, given limited demand within the trading area (see item (3) following), the new station, in conjunction with the existing high-volume station, will destroy the competitive viability of the remaining independent marketers.

has applied to the Federal Energy Administration for an order assigning to it a base period volume of [more than] [less than] ------ gallons per month for a retail gasoline station it intends to operate at ---------- ---------- This retail station will be owned by ---------- and operated by ----------

You are invited to submit written comments to FEA in support of or in opposition to the application. If you oppose the application on the ground that approval of it would adversely affect your business, you should set forth in detail the following minimum information:

1. Your name and address.

2. The person or persons who have an ownership interest in the business which you allege would be adversely affected, and the extent of each such person's ownership interest.

3. The location of your business in relation to the retail station for which the application for assignment was made.

4. The person or company from whom you presently purchase gasoline, and whether your business operates under the trademark of your supplier.

5. The volume, in gallons, of gasoline sold by your business in each month from January 1, 1972 until the present.

6. Whether or not there is a demand for gasoline in the trading area in which your business is located which cannot be met by existing retail stations.

7. The adverse effect which you believe approval of the application would have on your business.

8. Detailed factual data and information which support your claim that approval of the application will have an adverse effect on your business. Such data and information should include, at a minimum, audited or unaudited balance sheets and profit and loss statements for a recent, representative time period.

FEA can consider alleged adverse effects on your business only if such allegations are supported by the best available data. Broad and unsubstantiated allegations of adverse impact will be disregarded.

FEA will consider your written comments along with those submitted by the applicant and other interested persons. If you submit written comments, you will be notified of FEA's decision. FEA may, at its discretion, hold a public hearing to consider the application, in which event you will be notified. A copy of that portion of FEA's procedural regulations applicable to these proceedings is enclosed for your information.

Your written comments should be hand delivered or received by mail not later than ---------- to the following address:

Unless you claim confidential treatment for your submission, a copy of your comments should be delivered to the applicant. If you want the FEA to treat as confidential the information which you submit to it, it will do so if you so request and if the information is of a type entitled to such confidential treatment under the Freedom of Information Act, 5 U.S.C. 552, as amended, 18 U.S.C. 1905, 10 CFR 205.9, or under other Federal statutes, regulations or rules. Trade secrets and certain commercial and financial information are entitled to confidential treatment if you so request. If you request confidential treatment, you should designate on the original version of your written comments the information which you wish to be kept confidential and submit to FEA and the applicant another version of the document with such confidential information deleted. Information which is not designated as confidential or is not entitled by law or regulation to confidential treatment will be disclosed to the applicant and perhaps to other interested persons.

Sincerely,

---------- (Name and Title)

Enclosure.

[FR Doc.75-12273 Filed 5-6-75;1:07 pm]

FEDERAL MARITIME COMMISSION

METROPOLITAN STEVEDORE CO. AND TOKAI SHIPPING CO., LTD.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763 (46 U.S.C. 814)).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 29, 1975. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Mr. John E. Schaeffer, Esq.
Cooper, White & Cooper
44 Montgomery Street
San Francisco, California 94104

Agreement No. T-3083, between Metropolitan Stevedore Co. (Metropolitan) and Tokai Shipping Co., Ltd., (Tokai), provides for Metropolitan to furnish certain services to Tokai at premises which Metropolitan expects to receive from the City of Los Angeles pursuant to a use permit. Metropolitan agrees to discharge at berths covered by its permit all steel carried by Tokai to the Port of Los Angeles. Tokai agrees to deliver to Metropolitan sufficient steel cargoes so that revenues accrued pursuant to applicable Port of Los Angeles terminal tariff will be equal to at least $210,000 in each 12-month period. Tokai agrees that if its tariff obligations for each 12-month period do not meet the $210,000 guarantee, then it will pay Metropolitan the difference between $210,000 and the total revenues accrued under said tariff. If total revenues exceed $210,000 during each 12-month period, Tokai will share in a portion of such excess revenues attributable to revenue accrued through use of the premises on behalf of Tokai, on a percentage basis outlined in the agreement. Tokai agrees to pay to Metropolitan a proportionate share of all license and excise fees, occupation and property taxes due under Metropolitan's use permit.

Dated: May 5, 1975.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-12301 Filed 5-8-75;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	*Owner/operator and vessels*
01105	Sea Sirene Shipping and Financing Co. S.A.: *Pola.*
01248	Dampskibs A/ Avenir, Skibs A/S Beaumont, Skibs A/S Beaulieu, Skibs A/S Beauford, Skibs A/S Seattle: *Beaurivage.*
01360	Midland Enterprises Inc.: CH-2781.
01456	Oceanverg Shipping Co. Ltd.: *Vergray, Vergstar.*
01574	Fearnley & Eger: *Fernhill.*
01998	Gorthons Rederi AB: *Ingrid Gorthon, Nils Gorthon, Margit Gorthon, Maria Gorthon, Johan Gorthon, Carl Gorthon, Ada Gorthon, Ragna Gorthon, Ivan Gorthon.*
02246	Blue Star Line, Ltd.: *Afric Star.*
02295	Great Eastern Shipping Co., Ltd.: *Jag Doot.*
02477	American Dredging Co.: *No. 300, No. 120, No. 121, No. 122, No. 123, No. 124, No. 125, No. 126, No. 127, No. 128, No. 130, No. 105, No. 108, No. 109, No. 110, No. 111, No. 111-A, No. 112, No. 113, No. 114, No. 115, No. 115-A, No. 116, No. 116-A, No. 117, No. 118, No. 119.*
02492	Interstate Oil Transport Co.: *Interstate 71.*
02610	Peter Dohle Schiffahrts-KG.: *Katjana.*
02975	Venture Shipping (Managers) Ltd.: *Kingdom Venture.*
02977	J. Ray McDermott & Co., Inc.: *McDermott Derrick Barge No. 23.*
03315	Afran Transport Co.: *Afran Energy.*

Certificate No.	Owner/Operator and Vessels
04004	Koninklijke Java-China-Paketvaart Lijnen N.V.: *Straat Fremantle.*
04007	Egon Oldendorff: *Helga Oldendorff.*
04050	A/S Uglands Rederi: *Evita.*
04092	BV Bureau Wijsmuller: *Amsterdam.*
04160	Marine Transport Co.: *Mary Rose.*
04173	Foss Launch & Tug Co.: *Foss 343.*
04483	Kaiomaru Gyogyo Kabushiki Kaisha: *Kaiomaru No. 58.*
04625	American Commercial Lines Inc.: *James E. Niven.*
04642	South African Marine Corp. Ltd.: *S.A. Skukuza.*
04647	South African Sugar Carriers Pty Ltd.: *S.A. Sukumbi.*
05437	The Dow Chemical Co.: *ETT-103.*
05472	National Shipping Corp.: *Rupsa.*
05579	Black Sea Shipping Co.: *Tchernomorets—20.*
06130	Northern Shipping Co.: *Petr Smidovich.*
06251	Denizcilik Anonim Sirketi: *Akad.*
06510	Compagnie Nationale Algerienne de Navigation C.N.A.N.: *IBN Sina, IBN Khaldoun, Aures, Annaba, Hassi Messaoud, Berga, Skikda, IBN-Rochd, IBN-Badis, IBN-Batouta, IBN-Siradj, Setif, Tiaret, Mostaganem, Hassi R'Mel.*
06838	Compagnie Franco-Camerounaise S.A.R.L. de Navigation: *Nyombe.*
06853	Shipping Co. Knud L. Larsen: *Dorrit Lea, Peter Sif, Hans Sif, Margrethe Sandved.*
07266	Hamaya Suisan K.K.: *Eikyu Maru No. 86, Eikyu Maru No. 12.*
07290	Hollywood Terminals, Inc.: *Hollywood 2004, Hollywood 2006.*
08227	Lofaro and Gargiulo Armatori: *Rosario Lofaro.*
08414	I.F.R. Services Ltd.: *Orchidea.*
08627	Terminales Maracaibo C.A.: *Dona Marie, Dona Yolanda.*
08671	Excomm Ltd.: *Excomm Merchant.*
09018	Sigurd Herlofson & Co., S.A.: *Marra Mamba.*
09038	Umpqua River Navigation Co., Division of Bohemia, Inc.: *Oski.*
09244	System Fuels, Inc.: *SFI 31, SFI 32.*
09266	Atlantic Consolidated Foods Ltd.: *Atlantic Toni, Atlantic Carol, Atlantic Margaret, Atlantic Hawke, Atlantic Gairdner, Atlantic J.A.G., Atlantic Peggy, Atlantic Ocean Maid, Atlantic Paton, Atlantic Beatrice, Atlantic Ellen, Atlantic Jane, Atlantic Marie, Atlantic Ruthann, Norma.*
09470	Carrick Corp. Ltd.: *Tara Hall.*
09496	Mar Pacifico S.A.: *Sirena No. 3.*
09614	Hesperus (Panama) S.A.: *An Ming.*
09693	Luna Steamship S.A.: *White Luna.*
09716	Sacor Maritima, Lda.: *Cidla, Bandim, Angol.*
09792	United Fair Agencies Ltd.: *Grand Victoria.*
09796	China Pacific S.A.: *Commodore.*
09811	Cove Tanker Corp.: *Mount Navigator.*
09838	Ogden Sungari Transport, Inc.: *Ogden Sungari.*
09839	Transorient Navigators S.A.: *Astros.*
09842	Arta Compania Naviera S.A. (Panama): *Marivana Rena.*
09955	Ursa Major (Panama) S.A.: *Lucid.*
09966	Tara Corp. Ltd.: *Northcliffe Hall.*
09974	Rederi-Interessentskabet Sandved III: *Ann Sandved.*
09975	Rederi-Interessentskabet Sif 19: *Jette Sif.*
09976	Rederi-Interessentskabet Sif 18: *Grete Sif.*
09977	Rederi-Interessentskabet Sif 17: *Kaspar Sif.*
09978	Rederi-Interessentskabet Sif XX: *Skaga Sif.*
09979	Ole Prellsens Rederi: *Hille Prellsen.*
09980	Rederi I/S Sandved: *Kirsten Sandved.*
09981	Rederi-I/S AP 21/8-1970: *Sonja Egholm.*
09983	Jackson Steamship Co.: *Desert Song.*
10058	Matterhorn Shipping Co., Ltd.: *Stavros G. Livanos.*
10062	Gala Shipping Co. Inc.: *Young Soul.*
10071	Phaedon Shipping Co. S.A. of Panama: *Aristofilos.*
10072	Sapientza Compania Naviera S.A. Panama: *Phaedon II.*
10077	W. M. Webb, Inc.: *Sea Falcon.*
10082	Lindinger Light K/S: *Lindinger Light.*
10083	Shigetoshi Ueda: *Yamashiro Maru No. 18.*
10084	Silver Anchor Shipping Co., S.A.: *Ocean Melody.*
10085	Dipotama Marine Ltd.: *Yannis M.*
10086	High Tide Navigation S.A.: *Pacific Sincere.*
10087	Knight Towing Ltd.: *Pacific Challenge.*
10088	Linea Manaure C.A.: *Manaure.*
10089	Jactor Shipping Pte. Ltd., Singapore: *Hansa Trade, Hansa Nord.*
10090	International Bulk Carriers, Ltd.: *Olive Oil.*
10091	Carp Shipping Inc.: *Haeng Bok No. 508.*
10092	La Camogliese S.P.A.: *Capo Miseno.*
10093	Universal Giant Shipping Co., Ltd., S.A.: *Great Antares.*
10095	Escobal Naviera Co., S.A.: *Ohtori.*
10096	Ruys Bulk Transport N.V.: *Maaskade.*
10097	Shoei Kaiun K.K.: *Y. Joh No. 2.*
10098	Royal Cruise Line Special Shipping Co., Inc.: *Golden Odyssey.*
10100	Boswick Maritime Corp.: *Boswick.*
10104	Trans Ocean Shipping Ltd., Inc.: *Sea Sorceress.*
10106	Collegetown Marine Towing, Inc.: *Michael J.*
10108	Niclan Co., Ltd.: *Niclan K.*
10109	Standard Sand & Gravel Co.: *Elizabeth M, Tradewinds.*
10111	Masaki Hamaguchi: *Shoyo Maru No. 18.*
10112	Naves Mundiales Armadora S.A.: *Stadion.*
10113	Aurora Reederei GMBH & Co. KG MS "Marheike:" *Marheike.*
10114	John S. Latsis (London) Ltd.: *Petroship A.*
10115	Carga Atlantica Navegacion S.A.: *Aegis Diligence.*
10116	Alpha Naval Compania Naviera S.A.: *Aegis Mystic.*
10117	Kabushiki K Aisha Mataubiahi: *Daitoku Maru No. 7.*
10118	United Marine Navigation Ltd.: *Militos.*
10119	Intrepid Marine Investments, Ltd.: *Najkratis.*
10120	K/S Skaugen Supply Ships A/S and Offshore Antilles Supply Ships Ltd.: *Skaustream, Skauhill, Skaulake, Skautop.*
10123	Pitria Sea Navigation Co., Inc.: *Pitria Sea.*
10124	Pitria Spirit Navigation Co., Inc.: *Pitria Spirit.*
10125	Kaigai Gyogyo Kabushiki Kaisha: *Kaisei Maru No. 61, Kaisei Maru No. 62, Kaisen Maru No. 63, Kaisei Maru No. 65.*
10126	Shunpei Okawa: *Kanei Maru No. 18, Kanei Maru No. 28.*
10127	North Star Maritime Corp.: *Ocean Ranger.*
10128	Golden Star Steamship Inc.: *Golden Star.*
10130	Seahorse Shipping Co., Ltd.: *Atlantic Falcon.*
10131	Hansa Bulk Pte. Ltd.: *Ehrenfels, Trifels.*
10136	Superior Shipping Ltd.: *Bela Rozo.*
10137	Yue Man Shipping S.A.: *Yue Man.*
10139	Dolphin International, Inc.: *Blue Dolphin.*
10149	Attlich Co., Inc.-Panama: *Welcome.*
10150	PSF Offshore Logistics (United Kingdom) Ltd.: *FSB-01.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-12302 Filed 5-8-75;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to Part 542 of Title 46 CFR and section 311 (p)(1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	Owner/Operator and Vessels
01015	A/S Rederiet Odfjell: *Hassel.*
01090	Wallem, Steckmest & Co. A/S: *Kronviken.*
01109	C. Mackprang Jr.: *Nordstern.*
01248	Dampskibs A/S Avenir-Skibs A/S Beaumont, Beaulieu, Beaufort, Seattle: *Beauvirage.*
01330	Shell Tankers (United Kingdom) Ltd.: *Hadriania, Hemipiecta, Forthfield, Valvata.*
01383	Mariehamns Rederi Ab. Marie-Hamn: *Germundo, Gregerso, Freezer Finn, Borgo, Eckero, Herro, Basto, Fisko, Norro, Ranno, Saggo, Siyros, Jarso, Evofrio, Kallso, Tingo, Degero, Hamno.*
01428	Ocean Transport & Trading Ltd.: *Stentor.*

Certificate No.	Owner/Operator and Vessels
01435	Chapman & Willan Ltd.: *Federal Wear.*
01436	The Cambay Steamship Co. Ltd.: *Demeterton.*
01456	Oceanverg Shipping Co.* Ltd.: *Miguel De Larrinaga, Rupert De Larrinaga.*
01545	Borges Rederi A/S: *Wyvern.*
01589	Fortuity Compania Naviera S.A.: *Fortuity.*
01761	Union Steam Ship Co. of New Zealand, Ltd.: *Waikare.*
01905	Ben Line Steamers Ltd.: *Bencairn.*
01920	Messrs. Svend Foyn Bruun: *Primero.*
01980	AB Oceankompaniet: *Pacific Ocean.*
01988	Angfartygsaktiebolaget tirfing: *Roland.*
01990	Goteborgs Bogserings-Och Bargnings AB: *Dan.*
01998	Rederiaktiebolaget Gyife: *Joh Gorthon, Nils Gorthon, Carl Gorthon, Maria Gorthon, Tilia Gorthon, Margit Gorthon, Ivan Gorthon, Ragna Gorthon, Ada Gorthon, Alida Gorthon, Ingrid Gorthon.*
02000	Rederiaktiebolaget Svenska Lloyd: *Italia, Gallia.*
02032	D.B. Dentz Nakliyati T.A.S.: *Yozgat.*
02066	Canadian Pacific Ltd.: *Princess Marguerite.*
02172	Elizabeth Shipping Co., Ltd.: *Georgios T.*
02317	Gotass-Larsen A/S: *Golar Nel.*
02428	Kinsman Marine Transit Co.: *Thomas Wilson, William A. Reiss, Silver Bay.*
02474	Pacific Towboat & Salvage Co.: *Horizon.*
02480	I.B.C. Co.: *IBC No. 16, IBC No. 18, IBC No. 17, IBC No. 19.*
02601	Caraibische Scheepvaart Maatschappij N.V.: *Cholutecа.*
02603	Empresa Hondurena de Vapores, S.A.: *S/S Omoa.*
02727	Societe Maritime des Petroles BP.: *Chenonceaux.*
02838	Atlantic Union Corp.: *Yebala.*
03075	Primall S.A.C.I.: *Ballenita.*
03272	Dixiyln Corp.: *Dixilyn One-Fifty, Dixilyn Two-Fifty.*
03315	Afran Transport Co.: *Cabimas.*
03321	Marunouchi Kisen K.K.: *Kasuga Maru.*
03692	Marmac Corp.: *AT-2.*
03971	Korea Shipping Corp., Ltd.: *Daepori.*
04023	Erie Sand and Gravel Co.: *Wellston.*
04118	Marine Trading Ltd.: *La Bonita.*
04347	Maroceano Compania Naviera, S.A.: *Pelinaion.*
04356	Pacific Far East Line, Inc.: *Philippine Bear, Canada Bear, Guam Bear.*
04393	World Wide Transport, Inc.: *Conoco Dubai.*
04404	Lars Rej Johansen: *Joulla.*
04468	Kotoshiromaru Gyogyo Kabushiki Kaisha: *Kotoshiromaru No. 17.*
04489	Otoshiro Gyogyo Kabushiki Kaisha: *Otoshiro Maru No. 10.*
04504	Sumiyoshi Gyogyo Kabushiki Kaisha: *Sumiyoshi Maru No. 11.*
04511	Showa Gyogyo Kabushiki Kaisha: *Showamaru No. 12.*
04521	Taisen Gyogyo Kabushiki Kaisha: *Taisemaru No. 18.*
04621	Lunmar, S.A.: *Berna.*
04625	American Commercial Lines, Inc.: *Trade Winds.*
04646	Marian Corp., Ltd.: *Marland.*
04978	Oceanfrigo Societa D/Armamento Frigoriero: *Doroty, Doroty Seconda.*
05021	Miami Barge Lines, Inc.: *Riverside 4.*
05022	Riverside Barge Lines, Inc.: *Riverside 3, Riverside 2.*
05091	Dansk Esso A/S: *Esso Gothenburg.*
05391	Komandittselskapet Sea Venture A/S & Co.: *Sea Venture.*
05866	Efmariners Compania S.A. Panama: *Mareantes.*
06060	Sunshine Shipping Co. S.A. Panama: *Nicolaos H.*
06181	Galeana, S.A.: *Florida State.*
06295	Australasian Tankships (Panama) S.A.: *Maori, Halekulani.*
06496	Whaling City Dredge & Dock Corp.: *Steel RR Carfloat No. 637, Steel RR Carfloat No. 636, Steel RR Carfloat No. 635, Spinello Barge No. 366.*
06544	Hellenic Cruises (Monrovia) S.A.: *Galaxias.*
06555	Texas City Tankers Corp.: *William J. Fields.*
06577	Hellenic Cruises S.A.: *Orion.*
06599	Philon Special Shipping Societe Anonyme: *Tees Ore.*
06817	Compania Palacio Del Mar S.A.: *Nagata.*
06856	Taboga Enterprises Inc.: *Fermenco.*
07255	Ten Tung Steamship Co., Ltd.: *Hopei.*
07290	Hollywood Terminals, Inc.: *Ellis 1256.*
07305	Triumph Shipping S.A.: *Triumph.*
07336	American Rice Steamship Co.: American Rice.
07355	Trimmer S.A.: Progressus.
07356	Williams-McWilliams Co.: *George A. McWilliams, Diesel, W-701, Arkansas, Natchez, Port Arthur.*
07374	Ocean Tramping Co., Ltd.: *Eastglory.*
07489	Penta Shipping Ltd.: *Penta.*
07477	Fides Maritime (Private) Ltd.: *Fides Friendship.*
07712	Magdalena Shipping Corp.: *Barbergate.*
07713	Helecho Shipping Corp.: *Barberbrook.*
07934	Ship Operators of Florida, Inc.: *Caribe I.*
08111	Krimac S.A. Panama: *Dafra Star.*
08187	Thoralbe Schiffahrtsgesellschaft de Vries & Co. M.B.H.K.G.: *Thoralbe.*
08310	Universal Seaways Private Ltd.: *Fine Fruit.*
08344	Hammerton Shipping Co. S.A.: *Eastern River.*
08945	Marlineas Generales S.A. Panama: *Aristokleidis.*
09064	Thorheide Schiffahrtsgesellschaft de Vries & Co. MBH. K.G.: *Thorheide.*
09209	Tri Amindo (S) Pte., Ltd.: *Damon.*
09235	Sunlight Shipping Co. Ltd.: *Sunlight.*
09330	Thorodland Schiffahrtsgesellschaft de Vries & Co. M.B.H.K.G.: *Thorodland.*
09333	Throdrache Schiffahrtsgesellschaft de Vries & Co. M.B.H. K.B.: *Throdrache.*
09334	Hambro Shipping Co. S.A.: *Maray, Raymar.*
09384	Rebel Enterprises Inc. and Rebel Towing Co.: *Barge ST-107.*
09473	Stemil, Inc.: *LRL 200.*
09580	Tianna Shipping Co. Ltd.: *Inguza.*
09581	Eastgate Shipping Co. Ltd.: *Armadora.*
09747	Maravanzada Armadora, S.A.: *Chalkis.*

By The Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-12303 Filed 5-8-75;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-9399]

ARIZONA PUBLIC SERVICE CO.

Amendment to Supplement to Agreement

MAY 2, 1975.

Take notice that on April 25, 1975, Arizona Public Service Company (APS) tendered for filing Supplement No. 15 and Amendment No. 1 thereto of an Agreement with Navajo Tribal Utility Authority (NTUA), FPC Rate Schedule No. 6, for the delivery of part of NTUA's entitlement from APS' Four Corners Generating Station near Farmington, New Mexico to NTUA at the Navajo Generating Station near Page, Arizona. APS states that the Supplement and Amendment provides for no change of rate and is not a rate increase.

Copy of the filing was served upon the Arizona Corporation Commission.

APS requests that the waiver provisions of § 35.11 of the Commission's regulations be waived to permit an effective date of August 1, 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, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1975. 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.75-12198 Filed 5-8-75;8:45 am]

[Docket No. RI74-44]

AZTEC OIL & GAS CO.

Clarifying and Amending Order and Providing New Procedural Dates

MAY 2, 1975.

On January 27, 1975, an order was issued setting the proceeding in the above-captioned docket for hearing. On April 4, 1975, Aztec Oil & Gas Company (Aztec) filed its direct testimony and exhibits

including those of Messrs. Brickhill, Taylor, and Schantz of Foster Associates relating, respectively, to supply and demand, potential gas supply, and the commodity value of natural gas.

Aztec also submitted testimony and exhibits of a Mr. John R. Barnes relating to various rates requested covering what he has styled as: (1) flowing gas on a company-wide basis and infill drilling in the Blanco-Mesaverde Pool in the San Juan Basin of New Mexico, (2) proved undeveloped reserves, (3) probable reserves, and (4) wildcat reserves.[1]

The Commission Staff, on the other hand, has requested data from Aztec relating only to the sales of natural gas covered by Aztec's FPC Gas Rate Schedule Nos. 3, 4, 5, 12, 28, 29, and 35 listed in footnote three of the order issued on January 27, 1975 in this proceeding.

Based on the above, it is clear that a misunderstanding exists by the parties as to what we intended by our January 27, 1975 order in this proceeding. In the first sentence of that order we stated that:

> On January 3, 1975, Aztec Oil & Gas Company (Aztec) filed an application for rehearing of Opinion No. 699–H . . . requesting, *inter alia*, special relief for sales of its gas to El Paso Natural Gas Company (El Paso) in the San Juan Basin subarea of the Rocky Mountain Area . . . *which are involved in Docket No. RI74–144.* (emphasis added)

This statement was intended to set the limits of the proceedings. Thus, it was intended that the purpose of this proceeding would be to determine the just and reasonable rate or rates for only those sales covered by Docket No. RI74–144; in other words, only those sales currently made subject to refund in Docket No. RI74–144 and covered by Aztec's FPC Gas Rate Schedule Nos. 3, 4, 5, 12, 28, 29, and 35.[2] We affirm that intention.

Clearly, Aztec would be prejudiced if we were to issue this order clarifying the scope of the instant proceedings without providing an opportunity for Aztec to present new testimony and exhibits relating only to its current sales made pursuant to its aforementioned rate schedules. Accordingly, we find that good cause exists to provide for new procedural dates to accommodate all parties.[3]

This action clarifying our January 27, 1975, order shall be without prejudice to Aztec's filing for rate increases for any of its sales not covered by Docket No. RI74–144 and any filing seeking certification of new gas sales.

The Commission orders: Ordering Paragraphs (B), (D), (E), and (F) of our order issued January 27, 1975, in Docket No. RI74–144 are amended to read as follows:

(B) A public hearing on the issue of the rate or rates Aztec shall be allowed to charge El Paso Natural Gas Company for Aztec's current sales of natural gas covered by its FPC Gas Rate Schedules Nos. 3, 4, 5, 12, 28, 29, and 35 shall be held commencing on July 8, 1975, 10 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington D.C. 20426.

(D) Aztec and any intervenor supporting the application shall file their direct testimony and evidence on or before June 3, 1975. All testimony and evidence shall be served upon the Presiding Judge, the Commission Staff, and all parties to this proceeding.

(E) The Commission Staff, and any intervenor opposing the application, shall file their direct testimony and evidence on or before June 24, 1975. All testimony and evidence shall be served upon the Presiding Judge, and all other parties to this proceeding.

(F) All rebuttal testimony and evidence shall be served on or before July 1, 1975. All parties submitting rebuttal testimony and evidence shall serve such testimony upon the Presiding Judge, the Commission Staff, and all other parties to the proceeding.

By the Commission.

[SEAL] MARY B. KIDD,
Acting Secretary.

[FR Doc.75–12199 Filed 5–8–75;8:45 am]

[Docket No. CP75–313]

BAY STATE GAS CO. ET AL.

Application

MAY 2, 1975.

Take notice that on April 23, 1975, Bay State Gas Company (Bay State), 125 High Street, Boston, Massachusetts 02110, Boston Gas Company (Boston), 2900 Prudential Tower, Boston, Massachusetts 02199, and Providence Gas Company (Providence), 100 Weybosset Street, Providence, Rhode Island 02901, (Applicants) filed in Docket No. CP75–313 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 in interstate commerce by Bay State and Boston to Providence of 1,050 billion Btu of liquefied natural gas (LNG) to assure the maintenance of adequate high-priority winter service on Providence's system by offsetting anticipated curtailments, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application indicates that Providence, whose operations are intrastate in nature, is dependent upon Algonquin Gas Transmission Company (Algonquin) for its entire supply of pipeline delivered natural gas. The application further indicates that since 1971 Algonquin has curtailed deliveries of natural gas to its customers and that estimated curtailments by Algonquin for 1975 will approximate 19 percent of Providence's annual entitlement, a reduction of 2,876,220 million Btu. On the basis of this projected curtailment, Providence projects a deficiency in its gas supply for the 1975–76 winter heating season of approximately 1,600 billion Btu.

Applicants state that Bay State and Boston both of whose operations are limited to intrastate service, have agreed to assist Providence in meeting its supply emergency by selling to Providence 430 and 620 billion Btu of LNG respectively, at prices of $2.00 and $2.50 per million Btu, respectively, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). The application indicates that Providence does not have any underground storage facilities, but that it owns a 55,000-barrel storage tank in Exeter, Rhode Island, and that it is entitled under a lease to use 174,000 barrels of Algonquin LNG, Inc.'s, 600,000-barrel LNG storage tank[1] located in Providence, Rhode Island, for storage of the LNG to be provided by Bay State and Boston. Providence proposes to transport the LNG by truck from the facilities of Bay State and Boston, located in Ludlow and Boston, Massachusetts, respectively, to the storage facilities located in Providence and Exeter. Bay State and Boston indicate that, because of operating conditions on their respective systems, their LNG cannot be committed to Providence after June 15, 1975. Providence indicates that, provided it receives certification by June 15, 1975, it can complete delivery of the subject LNG on or before October 31, 1975.

Applicants state that the purpose of the proposed sales, to insure that Providence's LNG storage facilities will be filled before the onset of the 1975–76 winter season to assure the reliability of gas service by Providence to its high-priority customers during that winter heating season, is consistent with Commission policy expressed in § 2.70 of the General Policy and Interpretations, in Commission Order No. 402 (43 FPC 707), and in the Commission order issued September 12, 1974, in Docket No. CP75–14, et al.

Applicants request that, inasmuch as their respective gas businesses are limited to intrastate operations except for the sales contemplated herein and will be solely intrastate upon expiration of such sales, the proposed sales be authorized subject to the following conditions:

1. The certificate shall be limited to authorization of the sales proposed herein;

2. The Commission shall waive any accounting and other requirements generally applicable to a "natural-gas company" for the term of the certificate and with respect

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[1] Testimony of John R. Barnes, Exhibit No. 5, Docket No. RI74–144 (filed April 4, 1975).

[2] It was assumed that some of the sales being made under these rate schedules could qualify for the nationwide new gas rate promulgated by Opinion No. 699–H; —— F.P.C. —— (issued December 4, 1974). Based on data submitted by Aztec in response to Staff inquiries, it is clear that none of Aztec's curent sales covered by the aforementioned rate schedules could qualify for the nationwide rate.

[3] The procedural dates we set herein shall supersede those granted in the Notice of Extension of Procedural Dates issued April 25, 1975 in this proceeding.

[1] By order issued September 12, 1974, in Docket No. CP75–14, *et al.*, the Commission issued a temporary certificate authorizing the operation of Algonquin LNG, Inc.'s storage facility on a temporary basis.

to these sales, except for the volumes sold and charges made for such volumes;

3. The Commission shall indicate that all of the facilities and operations and related activities of Applicants are and will continue to be exempt from Commission regulations, and the non-jurisdictional status of the existing sales, operations and facilities of Applicants will not be rendered jurisdictional or otherwise affected by Commission regulation by reason of any certificate issued for the proposed sales; and

4. The Commission shall indicate that upon the requested abandonment becoming effective, Applicants will not be considered as natural-gas companies within the meaning of the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 22, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12200 Filed 5-8-75;8:45 am]

[Docket No. E-9398]

BROCKTON EDISON CO. AND MONTAUP ELECTRIC CO.

Filing of Initial Transmission Rate

MAY 2, 1975.

Take notice that on April 24, 1975, Montaup Electric Company (Montaup) and Brockton Edison Company (Brockton) tendered for filing an executed supplement to a contract dated April 26, 1965 under which Brockton serves the Town of Middleboro, Massachusetts. The supplement provides a rate for transmission of Middleboro's entitlements in various generating plants over a radial line owned by Brockton extending from a tap point on Montaup's 115 kv "Pool Transmission Facilities" (as defined in the New England Power Pool Agreement) to the Middleboro town line. According to Montaup and Brockton, transmission to the tap point is provided under separate agreements which provide rates that do not cover the cost of Brockton's radial line.

The rate provided in the supplement is $.60 per kilowatt per month of Middleboro's "Firm Delivered Present Entitlements" as defined in the supplement. According to Montaup and Brockton, the rate is derived from Brockton's demand related costs for the radial line.

The tendered supplement is requested to become effective on March 1, 1975, the date Middleboro began taking delivery over Brockton's 115 kv radial line following Middleboro's completion of a line and substation. Waiver of the 30-day notice requirement is requested in order to permit the March 1, 1975 requested effective date. Montaup and Brockton state that the 1974 year-end plant and operating figures used to derive the rate did not become available in time for a filing to be made 30 days prior to commencement of the service. The filing letter states that the parties to the supplement agree to make refunds from March 1, 1975 in the event a reduction in charges is ordered by the Commission. If waiver is not granted, an effective date of May 25, 1975 is requested. The rate proposed herein is intended to apply to transmission service from March 1, 1975 through May 18, 1975. According to documents filed in Docket No. E-9046 and subsequent Commission order, the transmission service to Middleboro will become Montaup's responsibility beginning May 19, 1975.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before May 15, 1975, file with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commision's rules of practice and procedure (18 CFR 1.8, 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 participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The documents filed by Montaup and Brockton are on file with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12201 Filed 5-8-75;8:45 am]

[Docket No. RI75-129]

C. CRADY DAVIS

Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

APRIL 17, 1975.

Respondent has filed a proposed change in rate and charge for the jurisdictional sale of natural gas, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR, Chapter I], and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column. This supplement shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket No.
RI75-129...	C. Crady Davis et al.....	1	14	Southern Union Gathering Co. (New Mexico) (Rocky Mountain)	$104,391	3-20-75	.....	9-20-75	[1] [3] 26.09	[2] [4] 54.28	

[1] Subject to Btu adjustment above 1,050 Btu and below 1,000 Btu.
[2] Subject to upward and downward Btu adjustment from a base of 1,000 Btu.
[3] The pressure base is 15,025 lb/in²a.
[4] The pressure base is 14.73 lb/in²a.

The proposed rate increase exceeds the applicable area ceiling rate set forth in Opinion No. 658 and is suspended for five months.

[FR Doc.75-12220 Filed 5-8-75;8:45 am]

[Docket No. E-9402]

CENTRAL HUDSON GAS AND ELECTRIC CORP.

Filing of Supplement to Rate Schedule

MAY 2, 1975.

Take notice that on April 28, 1975, Central Hudson Gas and Electric Corporation (Hudson) tendered for filing an agreement, intended to be a supplement to its Rate Schedule F.P.C. No. 42, designated as:

Agreements of March 11, 1975 setting forth Actual 1974 Charges and Estimated 1975 Charges to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) Under Roseton Transmission Agreement.

Hudson states that inasmuch as Rate Schedule F.P.C. No. 42 provides that estimated charges for any given year are to be adjusted to actual charges as soon as practical after the close of business for that year, and that actual charges for the previous year are to become the estimated charges for the present year, it is requesting a waiver of the notice requirements of § 35.3 of the Commission's rules and regulations to allow an effective date of January 1, 1975.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 14, 1975. 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12202 Filed 5-8-75;8:45 am]

[Docket No. E-9403]

CENTRAL HUDSON GAS AND ELECTRIC CORP.

Filing of Supplement to Rate Schedule

MAY 2, 1975.

Take notice that on April 28, 1975, Central Hudson Gas and Electric Corporation (Hudson) tendered for filing an agreement, intended to be a supplement to its Rate Schedule F.P.C. No. 43, designated as:

Agreement of March 11, 1975 setting forth Actual 1974 Charges and Estimated 1975 Charges to Consolidated Edison Company of New York, Inc. (Con Edison) Under Rock Tavern Substation Agreement.

Hudson states that inasmuch as Rate Schedule F.P.C. No. 43 provides that estimated charges for any given year are to be adjusted to actual charges as soon as practical after the close of business for that year, and that actual charges for the previous year are to become estimated charges for the present year, it is requesting a waiver of the notice requirements of § 35.3 of the Commission's rules and regulations to allow an effective date of January 1, 1975. Hudson also states that full annualization charges for recently-completed facilities will substantially increase in 1975 and that 1975 estimates have been adjusted to reflect this.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 14, 1975. 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12203 Filed 5-8-75;8:45 am]

[Docket No. CP75-323; Docket No. CP75-300]

COLORADO INTERSTATE GAS CO. ET AL.[1]

Order To Show Cause, Consolidating Proceedings, and Prescribing Procedures

MAY 1, 1975.

On June 14, 1974, Colorado Interstate Gas Company, a division of Colorado Interstate Corporation (CIG), filed an application in Docket No. CP74-320 in which it seeks to acquire and develop a new gas storage field (Latigo Field) in Arapahoe County, Colorado.[2] A Staff review of Commission files conducted during analysis of that application disclosed that no producer certificates have been issued for the sale of natural gas to CIG from the Latigo Field. Accordingly, in a letter from the Commission's Secretary dated August 28, 1974, CIG was requested to provide additional information by submitting the following:

(1) A detailed map indicating the location of the Latigo Field and the point or points where the gas purchased therefrom is delivered into CIG's system.

(2) Copies of the related producer contracts from whom CIG purchases gas in the Latigo Field and the date that purchases commenced.

(3) The above information for any other producers where appropriate Commission certificates have not been received.

In response to this request, CIG submitted copies of contracts and maps containing the detailed information requested with respect to all CIG purchases of gas in Colorado in connection with which the producer has received no FPC certification according to CIG's files. In submitting this information, CIG stated that their understanding is that no Commission certificate would be required of

[1] See Appendix A for names of the respondents hereto. The names of the respondents were derived from (a) the "Schedule of Reference Data" submitted by CIG on October 21, 1974, (b) the signatory parties to the contracts and amendments submitted by CIG on October 21, 1974, and (c) CIG's Form No. 2 (1973).

[2] By Commission order issued March 14, 1975, a formal hearing was scheduled on the issues in that proceeding and a temporary certificate was issued. The Commission stated that nothing in its order should be construed as a waiver by the Commission of its authority to direct CIG and the producers involved to show cause why they should not be held in violation of the Natural Gas Act.

the producers because all the gas involved in these purchases is produced, transported and used or sold for resale within the State of Colorado.

However, certain of the producers selling to CIG[4] have previously filed with the Commission for blanket producer certificates to cover their sales of production from the Vilas Field which is also located in Colorado. CIG has presented no explanation of why the Commission would not also have jurisdiction over the producer sales to CIG from other fields by the above-listed producer respondents where such gas is commingled with other certificated production moving in CIG's interstate natural gas facilities. As a further indication of the Commission's jurisdiction here, the map on the First Revised Sheet No. 4 of CIG's FPC Gas Tariff, Revised Volume No. 1, shows that pipelines or distribution lines of companies purchasing gas from CIG cross the state boundary lines of Colorado. We believe the sales by the producer respondents accordingly are jurisdictional since the gas enters and is being transported through jurisdictional facilities owned and operated by the purchaser, CIG, for the ultimate purpose of being sold pursuant to certificate authorization covering direct industrial sales and sales for resale as reflected in CIG's Form No. 2 (1973).

The courts have held that natural gas produced and consumed within a state is subject to Commission jurisdiction if it will flow in a commingled stream with gas from other sources in interstate commerce for resale [See e.g., "California v. Lo-Vaca Gathering Co.", 379 U.S. 366 (1965); "Colorado-Wyoming Gas Co. v. FPC," 324 U.S. 626 (1945)]. The Commission in Opinion No. 610 ["United Gas Pipeline Co.", 47 FPC 245, 262, (1972), aff'd sub nom. "Louisiana Power & Light Co. v. FPC," 483 F. 2d 623 (1973), cert. denied 416 U.S. 974 (1974)], stated that:

> the facilities, sales, and services in question became subject to our jurisdiction at such time as the commingling of interstate and intrastate gas took place. The Commission's jurisdiction under the Natural Gas Act does not depend upon whether a natural-gas company fulfills its obligation thereunder to obtain a certificate of public convenience and necessity.

The gas purchased from the producer respondents constitutes a significant portion of the gas supply for CIG's interstate markets.[4] Consequently, any premature abandonment or curtailment of the producers' sales to CIG would have a detrimental effect upon CIG's ability to supply the required volumes of gas to its Colorado markets. Any abandonment of service to CIG by the producers would require Commission approval under section 7(b) of the Natural Gas Act. Additionally, the cost of the gas from these producer sales is presently included in CIG's jurisdictional cost of service. From Staff's initial examination of the rates for the gas in the producer sales, some of these rates may be in excess of the applicable area rates determined by the Commission to be just and reasonable.

CIG and the producer respondents are directed by this order to show cause why they should not be found to be in violation of the Natural Gas Act, specifically section 7(c) for the sale and transportation of natural gas by the producers without Commission certificate authorization and for the uncertificated construction by CIG of gas-purchase facilities connecting CIG's system with the facilities of the producers, and section 7(b) for any abandonments by the producers of service to CIG without Commission permission and approval.

Simultaneously with the issuance of this order, we are issuing a notice of petition by CIG (filed April 11, 1975, Docket No. CP75-300) for a declaratory order disclaiming Commission jurisdiction over the sales to CIG by producers delivering gas to CIG from the Latigo Field. Since the producers involved and the issues raised in the petition for declaratory order are subsumed by this show cause proceeding, we shall consolidate the proceeding for a declaratory order with the Order to Show Cause. One record may be built to provide the basis for a decision in regard to the producers in the Latigo Field, similarly situated producers and other producers. Since factual as well as legal issues are involved in this consolidated proceeding, we believe that a formal hearing should be held concerning such issues.

The Commission finds: (1) It is necessary and proper in the public interest in the administration of section 7 of the Natural Gas Act to require CIG and the producer respondents to show cause why they should not be found to be in violation of the Natural Gas Act for the reasons set forth above.

(2) It is necessary and in the public interest to consolidate the proceeding for a declaratory order in Docket No. CP75-300 with the show cause proceeding in Docket No. CP75-323 in order to consider the jurisdictional issues as discussed above and in CIG's Petition for Declaratory Order.

(3) It is necessary and appropriate that this consolidated proceeding be set for formal public hearing.

The Commission orders: (A) That CIG and the producer respondents show cause why they should not be found to be in violation of the Natural Gas Act as set forth in this order.

(B) That Docket Nos. CP75-323 and CP75-300 are consolidated for the purpose of determination of the jurisdictional issues presented therein.

(C) 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., on June 17, 1975, at 10 a.m. (e.d.t.). The Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for the purpose—see Delegation of Authority, 18 CFR 3.5(d)—shall preside at the hearing in this proceeding and shall prescribe relevant procedures not herein provided.

(D) The direct case of CIG, the producer respondents and supporting intervenors with respect to all issues in this proceeding shall be filed and served on all parties of record including Commission Staff on or before May 27, 1975. The direct case shall include evidence showing, inter alia, all operations, flows and sales of the gas in question, and any other types of arrangements deemed relevant. Following the conclusion of cross-examination thereon, the Presiding Law Judge shall set such dates as are reasonable for the submission of testimony, if any, from opposing intervenors and Commission Staff and of answering and rebuttal cases, if any.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A—PRODUCER RESPONDENTS

Kenneth M. Aitken
Robert L. Allardyce
Amoco Production Company
Jerry D. Armstrong
Associated Oil & Gas Co.
Austin Funds, Ltd.
Baumgartner Oil Company
C. H. Bjerknes
Mary S. Bragdon
Border Exploration Company
Sidney F. Brody
Ray O. Brownlie
Cabot Corporation
Carmack Drilling Company
Harold C. Carmack
James J. Caron
Champlin Petroleum Company
Mrs. C. M. Crawford, Jr.
Harry L. Crosby, Jr.
Edward Mike Davis
Marvin Davis
Timothy M. Doheny
Dragoon Gas Company
Enbrook Oil & Gas Co., Inc.
Energy Minerals Corporation
Excelsior Oil Corporation
William E. Fay, Jr.
W. D. Ferguson Estate (Trusts A & B)
Ruth G. Fink
W. W. Fisher
W. H. Gaddis Estate
Durward C. Garrison
James S. Garvey
Jean K. Garvey
Garvey, Inc.
Garvey Industries, Inc.
Garvey Properties, Inc.
Olive W. Garvey
Shirley F. Garvey
Willard W. Garvey
Gas Processing Enterprises
Girard Trust Bank—Homer Trust
Howard Glenn
Halliburton Resources Management
E. M. Hayes
Joseph S. Hoover
J & L Oil Corporation
Jagee Corporation
Eric H. Jager
Kansas-Nebraska Natural Gas Company, Inc.
Koch Exploration Company, A Division of Koch Industries, Inc.

[3] Seller parties having small producer certificates are listed in Appendix B.

[4] CIG's Form No. 2 (1973) indicates that (a) 23,173,971 Mcf of gas were purchased in 1973 from suppliers in Colorado; (b) total gas purchased by CIG during 1973 amounted to 299,274,156 Mcf; (c) 266,399,861 Mcf were sold in 1973 in Colorado markets; and (d) the company produced 154,915,524 Mcf during 1973.

Joseph M. Larkin Estate
La Tourrette & Co.
Paul T. Lengyel
Lincoln Industries, Inc.
Olivia G. Lincoln
Graeme K. MacDonald
Alex G. McKenna
Phillip C. McKenna
Marjorie S. McKenna
McKnab Production Company, Inc.
Robert E. McMath Estate
Grace R. McMath Estate
J. A. McRae
McRae Oil Corporation
Machii-Ross Petroleum Co.
Mid-Continent Supply Company
Mid-West Industries Corporation
Midwest Oil Corporation
Mobil Oil Corporation
Monsanto Company
John W. Myers
Natol Petroleum Corporation
Howard T. Owens
Petroleum, Inc.
Point Corporation
C. Ray Robinson
Harold Rolley
Marrion Rolley
J. T. Ross
Russell Engineering Corporation
Frederick W. Shick
Donald G. Siegel
Sadie F. Simmons Estate
South & Patton, Inc.
Sun Oil Company
Texas Oil & Gas Corporation
Texas Pacific Oil Company
Paul H. Umbach
Union Oil Company of California
Union Texas Petroleum, a Division of Allied Chemical Corporation
Vallery Corporation
Vessels Gas Processing Company
James B. Wallace
Warren Petroleum Company, a Division of Gulf Oil Corporation
XO Exploration, Inc.

APPENDIX B—SELLER PARTIES HAVING SMALL PRODUCER CERTIFICATES

Arapaho Petroleum, Inc. CS74-331
J.H. Bander CS72-498
Cardinal Petroleum Company CS72-430
Comet Petroleum Corporation CS71-881
Patrick A. Doheny CS72-951
Falcon Seaboard Inc. CS72-503
National Cooperative Refinery Association CS69-32
Petro-Lewis Corporation CS72-204
Piper Petroleum Company CS71-1101
Ryan Oil Company CS72-485
Service Drilling Company CS71-144
United States Smelting, Refining and Mining Company CS67-85
Thomas G. Vessels CS75-226

[FR Doc.75-12204 Filed 5-8-75;8:45 am]

[Docket No. CP73-302]

COLUMBIA GAS TRANSMISSION CORP. AND CRAWFORD STORAGE FIELD PROJECT

Availability of Final Environmental Impact Statement

APRIL 28, 1975.

Notice is hereby given in the above docket, that on May 9, 1975, as required by § 2.82(b) of Commission Order No. 415-C, a Final Environmental Impact Statement prepared by the staff of the Federal Power Commission was made available. This final statement deals with the application filed by Columbia Gas Transmission Corporation in Docket No. CP73-302 for a certificate of public convenience and necessity under section 7 (c) of the Natural Gas Act requesting authorization for the development of a proposed underground gas storage field near Lancaster, Ohio. The proposal would include the drilling of 230 injection withdrawal wells, construction of 137.0 miles of pipeline, and other miscellaneous appurtenant facilities.

This final statement has been circulated to Federal, State and local agencies, and has been placed in the public files of the Commission, and is available for public inspection both in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426 and at its regional office located at 26 Federal Plaza, 22nd Floor, New York, New York 10007. Copies are available in limited quantities from the Federal Power Commission's Office of Public Information, Washington, D.C. 20426.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12197 Filed 5-8-75;8:45 am]

[Docket Nos. RP74-90, RP73-107 and RP72-157, PGA75-7]

CONSOLIDATED GAS SUPPLY CORP.

Order Accepting Filing Pursuant to PGA Clause, Establishing Procedures, Permitting Intervention and Consolidating Proceedings

MAY 1, 1975.

On March 18, 1975, Consolidated Gas Supply Corporation (Consolidated) tendered for filing revised tariff sheets [1] pursuant to section 12 (Purchased Gas Adjustment (PGA) Clause) of the General Terms and Conditions of Consolidated's FPC Gas Tariff, Second Revised Volume No. 1. Consolidated's March 18, 1975, filing reflects (1) a $2.6 million increase in the cost of gas purchased from producer suppliers and (2) a 1.42¢ surcharge credit to return overcharges and refunds totalling approximately $3.2 million accumulated in the Consolidated unrecovered purchased gas account during the period August, 1974, through January, 1975. Consolidated requests waiver of the Commission's regulations in order to permit an effective date of May 1, 1975.

Consolidated's March 18, 1975, filing was noticed on March 24, 1975, with comments, protests and petitions to intervene due on or before April 7, 1975. On April 7, 1975, Peoples Natural Gas Company (Peoples) filed a petition to intervene in the proceeding.

Our review of Consolidated's March 18, 1975, filing indicates that we should grant waiver of our notice requirements and permit Consolidated's March 18, 1975, filing to become effective May 1, 1975, as requested. In this regard we note that Consolidated's March 18, 1975, filing presents a schedule of gas purchases which includes purchases from small producers under one contract at a price of 79¢ per Mcf and under six contracts at a price of 75¢ per Mcf. Both price levels are in excess of the national rate level established by Opinion No. 699-H. Consolidated's March 18, 1975, filing has not shown these small producer purchases to be just and reasonable and they may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, we shall enter into an investigation under section 5 of the Natural Gas Act to determine the justness and reasonableness of these small producer purchases. With regard to the question of these small producer purchases, we note that the Supreme Court has remanded the small producer rulemaking in order for the Commission to enunciate the standards in determining the justness and reasonableness for small producer purchases.[2] We believe, therefore, that it would be premature to establish a procedural schedule in this docket at this time. However, we will permit the intervention of Peoples at this time.

The Commission finds: (1) Good cause to accept Consolidated's March 18, 1975, filing, effective May 1, 1975, as proposed.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act that the Commission enter upon an investigation under Section 5 of the Natural Gas Act concerning the lawfulness of the small producer rates in excess of the rate levels established in Opinion No. 699-H as contained in the March 18, 1975, filing.

(3) Good cause exists to grant waiver of the notice requirements of the Commission's regulations.

(4) Good cause exists to permit the intervention of Peoples.

The Commission orders: (A) Pending an investigation and decision thereon, Consolidated's proposed tariff sheets Second Revised Sheet Nos. 8 and 9 to its FPC Gas Tariff, Second Revised Volume No. 1, tendered March 18, 1975, are hereby accepted for filing to become effective May 1, 1975, as proposed.

(B) The notice requirements of § 154.38 (4)(v) of the Commission's regulations are hereby waived.

(C) Pursuant to the authority of Section 5 of the Natural Gas Act, the Commission's rules of practice and procedure, and the Regulations under the Natural Gas Act, a section 5 investigation shall be held concerning the lawfulness of Consolidated's small producer purchases at rates in excess of the rate levels established in Opinion No. 699-H as contained in Consolidated's March 18, 1975 filing.

(D) The above named party is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission and the procedures set forth in thi order: *Provided, however,* That participation of said intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in its petition to intervene, and Provided, further, the admission of such intervenor shall not be construed as recog-

[1] Second Revised Sheets No. 8 and 9.

[2] "Federal Power Commission v. Texaco, Inc.", *et al.*, Docket Nos. 72-1490 and 72-1491, issued June 10, 1974.

nition by the Commission that it might be aggrieved by any order or orders entered in this proceeding.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12205 Filed 5-8-75;8:45 am]

[Docket No. RP72-6; No. RP75-42-15; No. RP75-42-16]

EL PASO NATURAL GAS CO. ET AL.

Petition for Extraordinary Relief and Consolidation of Proceedings

MAY 2, 1975.

Take notice that on April 24, 1975, Public Service Commission of the State of New Mexico (New Mexico PSC), P.O. Box 2088, Santa Fe, New Mexico 87501, filed in Docket No. RP75-42-16 pursuant to section 5 of the Natural Gas Act and § 2.78 of the Commission's general policy and interpretations (18 CFR 2.78) a petition, on behalf of all consumers in the State of New Mexico who utilize natural gas to fuel agricultural irrigation pumping units and who are not otherwise represented, for extraordinary relief from the gas curtailment plan of El Paso Natural Gas Company (El Paso), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

In Opinion No. 697-A, issued December 19, 1974, the Commission changed the classification of gas utilized to fuel irrigation pumps from Priority 2 to Priority 3 for El Paso's curtailment purposes. New Mexico PSC seeks on behalf of the aforementioned New Mexico consumers extraordinary relief from the effects of the reclassification, while, New Mexico PSC states, in another motion before the Commission it contests the validity of such reclassification. The petition shows that the specific amounts of gas requested to be exempted from curtailment represent, in the aggregate, approximately 80 Mcf of gas per day during the summer peak period deliverable to Jal Gas Company, Inc., the City of Deming, New Mexico, the City of Socorro, New Mexico, and the Capitan-Carrizozo Natural Gas Association. New Mexico PSC requests that the relief granted be permanent.

New Mexico PSC states that the above-named resale customers, and, in turn, all of the end-use customers supplied by them, receive their total supply of gas from El Paso and that there is no source of natural gas available to irrigation end-users other than El Paso. The petition indicates that the irrigation end-users have no alternate fuel capacity and that neither storage facilities nor an established supply of transportation network exist. New Mexico PSC claims that the use of alternate fuels would be impractical in view of the widely scattered locations of facilities and their small individual consumption. The petition shows that the current prices per million Btu for natural gas sold to irrigation end-users are less than the only fuel which may be considered as an alternate, high-test gasoline, which is estimated to cost $3.57 per million Btu exclusive of transportation and storage costs. Further, the petition indicates that because the volumes of gas requested are the minimum amounts necessary to maintain viable agricultural operations by the affected end-users, no further conservation steps can be taken to reduce consumption.

Accordingly, New Mexico PSC requests that the volumes of gas specified in the petition be permanently exempted from curtailment by El Paso and that such volumes be supplemental to gas otherwise available through curtailment of lower priorities on a distribution system basis.

By petition filed April 11, 1975, in Docket No. RP75-42-15, Tucson Gas & Electric Company (Tucson) seeks extraordinary relief from the gas curtailment plan of El Paso proposed in the proceeding in Docket No. RP72-6.[1] Pursuant to ordering paragraph (F) of the Commission order issued March 21, 1975, in Docket No. RP72-6 the petitions for extraordinary relief by Tucson and New Mexico PSC in Docket Nos. RP75-42-15 and RP75-42-16, respectively, are hereby consolidated with the proceedings in Docket No. RP72-6.

Any person desiring to be heard or to make any protest with reference to the petition in Docket No. RP75-42-16 should on or before May 19, 1975, 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12206 Filed 5-8-75;8:45 am]

[Docket No. RM75-19]

END USE RATE SCHEDULES

Establishing Participation Procedure

MAY 2, 1975.

Take notice that any person interested in participating in the above-designated proceedings shall file with the Secretary of the Commission on or before May 16, 1975 a notice of intent to participate; participants having a common interest shall combine in a group where practicable and desirable. The Secretary will prepare and publish by May 23, 1975, a list of all participants including groups of participants. Participants shall certify that all other participants or a group's designated representative, have been served with a copy of each filing made hereunder.

The present comment period was fixed by notice issued April 24, 1975, with comments due June 2, 1975, and responding comments due June 23, 1975.

By direction of the Commission.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12217 Filed 5-8-75;8:45 am]

[Docket No. CI75-626]

BILL J. GRAHAM, OPERATOR, ET AL.

Application

MAY 2, 1975.

Take notice that on April 21, 1975, Bill J. Graham, Operator, et al., (Applicant), P.O. Box 5321, Midland, Texas 79701, filed in Docket No. CI75-626 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sale of natural gas in interstate commerce to The Permian Corporation (Permian) from the Susita Field, Crockett County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests permission and approval to abandon the percentage-type sale of gas to Permian from two wells on the subject acreage because, Applicant alleges, the sale is no longer economical for Applicant or Permian. Applicant states that he presently received 68.75 percent of the 17-cent per Mcf price Permian receives from El Paso Natural Gas Company for the subject gas at the tailgate of Permian's Todd Plant (or 11.68 cents per Mcf of gas). Applicant claims that he must pay royalties to the lessor, University of Texas, of 16.667 cents per Mcf of gas resulting in a net loss to Applicant of 4.98 cents per Mcf of gas. Applicant claims to have experienced losses from his operations of $373 in January 1975 and $636 in February 1975 and anticipates further losses in March 1975. Applicant states that he has reason to believe that the price of the gas sold from Permian to El Paso will increase to 25 cents per Mcf, at which rate Applicant would net 0.518 cent per Mcf for the subject gas.

Applicant claims that his production revenues do not justify certain expenses that are necessary to continue production from the subject wells. To prevent impairment to Permian's compressor caused by liquids in the subject gas Applicant states that he would have to install separation equipment at the two wells at an estimated cost of $9,000. Further, to remove fluid which has been accumulating in one of the two wells Applicant states that he must install artificial lift equipment at an estimated

[1] Notice of the petiiton was issued April 18, 1975, and was published in the FEDERAL REGISTER on -------- (40 FR-------).

cost of $10,000 plus a monthly maintenance cost of $350.

Applicant also claims that due to corrosion of his gas line he estimates that 10 percent of the subject gas is being lost through leakage. In addition, Applicant alleges that he pays one half of Permian's rental charges (or $450 per month) for a certain compressor plus fuel cost of 17 cents per Mcf to operate the compressor. Applicant claims that the royalty owners state that they will no longer pay their portion of the compressor rental charges amounting to $83 per month.

The application also indicates that Permian will be better served economically by the proposed abandonment. Applicant states that Permian has lost money ever since it installed the aforesaid compressor because Permian receives only 17 cents per Mcf of compressor fuel gas yet must pay for maintenance of a compressor to increase the pressure of gas received from 50 psi to 700 psi. Furthermore, Applicant states that since the gas from the subject wells is so dry as to spoil the other gas processed in Permian's plant, Permian must operate another compressor to deliver the subject gas to El Paso's line.

Applicant states that he estimates remaining reserves from the subject wells to be 200,000 Mcf of gas. Applicant claims that it could sell such reserves to a local market at a profit because he would not have the aforementioned expenditures.

Applicant states that after advising Permian that he "did not wish to lose money any longer" Permian removed the aforementioned compressor and severed the connection between Applicant and Permian. Applicant alleges that the aforementioned expenditures plus the cost of replacing the gas line necessitate that Applicant receive $85,000 for 160,000 Mcf of gas (Applicant's share of estimated remaining reserves) in the next 3 years to break even.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1975, 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 Commisison on its own review of the matter finds that permission and approval for the proposed abandonment are 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12207 Filed 5-8-75;8:45 am]

[Docket Nos. RP73-14 RP73-102, PGA79-3 and AP75-3].

MICHIGAN WISCONSIN PIPE LINE CO.

Proposed Rate Increase, Granting Interventions, Providing for Hearing and Establishing Procedures

APRIL 30, 1975.

On March 13, 1975, Michigan Wisconsin Pipe Line Company (Mich-Wis) tendered for filing a revision to its tariff [1] which reflects 1) a PGA increase to track increased gas costs of approximately $33.4 million and to recoup nearly $31 million which has accumulated in the deferred account, and 2) an advance payment increase to track the impact of approximately $2 million of advance payments in the lower 48 states and carrying charges of over $6 million paid to Exxon Company related to exploration and development in the Prudhoe Bay Field, Alaska. Mich-Wis also submitted alternate sheet [2] which eliminate the impact of both the carrying charges paid Exxon and the small producer purchases in excess of the national rate established by Commission Opinion No. 699-H. Mich-Wis requests that the Commission's regulations be waived to permit its tendered rate increase be placed into effect as of May 1, 1975, and requests further that should the Commission not accept the higher rates effective May 1, the alternate sheet should be accepted as of such date and the higher rates be suspended for one day.

An examination of Mich Wis' filing indicates that the PGA increases are primarily the result of the impact of supplier increases pursuant to Opinion No. 699-H. Such PGA increases have been computed in accordance with the applicable tariff provisions and the terms of the settlement agreement at Docket No. RP73-102 which we approved by order issued June 26, 1974. However our examination of the advance payment portion of Mich-Wis' filing indicates that seven advance payments applicable to the lower 48 states may not be reasonable and appropriate for rate base treatment as prescribed by Order No. 499.[3] Pursuant to the terms of the settlement at Docket No. RP73-102, that portion of the rate adjustment relating to these seven agreements will be placed into effect subject to refund, and a hearing held to investigate into whether these advances comply with the standards established by this Commission.

In addition to those advances discussed above, Mich Wis' filing reflects as a direct charge to its cost of service, over $6 million in carrying charges paid, and to be paid, to Exxon Company relating to exploration and development in the "Prudhoe Oil Pool", Alaska. Mich-Wis proposes to include these carrying charges in its cost of service via the advance payment tracking provisions of its settlement agreement at Docket No. RP73-102. Article IV of that settlement provides that the definition of "advance payments" shall be as provided in the Commission's outstanding advance payment orders or in any order which the Commission may issue which modifies, supersedes or in any manner changes the definition of "advance payments" for gas. Under Mich-Wis' agreement with Exxon, Mich-Wis will make payments to Exxon which approximate the interest expense that would have been incurred by Exxon had it borrowed the money needed to cover exploration and development costs incurred and to be incurred, in the Prudhoe Oil Pool. The interest expense is to be calculated using the annual Aaa corporate bond yield average reported in Moody's Bond Survey. The payments made pursuant to this agreement do not comport with the definition of "advance payment" which has been promulgated by this Commission and, therefore, should not be permitted to be tracked via the provisions set forth within the Mich-Wis settlement. We shall therefore reject this portion of Mich-Wis' filing and require the company to amend its filing as provided in the ordering paragraphs below.

With regard to the question of small producer purchases, we note that the Supreme Court has recently remanded the small independent producer rulemaking in order for the Commission to enunciate the standards in determining the justness and reasonableness of the prices for small producer purchases.[4] We believe, therefore, that it would be premature to establish a hearing schedule in this docket at this time.

Mich-Wis' filing of March 13, 1975, was noticed on March 19, 1975, with comments, protests, and petitions to intervene due on or before April 8, 1975. A timely petition by Wisconsin Gas Company was received, together with a petition of Exxon for leave to intervene out of time.

The Commission finds: (1) Good cause exists to accept as herein conditioned Alternate Ninth Revised Sheet No. 27F to Michigan Wisconsin's FPC Gas Tariff, Second Revised Volume No. 1 to be placed into effect as of May 1, 1975 and to accept Michigan Wisconsin's Ninth Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1, to be placed into effect as of May 2,

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[1] Ninth Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1.

[2] Alternate Ninth Revised Sheet No. 27F to FPC Gas Tarriff, Second Revised Volume No. 1.

[3] See Appendix A.

1975, subject to the elimination of carrying charges for exploration and development in Alaska.

(2) Good cause exists to institute an investigation into the propriety of including in rate base those advances set forth at Appendix A.

(3) Good cause exists to reject that portion of Mich-Wis' filing which relates to carrying charge payments to Exxon.

(4) Good cause exists to permit the intervention of the above-named petitioners.

The Commission orders: (A) Pending a hearing and a decision thereon, the proposed changes in rates and charges tendered in Mich-Wis' Alternate Ninth Revised Sheet No. 27F, Second Revised Volume No. 1; on March 13, 1975, is accepted for filing to be placed into effect as of May 1, 1975; or until such time as they are made effective in the manner provided by the Natural Gas Act and Ninth Revised Sheet No. 27F, Second Revised Volume No. 1 is accepted for filing to be placed into effect as of May 2, 1975, as conditoned below.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, and the Commission's rules of practice and procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held on August 10, 1975 at 10 a.m., in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, concerning the lawfulness of including within rate base those advances set forth at Appendix A. That portion associated with small producer purchases in excess of rate levels prescribed in Opinion No. 699–H is to be placed into effect subject to refund, pending further Commission order at this docket.

(C) On or before July 1, 1975, the Commission Staff shall serve its prepared testimony and exhibits. Any prepared testimony and exhibits of the intervening parties shall be served on or before July 15, 1975. Any rebuttal evidence by Mich-Wis shall be served on or before July 29, 1975.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5 (d)), shall preside at the hearing in this proceeding, shall prescribe revelant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in the Commission's rules of practice and procedure.

(E) The above named petitioners are hereby 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 the rights and interests specifically set forth in the respective petition to intervene; and *Provided, further,* That the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(F) That portion of Mich-Wis' rate increase relating to payments made to Exxon for exploration and development in Alaska is hereby rejected.

(G) The Secretary of the Commission shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX A—MICHIGAN WISCONSIN PIPE LINE CO.—ADVANCES TO BE SET FOR HEARING

Producer	Agreement date	Estimated balance, May 1, 1975
May Petroleum, Inc.	Nov. 1, 1974	$282,860
An-Son Corp.	Nov. 22, 1974	49,603
Howard L. Kennedy	Dec. 6, 1974	116,667
John F. Mitchell	do	58,333
Wm. B. Collister	do	350,000
Helmerich & Payne, Inc.	Dec. 20, 1974	231,370
Occidental Petroleum Corp.	Dec. 31, 1974	297,500

[FR Doc.75–12037 Filed 5–7–75;8:45 am]

[Rate Schedule No. 296]

PENNZOIL PRODUCING CO.

Rate Change Filing Pursuant to Commission's Opinion No. 699–H

MAY 2, 1975.

Take notice that the producer listed in the Appendix attached hereto has filed a proposed increased rate to the applicable new gas national ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 699–H, issued December 4, 1974.

The information relevant to this sale is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filing should on or before May 12, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petiiton 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.

MARY B. KIDD,
Acting Secretary.

APPENDIX

Filing date	Producer	Rate schedule No.	Buyer	Area
Apr. 18, 1975	Pennzoil Producing Co., 900 Southwest Tower, Houston, Tex. 77002.	296	United Gas Pipe Line Co.	Other southwest.

[FR Doc.75–12221 Filed 5–8–75;8:45 am]

[Docket No. RI75–134]

PERRY R. BASS (OPERATOR), ET AL.

Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

MAY 1, 1975.

Respondent has filed a proposed change in rate and charge for the jurisdictional sale of natural gas, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the Regulations pertaining thereto [18 CFR, Chapter I], and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column. This supplement shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[1] "Federal Power Commission v. Texaco, Inc., *et al.*, Docket Nos. 72–1490 and 72–1491, Opinion issued June 10, 1974.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI75-134..	Perry R. Bass (Operator) et al.	6	27	Transwestern Pipeline Co. (Texas-Permian Basin).	$2,640	4- 3-75	.....	10- 4-75	[1] [2] 30.84	[1] [2] 40.94	RI74-210.

* Unless otherwise stated, the pressure base is 14.65 lb/in² a.
[1] Includes 1.5 cents per Mcf for gathering.
[2] Unless otherwise stated, the rate shown is the total rate, inclusive of any applicable Btu adjustment and tax.

The proposed rate increase of Perry R. Bass exceeds the applicable area ceiling prescribed in Opinion No. 662 and is suspended for five months.

[FR Doc.75-12219 Filed 5-8-75;8:45 am]

[Docket No. E-8492; Project No. 1835]

SIERRA CLUB, ET AL.

Extension of Time

APRIL 23, 1975.

Nebraska Public Power District (NPPD) by motion filed April 14, 1975, requested an extension of time to April 21, 1975, within which to file NPPD's answer to Sierra Club's Motion to Modify Cease and Desist Order to Enjoin Construction of a Steam Electric Plant Contiguous to the Project Boundary of the Sutherland Reservoir or in the Alternative to Modify the Project Boundary to Include the Land Occupied by the Plant filed in these consolidated proceedings on March 26, 1975. On April 21, 1975, NPPD did file its answer to this motion.

For good cause shown the requested extension of time is granted. This of course makes NPPD's answer of April 21, 1975, timely.

In view of the extension of time and the answer filed on April 21, 1975, the effect of § 1.12(e) of the Commission rules and regulations (18 CFR 1.12(e) (1974)) is hereby stayed.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-12208 Filed 5-8-75;8:45 am]

[Docket No. RP72-91 (Phase II), et al. (AP5-16-74)]

SOUTHERN NATURAL GAS CO.

Further Postponement of Hearing

MAY 2, 1975.

On April 14, 1975, Southern National Gas Company filed a motion for reconsideration of the notice issued April 8, 1975, in the above-designated matter.

Notice is hereby given that the hearing date in the above matter is postponed until July 15, 1975, at 10 a.m. (e.d.t.).

By direction of the Commission.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12209 Filed 5-8-75;8:45 am]

[Docket No. CP75-302]

ELIZABETH, LOUISIANA, AND TENNESSEE GAS PIPELINE CO.

Application and Request for Extension of Emergency Service

APRIL 17, 1975.

Take notice that on April 14, 1975, the Town of Elizabeth, Louisiana (Applicant), P.O. Drawer C.R., Oakdale, Louisiana 71463, filed in Docket No. CP75-302 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Respondent), to sell and deliver to Applicant for a period of one year, or until alternative intrastate sources of natural gas can be secured (whichever period is shorter), the volume of natural gas estimated to be required for resale and distribution by Applicant to its residents, small commercial establishments, and agricultural users. Additionally, Applicant requests that authorization for the emergency sale currently being made to it by Respondent be extended, pending the final disposition of the subject application, to avoid complete termination of service and irreparable injury to high priority users. Applicant's proposals are more fully set forth in the subject application which is on file with the Commission and open to public inspection.

Applicant states that it sells and distributes natural gas to residential and small commercial consumers in the Town and to four small agricultural users located outside the Town limits for use in irrigating rice fields and in drying rice. Further, Applicant states that since December 16, 1974, following the depletion of its intrastate source of supply, it has been receiving emergency gas from Respondent and that these emergency deliveries are to terminate April 18, 1975, unless extended by the Commission. Applicant indicates that additional time is required to secure other sources of supply and that on-going efforts to secure same will be successful shortly; and for that reason, service from Respondent is requested only until the end of one year or until another source is obtained, whichever occurs first.

Applicant asserts that discussions with at least one of three potential intrastate suppliers will soon be successfully concluded and that once a supply is obtained, transportation arrangements must then be negotiated with an interstate pipeline to carry the gas to Applicant. Applicant submits that both supply and transportation arrangements can be quickly concluded and that, if Commission transportation authority is granted, the deliveries from Respondent requested herein will not be required for an extended period.

Applicant states that no new facilities will be required for the subject proposals.

The application indicates that estimated peak day requirements for the Town are 400 Mcf and for the farmers 300 Mcf and that periods of peak usage by the Town and the farmers are not expected to coincide and that the expected combined peak day requirement is, therefore, approximately 500 Mcf. Applicant estimates future annual requirements of the system will be approximately 50,000 Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 8, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 156.9). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-12210 Filed 5-8-75;8:45 am]

[Docket Nos. RP75-3 and RP74-48]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Postponement of Prehearing Conference

MAY 2, 1975.

Take notice that due to a schedule conflict of the Presiding Administrative Law Judge, the prehearing conference set for

May 6, 1975, by notice issued April 25, 1975, is postponed until May 13, 1975, at 10 a.m. (e.d.t.).

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12211 Filed 5-8-75;8:45 am]

[Docket No. CP75-312]

UNION LIGHT, HEAT AND POWER CO.

Application

MAY 2, 1975.

Take notice that on April 22, 1975, The Union Light, Heat and Power Company (Applicant), 107 Brent Spence Square, Covington, Kentucky 41001, filed in Docket No. CP75-312 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a liquefied natural gas plant, storage tank and associated equipment in Kenton and Grant Counties, Kentucky, and a liquefied natural gas (LNG) service to the Cincinnati Gas & Electric Company (CG&EC), all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant states that it operates an LNG plant in Erlanger, Kenton County, Kentucky, and LNG storage facilities in Grant County, Kentucky. By authorization of the order issued by the Commission in Docket No. CP70-212 on November 27, 1970, and order of the Public Service Commission of Kentucky, Applicant states, it purchased and erected the 1,000 Mcf per day capacity LNG plant and a 160,000 gallon cryogenic storage tank and associated equipment, and since December 1, 1970, has been providing FOB plant, interstate LNG service to CG&EC and to its own distribution retail customers around the communities of Crittenden and Dry Ridge, Kentucky.

Applicant further states that at the time the LNG facilities were constructed the plant had a capacity of 1,000 Mcf per day and was expected to operate approximately 300 days per year. According to Applicant, however, due to the present and the foreseeable future gas supply situation, Applicant is unable to supply any new markets and is and will be operating the plant at approximately 25 percent of capacity. Therefore, Applicant requests Commission approval to abandon the facilities and terminate operations, since it is alleged very uneconomical to operate the plant at this level.

Applicant states that it will install natural gas feeder lines to supply the two remote distribution systems in Kentucky which are presently being supplied with vaporized LNG and that CG&EC, to whom LNG service will be terminated, has informed Applicant that it is constructing gas feeder facilities to render a replacement gas service to the customers affected. Applicant has agreed with CG&EC that it will not terminate the LNG service until the replacement gas service feeder lines are in operation.

Applicant further cites deterioration, which could not reasonably have been foreseen, in the physical condition of the LNG plant, in particular the process gas piping, heat exchanger, and associated equipment. Applicant states that continued plant reliability would necessitate expensive repairs and replacements.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petiton to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12214 Filed 5-8-75;8:45 am]

[Docket No. E-9395]

VIRGINIA ELECTRIC AND POWER CO.

Contract Supplement

MAY 2, 1975.

Take notice that on April 23, 1975, Virginia Electric and Power Company (Virginia) tendered for filing a Contract Supplement dated April 1, 1975, to the Agreement designated as Virginia's Rate Schedule FPC No. 88-18 between Virginia and Albemarle Electric Membership Corporation (Albemarle).

Said supplement requests Commission authorization for connection of Albemarle's new Delivery Point (South Mills) located on and east of Route 343 and 0.3 mile east of the intersection of Route 17 and Route 343 in South Mills, Camden County, North Carolina.

The company requests waiver of the requirement to file billing data since it states that there will be no significant increase in the unit cost of electricity to Albemarle.

Virginia requests an effective date as that of the date of connection of facilities which is expected to occur sometime in June, 1975.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12212 Filed 5-8-75;8:45 am]

[Docket No. E-9394]

VIRGINIA ELECTRIC AND POWER CO.

Contract Supplement

MAY 2, 1975.

Take notice that on April 23, 1975, Virginia Electric and Power Company (Virginia) tendered for filing a contact supplement dated April 2, 1975, to the Agreement designated as Virginia's Rate Schedule FPC No. 94-26 between Virginia and Central Virginia Electric Cooperative (Central Virginia).

Said supplement requests Commission authorization for connection of Central Virginia's Doubleday-Madison Run Delivery Point, located approximately 0.4 mile east of Highway No. 15, 5 miles south of Orange and 4 miles north of Gordonsville in Orange County, Virginia.

The company requests waiver of the Regulations requiring the filing of billing data since, it states, that there will be no significant increase in the unit cost of electricity to Central Virginia as a result of the connection of delivery point facilities.

Virginia requests an effective date as that of the date of connection of facilities which is March 20, 1975, and requests waiver of those regulations necessary to allow such effective date.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1975, 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 protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to

make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12213 Filed 5-8-75;8:45 am]

[Docket No. E-9405]

WISCONSIN POWER AND LIGHT CO.

Filing of New Service Schedule A Agreements

MAY 2, 1975.

Take Notice that on April 28, 1975, Wisconsin Power and Light Company (WPL) tendered for filing a Service Schedule A (Revision Dated April 1, 1975) to the Power Pool Agreement dated July 26, 1973, between Wisconsin Power and Light Company (WPL), Wisconsin Public Service Corporation (WPS), and Madison Gas and Electric Company (MGE). Also included in the filing was a Service Schedule A (Revision Dated April 1, 1975) to the Master Interconnection Agreement dated January 5, 1966, between WPL and WPS and a Service Schedule A (Revision Dated April 1, 1975) to the Interconnection Agreement dated February 1, 1965, between WPS and MGE.

The provisions of these revised Service Schedules are to be effective as of the commercial operation date of Columbia I Unit which is presently estimated to be May 15, 1975.

The Service Schedules set the Participation Capacity Rate at $2.14 per KW per month in accordance with the procedures set forth in the basis Agreements on file with the Federal Power Commission.

WPL states that signed copies of each Service Schedule have been provided to the respective parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Paragraph 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 May 19, 1975. 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-12216 Filed 5-8-75;8:45 am]

FEDERAL TRADE COMMISSION

[Docket No. 8909]

XEROX CORP.

Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 75-11172, appearing on page 18601 of the issue of Tuesday, April 29, 1975, the following correction should be made on page 18604:

The last four (4) lines in the middle column, and the first two (2) lines of the third column should be deleted, and replaced by the words "the Commission a copy thereof in".

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (75-32)]

NASA AD HOC ADVISORY SUBCOMMITTEE TO EVALUATE PROPOSALS FOR PARTICIPATION IN THE SCIENTIFIC DEFINITION OF EXPLORER-CLASS PAYLOADS

Meeting

One section of the NASA Ad Hoc Advisory Subcommittee of the Space Science Steering Committee to evaluate proposals for participation in the scientific definition of Explorer-class payloads will meet at NASA Headquarters in Washington, D.C. during June. On June 4, 5, and 6, 1975, Subcommittee Section C (X-rays) will meet in Room 6004 of Federal Office Building 6 (400 Maryland Ave., SW.) from 8:30 A.M. to 4:30 P.M. The meetings of other subcommittee sections will be advertised in the FEDERAL REGISTER and convened in the near future.

The Subcommittee sessions will discuss, evaluate and categorize proposals for participation on Mission Definition Teams which will define Explorer-class X-ray payloads. Throughout the Subcommittee sessions, the professional qualifications of the proposers and their potential scientific contributions to the Mission Definition Teams will be candidly discussed and appraised. Discussion of these matters in a public session would invade the privacy of the proposers and the other individuals involved.

The meeting will be closed to members of the public. Since the Subcommittee session will be concerned throughout with matters listed in 5 USC 552(b)(6), it is hereby determined that the session will be closed to the public.

For further information please contact Dr. Albert G. Opp at 202/755-8493.

DUWARD L. CROW,
Assistant Administrator for DOD and Interagency Affairs.

MAY 5, 1975.

[FR Doc.75-12240 Filed 5-8-75;8:45 am]

NATIONAL ENDOWMENT FOR THE ARTS AND HUMANITIES

ARCHITECTURE AND ENVIRONMENTAL ARTS PROGRAM

Grant Guidelines

The following are guidelines for grants made under the Architecture and Environmental Arts Program of the National Endowment for the Arts, an independent agency of the Federal government which makes grants to organizations and individuals concerned with the arts throughout the United States.

Notice is hereby given that the deadline dates for this program are:

June 2, 1975 and January 2, 1976: Public Education and Awareness.
June 2, 1975 and January 2, 1976: Academic and Professional Research.
June 2, 1975: Assistance to State Arts Agencies.
November 3, 1975: National Theme: "Cityscale".
November 3, 1975: American Architectural Heritage.
November 3, 1975: Cultural Facilities.
January 2, 1976: Services to the Field.
January 2, 1976: Design Fellowships, General Programs—no deadline (consult guidelines for more information)

Interested persons should contact Bill Lacy, Director, Architecture and Environmental Arts Program, National Endowment for the Arts, Washington, D.C. 20506, (202) 634-4276 for further information and application forms. Only the Architecture and Environmental Arts Program office may distribute application forms.

Signed at Washington, D.C., on April 30, 1975.

FANNIE TAYLOR,
Director, Program Information.

FISCAL YEAR 1976

ARCHITECTURE + ENVIRONMENTAL ARTS PROGRAM: BACKGROUND

Program scope. The National Endowment for the Arts, an independent Federal agency, was established in 1965. The major goals of the Endowment are to make the arts more widely available to Americans, to strengthen cultural organizations, to preserve our rich cultural heritage for present and future generations, and to encourage the creative development of our nation's finest talent. The Architecture + Environmental Arts Program constitutes one of twelve Endowment program areas.

The Architecture + Environmental Arts Program is concerned primarily with the improvement of the visible characteristics of our man-made surroundings. Thus the scope of the program is subject to broad interpretation. It is perhaps useful to associate the program's activity with the design professions, typically: Architecture, Landscape Architecture, Urban Design, City and Regional Planning, Interior Design, and Industrial Design. The program attempts to encourage invention and innovation in design and to bring the very best design into the experience of every citizen.

Architecture + Environmental Arts grants are available for research, program development, creative design studies, and improvement of public participation and awareness.

The National Council on the Arts has recommended and the Endowment has adopted a policy not to support the acquisition of real property, capital construction, or the modification of existing structures. No grant requests will be considered for these purposes.

IMPORTANT INFORMATION

General requirements—Eligibility. Grants may be awarded to individuals "of exceptional talent," and to universities, state and local government entities, or other nonprofit, tax exempt organizations. Professional firms are not eligible for grants, but may participate under contract to a qualified applicant.

Number of submissions. Only one application may be submitted by each "applicant" or "applicant organization" in each grant category within a fiscal year, except universities which may submit one application for each of its eligible units.

Grants to individuals. These grants are available for amounts up to $10,000 and require no matching funds. By statute, Endowment grants may be awarded only to individuals "of exceptional talent." Grants are awarded only to citizens or permanent residents of the United States. Applications for grants to individuals must be submitted in the name of one person. Although modest use of consultants is permitted if essential for successful completion, it is intended that the individual applying carry out most of the work under any grant which may be awarded. Applications involving substantial participation of more than one person or which includes an organization must be submitted by a qualified organization and require matching funds.

Grants to Organizations. Grants to universities, state and local government entities, or other organizations extend to a maximum of $50,000. The applicant organization must provide an amount at least equal to the amount requested from the Endowment in matching funds. This matching amount must be expended only on the specific project for which the grant is made, as budgeted, and entirely within the grant period specified in the grant.

In the case of university departments, applications must be submitted under the signature of the appropriate university authorizing official. By statute, Endowment support is limited to organizations meeting the following criteria:

(a) Only those organizations which meet the requirements of Title VI of the Civil Rights Act of 1964 for the duration of any project supported in whole or in part by the National Endowment for the Arts.

(b) Only those organizations in which no part of net earnings inures to the benefit of a private stockholder or individual and to which donations are allowable as a charitable contribution under section 170(c) of the Internal Revenue Code of 1954, as amended. A copy of an Internal Revenue Service Determination letter for tax-exempt status must be submitted with each application.

(c) Only those organizations which compensate all professional performers, related or supporting professional personnel, laborers, and mechanics at the equivalent of the prevailing minimum compensation level on the basis of negotiated agreements which would satisfy the requirements of Parts 3, 5 and 505 of Title 29 of the Code of Federal Regulations for the duration of any project assisted in whole or in part by the National Endowment for the Arts.

Duration of Grants. Grants are awarded for a specific period of time, rarely exceeding one year in length.

Budget. Grants are generally awarded in amounts less than the maximum listed for each grant category. Applicants are urged to prepare realistic budgets and request the minimum Endowment assistance needed to achieve the purpose of the project.

Location. Generally all projects supported by the Endowment must be performed within the fifty states, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands. Full justification in terms of benefits accruing to the United States must accompany any request for an exception.

Selection Procedures. Architecture + Environmental Arts Staff review all applications and refer them to an advisory committee composed of persons who are outstanding representatives of the design and planning fields. The recommendations of this committee are submitted to the National Council on the Arts, an advisory group of twenty-six persons appointed by the President of the United States. The National Council reviews and makes recommendation on applications to the Chairman of the National Endowment for the Arts. Following this, applicants are notified of approval or rejection in writing.

Notification. Applicants are to understand that the grant process requires more than six months to complete and should plan their projects accordingly. An estimate of the announcement date is given for each grant category in the table of application deadlines. Applicants are notified of rejection or approval of proposed projects in writing. Applicants are requested not to seek information about the status of their applications prior to this notification.

Evaluation Criteria. Preference will be given applications in any grant category which meet the following criteria:

Clear response to a public need.

Assurance of favorable impact on the community in terms of aesthetic and economic benefit.

Demonstration of broad community, academic, or professional endorsement.

Evidence that objectives can be achieved within the framework of realistic methodology, budget, and time.

Participation of persons whose professional qualifications are clearly well suited to the successful achievement of project goals.

Provision of matching funds in the form of cash rather than services, overhead, et cetera.

Minimum emphasis on equipment, travel, or, in the case of manuscripts, those costs which might be borne by a publisher.

Assurance that the efforts of others are not being duplicated by the proposed project.

Treasury Fund Grants. When the National Endowment for the Arts was created, Congress included a unique provision in its enabling legislation. This provision allows the Endowment to work in partnership with private and other non-federal sources of funding for the arts. Designed to encourage and stimulate increased private funding for the arts, the Treasury Fund allows non-federal contributors to join the Endowment in the grant-making process, generally for projects supported by the Endowment under the established program guidelines.

The Endowment encourages use of the Treasury Fund method as an especially effective way of combining federal and private support, and as an encouragement to all potential donors, particularly those representing new or substantially increased sources of funds.

The Endowment may accept gifts in the form of money and other property. Bequests may be made to the Endowment as well. Donations to the Endowment are generally deductible for federal income, state, and gift tax purposes.

Gifts may be made to the Endowment for the support of a nonprofit, tax-exempt, cultural organization which has been notified that the Endowment intends to award it a grant under its regular program guidelines—organizations such as a museum, a symphony orchestra, a dance, opera, or theatre company—or for an Endowment program, such as fellowships, touring, conferences, or workshops.

When a restricted gift is received it frees an equal amount from the Treasury Fund, which is then made available to the grantee in accordance with the terms and conditions of the grant.

The Endowment also accepts unrestricted gifts to be used for projects recommended to the Chairman by the National Council on the Arts.

How a Treasury Fund Grant is Arranged. Those interested in giving for a specific purpose should note the step by step process described below.

(1) If a project is eligible for consideration under the Architecture + Environmental Arts Program guidelines the applicant submits to the Endowment a formal application, which may include a list of potential donors.

(2) The application is reviewed first by a panel of architects and other designers and then by the National Council on the Arts and is recommended for approval or rejection. Based on these recommendations, the Chairman makes the final determination and notification is sent to the applicant.

(3) If the grant award is approved, the applicant then requests that the donors forward their gifts to the National Endowment for the Arts in the form a gift transmittal letter specifying the amount and restricted purpose of the donation (i.e. the name of the applicant and specific project supported), and date by which payment will be made to the grantee organization (see below).

Handling Procedures. In order to simplify handling procedures for restricted donations which are to be matched by the Treasury Fund, grant recipients will receive payment directly from the donor (in cash or negotiable securities) on all restricted Treasury Fund gifts to the Endowment. Under this method, the following procedures apply:

(1) Gift transmittal letter is received by the Endowment from donor with above specified information.

(2) Upon receipt of payment on the gifts, grantee provides the Endowment with evidence of receipt of such payment as follows:

In the case of individual gifts of less than $5,000, grantee will forward to the Endowment, a list of donor's names, addresses, and amounts received, certified by an official of the organization and notarized.

In the case of individual gifts of $5,000 or more, grantee will forward to the Endowment, within the grant period, a photostatic copy of the instrument of payment, i.e. the check or negotiable securities, with a covering letter.

(3) In cases where benefit proceeds are to be utilized for purposes of the Treasury Fund, evidence, such as benefit announcement circulars, invitations, posters, etc. (which indicate donors had prior knowledge that their contributions would be used for the Treasury Fund) must be retained by grantee as evidence of donors' intent. In these cases, the grantee organization will forward to the Endowment, within the grant period, a notarized letter requesting release of the Treasury matching funds, signed by an appropriate official, certifying that the benefit was held on a specified date, yielded a specified sum for Treasury Fund gift purposes related to the grant in question, and that evidence of the benefit will be retained by grantee organization in its files.

(4) In all cases, donors are to make payment on gifts at least 60 days prior to termination of the grant period, and grantee organizations will provide the Endowment with evidence of receipt of payment on gifts at least 30 days prior to the termination of the grant period.

The Architecture + Environmental Arts Program encourages applicants to apply for Treasury Fund grants when applying for substantial and relatively costly projects.

For further information, contact the Office of General Counsel, National Endowment for the Arts, Washington, D.C. 20506.

Bicentennial Projects. The Endowment recognizes that the arts will play an important role in the celebration of our country's bicentennial. The Endowment welcomes this involvement on the part of artists and cultural organizations. The Endowment has an active interest in participating in these efforts, within funds available to it, and insofar as they are directed to professional creation and presentation of new works, improvement of artistic standards, preservation of our cultural heritage, and an increase of the availability of the arts for all Americans. If funds under these guidelines are sought for projects deemed by the applicant to be related to the bicentennial, a brief description of this relationship should be made in the application.

Accessibility to the Arts for the Handicapped. At a meeting in September 1973, the National Council on the Arts adopted a resolution stating the policy of the National Endowment for the Arts regarding accessibility to the arts for the handicapped.

One of the main goals of the National Endowment for the Arts is to assist in making the arts available to all Americans. The Arts are a right, not a privilege. They are central to what our society is and what it can be. The National Council on the Arts believes very strongly that no citizen should be deprived of the beauty and the insights into the human experience that only the arts can impart.

The National Council on the Arts believes that cultural institutions and individual artists could make a significant contribution to the lives of citizens who are physically handicapped. It therefore urges the National Endowment for the Arts to take a leadership role in advocating special provision for the handicapped in cultural facilities and programs.

The Council notes that the Congress of the United States passed in 1968 (P.L. 90-480) legislation that would require all public buildings constructed, leased or financed in whole or in part by the Federal Government to be accessible to handicapped persons. The Council strongly endorses the intent of this legislation and urges private interests and governments at the state and local levels to take the intent of this legislation into account when building or renovating cultural facilities.

The Council further requests that the National Endowment for the Arts and all of the program areas within the Endowment be mindful of the intent and purposes of this legislation as they formulate their own guidelines and as they review proposals from the field. The Council urges the Endowment to give consideration to all the ways in which the agency can further promote and implement the goal of making cultural facilities and activities accessible to Americans who are physically handicapped.

In view of the National Council on the Arts interest in the accessibility of cultural facilities to the physically handicapped, the Architecture + Environmental Arts Program will continue to develop pilot studies and resource materials pertinent to this field. The primary emphasis of these efforts will be to increase public awareness of the need to eliminate the physical barriers facing the handicapped. In addition, reference materials will aim to provide technical assistance to architects and planners by proposing exemplary models and design solutions for making cultural facilities accessible to all people. These materials will be made available to architects, planners, government officials, arts administrators and arts organizations.

INSTRUCTIONS FOR SUBMISSION OF APPLICATIONS

NOTE: Additional instructions specifically applicable to particular grant categories are included in the description of the grant category.

Inquiries. These should be addressed to the Architecture + Environmental Arts Program, National Endowment for the Arts, Washington, D.C. 20506. Questions related to grant conditions and budgets should be directed to the Grants Office, National Endowment for the Arts, Washington, D.C. 20506.

Application Forms. Application forms may be obtained from the Architecture + Environmental Arts Program, address as shown above. Individual applicants should request form "Individual Grant Application" NEA-2 (Rev.) and applicant organizations should request "Project Grant Application" NEA-3 (Rev.). All state and local government entities including state arts agencies should request "Application for Federal Assistance."

Submission of application. All applications must be submitted on the forms provided in triplicate and addressed as follows: Grants Office, National Endowment for the Arts, Washington, D.C. 20506.

Deadlines for Applications. See the table of deadlines and description of each grant category for specific dates. All applictions must be postmarked no later than the deadline date for the grant category under which category for specific dates. All applications postmarked after the specified deadline will be considered under any circumstances. No exceptions are made. Late applications will be returned.

General application requirements. Applications for grants to individuals must be submitted in the name of one person, even though others may assist. No grants are awarded to individuals for the purpose of hiring consultants to carry out a project.

Applicant organizations include any form of organized participation involving more than one person.

However, where two or more organizations are involved, one single organizational entity must be designated the "applicant organization," which in turn would become the legal recipient of any eventual grant. It is the responsibility of this entity to comply with all Endowment requests and regulations concerning the application, and to inform any co-sponsors or consultants of the status of the application and any eventual grant.

Names and titles must be typed or printed legibly beneath all signatures appearing on an application.

A complete project summary must be contained within the specific space provided on the application form. This summary should be as clear and concise as possible, stating the intent and purposes of the proposal.

Supplementary material, carefully selected to describe the proposed project may accompany an application. One copy is sufficient.

No supplementary material will be returned.

A minimum of three letters of endorsement pertaining to the project purposes and the qualification of participants must be submitted with each application in all programs. These should be forwarded with the application. If these letters are to be submitted independently, then they should be postmarked no later than the program deadline date.

Resumes for the individual applicant, or major participants in organization projects must accompany all applications.

Two copies of the organization's Internal Revenue Service Determination Letter of tax-exempt status must be submitted with each application.

APPLICATION DEADLINE AND GRANT CALENDAR

Grant category	Deadlines	Announcement of rejection or grant award	Do not plan to start before this date
Public education and awareness	June 2, 1975	October 1975	December 1975.
	Jan. 2, 1976	June 1976	August 1976.
Academic and professional research	June 2, 1975	October 1975	December 1975.
	Jan. 2, 1976	June 1976	August 1976.
Assistance to State arts agencies	June 2, 1975	October 1975	December 1975.
National theme—cityscale	Nov. 3, 1975	October 1976	December 1976.
American Architectural Heritage	do	March 1976	May 1976.
Cultural facilities	do	June 1976	August 1976.
Services to the field	Jan. 2, 1976	do	Do.
Design fellowships	do	do	Do.

GRANT CATEGORIES

Public education and awareness. To assist projects which will broaden public design awareness and participation in the resolution of design issues.

The measure of a nation's beauty is a reflection of the attitude of its people. Therefore, the improvement of a country's physical fabric is dependent upon awareness, concern, and participation of its citizens. Many who are not professional designers are confronted daily with decisions which have important design consequences: consumers in their choice of goods and services, clients in working with professional designers, and persons engaged in the building industry, for example.

Therefore, the objective of this program is to assist projects which are directed to these ends: to provide information on design issues; to advance public appreciation of beauty in the man-made world; and to provide assistance for groups or individuals as they seek ways to improve the quality of their surroundings.

Grants in this category will be awarded for preparation of publishable material, films, video-tapes, exhibits, critical journalism, and other public communication devices. Generally, funds will not be granted for work which should be supported by a publisher

Priority will be given to proposals which can identify a specific audience clearly, and a well defined means for broad dissemination. Projects which initiate further action are considered important. Special care will be taken to provide for projects involving groups or communities which have had little previous exposure to good design.

Individual applicants must be fully qualified to carry out the work proposed and are required to give evidence of experience.

Applicant organizations must provide similar information about principal consultants or other persons who may be engaged professionally in the proposed projects.

Deadlines June 2, 1975 and January 2, 1976. Complete applications only are accepted. They may be submitted by either of two deadlines, June 2, 1975 or January 2, 1976. In both cases the application must bear a postmark date no later than the applicable deadline date. Work may not be expected to begin on the project before December 1975

for those submitted in June, or before August 1976 for those submitted in January.

Eligibility. Grants may be awarded to individuals, universities, state and local government entities, and other nonprofit, tax exempt organizations.

Grant limits. Grants to organizations generally do not exceed $20,000, most grants being smaller than this amount. All require matching funds. Grants to individuals will not exceed $10,000 and require no matching funds.

How to apply. See pages 10–11.

Academic and Professional Research. For research projects conducted by professional schools, or other research organizations and groups active in design fields, and qualified individuals who are normally associated with such organizations.

The National Endowment for the Arts, through the program for Academic and Professional Research, provides assistance for exploratory activity in design. Emphasis is placed on design as an aesthetic concern. This program is not intended for projects of a more technical or scientific nature. Since the total amount of money available is relatively small, special attention is given to this distinction.

Projects for the development of new approaches to design which show promise of significant influence on the future quality of our surroundings are given highest priority. Those which seek to extend the state of knowledge in the field, assuming current design approaches, are also given consideration. Proposals in any of the following professional areas are appropriate: architecture, landscape architecture, urban design, city and regional planning, graphic design, interior design, and industrial design.

Deadline June 2, 1975 and January 2, 1976. Complete applications only are accepted. They may be submitted by either of two deadlines, June 2, 1975 or January 2, *1976.* Complete applications only are acbear a postmark date no later than the applicable deadline date. Work may not be expected to begin on the project before December 1975 for those submitted in June, or before August 1976 for those submitted in January.

Eligibility. Grants are available to universities, professional degree granting institutions, and other qualified nonprofit tax exempt organizations. Exceptionally talented individuals in the academic community are eligible for individual grants under this category.

Grant limits. A maximum of $20,000 may be contributed to organization projects, representing a maximum of fifty percent of total project costs. The maximum grant for an individual is $10,000, and bears no requirement for matching funds.

How to apply. See pages 10–11.

Special application instructions. Two aspects of any application are of the utmost importance: that the expected effect of the proposed project in the field of design concerned be explicitly, concisely, and convincingly stated; and that evidence be given of the applicant's capability to fulfill the requirements of the project in a manner which meets the highest standards.

Assistance to State Arts Agencies. For design programs conducted or initiated by state (or regional) arts agencies.

Grants under this program are awarded to state arts agencies to initiate state agency activity in architecture and related design fields. These grants are intended to encourage initiative on the part of the design professions within the states, to engage in projects of statewide significance, and to stimulate interest in research which addresses particular local design needs and opportunities. These grants are also intended to give state or regional arts agencies the means for expanding the audience for good design in the states, attending to an increase of citizen awareness and participation.

Proposals for the addition of professional staff will be considered in collaboration with the Federal-State Partnership Program. Although applications and grants will be administered by Architecture + Environmental Arts, funds will be made available through Federal-State Program Development.

Deadline June 2, 1975. Complete applications must bear a postmark date no later than June 2, 1975. Should a grant be awarded under this program, work on the project may not be expected to begin before the first part of December 1975.

Eligibility. Grants are available only to the officially designated state arts agencies. Regional arts agencies are also eligible. They may apply in their own behalf or in behalf of local metropolitan or community wide arts agencies and appropriate government agencies in the state.

Grant limit. The maximum Endowment contribution usually does not exceed $20,000. All grants must be matched by an amount at least equal to the Endowment contribution.

How to Apply. Read pages 10–11

National Theme: "Cityscale". A sequel to "City Edges" and "City Options" which seeks to encourage specific demonstration projects to influence the improvement of the quality of design in communities.

A new National Theme program, called "Cityscale," is being conducted by Architecture + Environmental Arts for Fiscal Year 1976. Attention will be called to elements of our cities and towns which enhance their human scale. This, the third in a series of National Theme programs emphasizing the habitability of our cities, will assist communities in preparation of actual projects to improve their visual character.

The "City Edges" program, carried out in Fiscal Year 1973, helped communities understand often overlooked boundary conditions—waterfronts, highways, downtowns, residential districts, open space threatened by encroachment, and historic settings as they confront contemporary pressures and needs. Projects gave impetus to local efforts to improve the physical connections between water and land, street and pedestrian, old districts and new development.

The "City Options" program, carried out in Fiscal Years 1974 and 1975, helped communities develop projects to enhance the identity, usefulness and amenity of particular city settings—from a town in California which wanted to figure out what to do with an abandoned trainyard, to one in Illinois which planned to unearth its long-covered 19th century brick sidewalks. "City Options" opened the eyes of many a city and town about what it is possible to do with our man-made environment.

"Cityscale" is a grant program predicated on the belief that the design of the little elements of our cities and towns has an important value often neglected. If the character of our living places is to be better than the mere sum of all the parts, every piece must be given sensitive attention. Benches, street lights, signs, plantings, paving, screening—these and many more are basic ingredients for a humane and comfortable community.

As we seek to restore to our cities that scale which people find more compatible with their activities, the potential of each little item must be sought. The vitality of life in public places, streets and other open spaces, missing from many contemporary projects, can be regained. It depends on the small features as well as the comprehensive outlines. "Cityscale" calls special attention to these details of the urban setting.

"Cityscale" is conceived to help communities plan for actual implementation by assisting in the design and promotion stages of projects which will be funded, in turn, and completed by the community. It is intended that these projects be assumed with the purpose of demonstrating the positive effect of improvements, thus encouraging similar programs to be initiated in other parts of the community.

Deadline November 3, 1975. Applications must bear a postmark date no later than November 3, 1975. Announcement of rejection or grant awards may be received in August 1976. Should a grant be awarded under this program work on the project may not be expected to begin until December 1976.

Eligibility. Grants are available to all local governmental entities.

Grant limit. Endowment grants generally will be awarded for a maximum of $50,000. The local community must provide matching funds in an amount at least equal to the amount requested from the Endowment.

How to apply. See pages 10–11.

Special application instructions. Preference will be given to communities which present proposals demonstrating imaginative concepts and commitment to search for new ideas and approaches.

Several criteria must be shown:

Capacity to complete the project and extend its effect to all segments of the community.

Favorable impact on the local economy and employment.

Assurance of participation by professional designers possessing the greatest capacity for achievement of design excellence.

Local endorsement by government officials and community groups.

It is necessary also that the applicant organization explain in a supplement to the application how the project fits into the community plans and budget structure.

American Architectural Heritage. To assist planning for the conservation of historic structures, significant districts, and special landscapes. (No construction funds)

The preservation of America's architectural heritage has long been a subject of major interest to the Architecture & Environmental Arts Program. While the program encourages historic preservation, the primary interest is not in the preservation or restoration of individual historic structures, but rather in the sympathetic adaptation of buildings and districts to create new vitality in communities.

In keeping with this interest, the program is sponsoring staff and contractual research to examine the adaptive use potential of older structures to serve as centers of cultural, recreational, or commerical activity. The end result of these studies will be the development of appropriate reference materials for distribution to public officials, design professionals, and interested citizens.

A special American Architectual Heritage pilot grant program will be undertaken for Fiscal Year 1976. Public announcement of specific details will occur in August or September 1975. This pilot effort will focus on the conservation of older neighborhoods, both residential and commercial, and the coalescence of diverse civic interests needed to make these places active centers for today's residents. In addition, emphasis will be placed upon the merger of urban design, city and town planning, and preservation objectives in the process of conserving these areas.

The National Council on the Arts has designated this program as one of the Endowment's official bicentennial projects.

Deadline November 3, 1975. Other details of the program to be announced.

Cultural Facilities. To assist communities in the planning and design of exemplary cultural facilities; to encourage the commitment of local public and private money for project implementation.

Architecture & Environmental Arts recognizes the necessity for the development needs of an increasing public interest and participation in the arts. While the greatest needs are for financial assistance to support construction costs and professional design fees, limited resources restrict the Endowment's ability to respond to requests of this nature. The focus with respect to cultural facilities is on the development, through contractual means, of publications and reference materials pertaining to the design; planning, and use of facilities for the arts.

Research initiated by Architecture & Environmental Arts will be directed towards developing information on traditional physical settings for the arts, such as museums, galleries, and theaters, as well as exploring ways in which railroad stations and endangered old buildings can be rehabilitated and made adaptable for use by the arts. Since many facilities housing cultural activities are of a highly specialized nature with exacting technical requirements of lighting, acoustics, air temperature controls, security and appropriate interior space, another important research aim is to develop publications of a technical nature which will answer questions and serve as a directory to consultants in this field.

This pilot grant category has been formulated in keeping with the Endowment's broad scope of efforts to advance the nation's cultural resources, yet recognizing the limited availability of funds. A small program of assistance to communities experiencing compelling need to establish, replace, or alter cultural facilities is offered. It is Endowment policy not to provide money for acquisition of real estate, construction, or renovation of buildings.

In addition, grants will be awarded for specific facilities, to assist in payment of professional services for the following: Feasibility studies, specification of facility requirements; technical studies of acoustics, studies for equipment needs, security and climate control (note: see page 2 re: Museums), fund raising promotion materials, and architectural design studies.

In obtaining Endowment funds the following communities will be given highest priority: Those which have lost their facilities due to unforeseen disaster; communities which have severely limited facilities, neighborhoods which are seeking economic and social revitalization through an arts program. Communities which seek to institute design competitions to assure a high standard of design will be given priority as well.

Deadline November 3, 1975. Complete applications must bear a postmark date no later than November 3, 1975. Should a grant be awarded under this program, work on the project may not be expected to begin before the first part of August 1976.

Eligibility. Grants are available to qualified organizations only. In general, to be eligible for consideration, projects should have aesthetic and cultural significance. Size of the institution is not a criterion but rather the nature of the project and the institution's capacity to carry it out successfully. Organizations generally should be in existence two years prior to applying.

Grant Limit. Under this program, Endowment grants to organizations are generally for a maximum of $20,000. Matching funds will be required in all instances. Exceptions may be considered in the case of natural disaster.

Special application instructions. In addition to the normal requirements for an application submitted by an organization, the following items must be included: (See page 10)

Evidence of actual demand.

Evidence of facility need, for example, the lack of facilities, or inadequacy of existing facilities.

Assurance that the design result may be expected to meet the highest standards.

Indication that the scale of the proposed facility will meet the demonstrated need.

Statement of property or facility ownership.

A full description of the use of the proposed facility, and its context in a plan for the community.

Evidence that a grant would attract local funds for project implementation.

Services to the Field. To assist projects which improve the effectiveness of design related national professional membership organizations.

In recognition of the part which the national professional organizations have in advancing the cause of good design, the Endowment has set aside funds to assist such groups. It is intended that only programs of highest national priority and most enduring benefit to the widest membership be supported by the Endowment. Projects are appropriate which would result in expanded long term organizational effectiveness in efforts to improve the quality of design in our surroundings or to assist the membership in accomplishing this same goal. Programs which can operate potentially on a self supporting basis are encouraged.

Deadline January 2, 1976. Complete applications must bear a postmark date no later than January 2, 1976. Should a grant be awarded under this program, work on the project may not be expected to begin before the first part of August 1976.

Eligibility. This grant category is open to the established national membership organizations of the design professions: architecture, landscape architecture, city and regional planning, interior design, and industrial design.

Grant limit. Grants generally do not exceed $20,000, and this may represent no more than fifty percent of the total costs of the proposed project.

How to apply. See pages 10–11.

Special application instructions. The application must: define a clearly documented need; show that without the Endowment funds the project could not be accomplished; indicate the manner in which the membership will benefit and the extent of organizational interest.

Requests for support of specific projects are preferable to those for more general aid.

Projects need not be new; support may be requested for the continuation and strengthening of existing projects.

Projects are appropriate which would result in expanded long term organizational effectiveness in efforts to improve the quality of design in our surroundings or to assist the membership in accomplishing this same goal. Programs which can operate potentially on a self supporting basis are encouraged.

Design Fellowships. To assist practicing professional designers of exceptional talent who wish to engage in a special independent project.

The Architecture + Environmental Arts Program seeks to encourage especially talented persons to engage in independent projects or studies which will improve their capabilities in design. Men and women who could benefit in this way from an intensive "official sabbatical" are considered. Candidates must show sufficient experience and maturity in their own design work to assure a broad understanding of the field. Fellowships are not offered for the purpose of graduate study, foreign travel, or purchases of special equipment, but rather for the purpose of obtaining experience through independent work which broadens or deepens the Fellow's professional awareness and capability. Each candidate is required to formulate a project which will be evaluated in terms of its potential impact on the profession and the applicant's personal development. The program is addressed especially to persons involved in private practice. Others will be considered. Persons who are associated primarily with a professional school must apply under the Academic and Professional Research category instead of this one.

Deadline January 2, 1976. All applications must bear a postmark date no later than January 2, 1976. Projects awarded grants under this program may not be expected to begin before the first part of August 1976.

Eligibility. Applicants must have been active continuously in any one of the design fields for the immediate past five years: architecture, landscape architecture, city and regional planning, urban design, interior design, and industrial design. They must have received at least a bachelor's degree or the equivalent in an accredited professional curriculum, and must hold a license for practice, if it is required in the applicant's profession.

Grant Limit. All grants are individual grants, the maximum amount being $10,000. Projects may extend for a 6 to 12 month period.

Special application instructions. Include with the application form: (See pages 10–11)

A statement by the applying licensed professionals which indicates state and number of license.

A statement which clarifies the actual relationship between the applicant and employer or practice during the period of the project.

A description of the project explaining the objectives of the project, proposed work schedule, procedures and plans for presentation, and a statement of anticipated benefit to the applicant and the profession, must be contained in the "Project Description" portion of the application form. Material may be sent by the applicant to supplement this information, but it can not be returned.

In addition, the following must be attached:

A comprehensive resume of past experience including information on educational background, professional experience, honors, travel, and publications.

Three letters of endorsement which attest to the applicant's professional qualifications, his ability to execute the proposed project in an exemplary manner, and the value of the project for the individual and the profession. It is preferred that only persons who are fully aware of the nature of the applicant's proposal submit these letters. These letters may be submitted separately, but should be postmarked before the January 2, 1976 deadline.

General Programs. In order to ensure budgetary flexibility, funds have been set aside to enable the Architecture + Environmental Arts Program to respond to new developments in the field of design.

Only applications which clearly do not fit under any other category may be submitted under this category, and only upon recommendation of the Architecture + Environmental Arts Program.

EXCELLENCE IN FEDERAL DESIGN

The Endowment recognizes that excellence in design related fields should be a major concern of public agencies at all levels of government.

In May 1972 the President designated the National Endowment for the Arts as the lead agency to implement the Federal Design Program. In response to the President's initiatives, the Endowment is coordinating a number of efforts to improve the quality of design among Federal agencies. In addition to these efforts, the Endowment is seeking to encourage "design excellence" programs by state and local governments.

While the following Endowment programs are directed to Federal agencies, they may also serve as models to state and local governments desiring to initiate their own design improvement programs. These efforts have been designated as Bicentennial programs by the National Council on the Arts.

Design Assemblies. In April 1973, the First Federal Design Assembly was held under the sponsorship of the Federal Council on the Arts and the Humanities and administered by the National Endowment for the Arts. With a theme, "The Design Necessity," the event provided a rare opportunity for interaction between professional designers and Federal agency officials. In addition to drawing considerable professional and public attention to the importance of public design quality, the Assembly resulted in a number of actions by Federal agencies to improve their design standards.

The Second Federal Design Assembly was held in September 1974. Its theme, "The Design Reality," concentrated on elements of the design process, marking one more step in the Endowment's effort to improve design awareness on the part of Federal agencies.

Federal Architecture Project. The Federal Architecture Project was established in October 1972 to review and expand the 1962 Guiding Principles for Federal Architecture and to conduct a thorough study of opportunities and constraints affecting the quality of Federal Architecture. An interim report, Federal Architecture: A Framework for Debate, and a staff report on multiple-use facilities have been issued. Additional staff reports will be published on adaptive use of older buildings and design competitions for architect-engineer selection. A book length visual history of Federal architecture is being prepared for publication in 1976. The Project is guided by a task force composed of distinguished citizens and design professionals and is assisted by a committee of representatives from 20 Federal agencies with major construction responsibilities.

Federal Graphics. The Endowment-sponsored program to achieve excellence in graphics throughout the Federal Government has gained momentum among Federal agencies. Twenty-six agencies—thirty percent of the total number—have had their graphic materials evaluated by an expert panel, most agencies implementing recommendations to improve and enhance communication effectiveness.

Continuing Federal Agency Efforts. In conjunction with these activities, additional design-related programs are planned for the coming year. Federal Design Matter, a newsletter for designers and administrators, is published periodically. The newsletter seeks to publicize Federal agency design accomplishments, as well as progress of the Federal Design Program. The newsletter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

As a participant in continuing interagency design efforts, the Endowment is working with the Federal Prisons Industries (FPI), a government corporation, to improve the design quality, manufacturing processes, and marketing potential of products manufactured by the FPI.

Another area of potential influence on the quality of public design consists of the Endowment's newly-acquired responsibility for commenting on the environmental impact statements required for all Federal or Federally funded projects.

[FR Doc.75-12224 Filed 5-8-75;8:45 am]

EDUCATION PROGRAM

Artists-in-Schools Guidelines

The following are guidelines for grants made under the Education Program of the National Endowment for the Arts, an independent agency of the Federal government which makes grants to organizations and individuals concerned with the arts throughout the United States.

Notice is hereby given that the deadline date for this program is:

August 1, 1975 for the 1976–77 school year.

Interested persons should contact John Kerr, Director, Education Program, National Endowment for the Arts, Washington, D.C. 20506, (202) 634–6028 for further information and application forms.

Signed at Washington, D.C., on April 30, 1975.

FANNIE TAYLOR,
Director, Program Information.

FISCAL YEAR 1976

PURPOSE

Artists-in-Schools recognizes that we all are required to make aesthetic decisions each day. Since the purpose of education is preparation for life, the development of aesthetic awareness and participation in the arts must be an integral part of learning experience in the school and the community.

Artists-in-Schools is a nationwide program involving the cooperative efforts of professional artists, students, and teachers. This exchange, which enriches the creativity of all three groups, should not be a casual or momentary encounter. It is intended to be a sustained interaction continuing through a sufficient portion of the school year which will be of mutual benefit to artists, teachers, students and the community. The program is intended to serve as a catalyst within the school and to provide a model for continuing collaboration between artists and teachers in all schools and at all levels.

The program is designed to encourage flexibility and cooperation between the state arts agencies and the Endowment both in the development of the original proposal and throughout the entire project period. Naturally, it is important that each state take responsibility in developing its own priorities in consultation with the Endowment. In doing so, great attention needs to be given to assuring that there be a sufficient number of components to give appropriate diversity in the overall program.

The program is not designed to train a generation of professional artists. Its purposes are primarily to enhance children's powers of perception and their ability to express themselves and communicate creatively through using tools and skills they might not otherwise develop. The program is also intended to provide an opportunity for artists to function in schools and communities in a manner and under working circumstances conducive to their own artistic development. Artists-in-Schools recognizes the school is where the students are.

Within this overall framework, the program may provide a variety of different benefits for students, teachers, artists and the community:

For Students, it may:

Nourish the innate creativity of students.

Enhance perception, self-awareness and self-expression.

Establish a pattern of achievement in the arts leading to greater achievements in other subject areas.

Encourage more involvement in the arts—both as participants and as spectators.

Enhance knowledge of contemporary arts and artists, and of the artists' role in society.

Secure a fuller understanding of the creativity and artistic resources representative of all segments of the community.

For Teachers, it may:

Offer shared insights into the creative process.

Gain new respect for creativity in their students and in themselves.

Lead to shared methods for stimulating student interest in the arts, and in other subjects.

Enhance knowledge and understanding of contemporary arts and artists, and of the role of the arts in society.

For Artists, it may:

Enhance creative development through direct exchanges and cooperative efforts undertaken with students and teachers.

Create the opportunity and the ability to communicate with wider audiences.

Clarify the role of the artist in society.

For the Community, it may provide:

A growing interaction with students, parents, artists and schools.

A growing sense of the artists' role in the community and the importance of community participation in the creative process.

A recognition that there are artistic activities occurring in many segments of the community.

STATEMENT OF THE NATIONAL COUNCIL ON THE ARTS

(At its February 1974 meeting the National Council on the Arts adopted a statement on Artists-in-School reaffirming certain fundamental principles and recommending action for future development of the program. Constructive recommendations were also made by the National Assembly of State Arts Agencies in April 1974. Because this program is vital to artists, students, teachers, local communities and represents a strong, ongoing partnership between state arts agencies and the National Endowment for the Arts, the Council believes that the adoption of another statement is appropriate and important. The statement adopted by the Council at its February 1975 meeting follows.)

The Council reaffirms its belief that the success of Artists-in-Schools is based in large measure on the participation of exceptionally talented professional artists in situations where the creative process is encouraged. In-depth contact with students, adequate studio space, equipment and supplies are essential to the success of each project. In addition the remuneration paid to the artist and the schedule should provide the artist with the opportunity to work independently, thereby contributing substantially to the financial and creative life of participating artists.

The Council agrees with the National Assembly of State Arts Agencies' statement of April 1974 "that one of the prime functions of the advisory panel (for Artists-in-Schools) is to assist the National Endowment for the Arts in this national state-based program in maintaining the highest professional standards of excellence artistically and educationally." In the opinion of the Council, the Artists-in-School Advisory Panel has been helpful in this regard, and the Council expects that the Panel will continue to assist

in maintaining the improving standards of excellence.

While responsibility for assuring the high quality of the program is shared by state, local and national agencies the greatest reliance must be placed upon state arts agencies with knowledge of local artists and the communities in which the program is to be carried out.

The Council is pleased to note that applications for the 1975–1976 school year indicated increasing amounts of cash matching and urges that efforts in this regard continue. Increased amounts of public and private monies promote a variety of interests and viewpoints which assist in dynamic growth quantitatively and qualitatively. The Council hopes that increased efforts can be made to secure private funds, especially as they might be used to ensure that Artists-in-Schools is available broadly to schools, students and teachers who wish to participate, and is not just an opportunity for a fortunate few.

The Council is pleased to note that every effort will be made to identify special funds to encourage Architecture and Environment Arts and Folk Arts components as part of the continuing options available for inclusion in state plans. The Council agrees with the recommendation of the Artists-in-Schools Advisory Panel that because of limited funds and the need for more thorough consideration that Music and Theatre remain modest pilot efforts not generally open to application. It urges the Artists-in-Schools Advisory Panel to meet with other appropriate panels and provide further recommendations to the Council concerning future developments of the program, including ways to encourage and expand projects which are responsive to the ethnic and cultural traditions of both the artists and students participating in the program.

INTRODUCTION

History. The Artists-in-Schools Program of the National Endowment for the Arts (Endowment) is funded primarily through grants to state arts agencies (SAAs) and other cooperating organizations, such as the St. Paul Council of the Arts and Sciences, San Francisco Poetry Center and Poets and Writers, Inc. It involves the placement of professional artists in elementary and secondary schools to work and to demonstrate their artistic discipline.

The United States Office of Education, Department of Health, Education and Welfare has cooperated closely with the Arts Endowment in the development and funding of the program.

A pilot program was launched in 1969–70 with six states participating in a visual artist-in-residence program. Prior to this time, the Endowment had initiated a poets in schools program, now an integral part of Artists-in-Schools. Both these pilot programs were so successful that in the school year of 1970–71, 31 states participated in programs involving visual arts, theatre, dance, poetry and music residencies. During the 1971–72 school year, the film and architecture/environmental arts components were added and by the 1972–73 school year, all 50 states and the five special jurisdictions were operating one or more Artists-in-Schools components involving dancers, musicians, poets, painters, sculptors, graphic artists, photographers, craftsmen, actors, filmmakers, architects and environmentalists.

During the 1972–73 school year, for the first time, the Bureau of Indian Affairs joined with the Endowment and Office of Education to participate in a special Artists-in-Schools project involving drama, film, poetry and visual arts at the Institute of American Indian Arts in Santa Fe, New Mexico.

In the 1973–74 school year, funds appropriated under the Manpower Development and Training Act were provided for a special series of grants for training programs and technical assistance for artists (poets, dancers, filmmakers) throughout the United States. These funds were utilized primarily for workshops and seminars.

In April 1974 at the request of the National Council on the Arts, state arts agency representatives met with staff representatives of the National Endowment for the Arts to discuss new directions for the Artists-in-Schools Program. Subsequently, at a meeting of the National Assembly of State Arts Agencies, the Assembly adopted a statement concerning future directions of Artists-in-Schools. The resolution follows:

The National Assembly of State Arts Agencies pledges its support of the National Endowment for the Arts' "Artists-in-Schools" program as it reflects the specific needs of all states and territories. The program is of great value to arts education in this nation and is reason for the following resolution:

"In reference to the 1975–76 (F.Y. 75 money) and future guidelines for the National Endowment for the Arts' "Artists-in-Schools" program, the National Assembly of State Arts Agencies resolves: (1) That the submission of a State Plan by each state arts agency be fundamental in the Artists-in-Schools guidelines; (2) that to insure that all schools have the opportunity for participation there should be the availability of matching the total State Plan on a dollar for dollar cash and/or in-kind basis rather than on an individual project basis; (3) that to assist the National Endowment for the Arts in formulating plans for future directions it is recommended that an advisory panel for the Artists-in-Schools program be established immediately; (4) that any proposed Artists-in-Schools budget format per art form be considered as frames of reference in preparation of State Plans, and may be adjusted to meet special circumstances which may exist in each state; (5) that the Artists-in-Schools program should substantially contribute to the advancement of the financial and creative life of the artists; and (6) that one of the prime functions of the advisory panel is to assist the National Endowment for the Arts in this national state-based program in maintaining the highest professional standards of excellence artistically and educationally." (Adopted by the National Assembly of State Arts Agencies, April 18, 1974.)

In May 1974 the Artists-in-Schools Advisory Panel was established. The Panel met in Washington and proposed modifications of the 1975–76 guidelines (Fiscal Year 1975 funds) to accord with the suggestions of state arts agencies and the recommendations of the National Council on the Arts.

Eligibility—State Arts Agencies and Designated Cooperating Organizations. Grants are made directly to state arts agencies and designated cooperating organizations to administer the Artists-in-Schools Program in each state.

Elementary and secondary public or non-public schools and professional artists may participate in the Program. Information concerning participation is listed under "Inquiries."

NOTE: (1) By statute the Endowment is limited to making grants to organizations only if no part of their net earnings inures to the benefit of a private stockholder or an individual and provided donations to such organizations are allowable as charitable contributions under section 170(c) of the Internal Revenue Code of 1954, as amended. All organizations are required to submit a copy of their Internal Revenue Service tax exemption determination letter with each application.

(2) Organizations receiving National Endowment for the Arts support must conduct their operations in accordance with the requirements of Title VI of the Civil Rights Act of 1964, which bar discrimination in Federally assisted projects on the basis of race, color, or national origin. It should be noted that these requirements, under recent court decisions, specifically prohibit exclusion from the benefits of the Artists-in-Schools program because of language barriers.

Application Deadline. Applications from state arts agencies or designated cooperating organizations must be postmarked no later than August 1, 1975 for the 1976–77 school year.

Notices of grant awards will not be sent before early December 1975 for the 1976–77 school year, thus giving approximately ten months advance notice for planning, selection of artists and sites, and identification of matching funds.

Inquiries—Elementary and Secondary Public and Non-Public Schools. Interested elementary and secondary public and non-public schools should direct inquiries to their state arts agency (see listing, page 27) with information copies to their state education agency.

Professional Artists. Artists-in-Schools does not offer grants directly to individual professional artists. Artists interested in participating in one of the components should direct inquiries as follows:

ARCHITECTURE/ENVIRONMENTAL ARTS COMPONENT

EDUCATION PROGRAM

National Endowment for the Arts
Washington, D.C. 20506
(Phone: 202/634–6028), or
State Arts Agency (see page 27)

DANCE COMPONENTS

EDUCATION PROGRAM

National Endowment for the Arts
Washington, D.C. 20506
(Phone: 202/634–6028)

FILM COMPONENT

CENTER FOR UNDERSTANDING MEDIA, INC.

75 Horatio Street
New York, New York 10014
(Phone: 212/989–1000) or,
State Arts Agency (see page 27)

FOLK ARTS COMPONENT

EDUCATION PROGRAM

National Endowment for the Arts
Washington, D.C. 20506
(Phone: 202/634–6028), or
State Arts Agency (see page 27)

POETRY COMPONENT

LITERATURE PROGRAM

National Endowment for the Arts
Washington, D.C. 20506
(Phone: 202/634–6044) or,
State Arts Agency (see page 27)
except in—

California: San Francisco Poetry Center, San Francisco State College, San Francisco, California 94132, (Phone: 415/469–2227).

Minnesota: St. Paul Council of Arts and Sciences, 30 East 10th Street, St. Paul, Minnesota 55101, (Phone: 612/227–8241).

New York: Poets and Writers, Inc., 201 West 54th Street, New York, New York 10019 (Phone: 212/757–2766).

VISUAL ARTS AND CRAFTS COMPONENT

State Arts Agency (see page 27)

Note: Two pilot components (Music and Theatre) are not open to applications.

Grant amounts. State arts agencies and designated cooperating organizations should

request only moderate increases for the 1976–77 school year above the amounts received for the 1975–76 school year. Where possible, applicants are urged to submit a program balanced by art form.

Screening criteria. Grants will be awarded to state arts agencies and designated cooperating organizations on the basis of:

(1) Quality of the proposed project,

(2) Ability to match Endowment monies, and

(3) Availability of funds to the Endowment.

Administrative responsibilities. From the inception of the program, the National Endowment for the Arts has encouraged state arts agencies and designated cooperating organizations, in coordination with state education agencies to assume primary responsibility for administration of the program. Selection of artists and schools and administration of grants is largely the responsibility of the state arts agencies in consultation with artists and advisory groups. State agencies are encouraged to shape the program in accordance with local needs and objectives.

State Arts Agency Role. Specific responsibilities of the state arts agencies and cooperating organizations will be to:

(1) Plan and coordinate each component of Artists-in-Schools with state and local public and private schools.

(2) Select sites and artists in consultation with state and local education agencies.

(3) Prepare applications for submission to the Endowment.

(4) Receive and administer the National Endowment for the Arts grants, in accordance with these guidelines.

(5) Prepare or arrange for the preparation of financial and narrative reports to the Endowment as requested in the grant award letter.

ARTISTS-IN-SCHOOLS COMPONENTS

At the present time, the components of the Artists-in-Schools Program include: Dance, film, poetry, and visual arts and crafts (e.g. graphics, painting, photography, sculpture, pottery, weaving, etc.). In response to requests from the field and the recommendations of the Artists-in-Schools Panel and the National Council on the Arts, Artists-in-School projects in architecture/environmental arts and folk arts can be considered as special components in the 1976–77 school year, and a small number of grants will be made in these areas with funds identified beyond the regular Artists-in-Schools budget. State Arts Agencies may submit requests for these new components (see p. 16, Architecture/Environmental Arts and p. 10, Folk Arts). Matching for these two new components must be dollar for dollar. For the 1976–77 school year, pilot programs are also in music and theatre.

Guidelines for each of the components are set out below. These guidelines will be used by the staff, Artists-in-Schools Advisory Panel and National Council on the Arts in reviewing applications of state arts agencies.

In preparing applications, it should be noted that states may provide cash or in-kind matching for the total Artists-in-Schools state plan as well as on an individual project basis. The National Council on the Arts has recommended that every effort be made to insure that a cash match is achieved at least in the overall funding provided to each state for Artists-in-Schools.

In developing a state plan, the items listed in the "Addendum" page 33, should be reviewed.

Architecture/Environmental Arts Component (Special). Funds are for the placement of designers in elementary and secondary schools. The residency is usually for a full school year, but the time may be divided among two or three designers. A portion of each grant can be used for visiting designers selected by the resident designer.

The purpose of the design residency is to place a professional designer working at his or her own discipline who is interested principally in the aesthetic concern of design in a school situation. A professional is one who is in a professional practice or teaching at a professional school; licensing is not critical. Standards of excellence should be determined based upon education and accomplishment. The goal of the residency should be to heighten the design awareness and explore the design process with both students and teachers through special projects and programs organized and carried out by the designer.

The residency must be defined clearly in terms of the designer's commitment to allow adequate time to devote to students and teachers as well as time for his or her own work independent of the program. Participating schools must provide adequate studio space, facilities, and equipment necessary for the designer.

Participating designers may be from any of the broad range of environmental design disciplines which take part in designing the built environment. These include, but are not limited to, architects, landscape architects, industrial designers, interior designers and planners. More specific selection criteria may be established by the panel within each state.

Amount of Grant. Generally, grants are in the amount of $6,100 which must be matched in dollars to provide $12,200 for one resident designer for a full school year.

Sample budget and matching.

Compensation and supplies for resident designer	$10,800
Honoraria for visiting designers selected by the resident designer to complement his or her own work	1,200
Documentation	200
Total for 1 designer	[1] 12,200

[1] Federal share = $6,100. Grantee match = $6,100.

This budget may be modified in consultation with the Endowment.

Matching. Endowment support in this component should be matched at least equally by non-federal funds. Matching for this pilot component must be on a dollar for dollar cash basis. The application must include a statement on the source(s) of matching funds, which may be provided from school budgets, other public funds or private groups or individuals. Local businesses, civic associations, or foundations may be interested in participating—perhaps as a bicentennial effort.

Selection of designers in residence. Selection is by a panel from within each state.

Panel composition is approved by the Endowment.

The panel should include: The director of the state arts agency (or a designated representative), a senior or tenured member of a professional environmental design school, a design or art educator or a design or art supervisor in schools, a professional environmental designer.

Dance Component.[1] The dance component of Artists-in-Schools is designed to utilize professional American dance companies and dance movement specialists in residency situations to:

(1) Present dance as an art form.

(2) Explore movement as a teaching tool.

(3) Employ movement as a means of encouraging self-expression and self-awareness in children.

Amount of grants. Grants generally do not exceed $30,000 and in most cases will be considerably less. Endowment funds may be used only towards payment of the dance company(ies) in residence under Artists-in-Schools.

Matching. Endowment support in this component should be matched at least equally by non-federal funds. (However, matching can be on an overall state plan or an individual project basis. The National Council on the Arts has recommended that every effort be made to insure that a cash match is achieved at least in the overall funding provided to each state for Artists-in-Schools.) The application must include a statement on the source(s) of matching funds, which may be provided from school budgets, other public funds or private groups or individuals. Local businesses, civic associations, or foundations may be interested in participating—perhaps as a bicentennial effort.

Selection of Artists. The state arts agency working with state and/or local education agencies selects the dance company and movement specialists for the residency from the Director of Dance Companies and Dance Movement Specialists provided by the Endowment.

A national advisory group of experts in the field of dance and education reviews those dance companies and dance movement specialists who wish to be considered for inclusion in Artists-in-Schools dance component in terms of professional experience, artistic quality, in-school teaching experience, company stability and suitability for the program. In addition, companies must meet the following quantitative qualifications required for participation in the Endowment's Dance Touring Program.

(1) The company must be a nonprofit, tax-exempt organization to which donations are deductible as charitable contributions under section 170(c) of the Internal Revenue Code of 1954, and must submit a copy of its Internal Revenue Service Tax-Exempt Determination Letter to the Endowment.

(2) The company must certify to the Endowment that while on tour, it pays all professional performers, related or supporting staff, laborers and mechanics no less than the minimum compensation level as determined by the appropriate union in accordance with Part 505 of Title 29 of the Code of Federal Regulations. The Company must also meet the applicable requirements of Title VI of the Civil Rights Act of 1964.

(3) The company must have performed at least 15 public appearances for which the dancers and staff were paid no less than the minimum compensation level as defined by the appropriate union during the 1973–74 season, and must project at least 15 such performances for the 1974–75 season.

(4) The company must have adequate management to provide potential tour sponsors with the necessary services to contract and carry out tour engagements.

(5) The company must have a history of sound administrative practices. If there is a reason to question the administrative function of the company, such as a history of cancelled contracts, commitments unfulfilled, deviation from the minimum fee requirements, et cetera, the company will be required to describe what it has done to correct these problems before it will be considered eligible for participation in the Program. If the problem remains, the company will be ineligible for participation. Each

[1] Detailed program information is provided to participating state arts agencies and state or local education agencies to assist with program planning.

company's participation in the Program will be reviewed annually to determine that the company is functioning within the Guidelines of the Program.

Implementation of the Program—(1) *Planning Orientation Workshops.* Summer workshops for program participants (in-school coordinators and school administrators, dance company members, dance movement specialists and state arts agency representatives) are held prior to the school year in order to insure careful and effective planning of the residencies.

(2) *The Residencies.* In order to achieve in-depth impact:

The dance company must be in residence at each locale for a minimum of two weeks. Generally, the company will present at least one performance at the end of its residency for those students, teachers, administrators, school board members, and parents who have been directly involved in the—program, as well as for community leaders and the general public.

The dance movement specialists must be in residence for at least four weeks preceding and/or following the company's residency.

(3) *The National Coordinator.* Under the direction of the Endowment, the responsibilities of the National Coordinator for the Dance Component are:

To aid dance companies and dance movement specialists to plan and execute their participation in the school residencies.

To provide liaison, guidance and coordination for the implementation of state programs through consultation with state arts agencies, educational units, dance movement specialists and dance companies in order to maximize the effect of the residencies.

To serve as a clearinghouse for the dissemination of information among participants in the AIS dance component.

To respond to inquiries regarding all aspects of the AIS dance component.

(4) *Artists' Fees.* Endowment funds may be used only towards payment of the dance company(ies) in residence under Artists-in-Schools. All dance company activities (including public performance) as well as transportation costs are included in the fee. The production cost of the public performance is the responsibility of the local sponsor or presenting organization. Participating dance companies must receive at least the minimum fee certified to the Endowment.

The dance movement specialists' fees are paid directly by the National Coordinator's Office from a separate grant.

(5) *In-School Coordinators.* Participating school districts must assign two in-school coordinators, an administrator and a dance-trained coordinator to provide liaison between the artists, classroom teachers and school administrators before and during the residencies and to plan and implement the local follow-up when the residencies are completed. The administrative in-school coordinator should have administrative ability, knowledge of the school district and necessary influence within the district to make all arrangements essential to the smooth operation of the program. The dance in-school coordinator should have dance training and the ability to continue to stimulate and expand dance activities in the school after the completion of the residencies. In-school coordinators must have release time in order to accomplish their responsibilities. Specific responsibilities include:

Preparing residency schedules with the advice and approval of the dance company and dance movement specialist.

Facilitating communication among teachers, administrators, parents, and students about purposes, events and expectations of the residency well in advance of residency dates.

Making all necessary local arrangements for artists in consultation with the state arts agency and/or state or local educational agency, and

Facilitating development of dance activities in the school and community after the residencies.

Film Component. Funds are for placement of professional filmmakers in elementary and secondary schools. One of the objects of the film component is to create a lasting resource for the school, one that does not terminate at the end of the project. In addition to placing a professional filmmaker or animator in a school, there is provision for training teachers and administrators.

Professional filmmakers and teachers work closely in planning and implementation at each site. Each site will have a competent teacher, adequate budget for film rental and filmmaking—and the services of a live-action filmmaker and/or animator. Many filmmakers also provide training and experience in the use of videotape.

Amount of Grants. Grants to individual states range in amount from $7,500 to $15,000.

Sample Budget and Matching.

	$15,000 sites (½ Federal)	$20,000 sites (½ Federal)	$30,000 sites (½ Federal)
Artists:[1]			
Honoraria	$5,000	$7,500	$10,000
Travel	1,000	1,000	2,000
Per diem	1,500	1,500	3,000
Total	7,500	10,000	15,000
Teachers:			
Summer and inservice local training	2,000	1,500	3,000
Release time	1,000	1,500	2,000
Total	3,000	3,000	5,000
Equipment	2,000	3,000	5,000
Film, processing, supplies	1,500	3,000	4,000
Administration	1,000	1,000	1,000

These budgets are samples and may be modified in consultation with the Endowment.

[1] NOTE: Since one purpose of the program is to support and encourage the role of practicing artists within the schools, at least 25 percent of the total budget should be assigned for honoraria, travel and living expenses for the artists.

Matching. Endowment support in this component should be matched at least equally by non-federal funds. (However, matching can be on an overall program outline or on an individual project basis. The National Council on the Arts has recommended that every effort be made to insure that a cash match is achieved at least in the overall funding provided to each state for Artists-in-Schools.) The application must include a statement on the source(s) of matching funds, which may be provided from school budgets, other public funds or private groups or individuals. Local businesses, civic associations, or foundation may be interested in participating—perhaps as a bicentennial effort.

Selection of artists. Filmmakers will be chosen to meet the needs at each site. This should be done in consultation with the state arts agency, Center for Understanding Media and appropriate education agencies.

Implementation of the program—Center for understanding media. The film component is coordinated by the Center for Understanding Media, Inc., 75 Horatio Street, New York, New York 10014 (Phone: 212/989-1000). The role of the Center is to provide guidance for state arts agencies in drawing up their initial project plans and budgets, assistance in the identification of competent professional filmmakers, provision of training programs for teachers and administrators, consultation on equipment, guidance in raising matching funds, and on-site visitations of projects. The project director for the Center is John Culkin. The project coordinator is Peter Haratonik. The Center should receive copies of all program plans and correspondence with the Endowment.

Folk Arts Component (Special). Funds are for the placement of folk artists in elementary or secondary schools. By "folk artists" it is meant artists representing the traditional expressive forms of the various cultures of the United States. The program encourages a broad interpretation of both "folk" and "arts"; however, it strongly urges the use of traditional artists themselves, rather than "interpreters" of folk arts who do not truly represent the cultures involved.

It is particularly desirable, though it is not a requirement that the traditional artists be resident in schools in their own communities or regions. In some cases, it may be desirable to allocate part of the grant to a professional folklorist, folk arts specialist, or other person knowledgeable in a folk culture who can organize the project, locate the artists, and act as an intermediary between the folk artists and the schools. A portion of each grant can also be used for visiting folk artists to complement the contributions of the resident folk artist.

The residencies should be in depth; one-time appearances are discouraged. Latitude will be provided in arrangements to accommodate the great variety of traditional arts. Where appropriate, participating schools must provide adequate space equipment and time for the artist to pursue his or her own work. Appropriate cooperative projects with non-school organizations can occupy part of an artist's time, at the artist's discretion. The folk artist is viewed not as a member of the teaching staff, but as a practicing artist in a school situation.

Amount of Grants. Generally, grants to individual states are in the amount of $7,500 and must be matched dollar for dollar.

Sample Budget and Matching.

Compensation and supplies for resident folk artist(s)	$10,800
Honoraria for visiting folk artists selected by resident artists to supplement his or her own work	1,200
Honoraria for folklorist-liaison(s)	2,800
Documentation	200
Total for resident folk artist(s)	[1] 15,000

[1] Federal share = $7,500. Grantee share = $7,500.

This budget could be modified in consultation with the Endowment.

Matching. Endowment support in this component should be matched at least equally by non-federal funds. Matching for this pilot component must be on a dollar for dollar cash basis. The application must include a statement on the source(s) of matching funds, which may be provided from school budgets, other public funds or private groups or individuals. Local businesses, civic associations, or foundations may be interested in participating—perhaps as a bicentennial effort.

Selection of Artists. Selection is by a panel from within a state. Panel composition is approved by the Endowment. The Endowment's Director of Folk Arts (202/634–5020) will provide assistance as requested.

The panel should include the state arts agency Director (or designated representative), a folk artist, various specialists in the folk arts traditions of the state.

Poetry Component. The poetry component provides funds for the placement of professional creative writers in elementary and secondary classrooms. The poetry component is designed to:

(1) Encourage students to learn to use language for self-expression.

(2) Introduce students and classroom teachers to contemporary poetry and fiction.

(3) Provide teachers with suggested new techniques in the teaching of creative writing and inspiring children to read.

(4) Build audiences for contemporary writing.

(5) Effect positive changes in student attitudes toward learning.

Matching. Endowment support in this component should be matched at least equally by non-federal funds. (However, matching can be on an overall program outline or on an individual project basis. The National Council on the Arts has recommended that every effort be made to insure that a cash match is achieved at least in the overall funding provided to each state for Artists-in-Schools.) The application must include a statement on the source(s) of matching funds, which may be provided from school budgets, other public funds or private groups or individuals. Local businesses, civic associations, or foundations may be interested in participating—perhaps as a bicentennial effort.

Selection of Artists. Participating artists must be professional, published poets. Selection is made jointly by the state arts agency and the participating schools.

A Directory of American Poets, compiled with the assistance of the Endowment's Literature Program, is available at $6.00 paperbound and $12.00 hardbound from Poets & Writers, Inc., 201 West 54th Street, New York, New York 10019. The cost of the directory also includes a subscription to the newsletter CODA which periodically updates the list of writers interested in readings or work in the schools. In addition, the Endowment's Literature Program will provide assistance as requested.

Implementation of the Program. Orientation/training sessions for teachers should be made a part of the program and strong emphasis should be given to acquainting teachers with the work of contemporary writers. Classroom teachers should be thoroughly briefed on the visiting poets' work prior to the residencies.

Poets should work no less than four times with the same groups of students, preferably more than this. Visits to classrooms need not be on consecutive days. Poets should not be scheduled for more than four periods during the normal school day. Allowances should be made within the budget for travel since one poet can reach a number of schools over a state or community during a relatively short period of time. One-time visits by a poet can be a useful introductory device, but should not be the continuing basis for allocating a poet's time in a community.

Writing done by students should be collected and reproduced, if possible, so that it may be returned to the students in time for the poet's next visit. Schools should be encouraged to assume responsibility for this service as an in-kind contribution. A selection of student writing should be part of the final report on the poetry component.

Visual Arts & Crafts Component. Funds are for placement of professional craftsmen and visual artists (sculptors, painters, photographers, printmakers and other graphic artists), in elementary and secondary schools. The residency is usually for a full school year, but the year can be divided among two or more artists. A portion of each grant can be used for visiting artists selected by the resident artist. Funds for the supplies of the resident artist are included as a part of the total compensation to the artist ($10,800). Budgetary provision for program supplies for students, teachers and other participants is the responsibility of the participating school(s).

The artist devotes part time to students and teachers and part time to his or her own work. Participating schools must provide adequate studio space, facilities, equipment, and time for the artist to pursue his or her own work. In practice, appropriate cooperative projects with state or local art organizations can occupy part of the artist's time at the artist's discretion. The artist is viewed not as a member of the teaching staff, but rather as a practicing artist working on his or her own art in a school situation.

Amount of Grants. Generally, grants to individual states are in the amount of $6,100, which must be matched in dollars to provide $12,200 for one resident artist for a full school year. In some instances, higher grant awards may be recommended recognizing that the states are attempting to secure dollar for dollar match but may not be able to do so at the present time.

Sample Budget and Matching.

Compensation and supplies for resident artist	$10,800
Honoraria for visiting artists selected by resident artist to complement his or her work	1,200
Documentation	200
Total for 1 artist	[1] 12,200

[1] Federal share = $6,100. Grantee match = $6,100.

This budget could be modified in consultation with the Endowment.

Matching. Endowment support in this component should be matched at least equally by non-federal funds. (However, matching can be on an overall state plan or on an individual basis. The National Council on the Arts has recommended that every effort be made to insure that a cash match is achieved at least in the overall funding provided to each state for Artists-in-Schools.) The application must include a statement on the source(s) of matching funds, which may be provided from school budgets, other public funds or private groups or individuals. Local businesses, civic associations, or foundations may be interested in participating—perhaps as a bicentennial effort.

Selection of Craftsmen and Visual Artists. Selection is by a panel from within the state. Panel composition is approved by the Endowment. For crafts projects, the Endowment's Crafts Coordinator (202/634–1566) will provide assistance as requested.

The panel should include the state arts agency Director (or designated representative), a professional artist, an art museum curator or director or a member of a professional arts school, an art educator or art supervisor in schools. For crafts projects, the panel should also include a professional craftsman. Consideration should be given only to thoroughly professional artists who can relate to students and teachers—and can work at their art in a school environment.

State Arts Agency Role. (see page 9)

MATERIALS AVAILABLE ABOUT THE ARTISTS-IN-SCHOOLS PROGRAM

Publications. "The Artist in the School: A report on the Artist-in-Residence Project," CEMREL, Inc. 1970. Report on the 1969 pilot visual arts component Artists-in-Schools Program.

Distribution: CEMREL, Inc., 10646 St. Charles Rock Road, St. Ann, Missouri 63074. Price: $4.00 per copy.

"Artists in Schools: Like a humming in the air," by Bennett Schiff, National Endowment for the Arts, 1973. Report on Artists-in-Schools projects operating in Alabama, Minnesota, Wyoming, California, Nebraska and Rhode Island during 1971–72 school year.

Distribution: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price: $2.75 domestic post paid or $2.50 GPO book store. Stock number: 3600–00015.

"Artists in the Classroom," Connecticut Commission on the Arts, 1973. A "how-to" book on the AIS program published by the Connecticut Commission on the Arts, Education Programs.

Distribution: Connecticut Commission on the Arts, 340 Capitol Avenue, Hartford, Connecticut 06106.

"Dance in the Schools: A New Movement in Education," Gene C. Wenner, Program Associate, Arts in Education Program, JDR 3rd Fund, 1974. This publication describes the use of dance in schools as developed through the Dance Component of the Artists-in-Schools Program of the National Endowment for the Arts.

Distribution: Charles Reinhart Management, Inc., 1860 Broadway, Room 1112, New York, New York 10023.

"A Directory of American Poets," Poets and Writers, Inc., 1973. Includes names and addresses of 1300 poets and contemporary writers whose work has been published in the U.S.

Distribution: Poets and Writers, Inc., 201 West 54th Street, New York, New York 10019. Price: $6.00 paperbound, $12.00 hardbound.

"A Documentation of the City Building Educational Program for the National Endowment for the Arts Within the Los Angeles Unified School District," 1971–72.

Distribution: Doreen Nelson, Director, City Building Educational Program, Sulphur Springs Union School District, 18830 Soledad Canyon Road, Saugus, California 91351.

"Homemade Poems," A Handbook, by Daniel Lusk, 1974.

Distribution: Lame Johnny Press, Associates, Hermosa, South Dakota 57744. Price: $2.50—Paperback.

"Joy To the World! Writing Poems with Children in Georgia," Rosemary Daniell.

Distribution: Georgia Council for the Arts, 706 Peachtree Center, South Building, 225 Peachtree Street, N.E., Atlanta, Georgia 30303.

"My Sister Looks Like a Pear, Awakening the Poetry in Young People," by Douglas Anderson, 1974.

Distribution: Hart Publishing Company, Inc., New York, New York 10012. Price: $7.50—Hardbound. $2.95—Paperback.

Films—Dance Component. Dancers in Schools, 16mm color, 28 minutes. Filmmaker D. A. Pennebaker was commissioned to document aspects of the dance component of the Artists-in-Schools Program jointly sponsored by the National Endowment for the Arts and

the U.S. Office of Education. Film captures the excitement of demonstration/workshops conducted in Alabama and California by Murray Louis, Virginia Tanner and Bella Lewitzky.

Distribution: Pennebaker, Inc., 56 West 45th Street, New York, New York 10036. Rental: $15.00. Sale: $250.00.

Move! 16mm color, 28 minutes. Documentary film on aspects of Artists-in-Schools Dance Component. Includes San Francisco conference of dance company members, dance movement specialists and administrators (August 1972) and residency of Bella Lewitzky Dance Company and Susan Cambigue, dance movement specialist (Reno, Nevada—Spring, 1973). Filmmaker: Steeg Productions, Inc.

Distribution Information: Program Information Office, National Endowment for the Arts, Washington, D.C. 20506.

Film Component. Children of the Media, 16mm color, 28 minutes. Film documents 1971-72 film component of the Artists-in-Schools Program. Filmmaker: Thomas McDonough.

Distribution: Center for Understanding Media, Inc., 75 Horatio Street, New York, New York 10014. Rental: $25.00. Sale: $250.00.

Poetry Component. Wishes, Lies, and Dreams, 16mm color, 28 minutes. The distinguished New York poet, Kenneth Koch, is recorded in the poetry in the schools program in New York City Public Schools. Filmmakers: Eric Breitbart and Alan Jacobs.

Distribution Information: Program Information Office, National Endowment for the Arts, Washington, D.C. 20506.

Music Component. Music in The Air, 16mm color, 28 minutes. Documentary film on music component of Artists-in-Schools Program (1972-73 school year). Filmmaker: Don Lenzer Films.

Distribution Information: Program Information Office, National Endowment for the Arts, Washington, D.C. 20506.

Theatre Component. Children's Theatre of John Donahue, 16mm color, 28 minutes. Filmmaker D. A. Pennebaker records the activities of the Children's Theatre Company of the Minneapolis Institute of the Arts in the Artists-in-Schools Program.

Distribution: Pennebaker, Inc., 56 West 45th Street, New York, New York 10036. Rental: $15.00. Sale: $250.00.

Visual Arts Component. Artist of the Arctic, 16mm color, 14 minutes. Documentary film on the work of the Eskimo artist/craftsman in the schools at Point Barrow, Alaska. Filmmaker: Norman G. Dyhrenfurth.

Distribution: Alaska State Council on the Arts, 360 K Street, Suite 240, Anchorage, Alaska 99501.

See-Touch-Feel, 16 mm color, 28 minutes. Filmmaker Donald Wrye documents the 1969 pilot Artists-in-Schools Program in the visual arts.

Distribution: Association-Sterling Films, 1701 N. Fort Myer Drive, Arlington, Virginia 22209. Rental: Free.

GENERAL INFORMATION

The Bicentennial. The Endowment recognizes that the arts will play an important role in the celebration of our country's bicentennial. The Endowment welcomes this involvement on the part of artists and cultural organizations. The Endowment has an active interest in participating in these efforts, within funds available to it, and insofar as they are directed to professional creation and presentation of new works, improvement of artistic standards, preservation of our cultural heritage, and increasing the availability of the arts for all Americans. If funds under these guidelines are sought for projects deemed by the applicant to be related to the bicentennial, a brief description of this relationship should be made in the application.

Resolution on the Accessibility to the Arts for the Handicapped. One of the main goals of the National Endowment for the Arts is to assist in making the arts available to all Americans. The arts are a right, not a privilege. They are central to what our society is and what it can be. The National Council on the Arts believes very strongly that no citizen should be deprived of the beauty and the insights into the human experience that only the arts can impart.

The National Council on the Arts believes that cultural institutions and individual artists could make a significant contribution to the lives of citizens who are physically handicapped. It therefore urges the National Endowment for the Arts to take a leadership role in advocating special provision for the handicapped in cultural facilities and programs.

The Council notes that the Congress of the United States passed in 1968 (Pub. L. 90-480) legislation that would require all public buildings constructed, leased or financed in whole or in part by the Federal Government to be accessible to handicapped persons. The Council strongly endorses the intent of this legislation and urges private interests and governments at the State and local levels to take the intent of this legislation into account when building or renovating cultural facilities. (Adopted by the National Council on the Arts, September 15, 1973.)

LIST OF STATE ARTS AGENCIES AND OTHER DESIGNATED COOPERATING ORGANIZATIONS

Alabama State Council on the Arts and Humanities, M. J. Zakrzewski, Exec. Director, 322 Alabama Street, Montgomery, Alabama 36104 (205) 269-7804.

Alaska State Council on the Arts, Roy H. Helms, Exec. Director, 360 K Street, Suite 240, Anchorage, Alaska 99501 (907) 279-3824 or 272-5342.

American Samoa Arts Council, Palauni M. Tuiasosopo, Chairman, Office of the Governor, Pago Pago, American Samoa 96999.

Arizona Commission on the Arts and Humanities, Mrs. Louise Tester, Exec. Director, 6330 North 7th Street, Phoenix, Arizona 85014 (602) 271-5884 (office), or 228 Madison Avenue, Yuma, Arizona 85364 (602) 783-7244.

The Office of Arkansas State Arts and Humanities, Dr. R. Sandra Perry, Exec. Director, 404 Train Station Square, Victory-at-Markham, Little Rock, Arkansas 72201. (501) 371-2539 or 2530.

California Arts Commission, James D. Forward, Exec. Director, 808 "O" Street, Sacramento, California 95814 (916) 445-1530.

The Colorado Council on the Arts and Humanities, Robert N. Sheets, Exec. Director, 1550 Lincoln Street, Room 205, Denver, Colorado 80203 (303) 892-2617 or 2618.

Connecticut Commission on the Arts, Anthony S. Keller, Exec. Director, 340 Capitol Avenue, Hartford, Connecticut 06106 (203) 566-4770.

Delaware State Arts Council, Mrs. Sophie Consagra, Exec. Director, Wilmington Tower, Room 803, 1105 Market Street, Wilmington, Delaware 19801 (302) 571-3540.

D.C. Commission on the Arts and the Humanities, Leroy Washington, Acting Director, 1023 Munsey Building, 1329 E Street NW., Washington, D.C. 20004 (202) 347-5905 or 5906.

Fine Arts Council of Florida, S. Leonard Pas, Jr., Exec. Director, c/o Department of the State, The Capitol Building, Tallahassee, Florida 32304 (904) 488-2416.

Georgia Council for the Arts, Georgia Beatie, Director, 706 Peachtree Center, South Bldg., 225 Peachtree Street, NE., Atlanta, Georgia 30303 (404) 656-3990.

Insular Arts Council of Guam, Mrs. Louis Hotaling, Director, P.O. Box EK (Univ. of Guam), Agana, Guam 96910. 729-2466.

Hawaii State Foundation on Culture and the Arts, Alfred Preis, Exec. Director, 250 South King Street, Room 310, Honolulu, Hawaii 96813. (808) 548-4145.

Idaho State Commission on Arts and Humanities, Miss Suzanne Taylor, Exec. Director, c/o State House, Boise, Idaho 83720. (208) 384-2119.

Illinois Arts Council, Michele Brustin, Director, 111 North Wabash Avenue, Room 1610, Chicago, Illinois 60602. (312) 793-3520.

Indiana Arts Commission, John Bitterman, Exec. Director, Union Title Building, 155 East Market, Suite 614, Indianapolis, Indiana 46204. (317) 633-5649.

Iowa State Arts Council, Jack E. Olds, Exec. Director, State Capitol Building, Des Moines, Iowa 50319 (515) 281-5297 or 262-2803.

Kansas Cultural Arts Commission, Jonathan Katz, Exec. Director, 117 West 10th Street, Suite 100, Topeka, Kansas 66612 (913) 296-3335.

Kentucky Arts Commission, Miss Nash Cox, Exec. Director, 100 W. Main Street, Frankfort Kentucky 40601 (502) 564-3757.

Louisiana Council for Music and Performing Arts, Inc., Mrs. E. H. (Lucile) Blum, President, International Building, Suite 804, 611 Gravier Street, New Orleans, Louisiana 70130 (505) 525-7241.

Maine State Commission on the Arts and the Humanities, Alden C. Wilson, Director, State House, Augusta, Maine 04330 (207) 289-2724.

Maryland Arts Council, James Backas, Exec. Director, 15 West Mulberry, Baltimore, Maryland 21210 (301) 685-7470.

Massachusetts Council on the Arts and Humanities, Miss Louise G. Tate, 14 Beacon Street, Boston, Massachusetts 02108 (617) 727-3668.

Michigan Council for the Arts, E. Ray Scott, Exec. Director, Executive Plaza, 1200 Sixth Avenue, Detroit, Michigan 48226 (313) 256-3735.

Minnesota State Arts Council, Louis H. Janson, Director, 100 East 22nd Street, Minneapolis, Minnesota 55404 (612) 296-2059 or 339-7691.

Mississippi Arts Commission, Mrs. Shelby R. Rogers, Exec. Director, State Executive Building, P.O. Box 1341, Jackson, Mississippi 39205 (601) 354-7336 or 266-7246. (Univ. of Miss.).

Missouri State Council on the Arts, Mrs. Emily Rice, Exec. Director, 111 South Bemiston, Suite 410, St. Louis, Missouri 63105 (314) 721-1672.

Montana Arts Council, David E. Nelson, Exec. Director, 235 East Pine, Missoula, Montana 59801 (406) 543-8286 or 543-8287.

Nebraska Arts Council, Gerald Ness, Exec. Director, Oak Park, 7367 Pacific Street, Omaha, Nebraska 68101 (402) 554-2122.

Nevada State Council on the Arts, James Deere, Executive Director, 560 Mill Street, Reno, Nevada 89502 (702) 784-6231 or 6232.

New Hampshire Commission on the Arts, John G. Coe, Exec. Director, Phenix Hall, 40 North Main Street, Concord, New Hampshire 03301 (603) 271-2789.

New Jersey State Council on the Arts, Brann J. Wry, Exec. Director, 27 West State Street, Trenton, New Jersey 08625 (609) 292-6130.

The New Mexico Arts Commission, John Wyant, Exec. Director, Lew Wallace Building, State Capitol, Santa Fe, New Mexico 87501 (505) 827-2061.

New York State Council on the Arts, Eric Larrabee, Exec. Director, 250 West 57th Street, New York, New York 10019 (212) 397–1700.

North Carolina Arts Council, Halsy North, Exec. Director, N.C. Dept. of Cultural Resources, Raleigh, North Carolina 27611 (919) 829–7897.

North Dakota Council on the Arts and Humanities, John Hove, Chairman, Department of English, North Dakota State University, Fargo, North Dakota 58102 (701) 237–7143.

Ohio Arts Council, James L. Edgy, Exec. Director, 50 West Broad Street, Suite 2840, Columbus, Ohio 43215 (614) 466–2613.

Oklahoma Arts and Humanities Council, William M. Andres, Exec. Director, Jim Thorpe Building, Sixth Floor, 2101 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105 (405) 424–1606.

Oregon Arts Commission, David Rhoten, Chairman, 328 Oregon Building, 494 State Street, Salem, Oregon 97301 (503) 378–3625.

Commonwealth of Pennsylvania Council on the Arts, Robert Bernat, Exec. Director, 503 North Front Street, Harrisburg, Pennsylvania 17101 (717) 787–6883.

Institute of Puerto Rican Culture, Luis M. Rodriguez Morales, Exec. Director, Apartado Postal 4184, San Juan, Puerto Rico 00905 (809) 723–2115.

Rhode Island State Council on the Arts, Mrs. Anne Vermel, Exec. Director, 4365 Post Road, East Greenwich, Rhode Island 02818 (401) 884–6410.

South Carolina Arts Commission, Rick George, Exec. Director, 829 Richland Street, Columbia, South Carolina 29201 (803) 758–3442.

South Dakota State Fine Arts Council, Mrs. Charlotte Carver, Exec. Director, 108 West 11th Street, Sioux Falls, South Dakota 57102 (605) 339–6646.

Tennessee Arts Commission, Norman Worrell, Exec. Director, 222 Capitol Hill Building, Nashville, Tennessee 37219, (615) 741–1701.

Texas Commission on the Arts and Humanities, Maurice D. Coats, Exec. Director, P.O. Box 13406, Capitol Station, Austin, Texas 78711 (512) 475–6593.

Utah State Division of Fine Arts, Mrs. Ruth Draper, Director, 609 East South Temple Street, Salt Lake City, Utah 84102 (801) 328–5895.

Vermont Council on the Arts, Inc., Peter Fox Smith, Exec. Director, 136 State Street, Montpelier, Vermont 05602 (802) 828–3291.

Virginia Commission on the Arts and Humanities, Frank R. Dunham, Exec. Director, 1215 State Office Building, Richmond, Virginia 23219 (804) 770–4492 or 770–3591.

Virgin Islands Council on the Arts, Stephen J. Bostic, Exec. Director, Caravelle Arcade, Christiansted, St. Croix, U.S. Virgin Islands 00820 (809) 773–3075, x3.

Washington State Arts Commission, James L. Haseltine, Exec. Director, 1151 Black Lake Boulevard, Olympia, Washington 98504, (206) 753–3860.

West Virginia Arts and Humanities Council, Norman Fagan, Exec. Director, State Office Building 6, Rm. B–531, 1900 Washington Street, East, Charleston, West Virginia 25305, (304) 348–3711.

Wisconsin Arts Board, Jerrald Rouby, Exec. Director, 123 W. Washington Avenue, Madison, Wisconsin 53702, (608) 266–6959.

Wyoming Council on the Arts, Michael Haug, Exec. Director, 200 West 25th Street, Cheyenne, Wyoming 82002, (307) 777–7742.

DESIGNATED COOPERATING ORGANIZATIONS

Center for Understanding Media, Inc., 75 Horatio Street, New York, New York 10014, (212) 989–1000.

New York Foundation for the Arts, Inc., 60 East 42nd Street, Room 935, New York, New York 10017, (212) 986–3140.

Poets and Writers, Inc., 210 West 45th Street, New York, New York 10019, (212) 757–2766.

Charles Reinhart Management, Inc., 1860 Broadway, Room 1112, New York, New York 10023, (212) JU6–1925.

San Francisco Poetry Center, San Francisco State College, San Francisco, California 94132, (415) 469–2227.

St. Paul Council of Arts and Sciences, 30 East 10th Street, St. Paul, Minnesota 55101, (612) 227–8241.

ADDENDUM

In submitting their application for Artists-in-Schools, SAAs wil be formulating a program outline. The format of the program outline is suggested as follows:

For Each Component.

(1) Description of goals and objectives.

(2) Artist selection procedures.

(3) School responsibilities, provision of:

Facilities.

Personnel (in-school coordinators, etc.).

Ground transportation (if any) for artists.

(4) Component Implementation Planning/Orientation: Workshops/meetings Residencies.

(A) Length.

(B) Activities.

Coordinator (if any).

(5) State Arts Agency Role.

(6) Other Related Aspects (e.g. Connection with Manpower Training Program, Elementary and Secondary Education Act, Emergency School Aid Act, consideration of questions itemized in this addendum, et cetera.)

(7) Reporting.

Format.

Deadline(s).

The following questions have been raised in discussions with the state arts agencies, artists, and Endowment consultants and are listed here in the belief that they may assist the states in the preparation of their program outlines.

Questions.

(1) How does the program outline insure the involvement of the best available professional and practicing artists in the AIS Program under the national guidelines?

How does the program outline insure standards and balance by art form consistent with the national guidelines?

(2) How is the program to avoid concentration in only affluent school districts?

(3) How does the program outline insure establishment of state selection panels (as required) in accordance with the national guidelines?

(4) How are matching funds to be secured?

(5) How will evaluation be accomplished? (Artists-in-Schools is an artist-oriented program, so evaluation efforts should be tailored to the special nature of the program. Strictly educational criteria may not always accommodate to the uniqueness of the Artists-in-Schools Program.)

What provision is being made for the inclusion of the artists' viewpoint to be included in the evaluation process?

(6) What indication is there of concentration on "in-depth" as opposed to "spread" activity?

(7) What plan exists to assure follow-up in the second year? (Follow up or take-over funding is an essential ingredient for a good program outline.)

(8) What provision is made for a state Artists-in-Schools coordinator? What provision is being made for in-school coordinators at the individual project sites? What provisions will be made for adequate release time for these coordinators? (Locally, someone on site should be able to free the artist from administrative work so he or she can spend the maximum amount of time doing what he or she was brought there to do.)

(9) What provision is being made to insure that artists meet together and with school personnel to discuss the program at the inception, mid-term and conclusion of the project?

(10) What provision is being made for the orientation of the teachers in the methods and techniques employed by artists?

(11) Is the flexibility required for the successful operation of the program provided? (e.g. joining of components, if desired).

(12) What joint planning is going on under AIS with state departments of education, local schools, state arts agencies, or other related state groups?

(13) How are artists being involved each step of the way in AIS planning along with teachers, coordinators, and administrators to insure that the artists are doing what they want to do and are capable of doing in the schools, and not what someone else thinks might be worthwhile?

(14) What provision does the program outline have for avoiding misunderstanding by offering contracts which are carefully negotiated with artists? (consideration should be given to health and other benefits).

(15) What provision is there for showings of AIS films? What provision for dissemination of evaluation reports?

(16) Does the program outline encourage schools to assume a larger amount of cash matching in yearly increments?

(17) Does the program outline provide for early notification to the artist of continuation of the residency of the following year?

(18) What provision, if any, in the program outline is there for purchase of artists/works through state or local resources?

(19) What provision is there in the program outline for accreditation of teacher workshops given by artists?

(20) What provision is there in the program outline to assure optimum working spaces for artists?

(21) What provision is there in the program outline to explore with administrators the possibilities for allowing artists to work with students for more than the usual class period?

(22) What provision is there in the program outline for an exhibition of the work of the resident artist early in the school year? (This might help generate support and stimulate community interest in the project.)

[FR Doc.75–12225 Filed 5–8–75;8:45 am]

NATIONAL SCIENCE FOUNDATION

UTILITY ADVISORY PANEL

Meeting

The Utility Advisory Panel will hold a two day meeting with the Energy Conversion Alternatives Study (ECAS) Steering Committee as indicated below:

Dates—May 27 (9:30 a.m. to 5 p.m.) and May 28 (8:30 a.m. to 2 p.m.).

Place—National Aeronautics and Space Administration (NASA) Lewis Research Center. Auditorium of the Administration Building Cleveland, Ohio.

The Utility Advisory Panel was established on March 18, 1975, in accordance with the Federal Advisory Committee Act, Pub. L. 92–463. The purpose of this Panel is to review the assumptions made

by, and the results of, the Energy Conversion Alternatives Study which is supported by the National Science Foundation, the National Aeronautics and Space Administration, and the Department of Interior's Office of Coal Research. As the aim of the study is to evaluate candidate coal energy conversion systems for application to electric power generation, it is necessary to ensure that the results are applicable to electric utilities.

The agenda for May 27th includes presentations by both the General Electric Corporation and the Westinghouse Corporation on energy conversion alternatives. On May 28th the Panel will discuss the NASA/Lewis work and will then make recommendations to the ECAS Steering Committee.

The meeting will be open to the public. Anyone who plans to attend or would like more information about this Panel should contact Dr. Richard I. Schoen, Division of Advanced Energy Research and Technology, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-7364.

Summary minutes of this meeting can be obtained from the Committee Management Coordination Staff, Management Analysis Office, National Science Foundation, Washington, D.C. 20550.

FRED K. MURAKAMI,
Committee Management Officer.

MAY 6, 1975.

[FR Doc.75-12284 Filed 5-8-75;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-534]

INSTITUTE FOR RESOURCE MANAGEMENT

Application for and Consideration of Issuance of Facility Export License

Please take notice that the Institute for Resource Management has submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of a research reactor with a thermal power level of 0.1 watts to Kyung Hee University, Seoul, Korea and that the issuance of such license is under consideration by the Nuclear Regulatory Commission.

No license authorizing the proposed reactor export will be issued until the Nuclear Regulatory Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The application complies with the requirements of the Act, and the Commission's regulations set forth in 10 CFR Ch. I, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Nuclear Regulatory Commission does not evaluate the health and safety characteristics of the facility to be exported.

Unless on or before May 27, 1975, a request for a hearing is filed with the Nuclear Regulatory Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of Nuclear Material Safety and Safeguards may, upon the determinations and findings noted above, cause to be issued to the Institute for Resource Management a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Nuclear Regulatory Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Md., this 6th day of May 1975.

For the Nuclear Regulatory Commission.

G. WAYNE KERR,
Agreements & Exports Branch, Division of Materials and Fuel Cycle Facility Licensing.

[FR Doc.75-12232 Filed 5-8-75;8:45 am]

[Docket Nos. STN 50-488, 489, and 490]

DUKE POWER CO.

Availability of Draft Environmental Statement for Perkins Nuclear Station, Units 1, 2, and 3

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed Perkins Nuclear Station, Units 1, 2, and 3 by Duke Power Company in Davie County, North Carolina is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. and in the Davie County Public Library, 416 N. Main Street, Mocksville, North Carolina 27028. The Draft Statement (NUREG-75/035) is also being made available at the Office of Intergovernmental Relations, 116 West Jones Street, Raleigh, North Carolina 27603 and at the Piedmont Triad Council of Governments, P.O. Box 8945, 5506 W. Friendly Avenue, Greensboro, North Carolina 27410. Requests for copies of the Draft Environmental Statement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Director, Division of Reactor Licensing.

The Applicant's Environmental Report, as supplemented, submitted by Duke Power Company is also available for public inspection at the above-designated locations. Notice of availability of the Applicant's Environmental Report was published in the FEDERAL REGISTER on July 9, 1974 (39 FR 26472).

Pursuant to 10 CFR Part 51, interested persons may submit comments on the Applicant's Environmental Report, as supplemented, and the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Applicant's Environmental Report and the Draft Environmental Statement (local agencies may obtain these documents upon request). Comments are due by July 1, 1975. Comments by Federal, State, and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Davie County Public Library, 416 N. Main Street, Mocksville, North Carolina 27028. Upon consideration of comments submitted with respect to the Draft Environmental Statement, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the FEDERAL REGISTER.

Comments on the Draft Environmental Statement from interested persons of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Rockville, Maryland this 5th day of May, 1975.

For the Nuclear Regulatory Commission.

WM. H. REGAN, Jr.,
Chief, Environmental Projects Branch #4, Division of Reactor Licensing.

[FR Doc.75-12281 Filed 5-8-75;8:45 am]

[Docket No. Stn 50-482]

KANSAS GAS AND ELECTRIC CO. AND KANSAS CITY POWER AND LIGHT CO. (WOLF CREEK GENERATING STATION, UNIT NO. 1)

Convening Special Prehearing Conference

The Atomic Safety and Licensing Board has been informed that the attorneys for the parties to the proceeding have agreed to request that a special prehearing conference be convened by the Board on Monday, May 19, 1975 in Lawrence, Kansas.

Wherefore, It is ordered, in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, particularly § 2.751(a) thereof, a special prehearing conference shall convene at 11 a.m. (local time) on Monday, May 19, 1975 in Division 2 Courtroom, Second Floor, Watkins Museum Building, 11th and Massachusetts Streets, Lawrence, Kansas 66044.

Issued May 5, 1975 at Bethesda, Maryland.

ATOMIC SAFETY AND LICENSING BOARD.
SAMUEL W. JENSCH,
Chairman.

[FR Doc.75-12282 Filed 5-8-75;8:45 am]

[Docket Nos. Stn 50-522, Stn 50-523]

PUGET SOUND POWER AND LIGHT CO., ET AL. (SKAGIT NUCLEAR POWER PROJECT, UNITS 1 & 2)

Convening Evidentiary Hearing

Take notice that, in accordance with the Atomic Energy Act, as amended, and the rules of practice of the Commission, and as announced at the special prehearing conference held on April 15, 1975, it is ordered the evidentiary hearing in this proceeding shall convene at 9 a.m. (local time) on Tuesday, July 15, 1975 in the U.S. District Court in Room 218 Federal Building, 104 West Magnolia Street, Bellingham, Washington 98225.

The evidentiary hearing will provide an opportunity to receive the statements from persons who desire to make limited appearances in accordance with the Rules of Practice of the Commission. These statements will be received at the commencement of the proceeding, after the entry of appearances by the attorneys for the parties and after the receipt of opening statements concerning the scope of evidence intended to be introduced by the parties.

Issued May 6, 1975 at Bethesda, Maryland.

ATOMIC SAFETY AND LICENSING BOARD.
SAMUEL W. JENSCH,
Chairman.

[FR Doc.75-12283 Filed 5-8-75;8:45 am]

[Docket No. PRM-50-13]

BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST

Filing of Petition for Rule Making

Notice is hereby given that the Business and Professional People for the Public Interest, 109 North Dearborn Street, Suite 1001, Chicago, Illinois by mailgram dated March 24, 1975, have filed with the Nuclear Regulatory Commission a petition for rule making.

The petitioners request that the Commission amend its regulation, 10 CFR Part 50, to require licensees to shut down operating units of nuclear power units at multi-unit facilities during periods when work on a unit under construction could compromise the integrity of the engineered safety features on an operating unit or units.

The petitioners also request that the Commission review and identify those operating nuclear power plants that do not fully comply with the criteria of IEEE Standard 279 for nuclear power plant protection systems, and issue an order to show cause why such plants should not be required to shut down until they are retrofitted to meet the criteria.

Section 50.55a(h) of 10 CFR Part 50 presently reads as follows:

(h) Protection systems: For construction permits issued after January 1, 1971, protection systems shall meet the requirements set forth in editions or revisions of the Institute of Electrical and Electronics Engineers Standard: Criteria for Protection Systems for Nuclear Power Generating Stations (IEEE 279) in effect 12 months prior to the date of issuance of the construction permit. Protection systems may meet the requirements set forth in editions or revisions of IEEE 279 which have become effective after 12 months prior to the date of issuance of the construction permit.

As a basis for the petition, the petitioners refer to the fire which occurred on March 22, 1975, in the electrical cabling at the Tennessee Valley Authority's Browns Ferry Nuclear Station in Alabama. The petitioners state that this occurrence represents a serious failure to meet the intent of Criterion 22, Protection system independence, Appendix A, 10 CFR Part 50.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. A copy of the petition may be obtained by writing the Division of Rules and Records at the below address.

All interested persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, on or before July 8, 1975.

Dated at Washington, D.C. this 5th day of May 1975.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.75-12351 Filed 5-8-75;8:45 am]

[Docket Nos. 50-500A, 50-501A]

TOLEDO EDISON COMPANY, ET AL., (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3)

First Prehearing Conference

A prehearing conference in the above proceeding will be held commencing at 10 a.m. on Wednesday, May 14, 1975, at the U.S. Tax Court, South Courtroom, Room 358, 400 Second Street, NW., Washington, D.C. to consider factors set forth in Title 10 CFR 2.751(a) of the Commission's rules of practice and in particular the identification of key issues in this proceeding.

Issued at Bethesda, Md., this 6th day of May 1975.

ATOMIC SAFETY AND LICENSING BOARD,

JOHN H. BREBBIA,
Member.

JOHN M. FRYSIAK,
Member.

DOUGLAS V. RIGLER,
Chairman.

[FR Doc.75-12353 Filed 5-8-75;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

ADVISORY COMMITTEE ON THE BALANCE OF PAYMENTS STATISTICS PRESENTATION

Public Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Advisory Committee on the Balance of Payments Statistics Presentation to be held on Friday, May 23, 1975, in room 10104 of the New Executive Office Building, 17th Street between Pennsylvania Avenue and H Street, NW., Washington, D.C. starting at 9:45 a.m.

The objective of the Committee is to develop recommendations to improve the presentation of the official statistics of the U.S. balance of payments which are published quarterly by the Department of Commerce in press releases and in the "Survey of Current Business." The Committee will consider the merits of the present and alternative methods of presenting and summarizing the accounts which would facilitate a more meaningful analysis by the government and the public, and will recommend to the Director of OMB improvements in the tables which could be implemented with the available basic data.

The meeting will be open to public observation and participation. Further information regarding the meeting may be obtained from the Statistical Policy Division, Office of Management and Budget, Room 10208, New Executive Office Building, Washington, D.C., telephone (202) 395-4730.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.75-12280 Filed 5-8-75;8:45 am]

CLEARANCE OF REPORTS

Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on May 6, 1975 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

National Center for Education Statistics, NCES User Needs Evaluation Questionnaire and Mailing List OE 2378, single-time, organizations using educational statistics, Planchon, P., 395-3898.

DEPARTMENT OF LABOR

Manpower Administration, Labor Market Information Reporting Instructions, other (see SF-83), State ES agencies, Strasser, A., 395-3880.

DEPARTMENT OF THE INTERIOR

National Park Service, Attitudes and Perceptions of Whitewater River Float Trip Participants on NPS, single-time, persons taking float trips in Dinosaur National Monument and Canyonlands National Park, Planchon, P., 395-3898.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration, Aviation Safety Report, FAA 8020-12, on occasion, users of the airspace system, Lowry, R. L., 395-3772.

Departmental and other, Program of University Research/Annual Follow-up Evaluation, on occasion, graduate students, Lowry, R. L., 395-3772.

ENVIRONMENTAL PROTECTION AGENCY

State Personnel Reclassification Study (Part 2) Air Pollution Control Agency, single-time, 55 State air pollution control agencies, Weiner, N., 395-4890.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Ball Bearings, Including Ball Bearings with Integral Shafts, Importers' Questionnaire, single-time, importers of ball bearings, Evinger, S. K., 395-3648.

REVISIONS

U.S. CIVIL SERVICE COMMISSION

Personal Qualifications Statement, SF 171, on occasion, individuals applying for Federal employment, Caywood, D. P., 395-3443.

DEPARTMENT OF COMMERCE

Bureau of Domestic Commerce, Franchising in the Economy, 1974-1976, DIB-910, annually, franchisors, Hulett, D. T., 395-4730.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation, Supplementary Homicide Report, 12-84, monthly, all law enforcement agencies where murder occurs, Hall, George, 395-4697.

Drug Enforcement Administration, Project Dawn—IV—Drug Abuse Warning Network, on occasion, see supporting statement, Reese, B. F., 395-5630.

DEPARTMENT OF TRANSPORTATION

Coast Guard, Characteristic of Liquid Chemicals Proposed for Bulk Water Movement, CG-4355, on occasion, chemical industry, Weiner, N., 395-4890.

DEPARTMENT OF TREASURY

Bureau of Customs, Abstract of Manufacturing Records (Wool and/or Hair), 7531-B, quarterly, manufacturers or processors of wool and/or hair, Caywood, D. P., 395-3443.

EXTENSIONS

DEPARTMENT OF JUSTICE

Departmental and other:

Application for Federal Assistance (Nonstruction), LEAA 4000/4, on occasion, Marsha Traynham, 395-4529.

Application for Federal Assistance (Construction), LEA 4000/4, on occasion, Marsha Traynham, 395-4529.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration, Annual Highway Safety Work Program (Volume 103, Chapter 3, Highway-Safety Program Manual) (AHSWB), HS-62, annually, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75-12387 Filed 5-8-75;8:45 am]

CLEARANCE OF REPORTS

Request

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on May 5, 1975 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

FEDERAL RESERVE SYSTEM

Special Survey of Respondents to the Survey of Time and Savings Deposits, single-time, commercial banks, Hulett, D. T., 395-4730.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, Member/Stockholder Ownership Retirement, Colorado Cooperatives, single-time, agricultural co-op firms, Hulett, D. T., 395-4730.

Food and Nutrition Service, Survey to Develop a Profile of School Food Service Personnel, single-time, school food service personnel, Sunderhauf, M. B., 395-4911.

DEPARTMENT OF COMMERCE

Bureau of Domestic Commerce, Black Walnut Logs and Veneers, DIB-947, annually, black walnut veneer producers, Weiner, N., 395-4890.

Food and Nutrition Service, Survey to Develop a Profile of School Food Service Personnel, single-time, school food service personnel, Sunderhauf, M. B., 395-4911.

National Oceanic and Atmospheric Administration:

Sport Fishermen's Cooperative Fishing Log (Atlantic Bluefin Tuna, Sport Fish Survey 1975), 88-915, single-time, marine sport fishermen, Planchon, P., 395-3898.

Specimen Log (Atlantic Bluefin Tuna, Sport Fishery Survey 1975), 88-916, on occasion, marine sport fisherman, Planchon, P., 395-3898.

Interview Log (Atlantic Bluefin Tuna, Sport Fishery Survey 1975), 88-917, on occasion, marine sport fishermen, Planchon, P., 395-3898.

Charter Boat Fishing Log (Atlantic Bluefin Tuna, Sport Fishery Survey 1974), 88-918, on occasion, marine sport fishing charter boat crew, Planchon, P., 395-3898.

Marina Log (Atlantic Bluefin Tuna, Sport Fishery Survey 1975), 88-919, on occasion, marine sport fishing marina employees, Planchon, P., 395-3898.

Atlantic Bluefin Tuna, Sport Fishery 1975 for New York, 88-915, 88-916, 88-917, 88-918, 88-919, on occasion, contract university personnel, Planchon, P., 395-3898.

Atlantic Bluefin Tuna Sport Fishery Survey 1975 for New Jersey, 88-915, 88-916, 88-917, 88-918, 88-919, on occasion, contract university personnel, Planchon, P., 395-3898.

Effort Card for Private Boat Owners, single-time, private boat owners, Planchon, P., 395-3898.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

HEALTH RESOURCES Administration, Mt. Sinai Hospital, Work Quality Demonstration Project, NCHS 0416, single-time, hospital workers, Dick Eisinger, 395-4716.

DEPARTMENT OF JUSTICE

Departmental and other, Video Recording and Reproducing Equipment Report LEAA 7360/1, on occasion, Federal, State, local criminal justice agencies, Caywood, D. P., 395-3443.

REVISIONS

VETERANS ADMINISTRATION

Report of Income From Sale of Property (Veterans Widow), 21-6783, on occasion, veterans and widows, Caywood, D. P., 395-3443.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, Potato Objective Yield Survey, other (see SF-83), potato growers, Lowry, R. L., 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, FY 1975 Annual Program and Expenditures Report, College Library Resources Grants, OE 3115, annually, institutions of postsecondary education, Lowry, R. L., 395-3772.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service, Report of Tobacco Acreage, ASCS-311, on occasion, operators of farms with types 32 and 41 tobacco, Marsha Traynham, 395-4529.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, Shrimp Log Book—Shrimp Landings—U.S. Flag Vessels, NOAA 88-23, monthly, Marsha Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Grant Application for Advanced Institutional Development Programs, Title III, HEA, PL 89-329 as amended, OE 1049-1, annually, institutions of postsecondary education, Lowry, R. L., 395-3772.

Bureau of Labor Statistics:
Occupational Wage Resurvey (by mail for alternate years), 2752B, on occasion, private industry establishments in selected areas, Strasser, A., 395-3880.
Wage-Rate Information (by occupation), 2752A, on occasion, private industry establishments in selected areas, Strasser, A., 395-3880.
General Establishment Information (in manufacturing, public utilities, communications and insurance industries), BLS 2751A, on occasion, private industry establishments in selected areas, Strasser, A., 395-3880.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75-12388 Filed 5-8-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 2-49435, etc.]

CORNING GLASS WORKS

Application and Opportunity for Hearing

MAY 2, 1975.

Notice is hereby given that Corning Glass Works (the "Company"), a New York Corporation, has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of First National City Bank under (i) an Indenture of the Company, dated as of October 1, 1951 (the "1951 Corning Indenture"), which has not been qualified under the Act, (ii) an Indenture of Corning International Corporation (a Delaware corporation and hereinafter referred to as "International"), dated as of March 15, 1971 (the "1971 International Indenture"), which has not been qualified under the Act, (iii) an Indenture of Dow Corning Overseas Capital Company N.V. (a Netherlands Antilles corporation and hereinafter referred to as "Overseas"), dated as of June 15, 1971 (the "1971 Overseas Indenture") which has not been qualified under the Act, and (iv) two Indentures of the Company, dated as of November 15, 1973 (the "1973 Corning Indenture") and as of November 1, 1974 (the "1974 Corning Indenture"), respectively, both of which have been heretofore qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First National City Bank from acting as Trustee under the 1971 Overseas Indenture or the 1951 Corning Indenture, the 1971 International Indenture, the 1973 Corning Indenture or the 1974 Corning Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Company alleges the following:

1. It has issued and outstanding:

(a) $8,100,000 principal amount of its 3¾-percent Income Debentures due March 1, 2002 under the 1951 Corning Indenture between the Company and First National City Bank, Trustee. The 1951 Corning Indenture has not been qualified under the Act;

(b) $50,000,000 principal amount of its 7¾ percent Sinking Fund Debentures due November 15, 1998 under the 1973 Corning Indenture between the company and First National City Bank, Trustee. The 1973 Corning Indenture has been qualified under the Act (File No. 2-49435 (22-7690)); and

(c) $50,000,000 principal amount of its 8.65 percent Notes due May 1, 1980 under the 1974 Corning Indenture between the Company and First National City Bank, Trustee. The 1974 Corning Indenture has been qualified under the Act (File No. 2-52173 (22-8100)).

2. International has issued and outstanding $20,000,000 principal amount of its 8½ percent Guaranteed Sinking Fund Debentures due March 15, 1986 under the 1971 International Indenture among International, the Company and First National City Bank, Trustee. The 1971 International Indenture has not been qualified under the Act. The 1971 International Indenture contains the Company's unconditional guarantee of the securities issued thereunder.

3. Overseas has issued and outstanding $20,000,000 principal amount of its 8½ percent Guaranteed Debentures under the 1971 Overseas Indenture among Overseas, The Dow Chemical Company (a Delaware corporation and hereinafter referred to as "Dow"), the Company and First National City Bank, Trustee. The 1971 Overseas Indenture contains the Company's and Dow's joint and several unconditional guarantee of the securities issued thereunder. The Company and Dow are parties to a reciprocal indemnification agreement, dated May 26, 1971, which provides that they shall share equally in all payments made by them as guarantors of the Securities issued under the 1971 Overseas Indenture.

4. The trusteeships of First National City Bank under the 1951 Corning Indenture, the 1971 International Indenture and the 1973 Corning Indenture were disclosed in connection with the Registration Statement Form S-7 (File No. 2-49435 (22-7690)) and Registration Statement Form S-7 (File No. 2-52173 (22-8100)) of the Company under the Securities Act of 1933 and the trusteeship of First National City Bank under the 1974 Corning Indenture was disclosed in connection with the Registration Statement Form S-7 (File No. 2-52173 (22-8100)) of the Company under the Securities Act of 1933. Said trusteeships under the 1951 Corning Indenture and the 1971 International Indenture were specifically described in section 608(c)(1) of Article Six of the 1973 Corning Indenture and section 608(c)(1) of Article Six of the 1974 Corning Indenture and said trusteeship under the 1973 Corning Indenture was specifically described in section 608(c)(1) of Article Six of the 1974 Corning Indenture. Since each said Registration Statement has become effective and no order has been issued by the Commission under section 305(b)(3) of the Trust Indenture Act of 1939, First National City Bank has continued to act as Trustee under the 1951 Corning Indenture, the 1971 International Indenture, the 1973 Corning Indenture and the 1974 Corning Indenture.

5. The trusteeship of First National City Bank under the 1971 Overseas Indenture was disclosed in connection with an application of Dow, dated May 21, 1971 (the "1971 Dow Application") (File No. 2-3120) to the Commission under section 310(b)(1)(ii) of the Act for an order that the trusteeship of First National City Bank under the 1971 Overseas Indenture did not require the disqualification of First National City Bank from acting as Trustee under (i) an indenture, dated as of September 15, 1963 (the "1963 Dow Indenture"), between Dow and First National City Bank, Trustee, under which Dow has issued and outstanding its Twenty-Five Year 4.35 percent Debentures due September 15, 1988, or (ii) an indenture, dated as of May 1, 1970 (the "1970 Dow Indenture"), between Dow and First National City Bank, Trustee. The 1963 Dow Indenture and the 1970 Dow Indenture were each qualified under the Act (File No. 2-21682 (22-3581) and No. 2-236992 (22-6017), respectively). The Commission issued its Order, dated August 6, 1971 (File No. 3-3120), granting the 1971 Dow Application and finding that the trusteeships of First National City Bank under the 1971 Overseas Indenture and the 1963 Dow Indenture and the 1970 Dow Indenture were not so likely to involve a material conflict of interest as to make it necessary in the public interest of for the protection of investors to disqualify said Bank from acting as Trustee

under any of said Indentures. First National City Bank has continued to act as Trustee under the 1971 Overseas Indenture, the 1963 Dow Indenture and the 1970 Dow Indenture.

6. Aside from differences between the 1971 Overseas Indenture and the 1951 Corning Indenture, the 1971 International Indenture, the 1973 Corning Indenture and the 1974 Corning Indenture as to amounts, dates, interest rates and certain other figures, the principal difference between the provisions of the 1971 Overseas Indenture and of said other Indentures, are as follows:

(a) As in the case of the 1971 International Indenture, the Company is a party to the 1971 Overseas Indenture only as a guarantor of the Debentures, whereas the Company is the principal obligor on the securities outstanding under the 1951 Corning Indenture, the 1973 Corning Indenture and the 1974 Corning Indenture.

(b) The Debentures issued under the 1971 Overseas Indenture, as in the case of the securities issued under the 1971 International Indenture, are issuable as coupon debentures not registerable as to principal and interest, whereas the securities issued under the 1951 Corning Indenture, the 1973 Corning Indenture and the 1974 Corning Indenture are registered without coupons.

(c) The 1971 Overseas Indenture (Article Three thereof), as the 1951 Corning Indenture (Article Three thereof), the 1971 International Indenture (Article Three thereof) and the 1973 Corning Indenture (Article Twelve thereof), require the obligor thereunder to make certain mandatory annual redemptions (Article Three thereof), whereas the 1974 Corning Indenture contains no such requirements.

(d) The 1971 Overseas Indenture, as the 1951 Corning Indenture and the 1971 International Indenture, does not contain provisions under which failure to make payment in respect of other indebtedness results in an event of default, whereas both the 1973 Corning Indenture (section 501(5) of Article Five thereof) and the 1974 Corning Indenture (section 501(4) of Article Five thereof) contain cross-default provisions.

(e) The 1971 Overseas Indenture (section 5.01 of Article Five thereof), as the 1951 Corning Indenture (section 505 of Article Five thereof), the 1973 Corning Indenture (section 1008 of Article Ten thereof) and the 1974 Corning Indenture (section 1008 of Article Ten thereof), contains provisions for protection against mortgages and other liens on the property of the obligor thereunder, whereas the 1971 International Indenture does not contain such provisions.

(f) The sections on the disqualification of the Trustee in the case of conflicting interest (Section 608 of Article Six in the 1973 Corning Indenture and Section 608 of Article Six in the 1974 Corning Indenture) and the limitation on the rights of the Trustee as a creditor (Section 613 of Article Six in the 1973 Corning Indenture and Section 613 of Article Six in the 1974 Corning Indenture) are omitted from the 1971 Overseas Indenture as from the 1951 Corning Indenture and the 1971 International Indenture.

(g) The 1951 Corning Indenture provides that (i) each instalment of interest on the unpaid principal amount of the debentures issued thereunder due on any interest payment date shall be payable only to the extent of the obligor's Consolidated Net Earnings for the next preceding Earnings Period (as such terms are defined in the 1951 Corning Indenture), (ii) any deficiency shall be fully cumulative and each such deficiency and all prior deficiencies, to the extent not paid, shall be due and payable on each succeeding interest payment date but only to the extent of the excess of Consolidated Earnings for the Earnings Period next preceding such succeeding interest payment date over the interest due and payable on such succeeding interest payment date, and (iii) all accrued but unpaid interest on the principal amount of the debentures or a portion thereof, as the case may be, shall be due and payable in full on the maturity date thereof. This provision is unique to the 1951 Corning Indenture.

7. The joint and several unconditional guarantee of the Company under the 1971 Overseas Indenture, the 1951 Corning Indenture, the unconditional guarantee of the Company under the 1971 International Indenture, the 1973 Corning Indenture and the 1974 Corning Indenture are each wholly unsecured. Should the joint and several unconditional guarantee of the Company under the 1971 Overseas Indenture be enforced against the Company, it would rank on a parity with the obligations of the Company evidenced by the securities issued under the 1951 Corning Indenture, the 1973 Corning Indenture and the 1974 Corning Indenture and with the obligations of the Company as guarantor of the securities issued under the 1971 International Indenture.

8. The differences between the provisions of the 1971 Overseas Indenture and the 1951 Corning Indenture, the 1971 International Indenture, the 1973 Corning Indenture and the 1974 Corning Indenture are unlikely to cause any conflict of interest between the respective trusteeships of First National City Bank under said Indentures.

9. The Company waives notice of hearing, and waives hearing, in connection with the matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Commission's Public Reference Section, 1100 L Street NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than May 29, 1975, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.75-12241 Filed 5-8-75;8:45 am]

OFFICE OF TELECOMMUNICATIONS POLICY

ELECTROMAGNETIC RADIATION MANAGEMENT ADVISORY COUNCIL

Meeting

Notice is hereby given that the Electromagnetic Radiation Management Advisory Council (ERMAC) will meet at 9 a.m. in Room 704, 1800 G Street, NW., Washington, D.C., on Wednesday, May 21, 1975.

The principal agenda items will be the discussions of certain classified documents. In addition, there will be a short discussion of possible personnel actions. Since the first matter will concern documents covered by 5 U.S.C. 552(b)(1), and the second will be covered by 5 U.S.C. 552(b)(6), the meeting will be closed pursuant to section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463).

The names of members of the Council, and other information pertaining to the meeting may be obtained from Lt. Cmdr. David C. Brown, Office of Telecommunications Policy, Washington, D.C. 20504 (telephone: 202-395-4737).

Dated: May 5, 1975.

BROMLEY SMITH,
Advisory Committee Management Officer.

[FR Doc.75-12222 Filed 5-8-75;8:45 am]

VETERANS ADMINISTRATION

COOPERATIVE STUDIES EVALUATION COMMITTEE

Meeting

The Veterans Administration gives notice pursuant to Public Law 92-463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 USC 4101, will be held in Room 119 of the main Veterans Administration building, 810 Vermont Avenue, NW, Washington, DC, on June 10, 11 & 12, 1975. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, the scientific validity and the propriety of technical details, including involvement of human subjects. The Committee advises the Assistant Chief Medical Director for Research and Development through the Chief, Cooperative Studies Program on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8 to 9 a.m., June 10, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator of the Committee, Veterans Administration Central Office, Washington, D.C., (202-389-3702) prior to May 28. The meeting will be closed from 9 a.m. to 5 p.m. on June 10 and all day each day on June 11 & 12 for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92-463 and sections 552(b)(2) and 552(b)(6) of Title 5, U.S. Code. During this portion of the meeting, discussion and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute an invasion of personal privacy.

Dated: May 5, 1975.

[SEAL] R. L. ROUDEBUSH,
Administrator.

[FR Doc.75-12285 Filed 5-8-75;8:45 am]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH STATISTICS

Meeting

The BRAC Committee on Occupational Safety and Health Statistics will meet at 10 a.m., May 28, 1975, at the General Accounting Office Building, 441 G Street NW., Room 4454, Washington D.C. The agenda for the meeting is as follows:

1. Discussion of Alternative Questions for Inclusion in the Varying Section of the 1975 Survey.
2. Matters Relating to Recordkeeping.
(a) Status of proposal for employee access to information on the log.
(b) Discussion of desirability of issuing guidelines for distinguishing between first aid and medical treatment.
(c) Demonstration of audio aid on recordkeeping.
3. Research Activities.
(a) Fatality Task Force project.
(b) The collective bargaining study of safety and health provisions, just completed by Office of Wages and Industrial Relations.
(c) Discussion of a research proposal on direct wage incentives and work injuries and illnesses.
4. State Programs—Grants and Performance.
(a) Status of grant program FY 75-76.
(b) State Performance in OSHA 103 Survey for 1973.
(c) BLS role in evaluating progress of State 18(b) plans.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on (Area Code 202) 961-2559.

Signed at Washington, D.C., this 1st day of May 1975.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc.75-12294 Filed 5-8-75;8:45 am]

Manpower Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75, published January 29, 1975 (40 FR 4393). In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to: Deputy Assistant Secretary for Manpower, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this fifth day of May 1975.

BEN BURDETSKY,
Deputy Assistant Secretary for Manpower.

Applications received during the week ending May 2, 1975

Name of Applicant	Location of Enterprise	Principal Product or Activity
Stafford Village Shopping Center, Inc.	Stafford, Va.	Shopping center.
Augusta Blocks, Inc.	Staunton, Va.	Manufacture of concrete building blocks.
Snowshoe Co.	Snowshoe, W. Va.	Recreational resort.
Florida West Grain Terminal (Tenant of Jackson County Port Authority).	Sneads, Fla.	Grain purchase, storage, and sales.
Industrial Contracting Co. (Tenant of Jackson County Port of Authority).	....do.	Industrial contracting.
H. B. Arnold Co., Inc.	Americus, Ga.	Grain marketing and storage.
Lumber Sales, Inc.	Franklin, Tenn.	Sale of lumber.
Intracoastal Marine, Inc. (Tenant of Jackson County Port Authority).	Sneads, Fla.	Barge and towing service.
Scott Boat Co., Inc. (Tenant of Tell City)	Tell City, Ind.	Manufacture of fiberglass boats.
Clyde Machines, Inc.	Glenwood, Minn.	Manufacture of agricultural and aircraft equipment.
Hugo Railcar, Inc. (Tenant of Hugo Industrial Development Corp.).	Hugo, Okla.	Repairing and remanufacturing of railroad freight cars.
J&H Custom Furniture, Inc.	Pindall, Ark.	Manufacture of church furniture.
Concordia Health Systems, Inc.	Bella Vista, Ark.	Hospital.
Ampacet Corp.	DeRidder, La.	Manufacture of concentrates for the polyolefin industry.
Nilcon Arizona, Inc.	Chandler, Ariz.	Manufacture of pre-stressed concrete products.
Sunray Packers and Shippers, Inc.	Richgrove, Calif.	Citrus fruit packing plant.

[FR Doc.75-12077 Filed 5-8-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 762]

ASSIGNMENT OF HEARINGS

MAY 6, 1975.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 123048 Sub 318, Diamond Transportation System, Inc., now being assigned July 9, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 103993 Sub 840, Morgan Drive Away, Inc., now being assigned July 10, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 140202, Sea & Shore Enterprises, Inc., now being assigned July 24, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 76032 Sub 286, Navajo Freight Lines, Inc. now assigned July 21, 1975, at Carson City, Nevada, will be held in the Nevada Gaming Control Board Hearing Room, 1180 East Williams St.

MC 138828 Sub 5, Maplewood Equipment Company, now assigned June 3, 1975 at Newark, New Jersey is canceled and transferred to modified procedure.

MC 139913, Foster's Freight, Inc., now assigned May 19, 1975, at Washington, D.C. is cancelled, and transferred to Modified Procedure.

MC 1263 Sub 18, McCarty Truck Line, Inc., now assigned June 2, 1975 at Lincoln, Nebraska will be held in Room 228, Federal Building & U.S. Courthouse, 129 N. 10th Street.

MC-C 8555, S. & C. Corporation, d.b.a. Piedmont Tours v. Mrs. Charles Hodgens, Individual, d.b.a. Tour of the Month Club, now assigned July 8, 1975, at South Carolina, is postponed indefinitely.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.75-12311 Filed 5-8-75;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Applications

MAY 6, 1975.

The following applications to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065(d)(2)), and notice thereof to all interested persons is hereby given as provided in such rules.

Carriers having a genuine interest in an application may file an original and three copies of verified statements in opposition with the Interstate Commerce Commission within 30 days from the date of publication. (This procedure is outlined in the Commission's report and order in Gateway Elimination, 119 M.C.C. 530.) A copy of the verified statement in opposition must also be served upon applicant or its named representative. The verified statement should contain all the evidence upon which protestant relies in the application proceeding including a detailed statement of protestant's interest in the proposal. No rebuttal statements will be accepted.

No. MC 504 (Sub-No. 99G), filed May 3, 1974. Applicant: HARPER MOTOR LINES, INC., 125 Milton Avenue SE., Atlanta, Ga. 30315. Applicant's representative: John P. Carlton, 903 Frank Nelson Building, Birmingham, Ala. 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *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), (1) between Chicago and Peoria, Ill., and points in Ohio, on the one hand, and, on the other, points in South Carolina. The purpose of this filing is to eliminate the gateway of Columbia, S.C. (2) Between Baltimore, Md., on the one hand, and, on the other, points in North Carolina within 30 miles of Laurinburg, N.C., including Laurinburg. The purpose of this filing is to eliminate a gateway point in South Carolina within 30 miles of Laurinburg, N.C. (3) Between Chicago and Peoria, Ill., and points in Ohio, on the one hand, and, on the other, points in North Carolina within 30 miles of Laurinburg, N.C., including Laurinburg. The purpose of this filing is to eliminate the gateways of Columbia, S.C. and a point in South Carolina within 30 miles of Laurinburg, N.C. (4) Between points in South Carolina, on the one hand, and, on the other, points in North Carolina within 30 miles of Laurinburg, N.C., including Laurinburg. The purpose of this filing is to eliminate a gateway point in South Carolina within 30 miles of Laurinburg, N.C.

(5) From Sanford, N.C., to Chicago and Peoria, Ill., and points in Ohio and South Carolina. The purpose of this filing is to eliminate a gateway point in South Carolina within 30 miles of Laurinburg, N.C., and the gateway of Columbia, S.C. (6) From New York, N.Y., and points in New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia, to points in North Carolina within a 100-mile radius of Sanford, N.C., and points in South Carolina. The purpose of this filing is to eliminate the gateways of Sanford, N.C., a point in North Carolina within 100 miles of Sanford, N.C. and within 30 miles of Laurinburg, N.C., and a point in South Carolina within 30 miles of Laurinburg, N.C. (B) (1) *Cotton and cotton goods*, from points in Georgia, North Carolina, and South Carolina, to points in Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia and Wilmington, Del. The purpose of this filing is to eliminate the gateways of Franklinton, Biscoe, Neuse (Falls), Fayetteville, Clayton, Sanford and Laurinburg, N.C., and points in North Carolina and South Carolina within 25 miles of Laurinburg, N.C. (2) *Cotton and cotton goods*, between points in Georgia, North Carolina and South Carolina, on the one hand, and, on the other, Chicago and Peoria, Ill., and points in Ohio. The purpose of this filing is to eliminate the gateway of Columbia, S.C. (3) *Textiles and textile products*, from points in South Carolina and points in North Carolina within 30 miles of Laurinburg, North Carolina, to points in Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia and Wilmington, Del. The purpose of this filing is to eliminate the gateway of a point within 25 miles of Laurinburg, N.C.

(4) *Marble and granite* (except commodities requiring special equipment), from points in South Carolina, to points in North Carolina and Missouri (except St. Louis, Mo., and points within 25 miles thereof). The purpose of this filing is to eliminate the gateway of a point in South Carolina which is within 25 miles of Elberton, Ga. (5) *Granite* (except commodities requiring special equipment), from points in South Carolina, to points in Delaware, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Illinois, Iowa, Wisconsin, and the District of Columbia and St. Louis, Mo., and points within 25 miles thereof. The purpose of this filing is to eliminate the gateway of a point in South Carolina within 25 miles of Elberton, Ga. (6) *Building and monumental stone* (except commodities requiring equipment), from points in South Carolina, to points in West Virginia, Maryland, Ohio and Illinois. The purpose of this filing is to eliminate the gateway of Rion, S.C.

MC 1042 (Sub-No. 9-G), filed June 3, 1974. Applicant: C.P.T. FREIGHT, INC., 2600 Calumet Avenue, Hammond, Ind. 46320. Applicant's representative: Eugene L. Cohn, One North LaSalle Street, Chicago, Ill. 60602. 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 Hebron, DeMotte, Kouts and Boone Grove, Ind. and points in Lake County, Ind., on the one hand, and, on the other, points in Illinois within a territory described as follows: beginning at the shores of Lake Michigan and extending southerly along the Illinois-Indiana State Boundary line to intersection Illinois Highway 114, thence along Illinois Highway 114 to intersection Illinois Highway 17, thence along Illinois Highway 17 to intersection U.S. Highway 66, thence along U.S. Highway 66 to intersection U.S. Highway 24, thence along U.S. Highway 24 to intersection U.S. Highway 150, thence along U.S. Highway 150 to intersection Illinois Highway 88, thence along Illinois Highway 88 to intersection Illinois Highway 2, thence along Illinois Highway 2 to the Illinois-Wisconsin State Boundary line, thence along the Illinois-Wisconsin State Boundary line to the shores of Lake Michigan, and thence southerly along the shores of Lake Michigan to the point of origin, including all points on the above described Highways. The purpose of this filing is to eliminate the gateway of Gary, Ind.

No. MC 3753 (Sub-No. 15-G), filed May 30, 1974. Applicant: A.A.A. TRUCKING CORPORATION, 3630 Quaker Ridge Road, Trenton, N.J. 08619. Applicant's representative: Herbert Burstein, 1 World Trade Center, New York, N.Y. 10048. 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, commodities requiring special equipment, livestock, commodities injurious or contaminating to other lading, clay products, refractory products, and undeliverable and refused clay products and refractory products): (a) between points in Connecticut, Rhode Island and Massachusetts, on the one hand, and, on the other, points in New York in the New York, N.Y. Commercial Zone as defined in *New York, N.Y. Commercial Zone*, 1 M.C.C. 665; points in Orange, Rockland and Westchester Counties, N.Y.; Baltimore, Md.; the District of Columbia; points in that part of New Jersey on, east and south of a line beginning at the New Jersey-New York State Boundary line and extending along U.S. Highway 202 to intersection U.S. Highway 206, thence along U.S. Highway 206 to Trenton, N.J., and also on, north and west of a line beginning at the Delaware River near Penns Grove, N.J. and extending along an unnumbered highway to intersection U.S. Highway 130, thence along U.S. Highway 130 to Bridgeport, N.J., thence along Alternate U.S. Highway 130 to intersection U.S. Highway 130, thence along U.S. Highway 130 to intersection New Jersey Highway 33, and thence along New Jersey Highway 33 to the Atlantic Ocean at Ocean Grove, N.J.; points in that part of Delaware on and north of a line beginning at the Maryland-Delaware State Boundary line and extending along U.S. Highway 40 to intersection Delaware Highway 273, and thence along Delaware Highway 273 to the Delaware River; points in Pennsylvania east of the Susquehanna River and on and south of a line beginning at the Susquehanna River at or near Pittston, Pa., and extending along U.S. Highway 11 to Scranton, Pa., thence along U.S. Highway 611 to the Pennsylvania-New Jersey State Boundary line; and points in Hudson, Burlington, Camden, Gloucester, Salem, Atlantic, Cape May, Cumberland, Mercer, Hunterdon, Morris and Sussex Counties, N.J. The purpose of this filing is to eliminate gateways at ponts in Essex, Union, Bergen and Passaic Counties, N.J., and Newark, N.J. and points within 15 miles of Newark, N.J.

(b) Between points in Burlington, Camden, Gloucester, Salem, Atlantic, Cape May and Cumberland Counties, N.J., on the one hand, and, on the other, points in New York, in the New York, N.Y. Commercial Zone as defined in *New York, N.Y. Commercial Zone*, 1 M.C.C. 665; Baltimore, Md.; the District of Columbia; points in Orange, Rockland and Westchester Counties, N.Y.; points in that part of New Jersey on, east and south of a line beginning at the New Jersey-New York State Boundary line and extending along U.S. Highway 202 to intersection U.S. Highway 206, thence along U.S. Highway 206 to Trenton, N.J., and also on, north and west of a line beginning at the Delaware River near Penns Grove, N.J. and extending along an unnumbered highway to intersection U.S. Highway 130, thence along U.S. Highway 130 to Bridgeport, N.J., thence along Alternate U.S. Highway 130 to intersection U.S. Highway 130, thence along U.S. Highway 130 to intersection New Jersey Highway 33, and thence along New Jersey Highway 33 to the Atlantic Ocean at Ocean Grove, N.J.; points in that part of Delaware on and north of a line beginning at the Maryland-Delaware State Boundary line and extending along U.S. Highway 40 to intersection Delaware Highway 273, and thence along Delaware Highway 273 to the Delaware River; points in Pennsylvania east of the Susquehanna River and on and south of a line beginning at the Susquehanna River at or near Pittston, Pa., and extending along U.S. Highway 11 to Scranton, Pa., thence along U.S. Highway 611 to the Pennsylvania-New Jersey State Boundary line; points in Hudson, Essex, Union, Mercer, Bergen, Hunterdon, Passaic, Morris, and Sussex Counties, N.J.; and points in Middlesex County, N.J. on and north of New Jersey Highway 18. The purpose of this filing is to eliminate gateways at Newark, N.J. and points in New Jersey within 15 miles of Newark, N.J.

(c) Between points in Mercer, Bergen, Hunterdon, Passaic, Morris, and Sussex Counties, N.J., on the one hand, and, on the other, Baltimore, Md.; the District of Columbia; points in Orange, Rockland and Westchester Counties, N.Y.; points in that part of New Jersey on, east and south of a line beginning at the New Jersey-New York State Boundary line and extending along U.S. Highway 202 to intersection U.S. Highway 206, thence along U.S. Highway 206 to Trenton, N.J., and also on, north and west of a line beginning at the Delaware River near Penns Grove, N.J. and extending along an unnumbered highway to intersection U.S. Highway 130, thence along U.S. Highway 130 to Bridgeport, N.J., thence along Alternate U.S. Highway 130 to intersection U.S. Highway 130, thence along U.S. Highway 130 to intersection New Jersey Highway 33, and thence along New Jersey Highway 33 to the Atlantic Ocean at Ocean Grove, N.J.; points in that part of Delaware on and north of a line beginning at the Maryland-Delaware State Boundary line and extending along U.S. Highway 40 to intersection Delaware Highway 273, and thence along Delaware Highway 273 to the Delaware River; points in Pennsylvania east of the Susquehanna River and on and south of a line beginning at the Susquehanna River at or near Pittston, Pa., and extending along U.S. Highway 11 to Scranton, Pa., thence along U.S. Highway 611 to the Pennsylvania-New Jersey State Boundary line; points in New York in the New York, N.Y. Commercial Zone as defined in *New York, N.Y. Commercial Zone*, 1 M.C.C. 665; points in Hudson, Essex and Union Counties, N.J.; and points in Middlesex County, N.J. on and north of New Jersey Highway 18. The purpose of this filing is to eliminate gateways at points in Bergen and Passaic Counties, N.J. located on and east of U.S. Highway 202.

No. MC 5470 (Sub-No. 88G), filed June 4, 1974. Applicant: TAJON, INC., R.D. No. 5, Mercer, Pa. 16137. Applicant's representative: Don Cross, 700 World Center Building, 918 Sixteenth Street NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal*, in dump vehicles, from points in Michigan, to points in Pennsylvania on and west of U.S. Highway 15. The purpose of this filing is to eliminate the gateways of Erie, Pa. and Conneaut, Ohio.

No. MC 14702 (Sub-No. 57-G), filed June 4, 1974. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, Ohio 44482. Applicant's representative: Paul F. Beery, 8 East Broad 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, dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between points in Ohio, on the one hand, and, on the other, points in Virginia, West Virginia and the District of Columbia. The purpose of this filing is to eliminate the gateways of Warren and Blaine, Ohio.

No. MC 14781 (Sub-No. 10G), filed June 3, 1974. Applicant: GOTTRY CORP., 999 Beahan Road, Rochester, N.Y. 14264. Applicant's representative: Paul F. Sullivan, 711 Washington Bldg., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* which by reason of size or weight, require the use of special equipment and *self-propelled articles*, each weighing 15,000 pounds or more, on trailers, between points in New York on and west of a line beginning at the International Boundary line between the United States and Canada and extending southerly along Interstate Highway 81 to its intersection with New York Highway 12 near Watertown, NY., thence along New York Highway 12 via Utica, N.Y. to its intersection with Interstate Highway 81 near Glen, N.Y., thence along Interstate Highway 81 to the New York-Pennsylvania State Boundary line on the one hand, and, on the other, points in Illinois, Indiana, Ohio, West Virginia, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine and the District of Columbia. The purpose of this filing is to eliminate gateways at points in Monroe County and Rochester, N.Y.

No. MC 19227 (Sub-No. 202G), filed June 3, 1974. Applicant: LEONARD BROS. TRUCKING CO., INC., 2515 Northwest 20th Street, Miami, Fla. 33152. Applicant's representative: William O. Turney, 2001 Massachusetts Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Airplane parts, and airplane supplies and equipment*, between points in California, on the one hand, and, on the other, points in Alabama, Georgia, Louisiana, Mississippi, South Carolina and Tennessee. The purpose of this filing is to eliminate the gateway of Pensacola, Fla. (2) *Guided missile parts, and guided missile supplies and equipment* used in the maintenance, servicing, repair, and operation of guided missiles, between points in California, on the one hand, and, on the other, points in Alabama, Georgia, Louisiana, Mississippi and South Carolina. The purpose of this filing is to eliminate the gateway of Pensacola, Fla. (3) *Commodities* (except boats), the transportation of which because of their size or weight requires the use of special equipment, (a) between points in California, on the one hand, and, on the other, points in Arizona. The purpose of this filing is to eliminate the gateway of Yuma, Ariz.

(b) Between points in California, on the one hand, and, on the other, points in Missouri, Nebraska, New Mexico, Oklahoma and Texas. The purpose of this filing is to eliminate the gateways of Yuma, Ariz. and points in New Mexico. (c) Between points in California, on the one hand, and, on the other, points in Arkansas and Louisiana. The purpose of this filing is to eliminate the gateways of Yuma, Ariz. and El Paso, Tex. (d) Between points in California, on the one hand, and, on the other, points in Alabama, Georgia and South Carolina. The purpose of this filing is to eliminate the gateways of El Paso, Tex. and Pensacola, Fla. (e) Between points in California, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. The purpose of this filing is to eliminate the gateways of El Paso, Tex. and Pensacola, Fla. (f) Between points in Arizona, on the one hand, and, on the other, points in Kansas, Missouri, Nebraska, New Mexico, Oklahoma and Texas. The purpose of this filing is to eliminate the gateway of points in New Mexico.

(g) Between points in Arizona, on the one hand, and, on the other, points in Arkansas and Louisiana. The purpose of this filing is to eliminate the gateway of points in Texas. (h) Between points in Arizona, on the one hand, and, on the other, points in Alabama, Georgia and South Carolina. The purpose of this filing is to eliminate the gateways of points in Texas and Florida. (i) Between points in Arizona, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. The purpose of this filing is to eliminate the gateways of El Paso, Tex. and Pensacola, Fla. (j) Between points in Kansas, Missouri, Nebraska, New Mexico, Oklahoma and Texas, on the one hand, and, on the other, points in Arkansas and Louisiana. The purpose of this filing is to eliminate the gateway of points in Texas. (k) Between points in Kansas, Missouri, Nebraska, New Mexico, Oklahoma, and Texas, on the one hand, and, on the other, points in Alabama, Georgia and South Carolina. The purpose of this filing is to eliminate the gateways of points in Texas and Pensacola, Fla. (l) Between points in New Mexico, Oklahoma and Texas, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. The purpose of this filing is to eliminate the gateways of points in Texas and Pensacola, Fla.

(m) Between points in Arkansas and Louisiana, on the one hand, and, on the other, points in Alabama, Georgia, and South Carolina. The purpose of this filing is to eliminate the gateways of points in Texas and Pensacola, Fla. (n) Between points in Arkansas and Louisiana, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. The purpose of this filing is to eliminate the gateways of points in Texas and Pensacola, Fla. (o) Between points in Alabama, Georgia, and South Carolina, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. The purpose of this filing is to eliminate the gateway of Pensacola, Fla. (4) *Self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, (a) between points in California, on the one hand, and, on the other, points in Arizona. The purpose of this filing is to eliminate the gateway of Yuma, Ariz.

(b) Between points in California, on the one hand, and, on the other, points in Missouri, Nebraska, New Mexico, Oklahoma and Texas. The purpose of this filing is to eliminate the gateways of Yuma, Ariz. and points in New Mexico. (c) Between points in California, on the one hand, and, on the other, points in Arkansas and Louisiana. The purpose

of this filing is to eliminate the gateways of Yuma, Ariz. and El Paso, Tex. (d) Between points in California, on the one hand, and, on the other, points in Alabama, Georgia and South Carolina. The purpose of this filing is to eliminate the gateways of Yuma, Ariz., El Paso, Tex. and Pensacola, Fla. (e) Between points in California, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. The purpose of this filing is to eliminate the gateways of Yuma, Ariz., El Paso, Tex. and Pensacola, Fla. (f) Between points in Arizona, on the one hand, and, on the other, points in Kansas, Missouri, Nebraska, New Mexico, Oklahoma and Texas. The purpose of this filing is to eliminate the gateway of points in New Mexico.

(g) Between points in Arizona, on the one hand, and, on the other, points in Arkansas and Louisiana. The purpose of this filing is to eliminate the gateway of El Paso, Tex. (h) Between points in Arizona, on the one hand, and, on the other, points in Alabama, Georgia and South Carolina. The purpose of this filing is to eliminate the gateways of El Paso, Tex. and Pensacola, Fla. (i) Between points in Arizona, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. The purpose of this filing is to eliminate the gateways of El Paso, Tex. and Pensacola, Fla. (j) Between points in Kansas, Missouri, Nebraska, New Mexico, Oklahoma and Texas, on the one hand, and, on the other, points in Arkansas and Louisiana. The purpose of this filing is to eliminate the gateway of points in Texas. (k) Between points in Kansas, Missouri, Nebraska, New Mexico, Oklahoma and Texas, on the one hand, and, on the other, points in Alabama, Georgia, and South Carolina. The purpose of this filing is to eliminate the gateways of points in Texas and Pensacola, Fla.

(l) Between points in Kansas, Missouri, Nebraska, New Mexico, Oklahoma and Texas, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. The purpose of this filing is to eliminate the gateways of points in Texas and Pensacola, Fla. (m) Between points in Arkansas and Louisiana, on the one hand, and, on the other, points in Alabama, Georgia and South Carolina. The purpose of this filing is to eliminate the gateways of points in Texas and Pensacola, Fla. (n) Between points in Arkansas and Louisiana, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. The purpose of this filing is to eliminate the gateways of points in Texas and Pensacola, Fla. (o) Between points in Alabama, Georgia and South Carolina, on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. The purpose of this filing is to eliminate the gateway of Pensacola, Fla.

No. MC 37248 (Sub-No. 19G), filed June 6, 1974. Applicant: VIRGINIA-CAROLINA FREIGHT LINES, INCORPORATED, V-C Drive, P.O. Box 4988, Martinsville, Va. 24112. Applicant's representative: Terrell C. Clark (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities* (except Class 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): (a) between points in the District of Columbia, points in Maryland within 55 miles of Gaithersburg, Md., points in West Virginia within 150 miles of Wythe County, Va., and points in North Carolina and Virginia, on the one hand, and, on the other, points in that part of Pennsylvania bounded by a line beginning at Philadelphia, Pa., and extending along Pennsylvania Highway 611 to Easton, Pa., thence along a line extending from Easton through Albany, Pa., to Pine Grove, Pa., thence along a line extending from Pine Grove through Linglestown, Pa., to Harrisburg, Pa., thence along Pennsylvania Highway 230 to intersection Pennsylvania Highway 72, thence along Pennsylvania Highway 72 to Lancaster, Pa., and thence along U.S. Highway 30 to the point of beginning, and points in that part of Pennsylvania south of U.S. Highway 1 between Philadelphia, Pa. and Morrisville, Pa., including points on the indicated portions of the highways specified. The purpose of this filing is to eliminate gateways at Baltimore, Md.; points in Virginia within 55 miles of Gaithersburg, Md.; and points in Virginia within 150 miles of Wythe County, Va.

(b) Between points in Tennessee, West Virginia and North Carolina within 150 miles of Wythe County, Va., and points in Virginia, on the one hand, and, on the other, Anderson, Charleston and Greenville, S.C. The purpose of this filing is to eliminate gateways at points in North Carolina within 50 miles of Winston-Salem, N.C. (c) Between points in Tennessee within 150 miles of Wythe County, Va., on the one hand, and, on the other, points in North Carolina. The purpose of this filing is to eliminate the gateway of Bristol, Va. (2) *Building materials, starch, sugar, flour, fertilizer, food-stuff, iron and steel products, and oil in drums*, between points in South Carolina and Georgia, on the one hand, and, on the other, points in the District of Columbia, Virginia, points in Tennessee, West Virginia and North Carolina within 150 miles of Wythe County, Va., points in Maryland within 55 miles of Gaithersburg, Md., points in that part of Pennsylvania bounded by a line beginning at Philadelphia, Pa., and extending along Pennsylvania Highway 611 to Easton, Pa., thence along a line extending from Easton through Albany, Pa., to Pine Grove, Pa., thence along a line extending from Pine Grove through Linglestown, Pa., to Harrisburg, Pa., thence along Pennsylvania Highway 230 to intersection Pennsylvania Highway 72, thence along Pennsylvania Highway 72 to Lancaster, Pa., and thence along U.S. Highway 30 to the point of beginning, and points in that part of Pennsylvania south of U.S. Highway 1 between Philadelphia, Pa. and Morrisville, Pa., including points on the indicated portions of the highways specified. The purpose of this filing is to eliminate gateways at Anderson, Charleston and Greenville, N.C.; Baltimore, Md.; points in North Carolina within 50 miles of Winston-Salem, N.C.; and points in Virginia within 55 miles of Gaithersburg, Md.

No. MC 44639 (Sub-No. 82G), filed May 30, 1974. Applicant: L. & M. EXPRESS CO., INC., 220 Ridge Road, Lyndhurst, N.J. 07071. Applicant's representative: Herman B. J. Weckstein, One Woodbridge Center, Woodbridge, N.J. 07095. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: (A) *Wearing apparel and materials and supplies* used in the manufacture of wearing apparel, (1) between Alberta and Kenbridge, Va., on the one hand, and, on the other, New York, N.Y. and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateway of Crewe, Va. (2) Between Stanhope and Justice, N.C., on the one hand, and, on the other, New York, N.Y., and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateways of Appomattox and Crewe, Va. (3) Between Seaboard, N.C., on the one hand, and, on the other, New York, N.Y., and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateways of Alberta and Crewe, Va. (4) Between Hollister, N.C.,

on the one hand, and, on the other, New York, N.Y. and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateway of Crewe, Va.

(5) Between Roanoke, Va. on the one hand, and, on the other, New York, N.Y. and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateway of Crewe, Va. (6) Between Kenly, N.C., on the one hand, and, on the other, New York, N.Y., and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateways of Alberta and Crewe, Va. (7) Between Lynchburg, Va. on the one hand, and, on the other, New York, N.Y. and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateway of Crewe, Va. (8) Between Bland, Va., on the one hand, and, on the other, New York, N.Y. and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateway of Crewe, Va. (9) Between Enfield, N.C., on the one hand, and, on the other, New York, N.Y. and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex, Union Counties and Salem, N.J. The purpose of this filing is to eliminate the gateway of Crewe, Va. (B) *Wearing apparel and materials and supplies* used in the manufacture of wearing apparel (except commodities in bulk), (1) between Eagle Rock, Va., on the one hand, and, on the other, New York, N.Y. and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateways of Crewe and Narrows, Va. (2) Between Louisa, Va. on the one hand, and, on the other, New York, N.Y. and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex and Union Counties, N.J. The purpose of this filing is to eliminate the gateway of Crewe, Va.

No. MC 45736 (Sub-No. 45G), filed June 3, 1974. Applicant: GUIGNARD FREIGHT LINES, INC., P.O. Box 26067, Charlotte, N.C. 28213. Applicant's representative: Edward G. Villalon, Suite 1032 Pennsylvania Bldg., Pennsylvania Avenue and 13th Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *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,) (A) between points in South Carolina, on the one hand, and, on the other, points in Alabama on and north of U.S. Highway 278, and points in Georgia, Kentucky, North Carolina, Virginia, and West Virginia, within 225 miles of Concord, N.C., and Savannah, Ga. The purpose of this filing is to eliminate the gateways of Concord, N.C., Sumter County, S.C. and Sumter, S.C. (B) Between points in Alabama on and north of U.S. Highway 278, and Savannah, Ga., on the one hand, and on the other, points in Georgia, Kentucky, North Carolina, Virginia and West Virginia within 225 miles of Concord, N.C. The purpose of this filing is to eliminate the gateways of Concord, N.C., Sumter County, S.C. and Sumter, S.C.

(C) Between points in Virginia south of a line beginning at Norfolk, Va., and extending along U.S. Highway 60 to Richmond, Va., thence along U.S. Highway 250 to Charlottesville, Va., thence in a northwesterly direction to Harrisonburg, Va., thence along U.S. Highway 11 through Roanoke, Va., to Bristol, Va., including points on the indicated portions of the highways specified, on the one hand, and, on the other, points in South Carolina, points in Alabama on and north of U.S. Highway 278, points in Georgia, North Carolina and West Virginia within 225 miles of Concord, N.C. and Savannah, Ga. The purpose of this filing is to eliminate the gateways of Concord, N.C., Sumter County, S.C., and Sumter, S.C. (2) *Lubricating Oil and Grease*, in containers, from St. Marys, W. Va., to points in South Carolina, points in Alabama on and north of U.S. Highway 278, points in Georgia, North Carolina and Virginia within 225 miles of Concord, N.C., points in Virginia, on and south of a line beginning at Norfolk, Va., and extending along U.S. Highway 60 to Richmond, Va., thence along U.S. Highway 250 to Charlottesville, Va., thence in a northwesterly direction to Harrisonburg, Va., thence along U.S. Highway 11 through Roanoke, Va., to Bristol, Va., including points on the indicated portions of the highways specified. The purpose of this filing is to eliminate the gateways of Concord, N.C., Sumter County, S.C., and Sumter, S.C. (3) *Furniture, New and Furniture Veneer Stock*, from points in North Carolina, Virginia and West Virginia within 225 miles of Concord, N.C., to points in Florida. The purpose of this filing is to eliminate the gateways of Concord, N.C., and Sumter, S.C.

No. MC 45764 (Sub-No. 21G), filed May 31, 1974. Applicant: ROBBINS MOTOR TRANSPORTATION, INC., P.O. Box 38, Essington, Pa. 19029. Applicant's representative: Alan Kahn, Suite 1920, Two Penn Center Plaza, Philadelphia, Pa. 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation of which because of size or weight requires the use of special equipment, (a) between points in Delaware, Maryland, Pennsylvania, and the District of Columbia, on the one hand, and, on the other, points in New Jersey and New York, (b) between points in Pennsylvania, on the one hand, and, on the other, points in Delaware, Maryland, and the District of Columbia, (c) between points in Maryland, on the one hand, and, on the other, points in Delaware, and (d) between points in New Jersey, on the one hand, and, on the other, points in New York. The purpose of this filing is to eliminate the gateway of Philadelphia, Pa. (e) Between points in New York, New Jersey, Delaware, Maryland, Pennsylvania, and the District of Columbia, on the one hand, and, on the other, points in Connecticut and Massachusetts. The purpose of this filing is to eliminate the gateways of Philadelphia, Pa. and points in Pennsylvania, New Jersey, Delaware, and Maryland within 75 miles of Philadelphia. (f) Between points in New York, New Jersey, Delaware, Maryland, Pennsylvania, and the District of Columbia, on the one hand, and, on the other, points in Rhode Island, Ohio, North Carolina, South Carolina, Virginia, and West Virginia and (g) between points in Massachusetts and Connecticut, on the one hand, and, on the other, points in Ohio, North Carolina, South Carolina, Virginia, and West Virginia. The purpose of this filing is to eliminate the gateway of Philadelphia, Pa.

(2) *Iron and steel articles* as described in Appendix V of the *Descriptions* case, 61 M.C.C. 209, between points in Maryland bounded by a line beginning at Chase, Md., thence west over Maryland Highway 149 through White Marsh, Md., to junction Maryland Highway 7, thence northeast over Maryland Highway 7 to junction Maryland Highway 152, thence north over Maryland Highway 152 to junction Maryland Highway 147, thence southwest over Maryland Highway 147 to junction Maryland Highway 145, thence west over Maryland Highway 145 to junction Maryland Highway 519, thence west over Maryland Highway 519 to Glyndon, Md., thence southeast over U.S. Highway 140 to junction Maryland Highway 125, thence southwest over Maryland Highway 125 to junction Maryland Highway 99, thence east over Maryland Highway 99 to junction Maryland Highway 105, thence south over Maryland Highway 105 to junction U.S. Highway 29, thence south over U.S. Highway 29 to junction Maryland Highway 103, thence south over Maryland Highway 103 to junction Maryland Highway 176, thence east over Maryland Highway 176 to Glen Burnie, Md., thence southeast over Maryland Highway 177 to Gibson Island, Md., and thence north along the west bank of the Chesapeake Bay to the point of beginning at Chase, Md., including points on the indicated portions of the highways specified, on the one hand, and, on the other, points in New York, New Jersey, Delaware, Pennsylvania, and the District of Columbia. The purpose of this filing is to eliminate the gateways of points within 75 miles of Philadelphia, Pa. and within 10 miles of Baltimore, Md. (3) *structural steel* and *equipment* used in the erection thereof and moving therewith, from points in Delaware, Maryland, New Jersey, Ohio, North Carolina, South Carolina, Virginia, West Virginia, and the District of Columbia, to points in Con-

necticut, Rhode Island, Massachusetts, Vermont, Maine, and New Hampshire. The purpose of this filing is to eliminate the gateway of the site of the Belmont Iron Works at Eddystone, Pa.

No. MC 97841 (Sub-No. 19G), filed June 4, 1974. Applicant: GENERAL HIGHWAY EXPRESS, INC., P.O. BOX 727, Sidney, Ohio 45365. Applicant's representative: Paul F. Beery, Ninth Floor, 8 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *General commodities*, between Dayton, Ohio, on the one hand, and, on the other, points in Ohio. The purpose of this filing is to eliminate the gateway of Sidney, Ohio.

No. MC 97877 (Sub-No. 2G), filed June 4, 1974. Applicant: INDUSTRIAL TRUCK LINES, INC., 420 Hopkins St., Buffalo, N.Y. 14220. Applicant's representative: A. David Millner, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, with the usual exceptions, (a) between points in Monroe County, N.Y., on the one hand, and, on the other, points in Niagara, Erie and Onondaga Counties, N.Y. and (b) from points in Monroe County, N.Y., to points in Broome, Cayuga, Chemung, Oneida, Orleans and Oswego Counties, N.Y. The purpose of this filing is to eliminate the gateways of points in Wyoming County, N.Y. and points in Erie and Genesee Counties, N.Y. (c) from points in Genesee, Oneida, Onondaga, and Wyoming Counties, N.Y., to points in Livingston and Allegany Counties, N.Y. The purpose of this filing is to eliminate the gateway of points in Erie County, N.Y. (d) from points in Madison and Niagara Counties, N.Y., to points in Livingston and Allegany Counties, N.Y. The purpose of this filing is to eliminate the gateways of points in Erie and Genesee Counties, N.Y. (e) from points in Monroe County, N.Y., to points in Livingston and Allegany Counties, N.Y. The purpose of this filing is to eliminate the gateways of points in Erie and Wyoming Counties, N.Y. (f) from points in Madison County, N.Y., to points in Erie County, N.Y. The purpose of this filing is to eliminate the gateway of points in Genesee County, N.Y. (g) from points in Madison County, N.Y., to points in Onondaga and Wyoming Counties, N.Y. The purpose of this filing is to eliminate the gateways of points in Erie and Genesee Counties, N.Y. (h) from points in Madison County, N.Y., to points in Broome, Cayuga, Chemung, Monroe, Niagara, Oneida, Orleans, and Oswego Counties, N.Y. The purpose of this filing is to eliminate the gateways of Genesee and Wyoming Counties, N.Y.

No. MC 103993 (Sub-No. 814G), filed June 5, 1974. Applicant: MORGAN DRIVE AWAY, INC., 2800 West Lexington Ave., Elkhart, Indiana 46514. Applicant's representative: Frank A. Antonovitz (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated buildings*, complete, knocked down, or in sections, *and equipment and materials* incidental to the erection and completion of such buildings when shipped therewith, and *rejected shipments* of such commodities and *equipment incidental to the handling of such commodities*, from all points in Missouri to all points in Colorado. The purpose of this filing is to eliminate the gateway of Monticello, Iowa.

No. MC 105457 (Sub-No. 78G), filed June 5, 1974. Applicant: THURSTON MOTOR LINES, INC., 600 Johnston Road, Charlotte, N.C. 28201. Applicant's representative: John V. Luckadoo, P.O. Box 10638, Charlotte, N.C. 28201. 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 commodities requiring special equipment), between Nashville, Murfreesboro, Cookeville, and Columbia, Tenn., on the one hand, and, on the other, points in Virginia. The purpose of this filing is to eliminate the gateways of Charlotte or Roanoke Rapids, N.C.

No. MC 105457 (Sub-No. 80G), filed June 4, 1975. Applicant: THURSTON MOTOR LINES, INC., 600 Johnston Road, Charlotte, N.C. 28201. Applicant's representative: John V. Luckadoo, P.O. Box 10638, Charlotte, N.C. 28201. 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 commodities requiring special equipment), between points in North Carolina on and east of U.S. Highway 29 and Winston-Salem, N.C., on the one hand, and, on the other, points in Virginia, (except points on and south of Virginia Highway 33 and on and east of U.S. Highway 1 and Danville, Va.). The purpose of this filing is to eliminate the gateways at Charlotte, and Roanoke Rapids, N.C.

No. MC 107012 (Sub-No. 202G), filed June 4, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988—Lincoln Highway & Meyer Road, Fort Wayne, Ind. 46801. Applicant's representative: Terry G. Fewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New commercial and institutional fixtures*, crated, (1) from points in Alabama, to points in Arizona, Arkansas, Iowa, New Mexico, New York, Oklahoma, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (2) From points in Arizona, to points in Alabama, Arkansas, Florida, and Mississippi. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (3) From points in Arkansas, to points in Alabama, Arizona, California, Florida, Georgia, Iowa, Kansas, Minnesota, Mississippi, Montana, Nevada, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, and Wyoming. The purpose of this filing is to eliminate the gateway of Greene County, Ark.

(4) From points in California, to points in Arkansas, Iowa, Louisiana, Mississippi, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (5) From points in Colorado, to points in Arkansas, Kentucky, Louisiana, and Virginia. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (6) From points in Connecticut, to points in North Carolina and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (7) From points in Delaware, to points in Florida, Georgia, North Carolina, and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (8) From points in District of Columbia, to points in Florida, Georgia, North Carolina, and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (9) From points in Florida, to points in Arizona, Arkansas, Kentucky, New Mexico, Oklahoma, Tennessee, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark.

(10) From points in Georgia, to points in Arkansas, Iowa, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (11) From points in Idaho, to points in Arkansas, Texas and Virginia. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (12) From points in Iowa, to points in Alabama, Arkansas, Georgia, Kentucky, Louisiana, New Mexico, North Carolina, South Carolina, Tennessee, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (13) From points in Kansas, to points in Arkansas, Kentucky, Louisiana, Mississippi, and Virginia. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (14) From points in Louisiana, to points in California, Colorado, Iowa, Kansas, Nevada, North Carolina, South Carolina, Tennessee, Utah, Virginia, and Wyoming. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (15) From points in Maine, to points in North Carolina, South Carolina, and West Virginia. The purpose of the filing is to eliminate the gateways of points in Tennessee and Kentucky.

(16) From points in Maryland, to points in Florida, Georgia, North Carolina, and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (17) From points in Massachusetts, to points in North Carolina and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (18) From points in Minnesota, to points in Arkansas, North Carolina, South Carolina, Tennessee, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (19) From points in Mississippi, to points in Arizona, Arkansas, California, Kansas, Kentucky, New Mexico, Oklahoma, Texas, and Virginia. The purpose

of this filing is to eliminate the gateway of Greene County Ark. (20) From points in Montana, to points in Arkansas, Kentucky, Texas, and Virginia. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (21) From points in Nevada, to points in Arkansas, Louisiana, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark.

(22) From points in New Hampshire, to points in North Carolina and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (23) From points in New Jersey, to points in Georgia, North Carolina, and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (24) From points in New Mexico, to points in Alabama, Florida, and Mississippi. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (25) From points in New York, to points in North Carolina and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (26) From points in North Carolina, to points in Iowa, Louisiana, North Dakota, Tennessee, and South Dakota. The purpose of this filing is to eliminate the gateways of Grand Rapids, Mich. and Greene County, Ark. (27) From points in North Dakota, to points in Arkansas, Kentucky, North Carolina, South Carolina, Tennessee, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark.

(28) From points in Oklahoma, to points in Alabama, Florida, Mississippi, and Tennessee. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (29) From points in Oregon, to points in Arkansas and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (30) From points in Pennsylvania, to points in Alabama, North Carolina, and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (31) From points in Rhode Island, to points in North Carolina and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (32) From points in South Carolina, to points in Arkansas, Iowa, Louisiana, Texas, and North Dakota. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (33) From points in South Dakota, to points in Arkansas, Kentucky, North Carolina, Texas, and Virginia. The purpose of this filing is to eliminate the gateway of Greene County, Ark.

(34) From points in Texas, to points in Alabama, California, Florida, Georgia, Iowa, Minnesota, Mississippi, Montana, North Dakota, South Carolina, South Dakota, and Tennessee. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (35) From points in Utah, to points in Arkansas and Louisiana. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (36) From points in Vermont, to points in North Carolina and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (37) From points in Virginia, to points in Colorado, Iowa, Kansas, Louisiana, Mississippi, Tennessee, Idaho, Montana, Wyoming, and South Dakota. The purpose of this filing is to eliminate the gateways of Greene County, Ark. and Grand Rapids, Mich. (38) From points in Washington, to points in Arkansas, Oklahoma, and Texas. The purpose of this filing is to eliminate the gateway of Greene County, Ark. (39) From points in West Virginia, to points in North Carolina and South Carolina. The purpose of this filing is to eliminate the gateway of points in Tennessee. (40) From points in Wyoming, to points in Arkansas, Kentucky, Louisiana, Texas, and Virginia. The purpose of this filing is to eliminate the gateway of Greene County, Ark.

No. MC 107103 (Sub-No. 7G), filed June 4, 1974. Applicant: ROBINSON CARTAGE CO., a Corporation, 2712 Chicago Drive SW., Grand Rapids, Mich. 49509. Applicant's representative: Robert D. Schuler, 100 West Long Lake Road, Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which because of size or weight requires the use of special equipment or specialized handling, and *related machinery parts*, and *related contractors' materials and supplies* when their transportation is incidental to the transportation by carrier of commodities which because of size or weight require the use of special equipment or specialized handling: (1) Between points in the Lower Peninsula of Michigan south and east of a line beginning at Lake Michigan and extending along the southern boundary lines of Allegan, Barry and Eaton Counties, Mich. to intersection U.S. Highway 27, thence northerly along U.S. Highway 27 to Mackinaw City, Mich., on the one hand, and, on the other, points in Illinois and Wisconsin. The purpose of this filing is to eliminate the gateway of points in the Lower Peninsula of Michigan on and west of U.S. Highway 27 and on and north of the southern boundaries of Allegan, Barry, and Eaton Counties, Mich. (2) Between points in the Lower Peninsula of Michigan east of U.S. Highway 27 on the one hand, and, on the other, points in Ohio. The purpose of this filing is to eliminate the gateway of points in the Lower Peninsula of Michigan on and west of U.S. Highway 27. (3) Between points in Ohio, on the one hand, and, on the other, points in Illinois. The purpose of this filing is to eliminate the gateway of points in the Lower Peninsula of Michigan on and west of U.S. Highway 27 and on and north of the southern boundaries of Allegan, Barry and Eaton Counties, Mich.

No. MC 107515 (Sub-No. 915G), filed June 4, 1974. Applicant: REFRIGERATED TRANSPORT CO., INC., 3901 Jonesboro Road, Forest Park, Ga. 30050. Applicant's representative: Alan E. Serby, 3379 Peachtree Road, NE., Suite 375, Atlanta, Ga. 30326. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, and meat by-products* (edible) as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, (a) from Omaha, Nebr., to points in Virginia. The purpose of this filing is to eliminate the gateway of Charlotte, N.C. (b) From Omaha, Nebr., to points in Tennessee. The purpose of this filing is to eliminate the gateway of Carrollton, Ga. (c) From Omaha, Nebr., to points in New York, Pennsylvania, New Jersey, and Maryland. The purpose of this filing is to eliminate the gateways of Gatesville or Ayden, N.C. (2) *Dairy products*, from Omaha, Nebr., to points in Virginia. The purpose of this filing is to eliminate the gateway of Charlotte, N.C.

No. MC 108341 (Sub-No. 35G), filed June 3, 1975. Applicant: MOSS TRUCKING COMPANY, INC., P.O. Box 8409, Charlotte, N.C. 28208. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* which because of size or weight require the use of special equipment, and *contractor's materials, supplies, and equipment* moving in connection therewith which do not necessarily require the use of special equipment, between points in Florida, Georgia, North Carolina, South Carolina, and Virginia, on the one hand, and on the other, points in that part of Pennsylvania East of Susquehanna River, and those in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Rhode Island, and the District of Columbia. The purpose of this filing is to eliminate the gateway of the District of Columbia.

No. MC 108449 (Sub-No. 375G), filed June 3, 1974. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, Minn. 55113. Applicant's representative: Adolph J. Biebenstein, 121 West Doty Street, Madison, Wis. 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk (except petroleum chemicals (but including naphtha) from Chicago, Ill.), from Lemont, Lockport and Chicago, Ill., to points in Wisconsin on, north and east of a line beginning at Superior, Wis. and extending along Wisconsin Highway 35 to intersection Wisconsin Highway 77, thence along Wisconsin Highway 77 to intersection Wisconsin Highway 27, thence along Wisconsin Highway 27 to intersection Wisconsin Highway 178, thence along Wisconsin Highway 178 to intersection U.S. Highway 53, thence along U.S. Highway 35 to intersection Wisconsin Highway 35, thence along Wisconsin Highway 35 to intersection Wisconsin Highway 93, thence along Wisconsin Highway 93 to the Mississippi River, thence along the Mississippi River to the north county boundary line of La Crosse County, Wis., thence

along the north county boundary lines of La Crosse, Monroe, Juneau, Adams, Waushara, Waupaca, Outagamie, Brown and Kewaunee Counties, Wis. (except to points in Wood and Marinette Counties from Chicago, Ill.). The purpose of this filing is to eliminate the gateway of La Crosse, Wis.

No. MC 109720 (Sub-No. 4G), filed June 4, 1974. Applicant: BROWN MOVING & STORAGE, INC., 99 West Main Street, New Britain, Conn. 06051. Applicant's representative: Robert J. Gallagher, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, New Jersey and Pennsylvania, on the one hand, and, on the other, points in Pennsylvania, Rhode Island, Connecticut, New Hampshire, New York, Vermont, New Jersey and Massachusetts. The purpose of this filing is to eliminate the gateways of Hartford, Conn. and points within 10 miles thereof, New Britain, Conn. and points within 10 miles thereof, and Hartford and Tolland Counties, Conn.

No. MC 111594 (Sub-No. 63G), filed May 31, 1974. Applicant: C W TRANSPORT, INC., 610 High Street, Wisconsin Rapids, Wis. 54494. Applicant's representative: Carl Steiner, 3900 South LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Louisville, Ky., on the one hand, and, on the other, Columbus, Ohio. The purpose of this filing is to eliminate the gateway of Winchester, Ind. (2) between points in Indiana, on the one hand, and, on the other, points in Ohio north of U.S. Highway 40. The purpose of this filing is to eliminate the gateways of Chicago and Chicago Heights, Ill.

No. MC 114604 (Sub-No. 27G), filed June 4, 1974. Applicant: CAUDELL TRANSPORT, INC., State Farmers Market, Building 33, Forest Park, Ga. 30050. Applicant's representative: Guy H. Postell, Suite 713, 3384 Peachtree Road NE., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, dairy products, and articles* distributed by meat packinghouses, as described in Sections A, B and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *foodstuffs*, from points in Georgia, to points in Alabama, South Carolina and Chattanooga, Tenn. The purpose of this filing is to eliminate the gateway of Atlanta, Ga.

No. MC 115495 (Sub-No. 25G), filed June 4, 1974. Applicant: UNITED PARCEL SERVICE, INC., 300 North 2nd Street, St. Charles, Ill. 60174. Applicant's representative: S. Harrison Kahn, 733 Investment Bldg., Washington, D.C. 20005. 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, commodities requiring special equipment, perishable commodities, and commodities having a prior or subsequent movement by air, water, or rail (other than trailer-on-flatcar service)), between points in Colorado, New Mexico, and Wyoming, on the one hand, and, on the other, Fort Smith, Fayetteville and points in Benton, Carroll and Boone Counties, Ark., and those points in Arkansas on and west of U.S. Highway 71, and points in Adair, Atchison, Andrew, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, DeKalb, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingston, McDonald, Macon, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Pettis, Platte, Polk, Putnam, Randolph, Ray, St. Clair, Saline, Schuyler, Stone, Sullivan, Taney, Vernon, Webster, and Worth Counties, Mo. Restriction: (a) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment; (b) No service shall be rendered between department stores, specialty shops, retail shops, and the branches or warehouses of such stores; or between department stores, specialty shops, and retail stores or the branches or warehouses thereof, on the one hand, and, on the other, the premises of the customers of such stores; (c) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day; (d) That no delivery service shall be provided under the authority granted herein to the premises of persons who or which have entered into contracts with applicant or its affiliates and are served by them pursuant to permits issued by the Commission; (e) No service shall be provided in the transportation of motion picture film, material, equipment, concession and supplies between motion picture distributors and suppliers, on the one hand, and, on the other, motion picture theaters and television stations; (f) No service shall be rendered in the transportation of shipments received from or to be delivered to any other motor carrier for movement to or from any points beyond those specifically granted herein. The purpose of this filing is to eliminate the gateway at Kansas City, Kans.

No. MC 117574 (Sub-No. 239G), filed May 31, 1974. Applicant: DAILY EXPRESS, INC., Post Office Box 39, Carlisle, Pa. 17013. Applicant's representative: James W. Hagar, P.O. Box 1166, 210 Pine Street, Harrisburg, Pa. 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Articles* which because of size or weight require the use of special equipment, except boats and machinery, equipment, materials, and supplies used in or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines (except boilers, heaters and castings), but not excluding heavy machinery, contractor's equipment and building materials, (a) between points in Maine, New Hampshire, and Vermont, on the one hand, and, on the other, points in Connecticut, Massachusetts, Rhode Island, New York, New Jersey, and Pennsylvania. The purpose of this filing is to eliminate the gateways of Scranton, Pa. and York County, Pa. (b) Between points in Connecticut, Massachusetts, Rhode Island, on the one hand, and, on the other, points in New Jersey, New York, Delaware, Ohio, Maryland, Virginia, West Virginia, District of Columbia, Pennsylvania, North Carolina, South Carolina, Georgia, Florida, Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin. The purpose of this filing is to eliminate the gateways of Scranton, Pa., Lancaster and York Counties, Pa.

(2) *Such commodities* as by reason of their size or weight require the use of special equipment (except machinery, equipment, materials and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines), but not excluding heavy machinery, contractor's equipment, and building materials, (a) between points in New York, New Jersey, Delaware, Maryland, Ohio, Virginia, West Virginia, Pennsylvania and the District of Columbia, on the one hand, and, on the other, points in New York, New Jersey, Delaware, Maryland, Ohio, Virginia, West Virginia, Pennsylvania and the District of Columbia. The purpose of this filing is to eliminate the gateways of Lewisburg, Berwick, and Scranton, Pa., Lancaster and York Counties, Pa. (b) Between points in Ohio, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia, on the one hand, and, on the other, points in North Carolina, South Carolina, Georgia and Florida. The purpose of this filing is to eliminate the gateways of Scranton, Pa. and York County, Pa. (c) Between points in Ohio, Pennsylvania, West Virginia, and Virginia, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Michigan, Minnesota and Wisconsin. The purpose of this filing is to eliminate the gateways of Du Bois and Berwick, Pa., York County, Pa., Columbus, Ohio and points within 80 miles of Columbus, Ohio.

(3) *Such commodities* as by reason of their size or weight require the use of special equipment except machinery, equipment, materials and supplies used in, or in connection with, the construc-

tion, operation, repair, servicing, maintenance and dismantling of pipelines, (a) between points in Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin, on the one hand, and, on the other, points in North Carolina, South Carolina, Georgia and Florida. The purpose of this filing is to eliminate the gateways of Jamestown, N.Y. and Bradford, Pa. (b) Between points in Illinois, Indiana, Kentucky, and Michigan, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky and Michigan. The purpose of this filing is to eliminate the gateways of Du Bois, Pa., Columbus, Ohio and points within 80 miles of Columbus, Ohio. (c) Between points in Maine, New Hampshire, and Vermont, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Michigan, Minnesota, Wisconsin, Delaware, Maryland, Virginia, West Virginia, Ohio, District of Columbia, and North Carolina. The purpose of this filing is to eliminate the gateways of Limestone, N.Y., Bradford and New Freedom, Pa., and York County, Pa.

No. MC 117574 (Sub-No. 241G), filed June 4, 1974. Applicant: DAILY EXPRESS, INC., Post Office Box 39, Carlisle, Pa. 17013. Applicant's representative: James W. Hagar, 100 Pine Street, P.O. Box 1166, Harrisburg, Pa. 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles and equipment and supplies* used or useful in the manufacture of iron and steel, and iron and steel articles, which because of size or weight require the use of special equipment, between the plant site of Bethlehem Steel Corporation, located at Burns Harbor (Porter County), Ind., on the one hand, and, on the other, points in Pennsylvania, New York, New Jersey, Ohio, Michigan, Illinois, Wisconsin, Missouri, Iowa, Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, Vermont, Virginia, West Virginia, Kentucky, North Carolina, South Carolina, Georgia, and Florida. The purpose of this filing is to eliminate the gateways of Columbus, Ohio and points within 80 miles thereof, Du Bois, Bradford, and Lewistown, Pa., York and Adams Counties, Pa., Jamestown, N.Y., and Hagerstown, Md.

(2) *Iron and steel articles*, from the plant site of Bethlehem Steel Corporation, located at Burns Harbor (Porter County), Ind., to points in Tennessee. The purpose of this filing is to eliminate the gateway of Middletown, Ohio. (3) *Iron and steel articles*, which because of size or weight require the use of special equipment, (a) from points in Illinois, Indiana, Kentucky, Michigan, Ohio, Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida, to points in Iowa, Missouri, Tennessee and Wisconsin. The purpose of this filing is to eliminate the gateways of Columbus, Ohio and points within 80 miles thereof, Bradford, Du Bois, Williamsport, Lewistown and Scranton, Pa., York, Adams, Lancaster, and Fulton Counties, Pa., Middletown, Ohio and Jamestown, N.Y. (b) From Kansas City, Mo., to points in Illinois, Indiana, Kentucky, Michigan, Ohio, Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Pennsylvania, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, and Tennessee. The purpose of this filing is to eliminate the gateways of Middletown and Dayton, Ohio, Columbus, Ohio and points within 80 miles thereof, Du Bois, Lewistown, and Williamsport, Pa., York, Adams, and Lancaster Counties, Pa. (4) *Steel reinforcing bars*, from the plant site of Bethlehem Steel Corporation at Steelton, Pa., to points in Tennessee. The purpose of this filing is to eliminate the gateway of Middletown, Ohio.

No. MC 117574 (Sub-No. 242G), filed June 4, 1974. Applicant: DAILY EXPRESS, INC., Post Office Box 39, Carlisle, Pa. 17013. Applicant's representative: James W. Hagar, 100 Pine Street, P.O. Box 1166, Harrisburg, Pa. 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1)(a) *Sewage, water, and refuse treatment systems, storage tanks and processing equipment*, the transportation of which because of size or weight requires the use of special equipment, and (b) *tools, materials and supplies* used in connection with the erection and construction of sewage, water and refuse treatment systems, storage tanks and processing equipment (except commodities in bulk), which because of size or weight do not require the use of special equipment when moving on the same vehicle or in the same shipment with articles in (a) above, between points in Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, Delaware, Maryland, Pennsylvania, District of Columbia, Virginia, West Virginia, Ohio, North Carolina, Indiana, Kentucky, and Michigan, on the one hand, and, on the other, points in the United States, except Alaska, California, Colorado, Arizona, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and except ports of Entry on the United States-Canada Boundary line in North Dakota and Minnesota. The purpose of this filing is to eliminate the gateways of Rochester, N.Y., Columbus, Ohio and points within 80 miles thereof, and York County, Pa.

(2) *Stone crushing equipment, and automatic loading equipment*, which because of size or weight requires the use of special equipment, between points in Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Wisconsin, on the one hand, and, on the other, points in the United States (except points in Florida, Alabama, Georgia, South Carolina, Kentucky, Virginia, West Virginia, and that part of Pennsylvania west of U.S. Highway 15). The purpose of this filing is to eliminate the gateways of Galion, Ohio and Lewistown, Du Bois, Bradford, and York County, Pa. (3) *Antenna systems*, which because of size or weight require the use of special equipment, from points in Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, Delaware, Maryland, District of Columbia, New York, New Jersey, Pennsylvania, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Illinois, Indiana, Kentucky, Michigan, Minnesota, Wisconsin, and Ohio, to points in the Continental United States (except Alaska). The purpose of this filing is to eliminate the gateways of Sherburne, N.Y., Scranton, Lewistown, Dauphin County, and York County, Pa., Columbus, Ohio and points within 80 miles thereof. (4) *Cable*, which because of size or weight requires the use of special equipment, from points in Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, District of Columbia, Pennsylvania, Virginia, West Virginia, Ohio, North Carolina, South Carolina, Georgia, Florida, Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin, to points in North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Indiana, and Michigan. The purpose of this filing is to eliminate the gateways of Glendale, W. Va., Columbus, Ohio and points within 80 miles thereof, Du Bois, Lewistown, Bradford, and Scranton, Pa., and York County, Pa.

(5)(a) *Self-propelled lift and hoist trucks*, each weighing 15,000 pounds or more; (b) *self-propelled tractors* (other than truck tractors), each weighing 15,000 pounds or more, and (c) *attachments and accessories* for the items named in (a) and (b) above, when transported on trailers, from the plantsite of Towmotor Corporation at Mentor, Ohio, to points in Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, District of Columbia, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin. The purpose of this filing is to eliminate the gateways of Columbus, Ohio and points within 80 miles thereof, Du Bois, Lewistown, Bradford, and Scranton, Pa., York County, Pa., and Mentor, Ohio.

No. MC 121454 (Sub-No. 4G), filed May 17, 1974. Applicant: WALSH MESSENGER SERVICE, INC., 4 Third Street, Garden City Park, N.Y. 10040. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission,

Classes A and B explosives, commodities in bulk, commodities requiring special equipment, audit and accounting media of all kinds, dental products, optical products, biological chemical specimens, and photographic film), between New York, N.Y., on the one hand, and, on the other, points in Bergen, Hudson, Passaic, Morris, Essex, Union, Middlesex, Somerset, and Monmouth Counties, N.J., Fairfield County, Conn., and Rockland and Orange Counties, N.Y., restricted against the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor to one consignee on any one day. The purpose of this filing is to eliminate the gateway of Nassau County, N.Y.

No. MC 123272 (Sub-No. 9G), filed May 31, 1974. Applicant: FAST FREIGHT, INC., 9651 South Ewing Avenue, Chicago, Ill. 60617. Applicant's representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glassware, with or without closures, and fiberboard cartons (knocked down) in mixed shipments with glass containers*, (a) from Vienna, W. Va., to Muscatine, Iowa and South Beaver Dam, Brandon, Eden, Calvary, Plymouth, Green Bay, Ladysmith, Cumberland, Clear Lake, Milltown, Frederick, Chetek, Wautoma, and Astico, Wis., and points within 10 miles of Astico, Wis. The purpose of this filing is to eliminate the gateway of points in Wisconsin. (b) From Chicago, Ill., to points in West Virginia (except points within 10 miles of the Ohio River). The purpose of this filing is to eliminate the gateway of Muncie, Ind.

(c) From Louisville, Ky. and Cincinnati, Ohio, to St. Paul and Minneapolis, Minn. The purpose of this filing is to eliminate the gateway of Lapel, Ind. (d) From South Beaver Dam, Brandon, Eden, Calvary, Plymouth, Green Bay, Ladysmith, Cumberland, Clear Lake, Milltown, Frederick, Chetek, Wautoma, and Astico, Wis., and points within 10 miles of Astico, Wis., to points in Kentucky (except points within 10 miles of the Ohio River), and points in West Virginia (except points within 10 miles of the Ohio River). The purpose of this filing is to eliminate the gateway of Muncie, Ind. (e) From Whiteland, Greenwood, Martinsville, Anderson, Elwood, Tipton, Peru, and Wabash, Ind., to St. Paul and Minneapolis, Minn. The purpose of this filing is to eliminate the gateway of Lapel, Ind. (f) From Chicago, Ill. and Cincinnati, Ohio, to points in that part of Kentucky south of U.S. Highway 60 (except points within 10 miles of the Ohio River). The purpose of this filing is to eliminate the gateway of Winchester, Ind.

(g) From Chicago, Ill., to points in that part of Kentucky (except points within 10 miles of the Ohio River). The purpose of this filing is to eliminate the gateway of Muncie, Ind. (h) From Muscatine, Iowa, to points in Kentucky (except points within 10 miles of the Ohio River), and points in West Virginia (except points within 10 miles of the Ohio River). The purpose of this filing is to eliminate the gateway of Muncie, Ind. (i) From South Beaver Dam, Brandon, Eden, Calvary, Plymouth, Green Bay, Ladysmith, Cumberland, Clear Lake, Milltown, Frederick, Chetek, Wautoma, and Astisco, Wis., and points within 10 miles of Astico, Wis. and Muscatine, Iowa, to points in that part of Kentucky south of U.S. Highway 60 (except points within 10 miles of the Ohio River). The purpose of this filing is to eliminate the gateway of Winchester, Ind.

(j) From Vienna, W. Va., to points in Indiana. The purpose of this filing is to eliminate the gateway of Louisville, Ky. (k) From Cincinnati, Ohio, to points in West Virginia (except points within 10 miles of the Ohio River). The purpose of this filing is to eliminate the gateway of Muncie, Ind. (l) From Louisville, Ky., to points in West Virginia (except points within 10 miles of the Ohio River). The purpose of this filing is to eliminate the gateways of Muncie or Lapel, Ind. (m) From Indianapolis and Jeffersonville, Ind., to St. Paul and Minneapolis, Minn. The purpose of this filing is to eliminate the gateway of Lapel, Ind. (2) *Glassware*, (a) from the plant site or warehouse facilities of the Kerr Glass Manufacturing Corporation in Huntington, W. Va., to Indianapolis, Ind. The purpose of this filing is to eliminate the gateway of points in Kentucky. (b) From Vienna, W. Va., to Indianapolis, Ind. The purpose of this filing is to eliminate the gateway of points in Kentucky (except Louisville). (3) *Fertilizer*, from Sheboygan, Wis., to points in that part of Indiana on and north of U.S. Highway 40. Restriction: No transportation of fertilizer, in containers, to points in Lake County, Ind. The purpose of this filing is to eliminate the gateways of Chicago, Ill. and Indianapolis, Ind.

(4) *Empty glass containers, with or without closures, and empty fiberboard cartons when accompanying shipments of empty glass containers*, (a) from Star City, W. Va., to points in Indiana within 75 miles of Indianapolis, Ind. (except Indianapolis, Lafayette, Lebanon, and Seymour). The purpose of this filing is to eliminate the gateway of Louisville, Ky. (b) From Star City, W. Va., to Muscatine, Iowa, Whiteland, Greenwood, Indianapolis, Martinsville, Anderson, Elwood, Tipton, Peru, Wabash, and Jeffersonville, Ind., and South Beaver Dam, Brandon, Eden, Calvary, Plymouth, Green Bay, Ladysmith, Cumberland, Clear Lake, Milltown, Frederick, Chetek, Wautoma, and Astico, Wis., and points within 10 miles of Astico, Wis. The purpose of this filing is to eliminate the gateway of Louisville, Ky. (5) *Canned, processed, and manufactured foods, in containers, and canning supplies, machinery, equipment and parts thereof*, (a) from points in Illinois, to points in Indiana (except Lafayette, Lebanon, Seymour, and New Albany); Ohio (except the Cincinnati, Ohio, Commercial Zone), and points in Iowa and Missouri on the Mississippi River, and points in Kentucky (except Louisville) and West Virginia on the Ohio River. The purpose of this filing is to eliminate the gateways of Tipton and Indianapolis, Ind., (b) from points in Wisconsin, to points in Illinois (except the Chicago, Illinois Commercial Zone), Indiana (except Lafayette, Lebanon, Seymour, and New Albany), Ohio (except the Cincinnati, Ohio, Commercial Zone), and points in Iowa and Missouri on the Mississippi River, and points in Kentucky (except Louisville) and West Virginia on the Ohio River. The purpose of this filing is to eliminate the gateways of Tipton and Indianapolis, Ind.

(c) From points in Indiana, to points in Illinois (except the Chicago, Illinois Commercial Zone), Wisconsin, Ohio (except the Cincinnati, Ohio Commercial Zone) and points in Iowa and Missouri on the Mississippi River, and points in Kentucky (except Louisville) and West Virginia on the Ohio River. The purpose of this filing is to eliminate the gateways of Greenwood and Indianapolis, Ind., (d) from points in Ohio, to points in Illinois (except the Chicago, Illinois Commercial Zone), Indiana (except Lafayette, Lebanon, Seymour, and New Albany), Wisconsin, and points in Iowa and Missouri on the Mississippi River and points in Kentucky (except Louisville) and West Virginia on the Ohio River. The purpose of this filing is to eliminate the gateways of Greenwood and Indianapolis, Ind., (e) from points in Iowa and Missouri on the Mississippi River, and points in Kentucky and West Virginia on the Ohio River, to points in Illinois (except the Chicago, Illinois Commercial Zone), Indiana (except Lafayette, Lebanon, Seymour and New Albany), Ohio (except the Cincinnati, Ohio Commercial Zone), and Wisconsin. The purpose of this filing is to eliminate the gateways of Tipton and Indianapolis, Ind.

(f) From points in Illinois, to Lafayette, Lebanon, Seymour, and New Albany, Ind., the Cincinnati, Ohio Commercial Zone, and Louisville, Ky. The purpose of this filing is to eliminate the gateways of Tipton, Indianapolis, and Greenwood, Ind., (g) from points in Wisconsin, to points within the Chicago, Ill. and Cincinnati, Ohio Commercial Zones, Lafayette, Lebanon, Seymour, and New Albany, Ind. and Louisville, Ky. The purpose of this filing is to eliminate the gateways of Tipton, Indianapolis, and Greenwood, Ind., (h) from points in Indiana, to points within the Chicago, Ill. and Cincinnati, Ohio Commercial Zones, and Louisville, Ky. The purpose of this filing is to eliminate the gateways of Greenwood, Indianapolis, and Tipton, Ind., (i) from points in Ohio, to points within the Chicago, Ill. Commercial Zone, Louisville, Ky., and Lafayette, Lebanon, Seymour and New Albany, Ind. The purpose of this filing is to eliminate the gateways of Greenwood, Indianapolis, and Tipton, Ind. (j) from points in Iowa and Missouri on the Mississippi River, and points in Kentucky and West Virginia on the Ohio River, to points within the Chicago, Ill. and Cincinnati, Ohio Commer-

cial Zones, Wisconsin, and to Lafayette, Lebanon, Seymour, and New Albany, Ind. The purpose of this filing is to eliminate the gateways of Tipton, Indianapolis, and Greenwood, Ind.

No. MC 129729 (Sub-No. 5G), filed May 31, 1974. Applicant: FRANCIS J. BEAROFF, INC., Swedeland Road, P.O. Box 195, King of Prussia, Pa. 19406. Applicant's representative: Raymond A. Thistle, Jr., Suite 1012, Four Penn Center Plaza, Philadelphia, Pa. 19103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from the plant sites of Grays Ferry Brick Company at Iona, N.J., to points in New York and Fairfax County, Va. The purpose of this filing is to eliminate the gateway of Perkiomen Junction, Pa.

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

MAY 5, 1975.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before May 19, 1975. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 4405 (Sub-No. E4), filed July 13, 1974. Applicant: DEALERS TRANSIT, INC., P.O. Box 361, Lansing, Ill. 60438. Applicant's representative: Robert E. Joyner, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, Tenn. 38137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric precipitators*, which because of size or weight require the use of special equipment, from those portions of West Virginia and Virginia, located on or west of U.S. Highway 19 from the Pennsylvania-West Virginia State line to Beckley, thence on and west of U.S. Highway 21 to the Virginia-North Carolina State line; that portion of North Carolina on and west of U.S. Highway 29; and that portion of South Carolina on and west of U.S. Highway 1, to those portions of Pennsylvania, north of the southern boundaries of Mercer, Venango, Clarion, Jefferson, Clearfield, Centre and Lycoming and west of the eastern boundaries of Lycoming, and Bradford Counties, Pa., and those portions of New York west of the eastern boundaries of Oswego, Cortland, Onondaga and Broome Counties, N.Y. The purpose of this filing is to eliminate the gateway of Warren, Ohio.

No. MC 4405 (Sub-No. E7), filed July 13, 1974. Applicant: DEALERS TRANSIT, INC., P.O. Box 361, Lansing, Ill. 60438. Applicant's representative: Robert E. Joyner, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, Tenn. 38137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric precipitators* which because of size or weight require the use of special equipment, from Lorain, Ashland, Cuyahoga, Medena, Wayne, Stark, Mahoning, Summit, Trumbull, Ashtabula, Portage, Geauga, Lake, and Columbiana Counties, Ohio to Kansas and Oklahoma. The purpose of this filing is to eliminate the gateway of Warren, Ohio.

No. MC 14321 (Sub-No. E1), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Arkansas, on the one hand, and, on the other, points in New Jersey, New York, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, Maine, North Carolina, South Carolina, Florida, Georgia, Alabama, Louisiana, Kentucky, Tennessee, Missouri, Indiana, West Virginia, Ohio, Illinois, Michigan, Wisconsin, Minnesota, and the District of Columbia. The purpose of this filing is to eliminate the gateways of points in Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas, or Alabama.

No. MC 14321 (Sub-No. E2), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Colorado, on the one hand, and, on the other, points in Arkansas. The purpose of this filing is to eliminate the gateways of Eureka, Kans., and points in Oklahoma.

No. MC 14321 (Sub-No. E3), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Nebraska on the one hand, and, on the other, points in Arkansas, Alabama and Mississippi. The purpose of this filing is to eliminate the gateways of Eureka, Kans., and points in Oklahoma, Missouri, and Arkansas.

No. MC 14321 (Sub-No. E4), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Arkansas, on the one hand, and, on the other, Eureka, Kans., and points within 45 miles thereof. The purpose of this filing is to eliminate the gateways of points in Oklahoma or Missouri.

No. MC 14321 (Sub-No. E5), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission between points in Colorado on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, West Virginia, Kentucky, Delaware, Maryland, Virginia, Tennessee, Georgia, Florida, South Carolina, North Carolina, and the District of Columbia. The purpose of this filing is to eliminate the gateways of Eureka, Kans., and points in Missouri or Oklahoma.

No. MC 14321 (Sub-No. E6), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Colorado, on the one hand, and, on the other, points in Louisiana. The purpose of this filing is to eliminate the gateways of Eureka, Kans., and points in Oklahoma.

No. MC 14321 (Sub-No. E7), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engle (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Colorado on the one hand, and, on the other points in Alabama and Mississippi. The purpose of this filing is to eliminate the gateways of Eureka, Kans., and points in Oklahoma, Arkansas, and Louisiana.

No. MC 14321 (Sub-No. E8), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Colorado, on the one hand, and, on the other, points in Ohio. The purpose

of this filing is to eliminate the gateways of Eureka, Kans., and points in Missouri.

No. MC 14321 (Sub-No. E9), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Texas on the one hand, and, on the other, points in Missouri, Minnesota, Wisconsin, Illinois, Tennessee, Kentucky, Indiana, Michigan, Ohio, West Virginia, Pennsylvania, Maryland, Delaware, Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, and the District of Columbia. The purpose of this filing is to eliminate the gateways of Eureka, Kans., and points in Missouri, as points in Arkansas and points in Missouri, Tennessee, Louisiana, or Alabama.

No. MC 14321 (Sub-No. E10), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Minnesota on the one hand, and, on the other, points in Texas. The purpose of this filing is to eliminate the gateways of Eureka, Kans., and points in Missouri.

No. MC 14321 (Sub-No. E11), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Minnesota on the one hand, and, on the other, points in Oklahoma. The purpose of this filing is to eliminate the gateways of Eureka, Kans., and points in Missouri.

No. MC 14321 (Sub-No. E12), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative. Joseph W. Engel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points in Minnesota on the one hand, and, on the other, points in Mississippi. The purpose of this filing is to eliminate the gateway of points in Arkansas.

No. MC 14321 (Sub-No. E13), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household good* as defined by the Commission, (1) between points in Missouri on the one hand, and on the other, points in Mississippi (except points in Alcorn, Tischomingo, Prentiss, Itawamba, Tippah, Benton, and Monroe Counties), and (2) between points in that part of Missouri located on and west and south of a line beginning at the Tennessee-Missouri State line, thence along Missouri Highway 84 to Missouri Highway 91 to Marble Hill, thence north along Missouri Highway to junction Missouri Highway 72, thence west along Missouri Highway 72 to Fredericktown, thence north along U.S. Highway 67 to junction Interstate Highway 55 and thence north along Interstate Highway 55 to St. Louis, Mo., on the one hand, and, on the other, points in Mississippi, and (3) between points in Alcorn, Tishomingo, Prentiss, Itawamba, Tippah, Benton and Monroe Counties, Miss., on the one hand, and, on the other, points in Missouri (except points in Scott, Stoddard, Butler, Dunklin, Pemiscot, New Madrid, Mississippi, and Lake Counties). The purpose of this filing is to eliminate the gateway of points in Arkansas.

No. MC 14321 (Sub-No. E13), filed June 4, 1974. Applicant: ENGEL VAN LINES, 901 Julia St., Elizabeth, N.J. 07201. Applicant's representative: Joseph W. Engel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *Household goods* as defined by the Commission, (1) between New York, N.Y., on the one hand, and, on the other, points in Nebraska on and south of U.S. Highway 30, (2) between points in New Jersey on and south of U.S. Highway 80, on the one hand, and on the other, points in Nebraska on and south of U.S. Highway 30, (3) between points in New York and New Jersey, on the one hand, and, on the other points in that part of Nebraska on, west and south of a line beginning at the Kansas-Nebraska State line and extending along U.S. Highway 183 to Ansley, Nebr., thence west along Nebraska Highway 92 to junction Nebraska Highway 61, thence north along Nebraska Highway 61 to junction Nebraska Highway 2, thence west along Nebraska Highway 2 to the Nebraska-South Dakota State line, (4) between points in New York north of Interstate Highway 84, on the one hand, and, on the other, points in that part of Nebraska located on, west and south of a line beginning at the Kansas-Nebraska State line and extending north along U.S. Highway 77 to Beatrice, Nebr., thence west along Nebraska Highway 4 to junction Missouri Highway 15, thence north along Missouri Highway 15 to junction Missouri Highway 74, thence west along Missouri Highway 74 to junction U.S. Highway 81, thence north along U.S. Highway 81 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction U.S. Highway 281, thence north along U.S. Highway 281 to junction Missouri Highway 2, thence along Missouri Highway 2 to Merna, thence west along Missouri Highway 70 or 92 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction Missouri Highway 92, thence west along Missouri Highway 92 to junction Missouri Highway 61, thence north along Missouri Highway 61 to junction Missouri Highway 2, thence west along Missouri Highway 2 to the Nebraska-South Dakota State line, and

(5) Between points in New York south of Interstate Highway 84, on the one hand, and, on the other, points in that part of Nebraska located on, west and south of a line beginning at the Kansas-Nebraska State line and extending north along U.S. Highway 77 to Lincoln, thence west along Missouri Highway 34 to junction Missouri Highway 15, thence north along Missouri Highway 15 to junction Missouri Highway 92, thence west along Missouri Highway 92 to junction U.S. Highway 81, thence north along U.S. Highway 81 to Columbus, thence west along U.S. Highway 30 to junction Missouri Highway 22, thence west along Missouri Highway 22 to junction Missouri Highway 39, thence north along Missouri Highway 39 to junction Missouri Highway 14, thence north along Missouri Highway 14 to junction U.S. Highway 275, thence west along U.S. Highway 275 to junction U.S. Highway 20, thence west along U.S. Highway 20 to Valentine, thence north along U.S. Highway 83 to the Nebraska-South Dakota State line. The purpose of this filing is to eliminate the gateway of Eureka, Kans., and points within 45 miles thereof.

No. MC 14552 (Sub-No. E4), filed May 20, 1974. Applicant: J. V. McNICHOLAS TRANSPORTATION CO., P.O. Box 749, Youngstown, Ohio 44501. Applicant's representative: James R. Grace (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel mill equipment, materials*, and *supplies* (except commodities, in bulk, and rolling mill rolls), from points in Pennsylvania located in a territory bounded on the north by lines beginning at the junction of U.S. Highway 62 and the New York-Pennsylvania State line, and bounded on the east by the Pennsylvania State line and bounded on the south by the Pennsylvania State line and bounded on the west by a line beginning at the Maryland-Pennsylvania State line and U.S. Highway 70, thence along U.S. Highway 70 to junction U.S. Highway 70 and Pennsylvania Highway 51, thence along Pennsylvania Highway 51 to the Ohio-Pennsylvania State line to the junction of the Ohio-Pennsylvania State line and U.S. Highway 62, thence along U.S. Highway 62 to the Pennsylvania-New York State line, to points in Ohio located in a territory bounded on the west by the Indiana-Ohio State line and bounded on the north by a line beginning at the Ohio-Indiana-Michigan State line, thence along the Ohio State line to junction Ohio State line, Lake Erie, and Ohio Highway 91 and bounded on the east by a line beginning at Lake Erie, the Ohio State line, and Ohio Highway 91, thence along Ohio Highway 91 to junction Ohio Highway 91 and U.S. Highway 422, thence along U.S. Highway

422 to the Ohio-Pennsylvania State line, thence along the Ohio-Pennsylvania State line to U.S. Highway 224 and bounded on the south by a line beginning at the Ohio-Pennsylvania State line and U.S. Highway 224, thence along U.S. Highway 224 to junction U.S. Highway 224 and Interstate Highway 71, thence along Interstate Highway 71 to the Ohio-Kentucky State line, thence along the Ohio-Kentucky State line to the Ohio-Kentucky-Indiana State line, restricted against the shipment of refractories and clay products from Womelsdorf and Plymouth Meeting, Pa., destined to the plant sites of the Youngstown Sheet and Tube Company, located at or near Youngstown and Struthers, Ohio, and the warehouse facilities of The Edward Corporation, located at or near Warren, Ohio. The purpose of this filing is to eliminate the gateway of the facilities of Youngstown Sheet & Tube, at Youngstown, Ohio.

No. MC 49052 (Sub-No. E8), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry St., Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission; (1) between points in Mississippi in and south of Pearl River, Stone, and George Counties, on the one hand, and, on the other, points in Tennessee in and east of Hamilton, Sequatchie, Van Buren, White, Putnam, Jackson, and Clay Counties; (2) between points in Adams, Franklin, Wilkinson, Amite, Pike, Walthall, Marion, Lamar, Forrest, Perry, and Greene Counties, Miss., on the one hand, and, on the other, points in Tennessee in and east of Polk, McMinn, Loudon, Knox, Union, and Claiborne Counties; and (3) between points in Claiborne, Jefferson, Copiah, Lincoln, Simpson, Lawrence, Jefferson Davis, Smith, Covington, Newton, Jasper, Jones, Lauderdale, Clarke, and Wayne Counties, Miss., on the one hand, and, on the other, points in Tennessee in and east of Hancock, Hawkins, and Greene Counties. The purpose of this filing is to eliminate the gateway of Columbus, Muscogee County, Ga.

No. MC 49052 (Sub-No. E9), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry St., Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission; (1) from points in Tennessee in and west of Polk, Monroe, Blount, Knox, Union, and Claiborne Counties, to points in Beaufort, Charleston, Hampton, Colleton, and Dorchester Counties, S.C.; (2) from points in Tennessee in and west of Hamilton, Bledsoe, White, Putnam, Overton, and Clay Counties, to points in Aiken, Barnwell, Allendale, Bamberg, Lexington, Orangeburg, Calhoun, Clarendon, Richland, Kershaw, Lee, Sumter, Chesterfield, Marlboro, Darlington, Dillon, Marion, Horry, Florence, Williamsburg, Georgetown, and Berkeley Counties, S.C.; and (3) from points in Tennessee in and west of Hardin, Decatur, Benton, and Henry Counties, to points in South Carolina in and west of Edgefield, Saluda, Newberry, Fairfield, Lancaster, and York Counties. The purpose of this filing is to eliminate the gateway of Jasper County or Baldwin County, Ga.

No. MC 49052 (Sub-No. E10), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry Street, Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, from points in Mississippi, to points in South Carolina. The purpose of this filing is to eliminate the gateways of Jasper County or Muscogee County or Dougherty County, Ga.

No. MC 49052 (Sub-No. E13), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry Street, Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission; (1) from points in Alabama, to points in South Carolina in and east of Edgefield, Saluda, Newberry, Fairfield, Chester, York, Aiken, Barnwell, Allendale, Hampton, and Jasper Counties; and (2) from points in South Carolina in and west of McCormick, Greenwood, Laurens, and Spartanburg Counties, to points in Alabama in and south of Sumter, Greene, Hale, Perry, Chilton, Elmore, Macon, and Lee Counties. The purpose of this filing is to eliminate the gateway of Bibb County, Ga.

No. MC 49052 (Sub-No. E14), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry Street, Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission; (1) from points in Mississippi, to points in Florida in and east of Monroe, Collier, Lee, Charlotte, Sarasota, Manatee, Hillsborough, Pinellas, Pasco, Hernando, Citrus, Levy, Dixie, Lafayette, Suwannee and Hamilton Counties; (2) from points in Mississippi (except Pearl River), Hancock, Stone, Harrison, George, and Jackson Counties, to points in Franklin, Liberty, Gadsden, Leon, Wakulla, Jefferson, Madison, and Taylor Counties, Fla.; and (3) from points in Alcorn, Prentiss, and Tishomingo Counties, Miss., to points in Bay, Washington, Jefferson, Calhoun, and Gulf Counties, Fla. The purpose of this filing is to eliminate the gateway of Dougherty County, Ga.

No. MC 49052 (Sub-No. E15), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry Street, Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, from points in Alabama in and south of Cleburne, Calhoun, Etowah, Blount, Walker, Fayette, and Lamar Counties, to points in Virginia in and east of Pittsylvania, Bedford, Roanoke, Craig, Alleghany, Bath, Highland, Augusta, Rockingham, Shenandoah, Frederick, Clarke, and Loudoun Counties. The purpose of the filing is to eliminate the gateway of Jasper County, Ga.

No. MC 49052 (Sub-No. E16), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry St., Macon, Ga. 31203. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (1) from points in Tennessee in and west of Lincoln, Marshall, Mawry, Hickman, Humphreys, Houston, and Stewart Counties, to points in Mecklenburg, Rowan, Cabarrus, Stanly, Davie, Davidson, Forsyth, Rockingham, Guilford, Randolph, Chatham, Alamance, Caswell, Person, Orange, Durham, Wake, Granville, Vance, Franklin and Warren Counties, N.C.; and (2) from points in Moore, Franklin, Marion, Hamilton, Sequatchie, Warren, Coffee, Bedford, Williamson, Rutherford, Cannon, Wilson, Davidson, Cheatham, Dickson, Montgomery and Robertson Counties, Tenn., to points in North Carolina in and east of Northampton, Halifax, Nash, Johnston, Harriett, Lee, Moore, Montgomery, Union, Anson, Richmond, Scotland, Robeson, Columbus, and Brunswick Counties, N.C. The purpose of this filing is to eliminate the gateway of Jasper County, Ga.

No. MC 49052 (Sub-No. E19), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry St., Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (1) from points in Kentucky in and west of Logan, Muhlenberg, McLean, and Davies Counties, to points in Mecklenburg, Union, Cabarrus, Stanly, Anson, Montgomery, Moore, Richmond, Scotland, Hoke, Lee, Robeson, Cumberland, Lee, Harnett, Wake, Johnston, Franklin, Nash, Wilson, Warren, Halifax, Edgecomb, Hertford, Bertie, Martin, Gates, Chowan, Perquimans, Pasquotank, Camden, and Currituck Counties, N.C.; and (2) from points in Monroe, Allen, Simpson, Barren, Warren, Edmonston, Butler, Ohio and Hancock Counties, Ky., to points in North Carolina in and east of Brunswick,

Columbus, Braden, Sampson, Wayne, Greene, Pitt, Beaufort, and Washington Counties. The purpose of this filing is to eliminate the gateway of Jasper County, Ga.

No. MC 49052 (Sub-No. E20), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry St., Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, from points in Kentucky in and west of Calloway and Marshall Counties, to points in Virginia Beach, Chesapeake, Portsmouth, Newport News, Hampton, Norfolk and Northampton, Mathews, Gloucester, York, James City, Surry, Isle of Wight and Nansemond Counties, Va. The purpose of this filing is to eliminate the gateway of Baldwin County, Ga.

No. MC 49052 (Sub-No. E21), filed June 4, 1974. Applicant: MACON TRADING POST, INC., 103 Cherry St., Macon, Ga. 31208. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Housesold goods*, as defined by the Commission, (1) from points in Shelby, Fayette, Tipton, and Lauderdale Counties, Tenn., to points in Virginia in and east of Henry, Pittsylvania, Halifax, Charlotte, Appomattox, Buckingham, Fluvanna, Louisa, Spotsylvania, Stafford, Prince William, and Fairfax Counties; and (2) from points in Hardeman, McNairy, Chester, Madison, Haywood, Crockett, Gibson, Dyer, Obion, and Lake Counties, Tenn., to points in Norfolk, Hampton, Newport News, Chesapeake, Portsmouth, Virginia Beach and Nansemond, Northampton, Mathews, Gloucester, York, James City, Surrey, and Isle of Wight Counties, Va. The purpose of this filing is to eliminate the gateway of Baldwin County, Ga.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-12309 Filed 5-8-75;8:45 am]

[Notice No. 51]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 5, 1975.

The following are notices of filing of application, 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, for temporary authority under section 210a (a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

No. MC 1328 (Sub-No. 16TA), filed April 25, 1975. Applicant: MGS TRANSPORTATION, INC., P.O. Box 270, Alexandria, Ind. 46001. Applicant's representative: Charles Garrett (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Roll paper stock*, from Cleve-Pak Corp., at Piermont, N.Y., to Cleve-Pak at Eaton, Ind., for 180 days. Supporting shipper: Cleve-Pak Corp., 1640 West Silver Spring Drive, Milwaukee, Wis. 53209. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 345 West Waune St., Fort Wayne, Ind. 46802.

No. MC 17051 (Sub-No. 14TA) (Correction), filed April 10, 1975, published in the FEDERAL REGISTER issue of April 22, 1975, and republished as corrected this issue. Applicant: BARNET'S EXPRESS, INC., 758 Lidgerwood Ave., Elizabeth, N.J. 07202. Applicant's representative: S. Michael Richards, 44 North Avenue, Webster, N.Y. 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel, equipment, materials and supplies used or useful in the manufacture and sale of wearing apparel*, between the facilities of Cooper Sportswear Manufacturing Co., Inc., at Newark, N.J., and the facilities of Fulton Shirt Co., at Elizabeth, N.J., on the one hand, and, on the other, Mapletree, Ala., Bridgeport, Conn., Fall River, Mass., Lumberton, Delco and Faison, N.C., Blairsville, Altoona, Norvelt, Perryopolis, Reading, Scranton and Wilkes-Barre, Pa., Norfolk, Va., and Parkersburg, W. Va., for 180 days. Supporting shipper: Fulton Shirt Co., 585 Division Street, Elizabeth, N.J., Cooper Sportswear Mfg. Co., Inc., 720 Frelinghuysen Ave., Newark, N.J. Send protests to: Robert E. Johnston, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 9 Clinton St., Newark, N.J., 07102. The purpose of this republication is to add Cooper Sportswear Mfg. Co., Inc., as the other supporting shipper, which was omitted in the previous publication.

No. MC 51146 (Sub-No. 426TA), filed April 25, 1975. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, Wis. 54304. Applicant's representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, Wis. 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tissue*, in parent rolls 101" in height, from the facilities of The Charmin Paper Products Company at Albany, Ga., to the facilities of The Charmin Paper Products Company at Oxnard, Calif., for 180 days. Supporting shipper: The Charmin Paper Products Company, P.O. Box 599, Cincinnati, Ohio 45201. Send protests to: John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 59640 (Sub-No. 44TA), filed April 24, 1975. Applicant: PAULS TRUCKING CORPORATION, Three Commerce Drive, Cranford, N.J. 07106. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses, catalogue showroom stores, and home center stores, and in connection therewith, *equipment, materials, and supplies* used in the conduct of such businesses, except commodities in bulk over irregular routes, (1) Between Milford, Conn., on the one hand, and, on the other, points in Delaware, New York, New Jersey, Massachusetts, and Pennsylvania, and (2) Between North Berwick, Maine, on the one hand, and, on the other, points in Connecticut, Delaware, New Jersey, New York, Massachusetts, and Pennsylvania. Restriction: The authority sought herein is limited to a transportation service to be performed, under a continuing contract, or contracts, with Supermarkets General Corporation, for 180 days. Supporting shipper: Supermarkets General Corporation, 301 Blair Road, Woodbridge, N.J. 07095. Send protests to: Robert E. Johnston, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 9 Clinton, St., Newark, N.J. 07102.

No. MC 68860 (Sub-No. 22TA), filed April 25, 1975. Applicant: RUSSELL TRANSFER INCORPORATED, 444 Glenmore Drive, Salem, Va. 24153. Applicant's representative: Liniel G. Gregory (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by wholesale, retail, chain grocery and food business houses, and equipment and supplies used in the conduct of such business*, except those of unusual value, Classes A and B explosives, commodities in bulk, household goods, those requiring special equipment, or those injurious or contaminating to other lading, between the plantsite of Service Warehouse Corp., Huntington, W. Va., on the one hand, and, on the other points in Virginia, North Carolina and South Carolina, Bristol Johnson City, Kingsport and Elizabethton, Tenn., Allentown, Shiremanstown

and Harrisburg, Pa., Savannah, Augusta, Statesboro and Atlanta, Ga., and points in Kentucky on and east of Highway 127, for 180 days. Supporting shipper: Service Warehouse Corporation, Huntington, W. Va. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 125 Campbell Ave., S.W. Roanoke, Va. 24001.

No. MC 95743 (Sub-No. 28TA), filed April 24, 1975. Applicant: WILLIAM F. MEHRING & SONS, INC., Route 1, Keymar, Md. 21757. Applicant's representative: James M. Tracey, Route 1, Box 3, Keymar, Md. 21757. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing granules*, in bulk, in tank vehicles, from Gladhill (Adams Co.), Pa., to points in Stratford, Conn., for 180 days. Supporting shipper: Louis Jordan, Jr., GAF Corporation, P.O. Box O, Blue Ridge Summit, Pa. 17214. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Bldg., Baltimore, Md. 21201.

No. MC 112520 (Sub-No. 305TA), field April 24, 1975. Aplpicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, Fla. 32303. Applicant's representative: Sol H. Proctor, 1107 Blackstone Bldg., Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gas*, in bulk, in tank vehicles, (1) from Santa Rosa County, Fla., to points in Alabama, Georgia, Louisiana and Mississippi; (2) from Escambia County, Ala., to points in Florida, Georgia, Louisiana, and Mississippi, for 180 days. Supporting shipper: Exxon Company, U.S.A., P.O. Box 2180, Houston, Tex. 77001. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 114896 (Sub-No. 28TA), filed April 24, 1975. Applicant: PUROLATOR SECURITY, INC., Suite 1001 East Mockingbird Towers, 1341 West Mockingbird Lane, Dallas, Tex. 75247. Applicant's representative: William E. Fullingim (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precious metals and toxic chemicals*, between Newark, N.J., and New York on the one hand, and, on the other, Indianapolis, Ind., Richmond, Va., Skokie, Ill., Warren, Pa., Erie, Pa., and Willow Island, W. Va., for 180 days. Supporting shipper; Englehard Industries Division, Englehard Minerals and Chemicals Corp., 430 Mountain Avenue, Murray Hill, N.J. 07974. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75202.

No. MC 116459 (Sub-No. 56TA), filed April 28, 1975. Applicant: RUSS TRANSPORT, INC., P.O. Box 4022, Chattanooga, Tenn. 37405. Applicant's representative: Sam Speer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous aluminum chloride*, in bulk and special containers, from Alcoa, Tenn., to points in Baton Rouge, La., for 180 days. Supporting shipper: Aluminum Company of America, 1501 Alcoa Bldg., Pittsburgh, Pa. 15219. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, A-422 Federal Bldg., 801 Broadway, Nashville, Tenn. 37203.

No. MC 117851 (Sub-No. 18TA), filed April 22, 1975. Applicant: JOHN R. CHEESEMAN, 501 North First Street, Fort Recovery, Ohio 45746. Applicant's representative: Earl N. Merwin, 85 East Gay Street, Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Water softeners and parts thereof*, and filter media (except commodities in bulk), (1) from Chardon, Ohio, to points in Deerfield, Wis.; (2) from Deerfield, Wis., to points in the states of Alabama, Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and West Virginia, for 180 days. Supporting shipper: Sta-Rite Industries, Inc., 40 W. Nelson St., Deerfield, Wis. 53531. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit Street, Toledo, Ohio 43604.

No. MC 118989 (Sub-No. 121TA) (Correction), filed March 7, 1975, published in the FEDERAL REGISTER issue of March 21, 1975, and republished as corrected this issue. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th, Milwaukee, Wis. 53221. Applicant's representative: Robert H. Levy, 29 South LaSalle St., Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers, container ends, and closures, and materials and supplies used in the manufacture and distribution of containers and container closures* (except commodities in bulk), *and scrap metal*, from the plantsite of American Can Company, located at Whitehouse, Ohio, to points in Indiana, Illinois, Michigan, Missouri, Kentucky, Wisconsin and West Virginia, for 180 days. Supporting shipper: American Can Company, 915 Harger Road, Oak Brook, Ill. 60521. Send protests to: John E. Ryden, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 135 West Wells St., Room 807, Milwaukee, Wis. 53203. The purpose of this republication is to add Wisconsin as a destination point, which was omitted in the previous publication.

No. MC 118989 (Sub-No. 124TA), filed April 18, 1975. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th St., Milwaukee, Wis. 53221. Applicant's representative: Robert H. Levy, 29 South LaSalle St., Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers and metal container ends* (except refuse containers), from Perrysburg, Ohio, to points in Baltimore, Md., for 180 days. Supporting shipper: Owens-Illinois, Inc., P.O. Box 1035, Toledo, Ohio 43666. Send protests to: John E. Ryden, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 119531 (Sub-No. 158TA), filed April 23, 1975. Applicant: SUN EXPRESS, INC., 1835 West Main St., Zanesville, Ohio 43701. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers and metal container ends*, from the plantsite of American Can Company at or near Whitehouse, Ohio, to Milwaukee, Wis., restricted to service in special van trailers with inside measurements of 109½" high by 93" wide, for 180 days. Supporting shipper: American Can Company, 915 Harger Road, Oak Brook, Ill. 60521. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Bldg., & U.S. Courthouse, 85 Marconi Blvd., Columbus, Ohio 43215.

No. MC 119789 (Sub-No. 250TA), filed April 23, 1975. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, Tex. 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulators, electric wire or wiring, pottery or pottery and iron combined, and parts*, from Sandersville, Ga., to points in Arkansas, Kansas, Louisiana, Mississippi, Oklahoma, Oregon, Washington, and Wyoming, for 180 days. Supporting shipper: Interpace Corp., Lapp Insulator Division, P.O. Box 776, Sandersville, Ga. 31082. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75202.

No. MC 119880 (Sub-No. 65TA), filed April 22, 1975. Applicant: DRUM TRANSPORT, INC., P.O. Box 2056, East Peoria, Ill. 61611. Applicant's representative: B. N. Drum (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic liquors*, in bulk, in tank vehicles, from points in Newark, N.J., Weston, Mo., Bardstown, Ky., New Orleans, La., Lake Alfred, Fla., to points in Portland, Oreg., for 180 days. Supporting shipper: Potter Distilleries Inc., 2131 N. E. 194th Street, Portland, Oreg. Send protests to: Richard K. Shullaw, District Supervisor, In-

terstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 129085 (Sub-No. 1TA), filed April 23, 1975. Applicant: DAVIS HAULING COMPANY, INC., Murray Road, P.O. Box 4018, Augusta, Ga. 30907. Applicant's representative: Charles Davis, Jr., 508 Loyola Drive, Augusta, Ga. 30904. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural lime*, in bulk, in dump vehicles, from Jefferson, Knox and Blount Counties, Tenn., to points in Georgia, South Carolina, North Carolina, and Alabama and from Cherokee County, S.C., to points in Georgia and North Carolina over irregular routes. Supporting shippers: T. E. Rushing Peanut Co., South Zetterower Ave., Statesboro, Ga. 30458. Section Gin & Grain Co., Drawer B, Section, Ala. 35771. Farmers Mutual Exchange of Bamberg, P.O. Box 928, Bamberg, S.C. 29003. International Mineral & Chemical Co., 940 Molly Pond Road, Augusta, Ga. 30901. Kerr McGee, P.O. Box 446, Allendale, S.C. 29810. Send protests to: William L. Scroggs, District Supervisor, 1252 W. Peachtree St. NW., Room 546, Atlanta, Ga. 30309.

No. MC 134959 (Sub-No. 4TA), filed April 22, 1975. Applicant: GEORGE BENNETT AND WILLIAM A. WHITE, doing business as BENNETT & WHITE, 617 21st Street, Greeley, Colo. 80631. Applicant's representative: Charles M. Williams, Suite 646 Metropolitan Bldg. 1612 Court Place, Denver, Colo. 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat scraps, meat and bone meal, and blood meal*, in bulk, from the Denver, Colo., Commercial Zone, to points in Flagstaff, Ariz.; Sparks, Nev.; and Pocatello, Idaho. Restricted: (1) against the transportation of the above commodities in bulk, in tank vehicles, and (2) to services rendered under a continuing contract or contracts with National By-Products, Inc., for 180 days. Supporting shipper: National By-Products, Inc., P.O. Box 16372, Denver, Colo. 80216. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 1961 Stout St., 2022 Federal Bldg., Denver, Colo. 80202.

No. MC 135684 (Sub-No. 13TA), filed April 24, 1975. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Old Croton Road, Flemington, N.J. 08822. Applicant's representative: Bert Collins, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ornamental iron products and accessories, and materials, supplies and equipment used or useful in the manufacture, distribution, or sale of the aforementioned commodities* (except commodities in bulk) on return, from the plantsite of Leslie-Locke Co., in Lodi, Ohio, to points in Connecticut, Delaware, the District of Columbia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New York, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, for 180 days. Supporting shipper: Leslie-Locke Co., Div., Quista Corp., Ohio Street, Lodi, Ohio 44254. Send protests to: Richard M. Regan, District Supervisor, Interstate Commerce Commission, 428 East State St., Room 204, Trenton, N.J. 08608.

No. MC 136318 (Sub-No. 32TA), filed April 23, 1975. Applicant: COYOTE TRUCK LINE, INC., 302 Cedar Lodge Road, P.O. Box 756, Thomasville, N.C. 27360. Applicant's representative: Allan Rachles, 5367 West 86th St., Indianapolis, Ind. 46268. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *New furniture, new store fixtures, new laboratory equipment, new lamps, and accessories*, from points in North Carolina, to points in Arkansas, Illinois, Louisiana, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin; (2) *Home, commercial and institutional furnishings and materials, supplies and equipment used in the manufacture, production, distribution and installation thereof*, from points in Georgia, to points in the United States in and west of Arkansas, Illinois, Louisiana, Missouri and Wisconsin. Restrictions: (1) Restricted against the transportation of commodities in bulk; (2) Restricted to traffic either originating at or destined to the plantsites and facilities of Champion International Corporation; (3) Restricted to a transportation service under a continuing contract or contracts with Champion International Corporation. Supporting shipper: Champion International Corporation, Hamilton, Ohio 45020. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Suite CC516, Charlotte, N.C. 28205.

No. MC 139269 (Sub-No. 3TA), filed April 25, 1975. Applicant: C. P. CRASKA, INC., 207 Cosby Manor Road, Utica, N.Y. 13502. Applicant's representative: Murray J. S. Kirshtein, 118 Bleeker Street, Utica, N.Y. 13501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix 1 to the report in 61 M.C.C. 209 and 766; *mayonnaise and salad dressings; frozen food*, from Jersey City, N.J., and points within 25 miles thereof, to points in the state of New York, for 180 days. Supporting shippers: Simon Pure Food Products, Inc., Passaic, N.J. Delsaco Food Corp., E. Rutherford, N.J. White Packing Company, North Bergen, N.J. L. N. White & Company, Inc., New York, N.Y. Send protests to: Morris H. Gross, District Supervisor, Interstate Commerce Commission, Room 104, 301 Erie Blvd., West, Syracuse, N.Y. 13202.

No. MC 140835 (Sub-No. 1TA), filed April 21, 1975. Applicant: A. C. WRIGHT TRUCKING, INC., Route 1, P.O. Box 35, Booneville, Miss. 38829. Applicant's representative: Joe Ray Langston, 7 Downing Drive, P.O. Box 748, Booneville, Miss. 38829. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural limestone*, from Colbert, Bibb, Franklin, Shelby, and Fayette Counties, Ala., and Hardin County, Tenn., to points in Tishomingo, Alcorn, Tippah, Prentiss, Itawamba, Lee, Yalobusha, Calhoun, Chickasaw, Monroe, Lowndes, Oktibbeha, and Clay Counties, Miss.; (2) *Crushed limestone and Rip-rap limestone*, from Colbert, Bibb, Franklin, Shelby and Fayette Counties, Ala., and Hardin County, Tenn., to points in the state of Mississippi; (3) *Rip-rap and crushed limestone and agricultural limestone*, from Tishomingo County, Miss., to points in Shelby County, Tenn.; (4) *Crushed gravel or rock, washed gravel or rock, clay gravel or rock*, from McNairy and Hardin Counties, Tenn., to points in Alcorn, Prentiss, Lee, Union, Benton, Tishomingo, Itawamba, and Tippah Counties, Miss.; (5) *Sand*, from McNairy, Hardin, Fayette and Hardeman Counties, Tenn., to points in Alcorn, Prentiss, Lee, Union, Benton, Tishomingo, Itawamba, Tippah, and Marshall Counties, Miss.; (6) *Basic slag*, from Jefferson County, Ala., to points in Tishomingo, Alcorn, Tippah, Prentiss, Itawamba, Lee, Yalobusha, Calhoun, Chickasaw, Monroe, Lowndes, Oktibbeha, and Clay Counties, Miss., to be restricted in bulk, in dump trucks or dump trailers, for 180 days. Supporting shippers: I.M.C. Tupelo, Miss. 38801. Nichols Farm Supply, P.O. Box 1218, Tupelo, Miss. 38801. Clayton Contractors, Route 1, Ecru, Miss. 38841. Southern Stone & Slag Co., Inc., 5120 Galaxie Drive, Jackson, Miss. 39206. Send protests to: Floyd A. Johnson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 435 Federal Office Bldg., 167 North Main Street, Memphis, Tenn. 38103.

No. MC 140840 (Sub-No. 1TA), filed April 24, 1975. Applicant: R. DOUGLAS JENNINGS, doing business as J. A. FRATE, 755 Broadway, Crystal Lake, Ill. 60014. Applicant's representative: Daniel C. Sullivan, 327 S. LaSalle St., Suite 1000, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* having a prior or subsequent movement by air, between points in O'Hare Airport, Bensenville, Elk Grove Village, Des Plaines, Schiller Park, and Rosemont, Ill., on the one hand, and, on the other, points in McHenry County, West Dindee, East Dindee, Carpentersville, Waucaunda, Palatine, Mt. Prospect, Rolling Meadows, and Barrington, Ill., for 180 days. Supporting shippers: There are approximately 13 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: William J. Gray, District Supervisor, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 140846 (Sub-No. 1TA), filed April 23, 1975. Applicant: CENTRAL DELIVERY SERVICE OF MASSACHUSETTS INC., 125 Magazine Street, Boston, Mass. 02119. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Polaroid land instant camera parts, such as lenses, shutter, apertures, springs, etc.* (except cases), (1) between Norwood, Mass., and Maridan, Cheshire, Bridgeport, Beacon Falls, Prospect, Wallingford, Wolcott, Milford and Stamford, Conn.; (2) between Providence, R.I., and Norwood, Mass., Logan Airport, Boston and Lawrence, Mass.; (3) Between Warwick, R.I., and Norwood, Mass., Logan Airport, Boston and Lawrence, Mass., for 180 days. Supporting shipper: Polaroid Corporation, Cambridge, Mass. 02139. Send protests to: John B. Thomas, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150 Causeway Street, Boston, Mass. 02114.

No. MC 140858 (Sub-No. 1TA), filed April 28, 1975. Applicant: SOS TRANSPORT, INC., Lawrence St. & Pattison Ave., Philadelphia, Pa. 19148. Applicant's representative: Richard M. Ochroch, Apt. #1, 9001 Ridge Avenue, Philadelphia, Pa. 19128. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Popcorn, caramel corn, corn chips, corn-Qs, and bakery products*, between points in Philadelphia, Pa., on the one hand, and, on the other, points in Tampa, Pompano Beach, Miami, Jacksonville, Hialeah, Fla.; New Orleans, La.; Atlanta, Ga.; Greenville, S.C.; Raleigh and Charlotte, N.C.; Louisville, Ky.; Richmond and Norfolk, Va.; Syracuse, Rochester, Buffalo, Waverly, Waterford, N.Y.; Cleveland, Ohio; Indianapolis, Ind.; Oakland, Ill.; Warren, Grand Rapids, Detroit, Ferndale and Plymouth, Mich.; *and such other materials and supplies used in the manufacture of popcorn, caramel corn, corn chips, corn-Qs, and bakery products*, from the destination points described herein to Philadelphia, Pa. Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract, or contracts, with Y & Y Snacks, Inc., Philadelphia, Pa. Supporting Shipper: Y & Y Snacks, Inc., 1714–18 N. Memphis St., Philadelphia, Pa. 19125. Send protests to: Peter R. Guman, District Supervisor, Federal Bldg., Room 3238, 600 Arch St., Philadelphia, Pa. 19106.

APPLICATION OF PASSENGERS

No. MC 136641 (Sub-No. 1 TA), filed April 25, 1975. Applicant: HUDSON VALLEY BUS CO., INC., Englewood Terrace, Mahopac, N.Y. 10541. Applicant's representative: Sidney J. Leshin, 575 Madison Avenue, New York, N.Y. 10022. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, in special round-trip operations, between points in Elmsford, N.Y., and points in Philadelphia, Pa., for 180 days. Supporting shippers: There are 13 statements of support attached to the application which may be examined at the Interstate Commerce Commission, in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Robert A. Radler, District Supervisor, 518 Federal Bldg., Albany, N.Y. 12207.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.75-12310 Filed 5-8-75;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

MAY 6, 1975.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before May 27, 1975.

FSA No. 42982—*Iron or Steel Articles from Minnequa, Colorado.* Filed by Trans-Continental Freight Bureau, Agent (No. 493), for interested rail carriers. Rates on iron and steel articles, in carloads, as described in the application, from Minnequa, Colorado, to points in California taking Rate Basis 4 or 6 as specified in the application.

Grounds for relief—Motor carrier competition.

FSA No. 42984—*Resin or Plastic Plasticizers or Solvents to Cincinnati, Ohio.* Filed by Southwestern Freight Bureau, Agent, (No. B-532), for interested rail carriers. Rates on resin or plastic plasticizers or solvents, in tank-car loads, as described in the application, from Bayport, Texas, to Cincinnati, Ohio. Grounds for relief—Rate relationship.

Tariff—Supplement 153 to Southwestern Freight Bureau, Agent, tariff 355-C, I.C.C. No. 5062. Rates are published to become effective on June 3, 1975.

AGGREGATE-OF-INTERMEDIATES

FSA No. 42983—*Iron or Steel Articles from Minnequa, Colorado.* Filed by Trans-Continental Freight Bureau, Agent, (No. 492), for interested rail carriers. Rates on iron and steel articles, in carloads, as described in the application, from Minnequa, Colorado, to points in California taking Rate Basis 4 or 6 as specified in the application.

Grounds for relief—Maintenance of depressed rates published to meet motor carrier competition without use of such rates as factors in constructing combination rates.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.75-12312 Filed 5-8-75;8:45 am]

[AB6 Sub-No. 217; Finance Docket No. 27790]

BURLINGTON NORTHERN, INC.

Abandonment and Trackage Rights

MAY 6, 1975.

Upon consideration of the record in the above-entitled proceedings, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

It appearing, That no environmental impact statement need be issued in these proceedings because these proceedings do not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.*; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Lancaster County, Nebraska, on or before May 20, 1975 and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 28th day of April, 1975.

By the Commission, Commissioner Tuggle.

[SEAL] ROBERT L. OSWALD,
Secretary.

BURLINGTON NORTHERN, INC., ABANDONMENT ACROSS OAK CREEK WEST OF LINCOLN, IN LANCASTER COUNTY, NEBRASKA

BURLINGTON NORTHERN, INC.—TRACKAGE RIGHTS—OVER UNION PACIFIC RAILROAD COMPANY AT LINCOLN, LANCASTER COUNTY, NEBRASKA

The Interstate Commerce Commission hereby gives notice that by order dated April 28, 1975, it has been determined that the proposed abandonment by Burlington Northern, Inc. of the Oak Creek Bridge No. 160 and the proposed trackage rights acquisition of Burlington Northern over 1.2 miles of parallel Union Pacific Railroad Company trackage, all in Lancaster County, Nebraska, if approved by the Commission, do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of

1969 (NEPA), 42 U.S.C. 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because no traffic would be diverted from rail to motor carriers, no shippers would be affected, no land use plans would be disrupted, and the historic, ecological, safety and other environmental impacts are absent or minor. Additionally, the proposed action is consistent with Lincoln/Lancaster Railroad Transportation Safety District's plans to improve Lincoln's existing railroad facilities. Authorization of the proposed abandonment and trackage rights agreement would enable the removal of Burlington Northern's rail bridge over Oak Creek by enabling rail access of Union Pacific's parallel bridge.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202–343–2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before June 19, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75–12313 Filed 5–8–75;8:45 am]

[AB 7 (Sub-No. 17)]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

Abandonment Between Menomonee Falls and Merton

MAY 6, 1975.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

It appearing, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby directed to publish the appended notice in a newspaper of general circulation in Waukesha County, Wis., on or before May 20, 1975 and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 28th day of April, 1975.

By the Commission, Commissioner Tuggle.

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY ABANDONMENT BETWEEN MENOMONEE FALLS AND MERTON, ALL IN WAUKESHA COUNTY, WISCONSIN

The Interstate Commerce Commission hereby gives notice that by order dated April 28, 1975, it has been determined that the proposed abandonment by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company of its branch line between Menomonee Falls and Merton, a distance of 14.53 miles all in Waukesha County, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332 (2)(C) of the NEPA.

It was concluded, among other things, that the environmental effects of the proposed action are considered to be insignificant because the shift of rail traffic to motor carriers would have only minimal impacts on air, noise, and water pollution and fuel consumption. The historical/archaeological sites in the area are not expected to be affected. Recreational development and activities such as hiking and bicycle trails would benefit by the abandonment. If abandoned, the right-of-way has potential for use as a linear park or for a hiking and bicycling trail. This would be consistent with recreational developmental activities in the area.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202–343–2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before June 19, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75–12315 Filed 5–8–75;8:45 am]

[AB 26 (Sub-No. 2)]

GEORGIA NORTHERN RAILWAY CO.

Abandonment Between Pavo and Barwick, in Thomas and Brooks Counties, Georgia

MAY 6, 1975.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

It appearing, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Thomas and Brooks Counties, Ga., on or before May 20, 1975 and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 25th day of April, 1975.

By the Commission, Commissioner Tuggle.

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

GEORGIA NORTHERN RAILWAY COMPANY ABANDONMENT BETWEEN PAVO AND BARWICK, IN THOMAS AND BROOKS COUNTIES, GEORGIA

The Interstate Commerce Commission hereby gives notice that by order dated April 25, 1975, it has been determined that the proposed abandonment by the Georgia Northern Railway Company of its line of railroad between Pavo and Barwick, Ga., a distance of 4.6 miles, if approved by the Commission, does not constitute a major Federal action signicantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332 (2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because area environmental quality will only be degraded slightly due to increased air pollution and energy consumption resulting from diversion of rail traffic to motor carrier transport upon abandonment. Lack of direct rail service may impede local developmental efforts, although there are no identifiable plans

or projects dependent upon continued rail access. There will be no effect on historic sites or recreational areas.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202–343–2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before June 19, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75–12314 Filed 5–8–75;8:45 am]

[Notice No. 45]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a Certificate or Permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate or permit	Date of action
Buske Lines, Inc., MC-43246 Sub-17	MC-43246 Sub-18	Oct. 31, 1974
Glenn McGlendon Trucking Co., Inc., MC-52704 Sub-101	MC-52704 Sub-102	Do.
Van Derhule Moving & Storage, Inc., MC-51824 Sub-5	MC-51824 Sub-6	Oct. 8, 1974
Alert Motor Freight, Inc., MC-56344 Sub-2	MC-56344 Sub-3	Oct. 15, 1974
Ploof Transfer Co., Inc., MC-59150 Sub-77	MC-59150 Sub-75	Oct. 30, 1974
Salt Creek Freightways, MC-59856 Sub-58	MC-59856 Sub-59	Oct. 1, 1974
Spokane Transfer & Storage Co., MC-71718 Sub-2	MC-71718 Sub-3	Oct. 31, 1974
Bowman Transportation, Inc., MC-94201 Sub-116	MC-94201 Sub-117	Oct. 17, 1974
Watkins Motor Lines, Inc., MC-95540 Sub-871	MC-95540 Sub-880	Oct. 25, 1974
Watkins Motor Lines, Inc., MC-95540 Sub-873	MC-95540 Sub-877	Do.
Buckner Trucking, Inc., MC-99776 Sub-14	MC-99774 Sub-13	Oct. 11, 1974
Mark E. Yoder, Inc., MC-110541 Sub-13	MC-110541 Sub-14	Nov. 1, 1974
Purolator Courier Corp., MC-111729 Sub-397, 400	MC-111729 Sub-410	Oct. 29, 1974
Floyd E. Hubbard, Jr., MC-111848 Sub-3	MC-111848 Sub-4	Oct. 30, 1974
C & R Transfer Co., MC-112306 Sub-16	MC-112306 Sub-17	Nov. 1, 1974
Bray Lines, Inc., MC-112822 Sub-278	MC-112822 Sub-280	Oct. 30, 1974
Bray Lines, Inc., MC-112822 Sub-301	MC-112822 Sub-309	Do.
Dart Transit Co., MC-114457 Sub-175	MC-114457 Sub-172	Oct. 25, 1974
J & M Transportation Co., Inc., MC-115311 Sub-144	MC-115311 Sub-143	Oct. 29, 1974
Eagle Trucking Co., MC-119774 Sub-67	MC-119774 Sub-65	Oct. 31, 9174
D.B.A., Glosier Service Co., MC-126758 Sub-5	MC-126758 Sub-6	Oct. 25, 1974
D.B.A., Glosier Service Co., MC-126758 Sub-7	MC-126758 Sub-8	Do.
R. D. S. Trucking Co., Inc., MC-126844 Sub-23	MC-126844 Sub-27	Nov. 1, 1974
Usher Transport, Inc., MC-126899 Sub-70, 77	MC-126899 Sub-71	Oct. 25, 1974
D.B.A., Melvin Wang Trucking, MC-129484 Sub-2	MC-129484 Sub-3	Nov. 1, 1974
The Glasgow & Davis Co., MC-133099 Sub-1	MC-133099 Sub-2	Oct. 25, 1974
Drache Truck Line, Inc., MC-133296 Sub-5	MC-133296 Sub-6	Oct. 31, 1974
D.B.A., Wm. Remines, Jr., MC-133304 Sub-4	MC-133304 Sub-5	Oct. 25, 1974
Figol Distributors Limited, MC-134574 Sub-15	MC-134574 Sub-14	Oct. 31, 1974
Eastern Transport, Inc., MC-135379 Sub-6	MC-135379 Sub-2	Oct. 29, 1974
Vanguard Office Furniture Delivery, MC-138296 Sub-1	MC-138296	Oct. 25, 1974

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75–12172 Filed 5–8–75;8:45 am]

federal register

FRIDAY, MAY 9, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 91

PART II

FEDERAL ENERGY ADMINISTRATION

IMPLEMENTATION OF ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

■

Administrative Procedures, Coal Utilization, and New Powerplant Regulations and Intention To Issue Prohibition Orders

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

Implementation of Energy Supply and Environmental Coordination Act of 1974

A notice of proposed rulemaking was issued by the Federal Energy Administration ("FEA") on February 5, 1975 (40 FR 5452) that proposed to amend Chapter II of Title 10 of the Code of Federal Regulations by the addition of the following parts: Part 303—Administrative Procedures and Sanctions; Part 305—Coal Utilization; and Part 307—New Powerplants. These parts would implement sections 2(a), (b) and (c) of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319) (ESECA) relating to prohibiting certain powerplants and major fuel burning installations from burning petroleum products or natural gas as their primary energy source, and requiring certain powerplants in the early planning process to be designed and constructed to be capable of using coal as their primary energy source. Written comments were invited from interested persons, to be submitted by February 18, 1975. In addition, a public hearing, at which eleven persons made oral presentations, was held on February 19, 1975. Including statements made at the public hearing, approximately 40 comments were received. All comments, including those received subsequent to February 18, have been reviewed and considered.

Certain modifications to the proposed regulations have been made, reflecting FEA consideration of these comments and presentations, as well as other information available to FEA.

General

Several definitions have been changed. In response to comments received, the term "powerplant" has been modified so that it now refers to one fossil-fuel fired steam electric generating unit that produces electric power for purposes of sale or exchange, rather than to one or more units as proposed.

ESECA excludes combined cycle units and combustion gas turbines from the category of powerplants in the early planning process to which FEA is authorized to issue construction orders. As a clarifying amendment, a definition of the term "combined cycle unit" has been added to the regulations; the term is defined to mean an electric power generation unit that consists of a combination of one or more combustion gas turbine units and one or more steam turbine units with the required energy input of the steam turbine(s) provided by and approximately matched to the energy in the exhaust gas from the combustion turbine unit(s). Use of small amounts of supplemental firing for the steam turbine does not preclude the unit from being a combined cycle unit. In addition, a definition of the term "combustion gas turbine" has been added; it is defined to mean an electric power generation unit that is a combination of a rotary engine driven by a gas under pressure that is the product of combustion of a fuel (usually natural gas or a petroleum product), with an electric power generator driven by such engine.

Several comments requested that the definition of the term "primary energy source" be expanded to permit greater use of petroleum products and natural gas. Except in the one respect discussed below (relating to intermittent control systems), the definition has not been expanded. The purpose of ESECA is to encourage the burning of coal to the greatest extent practicable, and it would be inconsistent with this purpose to permit more than the minimum uses of petroleum products and natural gas specified in the regulations.

The definition of the term "primary energy source" has been expanded in one respect, in response to comments that the proposed definition did not accommodate the requirements of intermittent control systems ("ICS"). One aspect of ICS operation is switching from the fuel being utilized to a fuel with a lower sulfur content when necessary to assure maintenance of air quality. Although a powerplant or major fuel burning installation in most instances could meet these requirements by switching to a supply of coal with a sulfur content lower than that usually burned, FEA has determined that in some cases the switch to the lower sulfur coal cannot be made in the short response time that may be required to meet the applicable air pollution requirements, and that the short response necessary can only be satisfied by switching to oil or natural gas, as appropriate.

FEA has therefore modified the definition of "primary energy source" to provide that the powerplant or major fuel gas in such minimum amounts as are required to enable such powerplant or installation "to comply with applicable primary standard conditions prescribed by EPA in accordance with 40 CFR 55.04, provided such minimum amounts of fuel may be used only when such primary standard conditions include utilization of intermittent control systems and only during such temporary periods as use of such minimum amounts is absolutely necessary to meet the terms of the primary standard conditions relating to use of intermittent control systems."

In the proposed regulations, comment was specifically requested on the definition of the term "early planning process". In response to these comments the definition as proposed has been substantially changed. The new definition is more fully discussed below, in the portion of this preamble dealing with Part 307.

Several commentors suggested that ESECA provides authority for FEA to encourage the use of petroleum coke as a fuel for powerplants or major fuel burning installations. To accomplish this, it was proposed that the definition of "coal" be modified to include petroleum coke. This interpretation would be proscribed by ESECA, which defines coal, in section 2(e)(2), as including only "coal derivatives." By contrast, petroleum coke is a petroleum-based product and not a coal derivative. The inclusion of petroleum coke in these regulations is not possible under the existing language of ESECA. In any event, it would not advance the purposes of the Act to allow powerplants and installations to burn this petroleum product in response to prohibition orders.

Consideration of Environmental Impact

A number of comments expressed concern that the proposed coal utilization regulations did not explain the procedures by which FEA would consider the environmental impacts of particular prohibition orders and construction orders. Comments also expressed concern that the regulations would be issued prior to close of the comment period for FEA's proposed draft programmatic environmental impact statement ("EIS") for the implementation of section 2 of ESECA.

The regulations have been revised fully to describe how FEA will consider environmental impacts of the coal utilization program and of particular prohibition orders and construction orders in a manner consistent with the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. ("NEPA"). Further, the regulations are being promulgated subsequent to publication of FEA's final programmatic EIS on the coal utilization program. Notice of its publication was published in the Federal Register dated April 24, 1975 (40 FR 18034).

Specifically, new sections, entitled "Consideration of Environmental Impact," have been added to Parts 305 and 307, as §§ 305.9 and 307.7. The sections describe the manner in which FEA will satisfy the objectives of NEPA prior to service of a Notice of Effectiveness for either a prohibition order or a construction order. The sections provide that: (a) Hearings in connection with the issuance of prohibition orders shall not be held prior to publication and circulation of the final programmatic EIS, and that construction orders shall not be issued prior to such time; (b) during the period for public comment prior to issuance of a prohibition or construction order, there will be an opportunity for interested persons to identify and comment on any site-specific environmental impacts that are likely to result from issuance of the prohibition order or construction order and that were not adequately considered in the programmatic EIS; and (c) FEA, before issuance of a Notice of Effectiveness for a prohibition order or construction order, will perform an analysis of the environmental impact of the issuance of the particular order.

This analysis will result in either (1) issuance of a declaration that a specific prohibition order, construction order, or group of such orders will not, if made effective by issuance of a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment, or (2) the preparation of an environmental impact statement covering significant site-specific impacts that are likely to result from a specific prohibition order, construction order, or group of such orders, and that have not been adequately discussed in the final programmatic EIS or in other official

documents made publicly available, including those made available during the FEA proceedings prior to the issuance of those orders, or by EPA in the course of its determinations with respect to certification and notification concerning the orders under section 119 of the Clean Air Act. If FEA prepares an environmental impact statement covering significant site-specific impacts from a prohibition order or construction order, or group of such orders, the statement will be prepared and published for comment in accordance with section 102(2)(C) of NEPA, prior to issuance of a Notice of Effectiveness. With respect to prohibition orders, an additional public hearing to consider a draft EIS may be afforded in appropriate cases in FEA's discretion.

The approach set out in the sections discussed above is based on the conclusion that the issuance of a Notice of Effectiveness for prohibition orders and construction orders, rather than issuance of the orders themselves, is the "major Federal action," for purposes of NEPA, for which a site-specific EIS might be required. This conclusion was based on several practical considerations. First, a prohibition order does not become a final order for purposes of administrative review until after EPA notification or certification has been accomplished and a Notice of Effectiveness has been issued. Only at that point can the recipient of an order begin modification, rescission or administrative appeal proceedings. Further, only after service of a Notice of Effectiveness is the recipient of a prohibition or construction order required to take action to prepare for coal burning which might have a significant adverse impact on the environment. Since an issued order does not require such action prior to service of such notice, there is no impact on the environment during the interval between issuance of the order and service of the notice, and no irretrievable or irreversible commitments of resources that might foreclose or restrict alternative courses of action will have been made. Likewise no irreparable harm to the environment will occur. Second, it would be premature to complete a site-specific EIS in connection with a prohibition or construction order until after FEA has a firm idea of what mode of pollution control the powerplant or major fuel burning installation will in fact adopt to comply with applicable air pollution requirements. For example, it will often not be known at the time a prohibition order is issued whether the recipient of the order will choose to use low sulfur coal or flue gas desulfurization to meet sulfur oxide emission requirements. This choice often will not be made until a source submits a compliance schedule in connection with the granting of a compliance date extension, pursuant to section 119 of the Clean Air Act, or files other information with EPA relating to how the source plans to meet air pollution requirements. Thus, the delay of completion of a site-specific environmental analysis of a prohibition or construction order until a stage after issuance of an order but prior to service of the Notice of Effectiveness is consistent with the intent of NEPA, as stated in the Council on Environmental Quality's Guidelines for preparation of an EIS:

> Statements must be written late enough in the development process to contain meaningful information, but early enough so that this information can practically serve as an input in the decision-making process, 40 CFR 1500.6(d)(2).

To implement the procedures outlined above, FEA has revised the regulations to provide for public hearings, if appropriate, to consider the contents of draft site-specific EIS's on specific prohibition or construction orders, or a group of such orders, if an EIS is required.

In addition, several other revisions have been made in the regulations, relating to consideration of environmental impacts. Sections 305.3(b)(2)(ii) and 305.4(b)(2)(ii) of the regulations, which require FEA to find that a prohibition order is consistent with the purposes of ESECA prior to issuing the prohibition order, have been amended to provide that the order shall be consistent with the purposes of ESECA if it serves as a means to discourage use of petroleum products and natural gas in a manner that is "consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment." Similarly, §§ 305.3(b)(2)(i) and 305.4(b)(2)(i), which deal with the required finding of "practicability," have been amended to provide that FEA shall consider the costs of complying with environmental protection requirements in addition to those necessary to comply with the Clean Air Act.

Part 305—Coal Utilization

The most significant change to Part 305 is the addition of § 305.9, "Consideration of Environmental Impact," which is discussed above.

Certain other modifications have also been made. The proposed regulations provided that a major fuel burning installation that had a design firing rate of 50 million Btu's per hour would be eligible for a prohibition order, if the findings required by ESECA could be made. A number of comments were received that a combuster with a design firing rate of 50 million Btu's per hour was too small to be issued a prohibition order, given the amount of potential fuel savings, the relationship of costs that might have to be incurred to the size of the combuster, and several other factors. Therefore, the minimum design firing rate has been raised to 100 million Btu's per hour in the regulations as promulgated.

There has been some modification of the findings stated in §§ 305.3(b) and 305.4(b). The discussion of the finding regarding "practicability" now provides that, in addition to the factors listed in the proposed regulations, FEA will evaluate the various costs in the context of the financial capabilities of the owner of the powerplant.

The finding with regard to "reliability of service" has been significantly modified. Several comments criticized the proposed finding as being too narrow. The revised language contemplates a more extended analysis of the impact of a prohibition order on the electric power dispatching system (which will be defined in each finding) of which the affected powerplant is a part, and of the factors that lead to an assessment of the net dependable electrical capacity and energy resources of such system in relation to the powerplant's electric power and energy output once a prohibition order becomes effective. The definition of "impairment" has been expanded to relate the probability of risk of loss of load to the dispatching system of which the powerplant is a part, and to any effects that might result from the powerplant being prohibited from burning natural gas or petroleum products as its primary energy source.

Some of those commenting suggested that prohibition orders should contain a statement that they are conditioned upon the continued validity of the findings that ESECA requires FEA to make before issuance of an order. Section 2(b)(1) of ESECA already ties the effectiveness of a prohibition order to the continued validity of those findings. Rather than performing the administratively difficult task of monitoring each order to insure that the validity of the findings has not been substantially impaired, FEA has determined that the recipient of the prohibition order is in the best position initially to make that assessment. If the underlying rationale for a finding has changed because of the occurrence of significantly changed circumstances, the modification and rescission proceedings contained in Part 303 provide the method by which FEA can fulfill its obligation under section 2.

Part 307—New Powerplants

A new section discussed above, relating to consideration of environmental impacts (§ 307.5), has been added to this part. Section 307.5, "Effective Date of Construction Orders," also has been added, to provide a two-step process in the issuance of construction orders. The proposed regulations provided that construction orders would be effective upon issuance. These regulations provide the orders will not become effective until service of a Notice of Effectiveness. The delay in effectiveness until issuance of a notice will permit completion of any necessary environmental analysis in the interval between issuance of the order and service of the notice, as described in § 307.7.

The February 5, 1975, notice of proposed rulemaking specifically requested comment on the proposed definition of "early planning process," and many were submitted. Commentors stated that the description of the beginning of the early process was too indefinite, and that the termination of the early planning process at field erection of boiler steel was too late. Some comments asserted that the early planning process ended with the commencement of the design of the powerplant,

while others indicated various points thereafter, but prior to field erection of boiler steel.

FEA has determined to define the early planning process as beginning 10 years from the powerplant's planned commencement of the sale or exchange of electric power. Ten years was chosen because much of the electric power generation industry currently is geared to planning ten years in advance of commercial operation, and, given the long lead-times that are associated with the construction of an electric power generating facility, many aspects of the planning frequently are well-known at that point.

The termination of the early planning process has been defined as the driving of the foundation piling, or the equivalent structural event, in accordance with approved final drawings for the main boiler of the powerplant. Assuming a normal progression in the design and construction of a powerplant, this event occurs approximately a year to a year and one-half after the commencement of the design of the powerplant. Typically, as of the time of driving of foundation piling, enough specifications and drawings have been finalized and sufficient money has been expended that the plant can no longer properly be considered in the early planning process. Any FEA-ordered major change in boiler design, after this time, to make the plant capable of burning coal as its energy source, could cause unreasonable delay in completion of construction of the powerplant and excessive cost.

The findings contained in § 307.3 have been modified in a manner similar to the corresponding findings in Part 305. Some findings for certain powerplants in the early planning process may not require the detailed analysis necessary for the equivalent findings relating to prohibition orders. For example, if a construction order is issued to a powerplant that is nine years from the planned commencement of the sale or exchange of electric power, FEA can assume, and so find, that in the remaining nine years, (1) there will be no impairment of reliability or adequacy of service because the order will not cause a delay in the date of commencement of the sale or exchange of electric power, and (2) there will be an adequate and reliable supply of coal available because of the magnitude of the Nation's coal reserves, and because, in the worst case, it takes only 3 to 5 years to open a new mine, and the powerplant can enter into a contract for coal from such a new mine.

One comment requested clarification of the requirement under section 2(c) of ESECA, that a powerplant in the early planning process be designed and constructed to be "capable" of using coal as its primary energy source. FEA interprets the term "capable" to mean that all the equipment and facilities, including air quality control systems, necessary to use coal as its primary energy source will be in place at the completion of the powerplant's construction and before it begins sale or exchange of electric power.

There has been some revision to the section (§ 307.6) describing the "Identification Report." This report is designed to elicit information that will assist FEA in identifying powerplants in the early planning process. The form must be submitted by all powerplants in the early planning process, in accordance with a notice of the filing requirement that will be published in the FEDERAL REGISTER subsequent to publication of these regulations. Thereafter, once a powerplant enters the early planning process, an "Identification Report" must be filed by the 15th day of the month subsequent to the powerplant's entry into the early planning process. FEA, however, may also require the powerplant to submit additional information that will be used in the analysis that accompanies the consideration of the findings required by section 2(c) of ESECA.

PART 303—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subparts B and C—Prohibition Orders and Construction Orders. The basic procedure for issuance of prohibition orders and construction orders has not been revised.

FEA expects the public comment period prior to issuance of prohibition orders or construction orders to be an important factor in these proceedings. Since the notice of intention to issue a prohibition order (or construction order) will contain FEA's initial conclusions with respect to, and the rationale in support of, the findings that are proposed to be the basis of the final order, FEA expects that interested persons will raise any substantial, relevant concerns about these findings during the comment period. In addition, site-specific environmental impacts (other than those air pollution impacts that will be considered by EPA in connection with proceedings under section 119 of the Clean Air Act) not fully considered in the programatic EIS should be identified to the extent possible.

As discussed above, in appropriate cases, FEA will provide additional opportunity for interested persons to comment on site-specific environmental impacts prior to issuance of the Notice of Effectiveness.

The role of a Notice of Effectiveness and the content of a prohibition order have been clarified in these regulations. The prohibitions against use of petroleum products or natural gas as a primary energy source contained in a prohibition order will become effective on the date (or at the termination of a stated period of time) stated in the Notice of Effectiveness. That date cannot be prior to the date the notice is served. The date in the notice will be either (1) a date determined by EPA in accordance with section 119 of the Clean Air Act or (2) the termination of a period of time determined by FEA as the time that the powerplant or major fuel burning installation requires to acquire or refurbish the equipment or facilities (other than those relating to the satisfaction of air pollution requirements) that are required before it can burn coal—whichever date is later. In some instances, preparing for coal firing—other than the time needed to install air pollution control equipment—will take longer than the date certified by EPA as the earliest date the prohibition order can go into effect; in other instances such preparation for coal burning can be completed before the date certified by EPA.

The description of the content of a prohibition order has been revised to provide for a schedule of events and dates ("compliance schedule") that must take place by a stated date if the powerplant or major fuel burning installation is to be in compliance with the order. The compliance schedule may require that actions be taken at any time after service of the Notice of Effectiveness. In addition, the order will require that the affected powerplant or major fuel burning installation file an application for a compliance date extension, or other information required by EPA's regulations if such powerplant or installation is not eligible for an extension, within 90 days of issuance of the order.

Subpart H—Appeals. Other than to accommodate the revised procedure for making construction orders effective upon issuance of a Notice of Effectiveness (rather than upon order issuance), by providing that the appeal of such order cannot be filed prior to service of the Notice of Effectiveness, the appeals procedure has not been changed.

Several comments proposed that the recipient of an FEA order should be allowed to file an appeal after the order's issuance and prior to the service of a Notice of Effectiveness. This suggested approach has not been adopted because, in view of the statutory scheme of ESECA, it would not be administratively feasible. The findings and assumptions on which the prohibition order is based could change as a result of EPA determinations under section 119 or as a result of FEA's environmental analysis. It would be premature to review the order in advance of completion of these actions and their formalization in a Notice of Effectiveness. After issuance of the Notice of Effectiveness, the order can be reconsidered, if appropriate, in the modification/rescission proceeding or on appeal.

One reason advanced for suggesting that there should be an appeal of a prohibition order prior to issuance of the Notice of Effectiveness is the length of the interval between issuance of the order and service of the notice, during which time there may be some uncertainty for the recipient of the order. FEA has considered this argument and has concluded that the potential uncertainty has no substantial adverse impact on the powerplant or major fuel burning installation, because the order is neither effective nor enforceable until a Notice of Effectiveness has been issued. Therefore, the recipient of the order will not be required to change position significantly, if at all, during this interval. Furthermore, even after the Notice of Effectiveness has been served, the powerplant or major fuel burning installation

may apply for a stay of the order in connection with an appeal of such order or an application for modification/rescission.

Subpart J—Modification/rescission. The modification/rescission procedures have been changed to include the new two-step procedure for issuance of construction orders, and have been clarified in one aspect.

The modification/rescission procedure for a construction order has been modified so that now it is the same as for a prohibition order (other than the modification of a prohibition order that is applicable for the period ending prior to or on June 30, 1975 ("short-term") to make it applicable after June 30, 1975 ("long-term")).

The subpart has been revised to make explicit FEA's authority to modify or rescind a prohibition order or construction order on FEA's initiative prior to issuance of a Notice of Effectiveness. This proceeding would enable FEA to address any substantial changes to the issued orders that result from EPA's determinations or FEA's environmental analysis. If the purpose of this proceeding is to modify an order, the order of modification will not be immediately appealable because the prohibition order as modified can be the subject of an appeal or application for modification/rescission once it is made effective by the Notice of Effectiveness. However, if the proceeding's purpose is to rescind a prohibition or construction order, an order of rescission will be appealable pursuant to Subpart H immediately upon receipt. A modification/rescission proceeding prior to issuance of a Notice of Effectiveness cannot be initiated by application.

It was suggested that the order modifying or rescinding a prohibition order should contain the same information as was stated in the initial order, or in an order modifying a short-term prohibition order to make it long-term ESECA requires that certain findings be made prior to issuance of a prohibition order or a construction order (or the modification of a short-term order to make it a long-term order); it does not, however, require these findings to be made in other modification/rescission proceedings. The regulations reflect this distinction. However, they do require an order issued at the conclusion of modification/rescission proceedings (other than an order making a short-term order into a long-term order), to include a written statement setting forth the pertinent facts and the legal basis for the order.

The regulations do not require that FEA request public comments through issuance of a public notice prior to issuance of an order of modification (other than for the modification of a short-term order to make it long-term) or rescission. This approach is based on the expectation that not all of these proceedings will warrant public comment. If the modification/rescission proceeding hinges on a full reconsideration of one of the findings required by section 2 of ESECA, however, FEA will issue a notice of intention and invite public participation.

Miscellaneous. The section numbers have been changed for Subparts E through and including Subpart K of Part 303. Thus, Subpart E now begins at § 303.70, rather than at § 303.60 as in the proposed regulations.

The dates by which applications must be filed for prohibition orders, construction orders or for modification/rescission of short-term orders to make them long-term have been changed.

The inflationary impact of this proposal has been considered by the FEA, consistent with Executive Order 11821, issued November 27, 1974.

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., May 5, 1975.

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PART 303—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. Chapter II of 10 Code of Federal Regulations is amended to add Part 303, which reads as follows:

Subpart A—General Provisions

Sec.
303.1 Purpose and scope.
303.2 Definitions.
303.3 Appearance before the FEA.
303.4 Filing of documents.
303.5 Computation of time.
303.6 Extension of time.
303.7 Service.
303.8 Subpoenas; witness fees.
303.9 General filing requirements.
303.10 Effective date of orders.
303.11 Order of precedence.
303.12 Address for filing documents with the FEA.
303.13 Public docket room.
303.14 Office of Private Grievances and Redress.

Subpart B—Prohibition Orders

303.30 Purpose and scope.
303.31 What to file.
303.32 Where to file.
303.33 When to file.
303.34 Notice.
303.35 Contents.
303.36 FEA evaluation.
303.37 Decision and order.
303.38 Appeal.

Subpart C—Construction Orders

303.40 Purpose and scope.
303.41 What to file.
303.42 Where to file.
303.43 When to file.
303.44 Notice.
303.45 Contents.
303.46 FEA evaluation.
303.47 Decision and order.
303.48 Appeal.

Subpart D—Supply Orders [Reserved]

Subpart E—Exception

303.70 Purpose and scope.
303.71 What to file.
303.72 Where to file.
303.73 Notice.
303.74 Contents.
303.75 FEA evaluation.
303.76 Decision and order.
303.77 Timeliness.
303.78 Appeal.

Subpart F—Exemption

Sec.
303.80 Purpose and scope.
303.81 Procedures.
303.82 What to file.
303.83 Where to file.
303.84 Contents.
303.85 FEA evaluation.
303.86 Decision and order.
303.87 Timeliness.
303.88 Appeal.

Subpart G—Interpretation

303.90 Purpose and scope.
303.91 What to file.
303.92 Where to file.
303.93 Contents.
303.94 FEA evaluation.
303.95 Decision and order.
303.96 Appeal.

Subpart H—Appeal

303.100 Purpose and scope.
303.101 Who may file.
303.102 What to file.
303.103 Where to file.
303.104 When to file.
303.105 Notice.
303.106 Contents.
303.107 FEA evaluation.
303.108 Decision and order.
303.109 Appeal of a remedial order.
303.110 Timeliness.

Subpart I—Stay

303.120 Purpose and scope.
303.121 What to file.
303.122 Where to file.
303.123 Notice.
303.124 Contents.
303.125 FEA evaluation.
303.126 Decision and order.

Subpart J—Modification or Rescission of Prohibition Orders and Construction Orders

303.130 Purpose and scope.
303.131 What to file.
303.132 Where to file.
303.133 When to file.
303.134 Notice.
303.135 Contents.
303.136 FEA evaluation.
303.137 Decision and order.
303.138 Timeliness.
303.139 Appeal.

Subpart K—Modification or Rescission of Orders (Other Than Prohibition Orders and Construction Orders) and Interpretations

303.140 Purpose and scope.
303.141 What to file.
303.142 Where to file.
303.143 Notice.
303.144 Contents.
303.145 FEA evaluation.
303.146 Decision and order.
303.147 Timeliness.
303.148 Appeal.

Subpart L—Rulings

303.150 Purpose and scope.
303.151 Criteria for issuance.
303.152 Modification or rescission.
303.153 Comments.
303.154 Appeal.

Subpart M—Rulemaking

303.160 Purpose and scope.
303.161 What to file.
303.162 Where to file.

Subpart N—Conferences, Hearings, and Public Hearings

303.170 Purpose and scope.
303.171 Conferences.
303.172 Hearings.
303.173 Public hearings.

Subpart O—Complaints

303.180 Purpose and scope.
303.181 What to file.

Sec.
303.182 Where to file.
303.183 Contents.
303.184 FEA evaluation.
303.185 Decision.

Subpart P—Notice of Probable Violation and Remedial Order

303.190 Purpose and scope.
303.191 Notice of probable violation.
303.192 Remedial order.
303.193 Remedial order for immediate compliance.
303.194 Remedies.
303.195 Appeal.

Subpart Q—Investigations, Violations, Sanctions and Judicial Actions

303.200 Investigations.
303.201 Violations.
303.202 Sanctions.
303.203 Injunctions.

AUTHORITY: (Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319); Federal Energy Administration Act of 1974 (Pub. L. 93-275); EO 11790 (39 FR 23185))

Subpart A—General Provisions

§ 303.1 Purpose and scope.

(a) Part 303 establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Federal Energy Administration in accordance with Parts 305 and 307 of this chapter.

(b) This subpart defines certain terms and establishes procedures that are applicable to each proceeding described in this part.

§ 303.2 Definitions.

As used in this part, the term:

"Action" means an order, or modification or rescission thereof, interpretation, notice of probable violation, or ruling issued, or a rulemaking undertaken by the FEA, unless otherwise defined in this part.

"Aggrieved", for purposes of administrative proceedings, means a person with an interest sought to be protected under the FEAA or ESECA who is adversely affected by an order or interpretation issued by the FEA.

"Air pollution requirement" means any emission limitation, schedule or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including the Clean Air Act (except for any requirement prescribed under subsections (c) or (d) of section 119, section 110(a)(2)(F)(v), or section 303 of such Act), and which limits stationary source emissions resulting from combustion of fuels (including a prohibition on, or specification of, the use of any fuel or any type, grade, or pollution characteristic).

"Clean Air Act" means the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. (1970), as amended by Pub. L. 93-319, 88 Stat. 246.

"Coal" includes coal derivatives.

"Combined cycle unit" means an electric power generation unit that consists of a combination of one or more combustion gas turbine units and one or more steam turbine units with the required energy input of the steam turbine(s) provided by and approximately matched to the energy in the exhaust gas from the combustion turbine unit(s). Use of small amounts of supplemental firing for the steam turbine does not preclude the unit from being a combined cycle unit.

"Combustion gas turbine" means an electric power generator unit that is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of a fuel, usually natural gas or a petroleum product, with an electric power generator driven by such engine.

"Compliance date extension" means an extension issued by the Administrator of EPA in accordance with section 119(c) of the Clean Air Act as a result of which a powerplant or major fuel burning installation may not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirements, from burning coal which is available to such source, except as otherwise provided in section 119(d)(3) of that Act.

"Conference" means an informal meeting, incident to any proceeding, between FEA and any person aggrieved by that proceeding.

"Construction order" means a directive issued by FEA pursuant to section 2(c) of ESECA that requires a powerplant in the early planning process to be designed and constructed to be capable of using coal as its primary energy source.

"Duly authorized representative" means a person who has been designated to appear before the FEA in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. Such appearance may consist of the submission of applications, petitions, requests, statements, memoranda of law, other documents, or of a personal appearance, verbal communication, or any other participation in the proceeding.

"Early planning process" commences 10 years prior to the planned commencement of the sale or exchange of electric power by a powerplant and terminates with commencement of the driving of the foundation piling, or the equivalent foundation structural event, in accordance with approved final drawings for the main boiler of the powerplant.

"EPA" means the Environmental Protection Agency.

"ESECA" means the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

"Exception" means the waiver or modification of the requirements of a regulation, ruling or generally applicable requirement under a specific set of facts.

"Exemption" means the release from the obligation to comply with an entire part, or subpart thereof, of Parts 303, 305 or 307 of this chapter.

"FEA" means the Federal Energy Administration, including the Administrator of FEA or his delegate.

"FEAA" means the Federal Energy Administration Act of 1974 (Pub. L. 93-275).

"Federal legal holiday" means New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day appointed as a national holiday by the President or the Congress of the United States.

"Interpretation" means a written statement issued by the FEA General Counsel, in response to a written request, that applies the regulations, rulings, and other precedents previously issued by the FEA to the particular facts of a prospective or completed act or transaction.

"Interested person" includes members of the public, as well as any person with an interest sought to be protected under ESECA.

"Major fuel burning installation" means an installation or unit other than a powerplant that has or is a fossil-fuel fired boiler, burner, or other combustor of fuel, or any combination thereof at a single site, and includes any person who owns, leases, operates or controls any such installation or unit.

"Natural gas" includes dry gas and casinghead gas.

"Notice of effectiveness" means both a written statement issued by FEA to a powerplant or major fuel burning installation, subsequent to a certification or notification by EPA pursuant to section 119(d)(1) of the Clean Air Act, advising such powerplant or installation of the date that a prohibition order applicable to it becomes effective; and a written statement issued by FEA to a powerplant in the early planning process advising such powerplant of the date that a construction order applicable to it becomes effective.

"Notice of probable violation" means a written statement issued to a person by the FEA that states one or more alleged violations of the provisions of Parts 303, 305, or 307 of this chapter or any order issued pursuant thereto.

"Order" means a written directive or verbal communication of a written directive, if promptly confirmed in writing, issued by the FEA pursuant to Parts 303, 305 or 307 of this chapter. It may be issued in response to an application, petition or request for FEA action or in response to an appeal from an order, or it may be a remedial order or other directive issued by the FEA on its initiative, including prohibition orders, and construction orders. A notice of probable violation is not an order. For purposes of this definition a "written directive" shall include telegrams, telecopies and similar transmissions.

"Person" means any association, firm, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government, including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments, and includes any officer, director, owner or duly authorized representative thereof. The FEA may, in regulations and in any forms issued in this part, treat as a person:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls,

(b) A parent and its consolidated entities,

(c) An unconsolidated entity, or

(d) Any part of a person.

"Petroleum product" means crude oil, residual fuel oil or any refined petroleum product, as that last term is defined in section 3(5) of the Emergency Petroleum Allocation Act of 1973.

"Powerplant" means a fossil-fuel fired steam electric generating unit that produces electric power for purposes of sale or exchange, and includes any person who owns, leases, operates or controls any such unit.

"Primary energy source" means, with respect to a powerplant or major fuel burning installation that utilizes a fossil-fuel, the fuel that is or will be used for all purposes except for the minimum amounts required for startup, testing, flame stabilization and control; and except for such minimum amounts required to enable such powerplant or major fuel burning installation to comply with applicable primary standard conditions prescribed by EPA in accordance with 40 CFR 55.04, provided such minimum amounts of fuel may be used only when such primary standard conditions include the utilization of intermittent control systems and only during such temporary periods as use of such minimum amounts is absolutely necessary to meet the terms of the primary standard conditions relating to use of intermittent control systems.

"Proceeding" means the process and activity, and any part thereof, instituted by the FEA, either on its initiative or in response to an application, complaint, petition or request submitted by a person, that may lead to an action by the FEA.

"Prohibition order" means a directive issued by FEA pursuant to sections 2 (a) and (b) of ESECA that prohibits a powerplant or major fuel burning installation from burning natural gas or petroleum products as its primary energy source.

"Remedial order" means a directive issued by the FEA requiring a person to cease a violation or to eliminate or to compensate for the effects of a violation, or both.

"Ruling" means an official interpretative statement of general applicability issued by the FEA General Counsel and published in the FEDERAL REGISTER that applies the FEA regulations to a specific set of circumstances.

"Stationary source fuel or emission limitation" means any emission limitation, schedule or timetable of compliance, or other requirement, which is prescribed under the Clean Air Act (other than sections 119, 111(b), 112, or 303) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110 (a)(2)(F)(v) of such Act), and which limits, or is designed to limit, stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic.

"Temporary suspension" means a suspension issued to any person by the Administrator of EPA in accordance with section 119(b) of the Clean Air Act that results in the temporary suspension of any stationary source fuel or emission limitation as it applies to such person during any period beginning June 22, 1974 and ending prior to or on June 30, 1975.

"United States", when used in the geographic sense, means the several States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

Throughout this part the use of a word or term in the singular shall include the plural and the use of the male gender shall include the female gender.

§ 303.3 Appearance before the FEA.

(a) A person may make an appearance and participate in any proceeding described in this part on his own behalf or by a duly authorized representative. Personal appearances are at the discretion of FEA, except as required by ESECA or the FEAA. Any application, appeal, petition, request or complaint filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative, unless an FEA form requires otherwise. Falsification of such certification will subject such person to the sanctions stated in 18 U.S.C. 1001 (1970).

(b) Suspension and disqualification. The FEA may deny, temporarily or permanently, the privilege of participating in proceedings, including oral presentation, to any individual who is found by FEA—

(1) To have made false or misleading statements, either verbally or in writing;

(2) To have filed false or materially altered documents, affidavits or other writings;

(3) To lack the specific authority to represent the person seeking an FEA action; or

(4) To have engaged in or to be engaged in contumacious conduct that substantially disrupts a proceeding.

§ 303.4 Filing of documents.

(a) Any document, including, but not limited to, an application, request, complaint, petition and other documents submitted in connection therewith, filed with the FEA under this Part 303, Part 305 or 307 of this chapter is considered to be filed when it has been received by the FEA National Office. Documents transmitted to the FEA shall be addressed as required by § 303.12. All documents and exhibits submitted become part of an FEA file and will not be returned.

(b) Notwithstanding the provisions of paragraph (a) of this section, if transmitted by registered or certified mail and addressed to the appropriate office, the following are considered to be filed upon mailing: (1) An application for a prohibition order or for a modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, or for a construction order, (2) an appeal, (3) a response to a denial of an appeal or application for modification or rescission of an order in accordance with § 307.107(a)(3) of this chapter and § 303.145(a)(3), respectively, (4) an application for modification or rescission of a prohibition order as a result of significantly changed circumstances that occurred during the interval between issuance of the prohibition order and service of the Notice of Effectiveness, (5) an application for the quashing or modification of a subpoena, (6) a reply to a notice of probable violation, (7) the appeal of a remedial order or remedial order for immediate compliance, (8) a response to denial of a claim of confidentiality, or (9) a comment submitted in connection with any proceeding.

(c) Hand-delivered documents to be filed with the Office of Exceptions and Appeals shall be submitted to Room 8002 at 2000 M Street, NW., Washington, D.C. All other hand-delivered documents to be filed with the FEA National Office shall be submitted to Executive Communications, Room 3309, 12th and Pennsylvania Avenue, NW., Washington, D.C.

(d) Documents received after regular business hours are deemed to have been filed on the next regular business day. Regular business hours for the FEA National Office are 8 a.m. to 4:30 p.m.

§ 305.3 Computation of time.

(a) *Days* (1) Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the FEA, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a Federal legal holiday.

(2) Saturdays, Sundays or intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(b) *Hours.* If the period of time prescribed in an order issued by the FEA is stated in hours rather than days, the period of time shall begin to run upon actual notice of such order, whether by verbal or written communication, to the person directly affected, and shall run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended or rescinded. When a written order is transmitted by verbal communication, the written order shall be served as soon thereafter as is feasible.

(c) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time after issuance to such person of an

order, notice, interpretation or other document and the order, notice, interpretation or other document is served by mail, 3 days shall be added to the prescribed period.

§ 303.6 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the office with which the document is required to be filed upon good cause shown.

§ 303.7 Service.

(a) All orders, notices, interpretations or other documents required to be served under this part shall be served personally or by registered or certified mail or by regular United States mail (only when service is effected by the FEA), except as otherwise provided.

(b) Service upon a person's duly authorized representative shall constitute service upon that person.

(c) Service by registered or certified mail, or, if by FEA, by regular mail is complete upon mailing. Official United States Postal Service receipts from such registered or certified mailing shall constitute *prima facie* evidence of service.

§ 303.8 Subpoenas; witness fees.

(a) The Administrator of the FEA, his duly authorized agent, the FEA General Counsel, or the agency official designated to conduct a hearing or public hearing convened in accordance with Subpart N of this part, may sign and issue subpoenas either on his own initiative or upon the request of any person participating in that proceeding, which request shall be supported by an adequate showing that the information sought will materially advance a proceeding.

(b) A subpoena may require the attendance of a witness, or the production of documentary or other tangible evidence in the possession or under the control of the person served, or both.

(c) A subpoena may be served personally by any person who is not an interested person and is not less than 18 years of age, or by certified or registered mail. For purposes of this paragraph, "interested person" means a person who is not participating directly in the proceeding with respect to which the subpoena is issued.

(d) Service of a subpoena upon the person named therein shall be made by delivering a copy of the subpoena to such person and by tendering the fees for one day's attendance and mileage as specified by paragraph (f) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person; leaving them at his office with the person in charge thereof; leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing them by registered or certified mail to him at his last known address; or by any method whereby actual notice is given to him and the fees are made available prior to the return date. When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees may be effected by handing them to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing them by registered or certified mail to such representative at his last known address or by any method whereby actual notice is given to such representative and the fees are made available prior to the return date. If any person is an entity with offices and operations in more than one jurisdiction, such person may designate one address to which any subpoena may be served by filing such designation with the General Counsel at the address specified in § 303.12.

(e) The original subpoena bearing a certificate of service shall be filed with the FEA office with the responsibility for the proceeding in connection with which the subpoena was issued.

(f) A witness subpoenaed by the FEA shall be paid the same fees and mileage as would be paid to a witness in a proceeding in the district courts of the United States. The witness fees and mileage shall be paid by the person at whose instance the subpoena was issued.

(g) Notwithstanding the provisions of paragraph (f) of this section, and upon request, the witness fees and mileage shall be paid by the FEA when it is shown that:

(1) The presence of the subpoenaed witness will materially advance the proceeding; and

(2) The person at whose instance the subpoena was issued would suffer a serious hardship if required to pay the witness fees and mileage. The designated FEA official issuing the subpoena shall make the determination required by this paragraph.

(h)(1) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the designated FEA official who issued the subpoena, or if he is unavailable, to the Administrator of FEA, to quash or modify such subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein.

(2) The Administrator of FEA or such other designated FEA official specified in paragraph (h)(1) of this section may (i) deny the application, (ii) quash or modify the subpoena, or (iii) condition the denial or granting of the application to quash or modify the subpoena upon the satisfaction of certain just and reasonable requirements. Such denial may be summary.

(i) If there is a refusal to obey a subpoena served upon any person under the provisions of this section, the FEA may request the Attorney General to seek the aid of the District Court of the United States for any district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the agency, or both.

§ 303.9 General filing requirements.

(a) *Purpose and scope.* The provisions of this section shall apply to all documents required or permitted to be filed with the FEA.

(b) *Signing.* All applications, petitions, requests, appeals, complaints, comments, or any other documents that are required to be signed shall be signed by the person filing the document or a duly authorized representative. Any application, petition, request, appeal, complaint, comment or other document filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative, unless an FEA form otherwise requires. (A false certification is unlawful under the provisions of 18 U.S.C. 1001 (1970).)

(c) *Labeling.* An application, petition, or other request for action by the FEA should be clearly labeled according to the nature of the action involved (e.g., "Application for Prohibition Order") both on the document and on the outside of the envelope in which the document is transmitted.

(d) *Obligation to supply information.* (1) A person who files an application, petition, complaint, appeal or other request for action and other documents relevant thereto, or to whom a prohibition order is issued is under a continuing obligation during the proceeding to provide the FEA with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other application, petition, complaint, appeal or request for action or document required to be submitted that is subsequently filed by that person with any FEA office or EPA office if such document pertains to this Part 303, Part 305 or 307 or Part 215 of this chapter, or Subpart A of 40 CFR Part 55 (which states the EPA regulations implementing section 3 of ESECA).

(2) With respect to documents required to be filed with EPA in accordance with Subpart A of 40 CFR Part 55, notice of the filing of such documents shall be filed with FEA within 5 days of their filing with EPA.

(e) *The same or related matters.* A person who files an application, petition, complaint or other request for action by the FEA shall state whether, to the best knowledge of that person, the same or related issue, act or transaction has been or presently is being considered or investigated by any FEA office, other Federal agency, department or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with the proceeding described in this part or under Subpart A of 40 CFR Part 55 (which states the EPA regulations implementing section 3 of ESECA). In addition, the person shall state whether contact subsequent to the issuance of this Part 303, Part 305 or 307 or Part 215 of this chapter has been made

by the person or one acting on his behalf with any person who is employed by the FEA or EPA with regard to the same issue, act or transaction or a related issue, act or transaction arising out of the same factual situation; the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Request for confidential treatment.* (1) (i) If any person filing a document with the FEA claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 (1970)), as amended, or is information referred to in 18 U.S.C. 1905 (1970), or is otherwise exempt by law from public disclosure, and if such person requests the FEA not to disclose such information, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and shall file a concise statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information or is covered by 18 U.S.C. 1905, such person shall include a concise statement specifying why such information is privileged or confidential.

(ii) If the person filing a document does not submit a second copy of the document with the confidential information deleted, the FEA may assume that there is no objection to public disclosure of the document in its entirety.

(2) The FEA retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by the FEA to deny such claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than 48 hours prior to the public disclosure of such information.

(g) *Separate applications, petitions or requests.* Each application, petition or request for FEA action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act or transaction, or are submitted in connection with the same proceeding.

§ 303.10 Effective date of orders.

(a) Any order issued by the FEA under Part 303, 305 or 307 of this chapter, except a prohibition order (or modification thereof) or a construction order as stated in paragraph (b) of this section, is effective as against all persons having actual notice thereof upon issuance, in accordance with its terms, unless and until it is stayed, modified, suspended, or rescinded. Such order is deemed to be issued on the date, as specified in the order, on which it is signed by an authorized representative of FEA, unless the order provides otherwise.

(b) (1) A prohibition order or the modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975 shall not become effective before certain action by EPA, actions by FEA in accordance with § 305.9 of this chapter, and service by FEA upon the affected powerplant or major fuel burning installation of a "Notice of Effectiveness," in accordance with § 305.7 of this chapter. A prohibition order or Notice of Effectiveness is deemed to be issued on the date, as specified in the order or notice, on which it is signed by an authorized representative of FEA.

(2) A construction order shall not become effective before certain action by FEA, in accordance with § 307.7 of this chapter, and service by FEA upon the affected powerplant of a "Notice of Effectiveness" in accordance with § 307.5 of this chapter. A construction order or Notice of Effectiveness is deemed to be issued on the date, as specified in the order or notice, on which it is signed by an authorized representative of FEA.

§ 303.11 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions of Parts 305 or 307 of this chapter, the provisions of this part shall control with respect to procedure.

§ 303.12 Addresses for filing documents with the FEA.

(a) (1) All applications, requests, petitions, appeals, reports, FEA forms, written communications and other documents to be submitted to or filed with the FEA National Office in accordance with this Part 303, Part 305 or 307 of this chapter shall be addressed as provided in this section.

(2) The FEA National Office has facilities for the receipt of transmissions via TWX and FAX. (The FAX is a 3M full duplex 4 or 6 minute (automatic) machine.)

FAX NUMBERS

(202) 254-6175
(202) 254-6461

TWX NUMBERS

(710) 822-9454
(710) 822-9459

(b) Documents for which a specific address number is not provided in accordance with paragraphs (c)–(e) of this section shall be addressed as follows: Federal Energy Administration, Code OFU, Attn: (Name of person to receive document, if known, and/or labeling as specified in § 303.9(c)), Washington, D.C. 20461.

(c) Documents to be filed with the Office of Exceptions and Appeals, as provided in this part or otherwise, shall be addressed as follows: Office of Exceptions and Appeals, Federal Energy Administration, Attn: (Name of person to receive document, if known, and/or labeling as specified in § 303.9(c)), Washington, D.C. 20461.

(d) Documents to be filed with the Office of General Counsel, as provided in this part or otherwise, shall be addressed as follows: Office of the General Counsel, Federal Energy Administration, Attn: (Name of person to receive document, if known, and/or labeling as specified in § 303.9(c)), Washington, D.C. 20461.

(e) Documents to be filed with the Office of Private Grievances and Redress shall be addressed as follows: Office of Private Grievances and Redress, Federal Energy Administration, Attn: (Name of person to receive document, if known and/or labeling as specified in § 303.9 (c)), Washington, D.C. 20461.

§ 303.13 Public docket room.

There shall be made available at the public docket room of FEA National Office, 12th and Pennsylvania Avenue, NW., Washington, D.C., for public inspection and copying:

(a) A list of all persons who have applied for an exception, an exemption, or an appeal, and a digest of each application;

(b) Each decision and statement setting forth the relevant facts and legal basis of an order, with confidential information deleted, issued in response to an application for an exception or exemption or at the conclusion of an appeal;

(c) The written comments received from interested persons in connection with issuance of prohibition orders, or modification or rescission thereof if applicable, or construction orders, with a verbatim transcript of the public hearing held prior to issuance of a prohibition order applicable for a period after June 30, 1975 or held prior to modification of a prohibition order for a period ending prior to or on June 30, 1975 to make it applicable for a period after June 30, 1975;

(d) The comments received during each rulemaking proceeding, with a verbatim transcript of the public hearing, if such a public hearing was held; and

(e) Any other information required by statute to be made available for public inspection and copying, and any information that the FEA determines should be made available to the public through display in the public docket room.

§ 303.14 Office of Private Grievances and Redress.

Petitions that seek special redress, relief or other extraordinary assistance apart from or in addition to the proceedings and procedures described in this part, including those petitions based on an assertion that the FEA is not complying with the FEAA, ESECA, FEA regulations, orders, rules, or otherwise, shall be filed in accordance with Subpart R of Part 205 of this chapter.

Subpart B—Prohibition Orders

§ 303.30 Purpose and scope.

(a) This subpart establishes the procedures for the filing by any powerplant

or major fuel burning installation of an application for a prohibition order that is applicable for a period ending either prior to or on June 30, 1975, or for a period ending after June 30, 1975, which application shall be filed only by a powerplant or major fuel burning installation. (The procedure for filing an application for modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975 is stated in Subpart J of this part.)

(b) A proceeding for issuance of a prohibition order may be commenced by FEA on its initiative or in response to an application. Sections 303.34, 303.36, 303.37, 303.38 shall be applicable to the proceeding regardless of the manner in which it is initiated. Other sections of this subpart apply only to a proceeding commenced in response to an application.

§ 303.31 What to file.

(a) A powerplant or major fuel burning installation filing under this subpart shall file an "Application for Prohibition Order" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) Application may be made in the case of a powerplant for an individual powerplant or for combinations thereof at a single site, and in the case of a major fuel burning installation, for an individual fossil-fuel fired boiler, burner or other combuster of fuel, or for combinations thereof at a single site. The application should specify the powerplant (or powerplants) or combustor (or combinations of combustors) with respect to which application is being made.

(c) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.32 Where to file.

All applications for a prohibition order shall be filed with the FEA National Office at the address provided in § 303.12.

§ 303.33 When to file.

All applications for prohibition orders shall be filed by June 1, 1975.

§ 303.34 Notice.

(a) *Prohibition orders that are applicable for a period ending prior to or on June 30, 1975.* Prior to issuance of a prohibition order that is applicable for a period ending prior to or on June 30, 1975, either in response to an application or on its initiative, FEA shall publish notice of the intention to issue such order in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. The notice shall describe the proposed action, state content of the proposed prohibition order and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views and arguments.

(b) *Prohibition orders applicable after June 30, 1975.* Prior to issuance of a prohibition order that is applicable after June 30, 1975, either in response to an application or on its initiative, FEA shall publish notice of the intention to issue such order in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. The notice shall describe the proposed action, state the content of the proposed prohibition order and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views or arguments, and shall set a date, time and place at which there shall be an opportunity for interested persons to make oral presentation of data, views and arguments in accordance with Subpart N of this part.

§ 303.35 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application. In addition to such information, the application shall include the following information:

(1) Description of applicant, including but not limited to, location, electric power and/or energy output, fuels utilized and rate of use thereof, and, in the case of a powerplant, the identification of the electric power dispatching systems with which the powerplant is interconnected and the regional reliability council that has jurisdiction of the powerplant.

(2) Information regarding the applicant's capability to burn coal as of June 22, 1974, and an identification and description of any plant equipment or facilities necessary to the burning of coal that the applicant would have had to acquire or refurbish to render the powerplant capable of burning coal on that date.

(3) Identify the type of coal (Btu/lb., percent sulfur, percent ash, percent volatile matter, and ash slagging/sintering characteristics) used as the applicant's original specification coal; the source from which the applicant now does or will obtain such coal; and the means of transporting such coal to the applicant.

(4) Identify the maximum and minimum values for other types of coal (Btu/lb., percent sulfur, percent ash, percent volatile matter, and ash slagging/sintering characteristics) compatible with applicant's design tolerances; the source from which the applicant now does or will obtain such coal; and the means of transporting such coal to the applicant.

(5) Identify any anticipated acquisition or refurbishing of coal handling and firing equipment, such as boilers, unloaders, conveyors, crushers, pulverizers, scales, burners, feeders, air heaters, soot blowers, coal-burning instrumentation and controls, and ash handling and ponding, that would be required to reinstitute coal-burning capability. Also include current copies of detailed plot plans and elevation drawings that are relevant to a return to coal burning, and any information relevant to the adequacy of storage facilities for coal.

(6) Identify the costs associated with the procurement of the above new equipment or the refurbishing of existing equipment needed to restore coal firing capability, stating this cost information on a component by component basis, and also provide an estimate of the operating and maintenance cost differential associated with the necessary changes.

(7) Provide an estimate of the lead time necessary to restore coal firing capability (other than the time associated with actions required to meet air pollution control regulations). Specify the estimated times for the acquisition or refurbishing of necessary individual equipment components as well as the time necessary to build an adequate coal inventory.

(8) Identify any state or local laws or policies, other than air pollution control laws or policies, that might limit the utilization of coal by the applicant.

(9) Provide the following financial information:

(i) Most recent Securities and Exchange Commission form 10K;

(ii) Date, type, amount and yield on latest capital offering;

(iii) Current coverage ratio, price/book value of equity;

(iv) Current 10 year construction budget including Construction Work, in Progress; and

(v) Operating budget for current fiscal year.

(10) With respect to powerplants, information regarding the potential for the impairment of the reliability of service, if any, in the area served by such powerplant if a prohibition order was to be issued. Such information shall include an electrical one-line diagram showing the relationship of the powerplant to the electric power dispatching system of which the powerplant is a part, the projected monthly peak loads and net dependable electrical capacity and energy resources of such dispatching system for the three years after the filing of the application, and a statement regarding any impairment of reliability of service to the area served by the powerplant, the dispatching system of which the powerplant is a part, or otherwise, that might be caused by issuance of a prohibition order to such powerplant. ("Reliability of service" and "impairment" are defined in § 305.3(b)(4) of this chapter.)

(11) An estimate of the anticipated effect that denial of the application would have on the applicant's operation.

(12) Any other information that the applicant believes would be pertinent to FEA's evaluation of the application.

(13) A certification by the applicant's chief executive officer or his duly authorized representative of the accuracy of the information stated in the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it is most beneficial. The request and FEA's determination concerning it shall be made in accordance with Subpart N of this part, which determination is in FEA's discretion.

§ 303.36 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third parties relevant to the application or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions, except that the affected powerplant of major fuel burning installation's opportunity to respond to written comments or oral presentations in response to a notice of intention to issue an order shall be in accordance with such notice. In evaluating an application or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

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

(3) Applications for prohibition orders filed after June 1, 1975 shall be dismissed automatically.

(b) *Criteria.* The decision with respect to an application and the decision with respect to an FEA-initiated proceeding shall depend on whether FEA can make the findings stated in § 305.3(b) or § 305.4(b) of this chapter, as appropriate, and, shall include a consideration of the factors stated in §§ 305.3(d) and 305.4 (c) and (d) of this chapter, as applicable.

§ 303.37 Decision and order.

(a) Upon consideration of an application for a prohibition order and other relevant information received or obtained during the proceeding, the FEA shall issue either a prohibition order or an order denying the application.

(b) Prohibition orders, whether issued in response to an application or on FEA's initiative, shall not become effective until the notification or certification procedures described in this paragraph are satisfied.

(1) The prohibitions stated in prohibition orders that are applicable for a period ending prior to or on June 30, 1975 shall not become effective (i) until the date which the Administrator of EPA certifies, pursuant to section 119(d)(1)(A) of the Clean Air Act, is the earliest date that the powerplant or major fuel burning installation will be able to comply with the air pollution requirements that will be applicable to it and (ii) until FEA has served the affected powerplant or major fuel burning installation a Notice of Effectiveness. Such order shall not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of such Act.

(2) The prohibitions stated in prohibition orders that are applicable after June 30, 1975 shall not become effective (i) until either (A) the Administrator of EPA notifies the FEA, in accordance with section 119(d)(1)(B) of the Clean Air Act, that the powerplant or major fuel burning installation will be able on and after July 1, 1975 to burn coal and to comply with all applicable air pollution requirements without a compliance date extension, or (B) if no notification is given, the date which the Administrator of EPA certifies pursuant to section 119(d)(1)(B) of the Clean Air Act is the earliest date that the powerplant or major fuel burning installation will be able to comply with all applicable requirements of section 119, and (ii) until FEA has taken the actions described in § 305.9 of this chapter and has served the affected powerplant or major fuel burning installation a Notice of Effectiveness. Such order shall not be effective during any period certified by the Administrator of EPA under section 119(d)(3)(B) of such Act.

(3) Upon receipt of notification or certification by the Administrator of EPA, in accordance with the procedure described in subparagraphs (1) and (2) of this paragraph, the FEA may issue a Notice of Effectiveness.

(c) The prohibition order or the order denying an application for a prohibition order shall include a written statement of the pertinent facts, a statement of the legal basis upon which the order is issued, and, when the order is a prohibition order, a recitation of the conclusions regarding the findings to be made by FEA in accordance with §§ 305.3(b) or 305.4(b) of this chapter, as appropriate, and a summary of the rationale for each. The order shall provide that it is not a final agency action and that if any person aggrieved thereby files an appeal such appeal must be filed with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part, except that an order dismissing the application for a prohibition order filed after June 1, 1975 shall state that it is a final order of which the applicant may seek judicial review. A prohibition order shall provide that the prohibitions stated therein shall become effective on the date stated in the Notice of Effectiveness, which date shall not be earlier than service of such notice, and that it will not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of the Clean Air Act. The date stated in the Notice of Effectiveness shall be either (1) the date EPA determines in accordance with section 119(d)(1)(B) of the Clean Air Act, or (2) the termination of the period of time that FEA determines is required to acquire or refurbish equipment or facilities necessary for coal burning, other than equipment or facilities necessary to comply with the Clean Air Act, whichever date is later. The prohibition order shall state that within 90 days after its issuance the affected powerplant or major fuel burning installation must (3) make application to the EPA for a compliance date extension or (4) if such powerplant or installation is not eligible for a compliance date extension, it must provide such other information as EPA may by regulation require. The prohibition order may include a schedule of events that must take place by a stated date ("compliance schedule") to insure that affected powerplant or major fuel burning installation will be able to comply with the prohibitions stated in the prohibition order by the date stated in the Notice of Effectiveness, or may provide for the incorporation of such compliance schedule in the Notice of Effectiveness. The compliance schedule may require actions by the affected powerplant or major fuel burning installation at any time subsequent to the service of the Notice of Effectiveness.

(d) The FEA shall serve a copy of the prohibition order, or of the order denying or dismissing the application for a prohibition order, upon the applicant or, if the action was initiated by FEA, upon the affected powerplant or major fuel burning installation, and any other person who participated in the proceeding by filing written comments or making oral presentation. Notice of issuance of a Notice of Effectiveness for a prohibition order shall be published in the FEDERAL REGISTER, and, in addition, such notice shall be served on the affected powerplant or major fuel burning installation.

§ 303.38 Appeal.

(a) Any person aggrieved by an order issued by the FEA under this subpart that denies an application for a prohibition order my file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal shall be filed within 10 days of service of the order from which the appeal is taken.

(b) Any person aggrieved by a prohibition order may file an appeal with the FEA Office of Exceptions and Appeals, after issuance of a Notice of Effectiveness. The appeal shall not be filed prior to service by FEA of the Notice of Effectiveness, and shall be filed within 30 days after the service of such notice.

(c) If a powerplant or major fuel burning installation applies for a modification or rescission of a prohibition order, in accordance with Subpart J of this part, any

appeal of such prohibition order shall be suspended until 30 days after an order has been issued in accordance with Subpart J or until 30 days from the date on which such powerplant or major fuel burning installation may treat that application as being denied in all respects.

(d) There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal, except that an order dismissing an application for a prohibition order that was filed after June 1, 1975 shall be a final order of which there may be judicial review.

Subpart C—Construction Orders

§ 303.40 Purpose and scope.

(a) This subpart establishes the procedures for the filing by a powerplant (other than a combustion gas turbine or combined cycle unit) in the early planning process of an application for a construction order.

(b) A proceeding for issuance of a construction order may be commenced by FEA on its initiative or in response to an application. Sections 303.44, 303.46, 303.47, 303.48 shall be applicable to the proceeding regardless of the manner in which the proceeding is initiated. Other sections of this subpart apply only to proceedings commenced in response to an application.

§ 303.41 What to file.

(a) A powerplant filing under this subpart shall file an "Application for Construction Order" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) Application may be made for an individual powerplant or for combinations thereof at a single site. The application should specify the powerplant or powerplants with respect to which the application is being made.

(c) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.42 Where to file.

All applications for construction orders shall be filed with the FEA National Office at the address provided in § 303.12.

§ 303.43 When to file.

(a) All applications for construction orders must be filed by June 1, 1975.

§ 303.44 Notice.

Prior to issuance of a construction order, either in response to an application or on its initiative, FEA shall publish notice of the intention to issue such order in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant that would be affected by the proposed order. The notice shall describe the proposed action, state the content of the proposed construction order and provide a period of no less than 10 days from the date of publication in which interested persons may file written data, views and arguments.

§ 303.45 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the subject of the application and the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application. In addition to such information, the application shall include the following information:

(1) Description of applicant's proposed powerplant, including, but not limited to, location, electric power and energy output, fuels to be utilized and rate of use thereof, the identification of the electric power dispatching system with which the powerplant will be interconnected and the regional reliability council that would have jurisdiction of the powerplant, projected monthly peak loads for the electric power dispatching system with which the powerplant will be interconnected and the net dependable electrical capacity and energy resources of such system for the three years following the date the powerplant commences the sale or exchange of electric power, and the stage in the early planning process that the powerplant has reached at time of application.

(2) A description of the modifications to the design and construction of the powerplant, if any, required to render it capable of using coal as its primary energy source, if such capability currently is not planned.

(3) An analysis of the likelihood that use of coal would result in the impairment of reliability or adequacy of service, as such terms are defined in § 307.3 (c)(1) of this chapter.

(4) Identify the type of coal (Btu/lb., percent sulfur, percent ash, percent volatile matter, and ash slagging/sintering characteristics) that is the powerplant's design specification coal; the source from which the applicant anticipates that it will be able to obtain such coal and its susceptibility to interruption and the method by which such coal would be transported to the powerplant.

(5) The identification and description of any contractual commitments for the design or construction of the powerplant and an analysis of the impact, if any, (taking into account the considerations stated in § 307.3(d) of this chapter) of the requirement that the powerplant be designed and constructed to be capable of using coal as its primary energy source.

(6) An analysis of the capability of the powerplant to recover any increase in projected capital investment that might be required as a result of a construction order.

(7) The identification of any loss of revenue resulting from a delay, if any, in the commencement of the sale or exchange of electric power, to the extent that electric power will have to be purchased from another powerplant, resulting from a construction order.

(8) The identification of any relevant regulations or policies of any State or local agency with jurisdiction over the sale or exchange of electric power by powerplants.

(9) An estimate of the anticipated effect that denial of the application would have on the applicant's proposed operation.

(10) Any other information that the applicant believes would be pertinent to FEA's evaluation of the application.

(11) A certification by the applicant's chief executive office or his duly authorized representative of the accuracy of the information stated in the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it is most beneficial. The request and FEA's determination concerning it shall be made in accordance with Subpart N of this part, which determination is in FEA's discretion.

§ 303.46 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions, except that the affected powerplant's opportunity to respond to written comments in response to a notice of intention to issue an order shall be in accordance with such notice. In evaluating an application or other documents, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the application.

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

(3) Applications for construction orders filed after June 1, 1975 shall be dismissed automatically.

(b) *Criteria.* The decision with respect to an application and the decision with respect to an FEA-initiated proceeding shall be subject to the findings stated in § 307.3 (b) and (c) of this chapter and shall include a consideration of the factors stated in § 307.3(d) of this chapter.

§ 303.47 Decision and order.

(a) Upon consideration of an application for a construction order and other relevant information received or obtained during the proceeding, the FEA shall issue either a construction order or an order denying the application.

(b) Construction orders, whether issued in response to an application or on FEA's initiative, shall not become effective until FEA has taken the actions described in § 307.7 of this chapter and has served the affected powerplant a Notice of Effectiveness.

(c) The construction order, or the order denying an application for a construction order, shall include a written statement of the pertinent facts, a statement of the legal basis upon which the order is issued, and when the order is a construction order, a recitation of the conclusions regarding the findings to be made by FEA in accordance with § 307.3 (b) and (c) of this chapter, as appropriate, and a summary of the rationale for each. The order shall provide that it is not a final agency action and that if any person aggrieved thereby files an appeal, such appeal must be filed with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part, except that an order dismissing an application for a construction order filed after June 1, 1975 shall state that it is a final order of which the applicant may seek judicial review. A construction order shall state that it shall be effective on the date stated in the Notice of Effectiveness, which date shall not be earlier than the date of service of such notice.

(d) The FEA shall serve a copy of the construction order, or of the order denying the application for a construction order, upon the applicant or, if the action was initiated by FEA, upon the affected powerplant, and any other person who participated in the proceeding by filing written comments. Notice of issuance of a Notice of Effectiveness for a construction order shall be published in the FEDERAL REGISTER, and, in addition, such notice shall be served on the affected powerplant.

§ 303.48 Appeal.

(a) Any person aggrieved by an order issued by the FEA under this subpart that denies an application for a construction order may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal shall be filed within 10 days of service of the order from which the appeal is taken.

(b) Any person aggrieved by a construction order may file an appeal with the FEA Office of Exceptions and Appeals, after issuance of a Notice of Effectiveness. The appeal shall not be filed prior to service by FEA of the Notice of Effectiveness, and shall be filed within 30 days after the service of such notice.

(c) If a powerplant applied for a modification or rescission of a construction order, in accordance with Subpart J of this part, any appeal of such construction order shall be suspended until 30 days after an order has been issued in accordance with Subpart J of this part or until 30 days from the date on which such powerplant may treat that application as being denied in all respects.

(d) There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal, except that an order dismissing an application for a construction order that was filed after June 1, 1975 shall be a final order of which there may be judicial review.

Subpart D—[Reserved]

Subpart E—Exception

§ 303.70 Purpose and scope.

(a) This subpart establishes the procedures for applying for an exception from a regulation, ruling or generally applicable requirement based on an assertion of serious hardship, inequity or unfair distribution of burdens and for the consideration of such application by the FEA.

(b) A request for an interpretation or other specific action which includes, or could be construed to include, an application for an exception may be treated solely as a request for an interpretation or other action, and processed as such by FEA.

(c) The filing of an application for an exception shall not constitute grounds for non-compliance with the requirements of the regulation, ruling or generally applicable requirement from which an exception is sought, unless a stay has been issued in accordance with Subpart I of this part.

§ 303.71 What to file.

(a) A person filing under this subpart shall file an "Application for Exception (ESECA)" which should be clearly labeled as such on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.72 Where to file.

All applications for exception shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.73 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, or a copy from which confidential information has been deleted in accordance with § 303.9(f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the FEA action sought. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the FEA Office of Exceptions and Appeals within 10 days of service of such application. The application filed with the FEA shall include certification to the FEA that the applicant has complied with the requirements of this subsection and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

The FEA may require the applicant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) The FEA shall serve notice on any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of such notice.

(d) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 303.9 (f), to the applicant. The person shall certify to the FEA that he has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

(e) At regular intervals, the FEA shall publish a list of all persons who have applied for an exception under this subpart, with a brief description of the factual situation and the relief requested.

§ 303.74 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include

the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference or hearing regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference or hearing is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is within FEA's discretion.

(c) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA and EPA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the particular action sought therein.

(d) The application shall specify the exact nature and extent of the relief requested.

§ 303.75 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application or other document: *Provided,* That the applicant is afforded an opportunity to respond to all relevant third person submissions. In evaluating an application or other documents, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a hearing or conference, if, in its discretion, it considers that such hearing or conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request necessary additional information is not submitted by the applicant, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 303.73, the FEA may dismiss the application without prejudice.

(b) *Criteria.* (1) The FEA shall only consider an application for an exception when it determines that a more appropriate proceeding is not provided by this part.

(2) An application for an exception may be granted to alleviate or prevent special hardship, inequity or unfair distribution of burdens.

(3) An application for an exception shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous applications for exception.

§ 303.76 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an order either granting or denying the application.

(b) The order shall include a written statement setting forth the pertinent facts and the legal basis upon which the order is issued. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the FEA as one who is aggrieved by such order. A copy of each order, with such modification as is necessary to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552, will be on file in the public docket room described in § 303.13. If such copy contains information that has been claimed by an applicant or other person to be confidential, notice of the FEA's intention to place a copy in the docket room and an opportunity to respond shall be given to such person no less than five days prior to its placement in such room. The Office of Exceptions and Appeals shall publish periodically a digest of all orders issued.

§ 303.77 Timeliness.

(a) When the FEA has received all substantive information deemed necessary to process an application filed under this subpart, the FEA shall serve notice of that fact upon the applicant and all other persons who received notice of the proceeding pursuant to the provisions of § 303.73; and if the FEA fails to take action on the application within 90 days of serving such notice, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the FEA fails to take action on the application within 150 days from the filing of the application, the applicant may treat it as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 303.78 Appeal.

Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the order from which the appeal is taken or within 30 days of the date on which the applicant can treat the application as being denied in all respects. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart F—Exemption

§ 303.80 Purpose and scope.

This subpart establishes the procedures for filing an application for exemption and the consideration of such by the FEA. The applicant must be seeking an exemption from no less than an entire part, or subpart thereof, of Parts 303, 305 or 307 of this chapter.

§ 303.81 Procedures.

(a) An exemption may be effected only by amendment to the regulations. Although an application for an exemption is a request for a rulemaking, the application is not subject to the procedures of Subpart M of this part. If a rulemaking proceeding is convened, however, it shall be held in accordance with Subpart M of this part.

(b) An application for an exemption shall be submitted separate and apart from any other application, appeal, petition or other request submitted in accordance with this part. If an application for exemption is included with any other application, appeal, petition, or other request, the application for exemption will not be processed, nor will it be severed for separate consideration.

§ 303.82 What to file.

A person filing under this subpart shall file an "Application for Exemption (ESECA)" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

§ 303.83 Where to file.

An application for exemption shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.84 Contents.

The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of the application and to the FEA action sought. The application shall identify the part or parts, or subparts thereof, of this chapter from which the exemption is sought; describe the business or other reason that would justify such exemption; identify the persons or classes of persons and acts or transactions that would be aggrieved or affected by such exemption and describe the adverse impact; describe the benefit to the person making the application, or others, that would result if the exemption were effected; and explain the reasons why the action sought by the application cannot be accomplished by any

other proceeding provided in this part. Upon request, the applicant shall submit copies of relevant contracts, agreements, leases, instruments, and other documents that are representative of those that would be affected by the granting of the requested exemption.

§ 303.85 FEA evaluation.

(a) *Processing.* All applications for exemption shall be evaluated by FEA to determine if the institution of a rulemaking proceeding is warranted and if the FEA action sought by the applicant could more appropriately be considered in any other proceeding provided by this part. The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application for exemption or other document provided that the person making the request is afforded an opportunity to respond to all relevant third person submissions other than written comments or oral presentations in response to a rulemaking. In evaluating an application or other document, the FEA may conduct its own investigation and consider any other source of information.

(b) *Criteria.* (1) Rulemaking proceedings for the purpose of considering an application for exemption will be instituted only if the FEA in its discretion determines that such a proceeding would be appropriate. Among the factors that the FEA will evaluate in making a determination with respect to a rulemaking are—

(i) The order shall include a written statement setting forth the pertinent facts and legal basis upon which the order is issued. The order denying the application shall state that any person aggrieved thereby may file an appeal with the Office of Exceptions and Appeals in accordance with Subpart H of this part.

§ 303.87 Timeliness.

(a) If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 303.88 Appeal.

(a) Any person aggrieved by an order issued by the FEA under this subpart that denies an application for exemption may file an appeal with the Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the order from which the appeal is taken or within 30 days of the date on which the applicant can treat the application as being denied in all respects. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

(1) The impact that granting the exemption would have on the regulatory scheme and objectives;

(2) The number of persons who would be exempted; and

(3) The economic justification for such exemption.

(b) The FEA may summarily deny an application for exemption if—

(1) The exemption sought is not from each or all of this Part 303, Part 305 or 307, or a subpart thereof, of this chapter;

(2) The granting of an exemption to the person making the application would not have sufficient national impact, economic or otherwise, to warrant rulemaking proceedings for the purpose of considering an amendment to the regulation;

(3) It is determined that the statutory criteria cannot be met; or

(4) It is determined that another proceeding provided by this part is more appropriate.

§ 303.86 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an appropriate order. If the application is not denied, the order shall provide for publication of a notice of proposed rulemaking regarding the application in the FEDERAL REGISTER.

Subpart G—Interpretation

§ 303.90 Purpose and scope.

(a) This subpart establishes the procedures for the filing of a formal request for an interpretation and for the consideration of such request by the FEA. Interpretations shall be in writing and shall only be issued by the FEA General Counsel. Responses, which may include verbal or written responses, to general inquiries or to other than formal written requests for interpretation filed with the General Counsel are not interpretations and merely provide general information.

(b) A request for interpretation that includes, or could be construed to include, an application for an exception or an exemption may be treated solely as a request for interpretation and processed as such.

§ 303.91 What to file.

(a) A person filing under this subpart shall file a "Request for Interpretation (ESECA)" which should be clearly labeled as such both on the request and on the outside of the envelope in which the request is transmitted, and shall be in writing and signed by the person filing the request. The person filing the request shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the person filing the request wishes to claim confidential treatment for any information contained in the request or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.92 Where to file.

A request for interpretation shall be filed with the General Counsel at the address provided in § 303.12.

§ 303.93 Contents.

(a) The request shall contain a full and complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of the request and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the request. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the request.

(b) The request for interpretation shall include a discussion of all relevant authorities, including, but not limited to, FEA and EPA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the particular interpretation sought therein.

§ 303.94 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in a request or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any request for interpretation or other document: *Provided*, That the person making the request is afforded an opportunity to respond to all relevant third person submissions. In evaluating a request for interpretation or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA on its own initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the request.

(2) The FEA shall issue its interpretation on the basis of the information provided in the request, unless that information is supplemented by other information brought to the attention of the General Counsel during the proceeding. The interpretation shall, therefore, depend for its authority on the accuracy of the factual statement and may be relied upon only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(3) If the FEA determines that there is insufficient information upon which to base a decision and if upon request necessary additional information is not submitted by the person requesting the interpretation, the FEA may refuse to issue an interpretation.

(b) *Criteria.* (1) The FEA shall base an interpretation on the FEAA and ESECA and the regulations and published rulings of the FEA as applied to the specific factual situation.

(2) The FEA shall take into consideration previously issued interpretations dealing with the same or a related issue.

§ 303.95 Decision and effect.

(a) Upon consideration of the request for interpretation and other relevant information received or obtained during the proceeding, the General Counsel may issue a written interpretation.

(b) The interpretation shall contain a written statement of the information upon which it is based and a legal analysis of and conclusions regarding the application of rulings, regulations and other precedent to the situation presented in the request.

(c) Only those persons to whom an interpretation is specifically addressed and other persons upon whom the FEA serves the interpretation and who are directly involved in the same transaction or act may rely upon it. No person entitled to rely upon an interpretation shall be subject to civil or criminal penalties stated in Subpart Q of this part for any act made in reliance upon the interpretation, notwithstanding that the interpretation shall thereafter be declared by judicial or other competent authority to be invalid.

(d) FEA at any time may rescind or modify an interpretation on its initiative. Rescission or modification may be effected by notifying persons entitled to rely on the interpretation that it is rescinded or modified. This notification shall include a statement of the reasons for the rescission or modification and, in the case of a modification, a restatement of the interpretation as modified.

(e) An interpretation is modified by a subsequent amendment to the regulations or ruling to the extent that it is inconsistent with the amended regulation or ruling.

§ 303.96 Appeal.

Any person aggrieved by an interpretation issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the interpretation from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart H—Appeal

§ 303.100 Purpose and scope.

(a) This subpart establishes the procedures for the filing of an administrative appeal of FEA actions taken under Subparts B, C, E, F, G, J, K or P of this part and the consideration of such appeal by the FEA.

(b) A person who has appeared before the FEA in connection with a matter arising under Subparts B, C, E, F, G, J, K or P of this part has not exhausted his administrative remedies until an appeal has been filed under this subpart and an order granting or denying the appeal has been issued.

§ 303.101 Who may file.

Any person aggrieved by an order or interpretation issued by the FEA under Subparts B, C, E, F, G, J, K or P of this part may file an appeal.

§ 303.102 What to file.

(a) A person filing under this subpart shall file an "Appeal of Order (ESECA)" or an "Appeal of Interpretation (ESECA)" which should be clearly labeled as such both on the appeal and on the outside of the envelope in which the appeal is transmitted, and shall be in writing and signed by the person filing the appeal. The appellant shall comply with the general filing requirements stated in § 303.9 (other than § 303.9(e), as provided in § 303.106(c)) in addition to the requirements stated in this subpart.

(b) If the appellant wishes to claim confidential treatment for any information contained in the appeal or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.103 Where to file.

The appeal of an order or interpretation shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.104 When to file.

The time within which an appeal must be filed and, in the case of a prohibition order and construction order, the time before which an appeal cannot be filed, is stated in the appeals section of each subpart, unless a subpart describes a proceeding for which there is not an administrative appeal.

§ 303.105 Notice.

(a) The appellant shall send by United States mail a copy of the appeal and any subsequent amendments or other documents relating to the appeal, or a copy from which confidential information has been deleted in accordance with § 303.9(f), to each person who is reasonably ascertainable by the appellant as a person who will be aggrieved by the FEA action sought, including those who participated in the prior proceeding, except as provided in paragraphs (b) and (c) of this section. The copy of the appeal shall be accompanied by a statement that the person may submit comments regarding the appeal to the FEA Office of Exceptions and Appeals within 10 days. The appeal filed with the FEA shall include certification to the FEA that the appellant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the appeal was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if an appellant determines that compliance with paragraph (a) of this section would be impracticable, the appellant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the appeal a description of the persons or class or classes of persons to whom notice was not sent.

(c) The FEA may require the appellant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER. With respect to the appeal of a construction order, a prohibition order, or the modification or rescission of a prohibition order or construction order as a result of significantly changed circumstances that occurred during the interval between issuance of a prohibition or construction order and service to Notice of Effectiveness, FEA shall provide notice of the appeal of those orders by publication in the FEDERAL REGISTER. Such notice shall state that aggrieved persons shall have 10 days from publication of the notice to file written comments regarding the appeal.

(d) The FEA shall serve notice on any other person reasonably identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the appeal will be accepted if filed within 10 days of service of that notice, except as stated in paragraph (c) of this section with respect to prohibition orders, construction orders, or the modification or rescission of such orders.

(e) Any person submitting written comments to the FEA with respect to an appeal filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 303.9 (f), to the appellant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 303.106 Contents.

(a)(1) The appeal shall contain a concise statement of the grounds upon which it is brought and a description of the relief sought. It shall include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the appeal.

(2) An appeal of a prohibition order, of an order modifying a prohibition order that is applicable for the period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, or of a construction order may not contain an assertion of significantly changed circumstances, as that term is defined in this subpart, as modified in § 303.136(b)(2). An assertion of significantly changed circumstances relating to such orders should be made pursuant to Subpart J of this part.

(3) If the appeal (other than the appeal of a prohibition order, of the modi-

fication of a prohibition order applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1974, or of a construction order) includes a request for relief based on significantly changed circumstances, there shall be a complete description of the events, acts, or transactions that comprise the significantly changed circumstances, and the appellant shall state why, if the significantly changed circumstances is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding. For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the prior proceeding;

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on an appeal or exception that was in effect at the time of the proceeding upon which the order or interpretation is based and which, if such had been made known to FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(4) A substantial change in the facts or circumstances upon which an outstanding and continuing order or interpretation affecting the appellant was issued, which change has occurred during the interval between issuance of the order or interpretation and the date of the appeal and was caused by forces or circumstances beyond the control of the appellant.

(b) A copy of the order or interpretation that is the subject of the appeal shall be submitted with the appeal.

(c) The appellant shall state whether to the best of his knowledge the same or a related issue, act or transaction that is the subject of the appeal has been or presently is being considered or investigated by any FEA or EPA office, other Federal agency, department or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with an FEA proceeding described in this part, other than the proceeding from which the appeal is taken, or under Subpart A of 40 CFR Part 55 (which states the EPA regulations implementing section 3 of ESECA). In addition, the appellant shall state whether contact has been made by the appellant or a person acting on his behalf with any person who is employed by the FEA or EPA subsequent to service of the order or interpretation that is being appealed with regard to the issue, act or transaction that is the subject of the appeal; the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact. An appellant shall comply with this paragraph in lieu of § 303.9(e).

(d) The appellant shall state whether he requests or intends to request that there be a conference or hearing regarding the appeal. Any request not made at the time the appeal is filed shall be made as soon thereafter as possible, to insure that the conference or hearing is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is within FEA's discretion.

§ 303.107 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an appeal or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any appeal or other document provided that the appellant is afforded an opportunity to respond to all relevant third person submissions. In evaluating an appeal or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the FEA may dismiss the appeal with leave to amend within a specified time. If the failure to supply additional information is repeated or willful, the FEA may dismiss the appeal with prejudice. If the appellant fails to provide the notice required by § 303.105, the FEA may dismiss the appeal without prejudice.

(3) Failure to satisfy requirements:

(i) If the appellant fails to satisfy the requirements of paragraph (b)(1) of this section, the FEA may issue an order summarily denying the appeal. The order shall state the grounds for the denial and a copy of the order shall be served upon the appellant and any other person who participated in the appellate proceeding.

(ii) The order denying the appeal shall become a final order of the FEA within 10 days of its service upon the appellant, unless within such 10-day period an amendment to the appeal that corrects the deficiencies identified in the order is filed with the Office of Exceptions and Appeals.

(iii) Within 10 days of the filing of such amendment, as provided in paragraph (b)(1) of this section, the FEA shall notify the appellant whether the amendment corrects the specified deficiencies. If the amendment does not correct the deficiences, that notice shall be an order dismissing the appeal as amended. Such order shall be a final order of the FEA of which appellant may seek judicial review.

(b) *Criteria.* (1) An appeal may be summarily denied if—

(i) It is not filed in a timely manner, unless good cause is shown; or

(ii) It is defective on its face for failure to state, and to present facts and legal argument in support thereof, that the FEA action was erroneous in fact or in law, or that it was arbitrary or capricious.

(2) The FEA may deny any appeal if the appellant does not establish that—

(i) The appeal was filed by a person aggrieved by an FEA action;

(ii) The FEA's action was erroneous in fact or in law; or

(iii) The FEA's action was arbitrary or capricious. The denial of an appeal shall be a final order of FEA of which the appellant may seek judicial review.

§ 303.108 Decision and order.

(a) Upon consideration of the appeal and other relevant information received or obtained during the proceeding, the FEA shall enter an appropriate order, which may include the modification of the order or interpretation that is the subject of the appeal.

(b) The order shall include a written statement setting forth the pertinent facts and the legal basis of the order. The order shall state that it is a final order of the FEA of which the appellant may seek judicial review.

(c) The FEA shall serve a copy of the order upon the appellant, any other person who participated in the appellate proceeding and upon any other person reasonably identifiable by the FEA as one who is aggrieved by such order.

(d) A copy of each order, with such modification as is necessary to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552, will be filed in the public docket room described in § 303.13. If such copy contains information that has been claimed by an appellant or other person to be confidential, notice of the FEA's intention to place a copy in the public docket room and an opportunity to respond shall be given to such person no less than five days prior to its placement in such room.

§ 303.109 Appeal of a remedial order.

The appeal of a remedial order shall other persons who receives notice of the stated in this subpart, except:

(a) The appeal must be filed within 10 days of the service of the remedial order; and

(b) If the appeal is of a remedial order that was issued subsequent to a notice of probable violation that relates to an order or interpretation previously issued by the FEA, with respect to which there was an exhaustion of administrative remedies, no issues will be considered on the current appeal that were raised in that prior proceeding.

(c) If an issue raised on an appeal of a remedial order is also being considered in connection with any other FEA proceeding, the FEA may consolidate such issues and consider them in the appellate proceeding for the remedial order.

§ 303.110 Timeliness.

(a) When the FEA has received all substantive information deemed necessary to process any appeal filed under this subpart, the FEA shall serve notice of that fact upon the appellant and all other persons who receive notice of the proceeding pursuant to the provisions of

§ 303.105, except those persons who received notice by publication of the notice in the FEDERAL REGISTER, or participated in the appellate proceeding by the filing of comments; and if the FEA fails to take action on the appeal within 90 days of serving such notice, the appellant may treat the appeal as having been denied in all respects and may seek judicial review thereof.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the FEA fails to take action on the appeal within 120 days of the filing of the appeal, the appellant may treat it as having been denied in all respects and may seek judicial review thereof.

(c) If a powerplant or major fuel burning installation, as appropriate, applies for a modification or rescission of a prohibition order or a construction order in accordance with Subpart J of this part, any appeal of the prohibition order or construction that is the subject of such application shall be suspended until 30 days after an order has been issued in accordance with Subpart J of this part or until 30 days from the date on which the powerplant or major fuel burning installation may treat that application for modification or rescission as being denied in all respects pursuant to Subpart J of this part. The 120-day period provided in paragraph (b) of this section shall be suspended during the period the appeal is stayed.

Subpart I—Stay

§ 303.120 Purpose and scope.

This subpart establishes the procedures for the application for and granting of a stay by the FEA. An application for a stay will only be considered—

(a) Incident to or pending an appeal from an order of the FEA;

(b) Incident to an application for an exception from the application of any FEA regulations, rulings, or generally applicable requirements when the stay sought is of the same regulation, ruling or generally applicable requirement from which the exception is sought;

(c) Incident to an application for modification or rescission of an issued and effective prohibition order or construction order (other than the modification of a prohibition order that is applicable for a period ending prior to or before June 30, 1975 to make it applicable after June 30, 1975); or

(d) Pending judicial review.

All FEA orders, regulations, rulings, and generally applicable requirements shall be complied with unless and until an application for a stay is granted.

§ 303.121 What to file.

(a) A person filing under this subpart shall file an "Application for Stay (ESECA)" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9 (f) shall apply.

§ 303.122 Where to file.

(a) An application for stay of an FEA order incident to an appeal from such order shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

(b) An application for stay of the application of any or all FEA regulations, rulings, or generally applicable requirements incident to an application for an exception therefrom shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

(c) An application for stay of an issued and effective prohibition order or a construction order shall be filed with the FEA National Office at the address provided in § 303.12.

(d) An application for stay of an FEA order or of the application of any FEA regulations, rulings or generally applicable requirements pending judicial review shall be filed with the office that issued the order of which judicial review is sought.

§ 303.123 Notice.

(a) When administratively feasible, the FEA shall notify each person reasonably identifiable by the FEA as one who would be aggrieved by the FEA action sought that the applicant has filed for a stay and that the FEA will accept written comment on the application.

(b) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 303.9 (f), to the applicant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 303.124 Contents

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include, but not be limited to, all information that relates to the satisfaction of the criteria in § 303.125(b).

(b) The application shall include a description of the proceeding incident to which the stay is being sought. This description shall contain a discussion of all FEA and EPA actions relevant to the proceeding.

(c) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is within FEA's discretion.

§ 303.125 FEA evaluation.

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

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

(3) The FEA shall process applications for stay as expeditiously as possible. When administratively feasible, the FEA shall grant or deny the application for stay within 10 business days after receipt of the application.

(4) Notwithstanding the provision for notice to third persons in § 303.123(a), the FEA may make a decision on an application for stay prior to the receipt of written comments.

(b) *Criteria.* The grounds for granting a stay are a showing that there is a likelihood of success on the merits and one or more of the following:

(1) A showing that irreparable injury will result in the event that the stay is denied;

(2) A showing that denial of the stay will result in a more immediate special hardship, inequity or unfair distribution of burdens to the applicant than to the other persons affected by the proceeding;

(3) A showing that it would be desirable for public policy or other reasons to preserve the *status quo ante* pending a decision on the merits of the appeal, exception, modification or rescission; or

(4) A showing that it is impossible for the applicant to fulfill the requirements of the original order.

§ 303.126 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the decision, and the terms and conditions of the stay.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person reasonably identifiable by FEA as one who is aggrieved by such decision.

(d) The grant or denial of a stay is not an order of the FEA subject to administrative review.

(e) In its discretion and upon a determination that such is in accordance with the objectives of the regulations and the FEAA or ESECA, the FEA may order a stay on its own initiative.

Subpart J—Modification or Rescission of Prohibition Orders and Construction Orders

§ 303.130 Purpose and scope.

(a) This subpart establishes the procedures for the filing by any powerplant or major fuel burning installation of an application for modification or rescission of a prohibition order or a construction order.

(b) A proceeding for modification or rescission of a prohibition order or a construction order may be commenced by FEA in response to an application or upon its initiative. A proceeding commenced on FEA's initiative may be begun by FEA at any time after FEA has issued a prohibition order or construction order. Sections 303.134, 303.136, 303.137, and 303.139 shall be applicable to the proceeding regardless of the manner in which the proceeding was initiated. Other sections of this subpart apply only to a proceeding commenced in response to an application.

§ 303.131 What to file.

(a) A powerplant or major fuel burning installation filing under this subpart shall file an "Application for Modification (or Rescission) of Prohibition Order (or Construction Order)" which should be clearly labeled as such, using the applicable terms, both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures stated in § 303.9(f) shall apply.

§ 303.132 Where to file.

An application for modification or rescission shall be filed with the FEA National Office at the address provided in § 303.12.

§ 303.133 When to filie.

(a) *Prohibition orders.* (1) An application for modification of a prohibition order that is applicable for the period ending prior to or on June 30, 1975 to make it applicable for a period after June 30, 1975 shall be filed by May 15, 1975.

(2) An application for modification or rescission of a prohibition order based on significantly changed circumstances, which circumstances occurred during the interval between issuance of the order and service of a Notice of Effectiveness, shall be filed within 30 days of such service of such notice.

(3) An application for modification or rescission of a prohibition order based on significantly changed circumstances other than those stated in subparagraph (2) of this paragraph may be filed at any time after the Notice of Effectiveness is served.

(b) *Construction orders.* (1) An application for modification or rescission of a construction order based on significantly changed circumstances, which circumstances occurred during the interval between issuance of the order and service of a Notice of Effectiveness, shall be filed within 30 days of such service of such notice.

(2) An application for modification or rescission of a construction order based on significantly changed circumstances other than those stated in subparagraph (1) of this paragraph may be filed at any time after the Notice of Effectiveness is served.

§ 303.134 Notice.

(a) *Prohibition order applicable for a period ending prior to or on June 30, 1975.* (1) Prior to issuance of an order modifying or rescinding a prohibition order that is applicable for a period ending prior to or on June 30, 1975 (other than the modification described in subparagraph (2) of this paragraph), either in response to an application or on its initiative, FEA may publish notice of the intention to take any such action in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. Any such notice shall describe the proposed action and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views and arguments.

(2) Prior to issuance of an order modifying a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, either in response to an application or on its initiative, FEA shall publish notice of the intention to take such action in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. Such notice shall describe the proposed action, state the content of the prohibition order as it is proposed to be modified and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views or arguments, and shall set a date, time and place at which there shall be an opportunity for interested persons to make oral presentation of data, views and arguments in accordance with Subpart N of this part.

(b) *Prohibition orders applicable after June 30, 1975.* Prior to issuance of an order modifying or rescinding a prohibition order that is applicable after June 30, 1975, either in response to an application or on its initiative, FEA may publish notice of the intention to take such action in the FEDERAL REGISTER and shall serve a copy of any such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. Any such notice shall describe the proposed action and provide a period of no less than 10 days from date of publication in which interested persons may file written data, views or arguments.

(c) *Construction orders.* Prior to issuance of an order modifying or rescinding a construction order, either in response to an application or on its initiative, FEA may publish notice of the intention to take such action in the FEDERAL REGISTER and shall serve a copy of any such notice on the powerplant that would be affected by the proposed order. Any such notice shall describe the proposed action and provide a period of no less than 10 days from date of publication in which interested persons may file written data, views or arguments.

(d) If FEA on its initiative commences a proceeding for the modification or rescission of a prohibition order and does not publish in the FEDERAL REGISTER a notice of intention to take such action, it shall give notice, either by service of a written notice or by verbal communication, which communication shall be promptly confirmed in writing, to each person who was served the order that FEA proposes to modify or rescind. A reasonable period of time shall be given for each person notified to file a written response or give a verbal communication, which communication shall be promptly confirmed in writing.

§ 303.135 Contents.

(a)(1) An application (other than an application for modification of a prohibition order that is applicable for the period ending prior to June 30, 1975 to make it applicable after June 30, 1975) shall contain a full and complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a description of the acts or transactions that would be affected by the requested action; and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the FEA upon its request. A copy of the prohibition order or construction order of which modification or rescission is sought shall be included with the application.

(2) The application referred to in subparagraph (1) of this paragraph shall fully describe the events, acts, or transactions that comprise the significantly changed circumstances as defined in § 303.136(b)(2), upon which the application for modification or rescission of a prohibition order or construction order is based. The application shall state why, if

the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding.

(b) An application for modification of a prohibition order that is applicable for the period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975 shall contain the information required to be submitted by § 303.35(a).

(c) The applicant shall state whether he requests or intends to request that there be a conference regarding an application (other than an application for modification of an order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975). Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is in FEA's discretion.

(d) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA or EPA rulings, regulations, interpretations, and decisions on appeal and exceptions relied upon to support the action sought therein.

§ 303.136 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application for modification or rescission or other document: *Provided*, That the applicant is afforded an opportunity to respond to all relevant third person submissions, except that the affected powerplant or major fuel burning installation's opportunity to respond to written comments or oral presentations in response to a notice of intention to issue a modification or rescission of an order shall be in accordance with such notice. In evaluating an application for modification or rescission or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA may on its initiative convene a conference, if, in its discretion, it considers that such will advance its evaluation of the application.

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

(b) *Criteria.* (1) The decision with respect to modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, either in response to an application or on its initiative, shall depend on whether FEA can make the findings stated in § 305.3 (b) or § 305.4(b) of this chapter, as appropriate, and shall include, as applicable, a consideration of the factors stated in §§ 305.3(d) and 305.4 (c) and (d) of this chapter.

(2) FEA's decision with respect to modification or rescission of a prohibition order or a construction order, other than the modification described in subparagraph (1) of this paragraph, either in response to an application or on its initiative, shall be based on a determination that there are significantly changed circumstances. For purposes of this paragraph, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based—in particular, (A) those that would substantially affect the findings made by FEA in accordance with §§ 305.3(b), 305.4(b), or § 307.3(b) and (c) of this chapter, or the factors considered pursuant to §§ 305.3(d), 305.4 (c) and (d), and 307.3(d) of this chapter; and (B) those developed pursuant to actions taken by FEA pursuant to §§ 305.9 and 307.7 of this chapter.

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application or order is based and which, if such had been made known to the FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which was based an outstanding and continuing prohibition order or, construction order, which change occurred during the interval between issuance of such orders and service of a Notice of Effectiveness, or occurred during the interval after service of a Notice of Effectiveness and prior to the application for modification or rescission of a prohibition order or construction order, and was caused by forces or circumstances beyond the control of the applicant.

§ 303.137 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an appropriate order.

(1) If the appropriate order is a modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, such order shall not become effective (i) until (A) the Administrator of EPA notifies the FEA under section 119(d)(1)(B) of the Clean Air Act that the affected powerplant or major fuel burning installation will be able on and after July 1, 1975 to burn coal and to comply with all applicable air pollution requirements without a compliance date extension or (B) if no notification is given, the date which the Administrator of EPA certifies pursuant to section 119(d)(1)(B) of the Clean Air Act is the earliest date that the powerplant or major fuel burning installation will be able to comply with all applicable requirements of such section 119, and (ii) until EEA has taken the actions described in § 305.9 of this chapter and has served the affected powerplant or major fuel burning installation a Notice of Effectiveness. Upon receipt of notification or certification by the Administrator of EPA, in accordance with the procedures described in this paragraph, FEA may issue a Notice of Effectiveness.

(2) Prohibition orders as modified shall not be effective during any period certified by the Administrator of EPA under section 119(d)(3)(B) of the Clean Air Act.

(b)(1) *Prohibition orders applicable for a period ending prior to or on June 30, 1975, modified to make them after June 30, 1975.* The order shall include a written statement of the pertinent facts, a recitation of the conclusions regarding the findings to be made by FEA in accordance with § 305.3(b) or § 305.4(b) of this chapter, as appropriate, and a summary of the rationale for each, and a statement of the legal basis upon which the order is isued. The order shall provide that any person aggrieved thereby may file an appeal with the Office of Exceptions and Appeals in accordance with Subpart H of this part. A prohibition order, as modified, shall provide that the prohibitions stated therein shall become effective on the date stated in the Notice of Effectiveness, which date shall not be earlier than service of such notice, and that the modified order will not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of the Clean Air Act. The date stated in the Notice of Effectiveness shall be either (i) the date EPA determines in accordance with section 119(d)(1)(B) of the Clean Air Act, or (ii) the termination of the period of time that FEA determines is required to acquire or refurbish equipment or facilities necessary for coal burning, other than equipment or facilities necessary to comply with the Clean Air Act, whichever date is later. The prohibition order shall state that within 90 days after its issuance the affected powerplant or major fuel burning installation must (iii) make application to the EPA for a compliance date extension or (iv) if such powerplant or installation is not eligible for a compliance date extension, it must provide such other information as EPA may by regulation require. The prohibition order may include a schedule of events that must take place by a stated date ("compliance schedule") to insure that the affected powerplant or major fuel burning installation will be able to comply with the prohibitions stated in the prohibition order by the date stated in the Notice of Effectiveness, or may provide for the incorporation of such compliance schedule in the Notice of Effectiveness. The compliance schedule may require actions by the affected powerplant or

major fuel burning installation at any time subsequent to the service of the Notice of Effectiveness.

(2) *Other prohibition orders.* The order shall either modify or rescind the prohibition order or deny the application for modification or rescission and shall include a written statement setting forth the pertinent facts and legal basis of the order. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. If appropriate, it shall state that a modified prohibition order will not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of the Clean Air Act.

(c) *Construction orders.* The order shall either modify or rescind the construction order or deny the application for modification or rescission and shall include a written statement setting forth the pertinent facts and legal basis of the order. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part.

(d) The FEA shall serve a copy of the order upon the applicant or, if the action was initiated by FEA, upon the affected powerplant or major fuel burning installation, and any other person who participated in the proceeding by filing written comments or making oral presentation. Notice of issuance of an order substantially modifying or rescinding a prohibition order or a construction order shall be published in the FEDERAL REGISTER.

§ 303.138 Timeliness.

(a) *Prohibition orders for a period ending after June 30, 1975.* If the FEA fails to take action on an application for modification or rescission of a prohibition order for a period ending after June 30, 1975 within 90 days of filing, the applicant may treat the application as having been denied in all respects, and may appeal therefrom as provided in this subpart.

(b) *Construction orders.* If FEA fails to take action on an application for modification or rescission of a construction order within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the applicant may treat the application as having been denied in all respects and may seek appeal therefrom as provided in this subpart if FEA fails to issue an order granting or denying the application within 150 days of the filing of such application.

(d) For purposes of this section, the term "action" includes service of a "Notice of Intention to Modify (or Rescind) Prohibition Order (or Construction Order)" on the applicant.

§ 303.139 Appeal.

(a) Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part, except as provided in paragraph (c) of this section.

(b)(1) The appeal of an order (other than an order modifying a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975) issued pursuant to this subpart shall be filed within 30 days of service of the order or within 30 days of the date on which the applicant can treat the application as being denied in all respects, except as provided in subparagraphs (2) and (3) of this paragraph.

(2) The appeal of an order denying an application to modify a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975 shall be filed within 10 days of service of such order.

(3) The appeal of an order modifying a prohibition order that is applicable for a period ending prior to or on June 30, 1975, to make it applicable after June 30, 1975 shall not be filed prior to service by FEA of the Notice of Effectiveness and shall be filed within 30 days after service of such notice.

(c) There shall be no appeal of an order modifying a prohibition order or construction order, where such order is the result of a proceeding initiated prior to issuance of a Notice of Effectiveness issued prior to service of a Notice of Effectiveness. The appeal of such order shall be taken within 30 days of service of such notice.

(d) There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart K—Modification or Rescission of Orders (Other Than Prohibition Orders or Construction Orders) and Interpretations

§ 303.140 Purpose and scope.

(a) This subpart establishes the procedures for the filing of an application for modification or rescission of an FEA order (other than a prohibition order or construction order) or an interpretation. Modification or rescission is a summary proceeding that will be initiated only if the criteria described in § 303.145(b) are satisfied.

(b) A proceeding for modification or rescission of an order (other than a prohibition order or construction order) or an interpretation may be commenced by FEA in response to an application or on its initiative. Section 303.143(c)(2), 303.145(a)(1), 303.146 (b) and (c), and 303.148 shall be applicable to the proceeding regardless of the manner in which the proceeding is initiated. Other sections of this subpart apply only to a proceeding commenced in response to an application.

§ 303.141 What to file.

(a) A person filing under this subpart shall file an "Application for Modification (or Rescission) (ESECA)" which should be clearly labeled, using the applicable term, as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9 (f) shall apply.

§ 303.142 Where to file.

All applications for modification or rescission filed under this subpart shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.143 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, from which confidential information has been deleted in accordance with § 303.9 (f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the FEA action sought, including persons who participated in the prior proceeding. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the FEA office with which the application was filed within 10 days. The application filed with the FEA shall include certification to the FEA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

The FEA may require the applicant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c)(1) The FEA shall serve notice on any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the application will

be accepted if filed within 10 days of service of that notice.

(2) If FEA on its initiative commences a proceeding for the modification or rescission of an order (other than a prohibition order or construction order) or an interpretation, it shall give notice, either by service of a written notice or by verbal communication, which communication shall be promptly confirmed in writing, to each person who was served the order or interpretation that FEA proposes to modify or rescind. A reasonable period of time shall be given for each person notified to file a written response or give a verbal communication, if promptly confirmed in writing.

(d) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 303.9 (f), to the applicant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 303.144 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the FEA upon its request. A copy of the order or interpretation of which modification or rescission is sought shall be included with the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part which determination is in FEA's discretion.

(c) The applicant shall fully describe the events, acts, or transactions that comprise the significantly changed circumstances, as defined in § 303.145(b)(2), upon which the application is based. The applicant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding.

(d) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA or EPA rulings, regulations, interpretations and decisions on appeal and exception relied upon to support the action sought therein.

§ 303.145 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to the application for modification or rescission or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions. In evaluating an application for modification or rescission or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 303.143, the FEA may dismiss the application without prejudice.

(3) Failure to satisfy requirements. (i) If the applicant fails to satisfy the requirements of paragraph (b)(1) of this section, the FEA shall issue an order denying the application. The order shall state the grounds for the denial.

(ii) The order denying the application shall become final within 10 days of its service upon the applicant, unless within such 10-day period an amendment to correct the deficiencies identified in the order is filed with the Office of Exceptions and Appeals.

(iii) Within 10 days of the filing of such amendment, the FEA shall notify the applicant whether the amendment corrects the specified deficiencies. If the amendment does not correct the deficiencies, the notice shall be an order dismissing the application as amended. Such order shall be a final order of the FEA of which the applicant may seek judicial review.

(b) *Criteria.* (1) An application for modification or rescission of an order (other than a prohibition order or construction order) or an interpretation shall be processed only if—

(i) The application demonstrates that it is based on significantly changed circumstances; and

(ii) The 30-day period within which a person may file an appeal has lapsed or, if an appeal has been filed, a final order has been issued.

(2) For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based;

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application is based and which, if such had been made known to the FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order or interpretation of the FEA affecting the applicant was issued, which change has occurred during the interval between issuance of such order or interpretation and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

§ 303.146 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the pertinent facts and the legal basis of the order. The order shall state that it is a final order of which the applicant may seek judicial review.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the FEA as one who is aggrieved by such order.

§ 303.147 Timeliness.

If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 303.148 Appeal.

The denial of an application for modification or rescission filed under this subpart shall be a final order of FEA of which the applicant may seek judicial review.

Subpart L—Rulings

§ 303.150 Purpose and scope.

This subpart establishes the criteria for the issuance of interpretative rulings by the General Counsel. All rulings shall be published in the FEDERAL REGISTER. Any person is entitled to rely upon such ruling to the extent provided in this subpart.

§ 303.151 Criteria for issuance.

(a) A ruling may be issued, in the discretion of the General Counsel, whenever there have been a substantial number of inquiries with regard to similar factual situations or a particular section of the regulations.

(b) The General Counsel may issue a ruling whenever it is determined that it

will be of assistance to the public in applying the regulations to a specific situation.

§ 303.152 Modification or rescission.

(a) A ruling may be modified or rescinded by:

(1) Publication of the modification or rescission in the FEDERAL REGISTER; or

(2) A rulemaking proceeding in accordance with Subpart M of this part.

(b) Unless and until a ruling is modified or rescinded as provided in paragraph (a) of this section, no person shall be subject to the sanctions or penalties stated in Subpart Q of this part for actions taken in reliance upon the ruling, notwithstanding that the ruling shall thereafter be declared by judicial or other competent authority to be invalid. Upon such declaration, no person shall be entitled to rely upon the ruling.

§ 303.153 Comments.

A written comment on or objection to a published ruling may be filed at any time with the General Counsel at the address provided in § 303.12.

§ 303.154 Appeal.

There is no administrative appeal of a ruling.

Subpart M—Rulemaking

§ 303.160 Purpose and scope.

(a) This subpart establishes the procedures that govern a rulemaking proceeding. The initiation of a rulemaking proceeding is within the sole discretion of the FEA.

(b) Rulemaking by the FEA shall be in accordance with the Administrative Procedure Act (5 U.S.C. 551, et seq. (1970)) and the FEAA.

§ 303.161 What to file.

(a) *Comments in connection with a rulemaking.* Any comments filed in connection with a rulemaking shall be filed in accordance with the instructions in the notice of proposed rulemaking published in the FEDERAL REGISTER. Such comments shall be in writing and signed by the person filing them.

(b) *Petition for rulemaking.* (1) Any person may at any time file a petition regarding any FEA regulation or amendment thereto or, by letter, request that a rulemaking proceeding be instituted. Such petition or request shall be signed by the person filing it.

(2) Upon due consideration of a petition for rulemaking, expressly designated as such, the FEA shall either: (i) Institute a rulemaking as proposed or as modified in its discretion; (ii) notify the petitioner in writing that it does not intend to institute a rulemaking as proposed or as modified and stating the reasons therefore; or (iii) notify the petitioner in writing that the matter is under continuing consideration and that no decision can be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth in such notice.

§ 303.162 Where to file.

All comments filed in connection with a rulemaking shall be submitted in accordance with the instructions in the notice of proposed rulemaking. Any other petition or request shall be filed with the General Counsel at the address provided in § 303.12.

Subpart N—Conferences, Hearings, and Public Hearings

§ 303.170 Purpose and scope.

This subpart establishes the procedures for requesting and conducting an FEA conference, hearing, or public hearing. Such proceedings shall be convened in the discretion of the FEA, consistent with the requirements of the FEA and ESECA.

§ 303.171 Conferences.

(a) The FEA in its discretion may direct that a conference be convened, on its initiative or upon request by a person, when it appears that such conference will materially advance the proceeding. The determination as to who may attend a conference convened under this subpart shall be in the discretion of the FEA, but a conference will usually not be open to the public.

(b) A conference may be requested in connection with any proceeding of the FEA by any person who might be aggrieved by that proceeding. The request may be made in writing or verbally, but must include a specific showing as to why such conference will materially advance the proceeding. The request shall be addressed to the FEA office that is conducting the proceeding.

(c) A conference may only be convened after actual notice of the time, place, and nature of the conference is provided to the person who requested the conference.

(d) When a conference is convened in accordance with this section, each person may present views as to the issue or issues involved. Documentary evidence may be presented at the conference, but will be treated as if submitted in the regular course of the proceedings. A transcript of the conference will not usually be prepared. However, the FEA in its discretion may have a verbatim transcript prepared.

(e) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the FEA in its discretion determines that such would be advisable.

§ 303.172 Hearings.

(a) The FEA in its discretion may direct that a hearing be convened, on its initiative or upon request by a person, when it appears that such hearing will materially advance the proceeding. The determination as to who may attend a hearing convened under this subpart shall be in the discretion of the FEA, but a hearing will usually not be open to the public.

(b) A hearing may only be requested in connection with an application for an exception or an appeal. Such request may be by the applicant, appellant, or any other person who might be aggrieved by the FEA action sought. The request shall be in writing and shall include a specific showing as to why such hearing will materially advance the proceeding. The request shall be addressed to the Office of Exceptions and Appeals as provided in § 303.12.

(c) The FEA will designate an agency official to conduct the hearing, and will specify the time and place for the hearing.

(d) A hearing may only be convened after actual notice of the time, place, and nature of the hearing is provided both to the applicant or appellant and to any other person reasonably identifiable by the FEA as one who will be aggrieved by the FEA action involved. The notice shall include, as appropriate:

(1) A statement that such person may participate in the hearing; or

(2) A statement that such person may request a separate conference or hearing regarding the application or appeal.

(e) When a hearing is convened in accordance with this section, each person may present views as to the issue or issues involved. Documentary evidence may be presented at the hearing, but will be treated as if submitted in the regular course of the proceedings. A transcript of the hearing will not usually be prepared. However, the FEA in its discretion may have a verbatim transcript prepared.

(f) The official conducting the hearing may administer oaths and affirmations, rule on the presentation of information, receive relevant information, dispose of procedural requests, determine the format of the hearing, and otherwise regulate the course of the hearing.

(g) Because a hearing is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the FEA in its discretion determines that such would be advisable.

§ 303.173 Public hearings.

(a) A public hearing shall be convened prior to issuance of a prohibition order applicable after June 30, 1975 and prior to the modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make such order applicable after June 30, 1975.

(b) A public hearing shall be convened incident to a rulemaking:

(1) When the proposed rule or regulation is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses; or

(2) When the FEA determines that a public hearing would materially advance the consideration of the issue. A public hearing may be requested by any interested person in connection with a rulemaking proceeding, but shall only be convened on the initiative of the FEA unless otherwise required by statute.

(c) A public hearing may be convened incident to any other proceeding, including the environmental analysis described in §§ 305.9 and 307.7 of this chapter, if such analysis results in preparation of an environmental impact statement covering significant site-specific impacts

that are likely to result from a specific prohibition or construction order, or group of such orders, when the FEA in its discretion determines that such public hearing would materially advance the consideration of the issue.

(d) A public hearing may only be convened after publication of a notice in the FEDERAL REGISTER, which shall state the time, place, and nature of the public hearing.

(e) Interested persons may file a request to participate in the public hearing in accordance with the instructions in the notice published in the FEDERAL REGISTER. The request shall be in writing and signed by the person making the request. It shall include a description of the person's interest in the issue or issues involved and of the anticipated content of the presentation. It shall also contain a statement explaining why the person would be an appropriate spokesperson for the particular view expressed.

(f) The FEA shall appoint a presiding officer to conduct the public hearing. An agenda shall be prepared that shall provide, to the extent practicable, for the presentation of all relevant views by competent spokespersons.

(g) A verbatim transcript shall be made of the hearing. The transcript, together with any written comments submitted in the course of the proceeding, shall be made available for public inspection and copying in the public docket room described in § 303.13.

(h) The information presented at the public hearing, together with the written comments submitted and other relevant information developed during the course of a proceeding, shall provide the basis for the FEA decision.

Subpart O—Complaints

§ 303.180 Purpose and scope.

This subpart establishes the procedures for the filing and consideration of complaints relating to alleged violations of the regulations stated in Parts 303, 305, or 307 of this chapter.

§ 303.181 What to file.

A person filing under this subpart shall file a "Complaint (ESECA)" which should be clearly labeled as such both on the complaint and on the outside of the envelope in which the complaint is transmitted, and shall be in writing and signed by the person filing the complaint. The complainant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart. Verbal complaints that otherwise satisfy the requirements of this subpart will be accepted, but written verification may be requested by the FEA.

§ 303.182 Where to file.

A complaint shall be filed with the FEA National Office at the address provided in § 303.12.

§ 303.183 Contents.

The complaint shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the complaint and to the FEA action sought. Such facts shall include the names and addresses of all persons involved (if reasonably ascertainable) and a description of the events that led to the complaint. It shall include a statement describing the regulation, ruling, order or interpretation that allegedly has been violated.

§ 303.184 FEA evaluation.

(a) *Processing.* The FEA may initiate an investigation of any statement in a complaint or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions relevant to a complaint or other document from third persons to the proceeding. In evaluating a complaint, the FEA may consider any other source of information. The FEA on its initiative may order a conference if, in its discretion, it considers such conference will advance its evaluation of the complaint.

(b) *Confidentiality of information.* Information received in the investigation of a complaint, including the identity of the complainant and any other person who provides information during the proceeding, shall remain confidential to the extent it is covered by the investigatory file exception to public disclosure contained in 5 U.S.C. 552 unless, upon proper notice to the complainant and an opportunity to respond, the FEA determines that disclosure would be in the public interest.

§ 303.185 Decision.

After consideration of a written complaint, unless written verification of a verbal complaint was not requested, and of other relevant information received or obtained during the proceeding, the FEA may:

(a) Issue a notice of probable violation or remedial order for immediate compliance in accordance with the provisions of Subpart P of this part;

(b) Determine that no violation has occurred or that a notice of probable violation or a remedial order for immediate compliance would not be appropriate; or

(c) Take such other action as it deems appropriate.

Subpart P—Notice of Probable Violation and Remedial Order

§ 303.190 Purpose and scope.

(a) This subpart establishes the procedures for determining the nature and extent of violations of the FEA regulations stated in this Part 303, Parts 305 and 307 of this chapter and the procedures for issuance of a notice of probable violation, a remedial order, or a remedial order for immediate compliance.

(b) When any report required by the FEA or any audit or investigation discloses, or the FEA otherwise discovers, that there is reason to believe a violation of any provision of this Part 303, Part 305 or 307 of this chapter, or any order issued thereunder, has occurred, is continuing or is about to occur, the FEA may conduct proceedings to determine the nature and extent of the violation and may issue a remedial order thereafter. The FEA may commence such proceeding by serving a notice of probable violation or by issuing a remedial order for immediate compliance.

§ 303.191 Notice of probable violation.

(a) The FEA may begin a proceeding under this subpart by issuing a notice of probable violation if the FEA has reason to believe that a violation has occurred, is continuing, or is about to occur.

(b) Within 10 days of the service of a notice of probable violation, the person upon whom the notice is served may file a reply with the FEA office that issued the notice of probable violation at the address provided in § 303.12. The FEA may extend the 10-day period for good cause shown.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the notice of probable violation. Such facts shall include a complete statement of the business or other reasons that justify the act or transaction, if appropriate; a detailed description of the act or transaction; and a full discussion of the pertinent provisions and relevant facts reflected in any documents submitted with the reply. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the reply. When the notice of probable violation pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information regarding the entire transaction shall be submitted.

(d) The reply shall include a discussion of all relevant authorities, including, but not limited to FEA and EPA rulings, regulations, interpretations, and decisions on appeal and exception relied upon to support the particular position taken.

(e) The reply should indicate whether the person requests or intends to request a conference regarding the notice. Any request not made at the time of the reply shall be made as soon thereafter as possible to insure that the conference is held when it will be most beneficial. A request for a conference must conform to the requirements of Subpart N of this part, which determination is within FEA's discretion.

(f) If a person has not filed a reply with the FEA within the 10-day period provided, and the FEA has not extended the 10-day period, the person shall be deemed to have conceded the accuracy of the factual allegations and legal conclusions stated in the notice of probable violation.

(g) If the FEA finds, after the 10-day period provided in § 303.191(b), that no violation has occurred, is continuing, or is about to occur, or that for any reason the issuance of a remedial order would not be appropriate, it shall notify, in writing, the person to whom a notice of probable violation has been issued that the notice is rescinded.

§ 303.192 Remedial order.

(a) If the FEA finds, after the 10-day period provided in § 303.191(b), that a

violation has occurred, is continuing, or is about to occur, the FEA may issue a remedial order. The order shall include a written statement setting forth the relevant facts and the legal basis of the remedial order.

(b) A remedial order issued under this section shall be effective upon issuance, in accordance with its terms, until stayed, suspended, modified, or rescinded. A remedial order shall remain in effect notwithstanding the filing of an application to modify or rescind it under Subpart K of this part.

(c) A remedial order may be referred at any time to the Department of Justice for appropriate action in accordance with Subpart Q of this part.

§ 303.193 Remedial order for immediate compliance.

(a) Notwithstanding the provisions of §§ 303.191 and 303.192, the FEA may issue a remedial order for immediate compliance, which shall be effective upon issuance and until rescinded or suspended, if it finds that:

(1) There is a strong probability that a violation has occurred, is continuing or is about to occur;

(2) Irreparable harm will occur unless the violation is remedied immediately; and

(3) The public interest requires the avoidance of such irreparable harm through immediate compliance and waiver of the procedures afforded under §§ 303.191 and 303.192.

(b) A remedial order for immediate compliance shall be served promptly by telex or telegram upon the person against whom such order is issued, with a copy of the remedial order for immediate compliance served by registered or certified mail. The order shall contain a written statement of the relevant facts and the legal basis for the remedial order for immediate compliance, including the findings required by paragraph (a) of this section.

(c) The FEA may rescind or suspend a remedial order for immediate compliance if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied. When appropriate, however, such a suspension or rescission may be accompanied by a notice of probable violation issued under § 303.191.

(d) If at any time in the course of a proceeding commenced by a notice of probable violation the criteria set forth in paragraph (a) of this section are satisfied, the FEA may issue a remedial order for immediate compliance, even if the 10-day period for reply specified in § 303.191(b) has not expired.

(e) At any time after a remedial order for immediate compliance has become effective, the FEA may refer such order to the Department of Justice for appropriate action in accordance with Subpart Q of this part.

§ 303.194 Remedies.

A remedial order or a remedial order for immediate compliance may require the person to whom it is directed to take such action as the FEA determines is necessary to eliminate or to compensate for the effects of a violation.

§ 303.195 Appeal.

(a) No notice of probable violation issued pursuant to this subpart shall be deemed to be an action of which there may be an administrative appeal pursuant to Subpart H of this part.

(b) Any person to whom a remedial order or a remedial order for immediate compliance is issued under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 10 days of service of the order from which the appeal is taken

Subpart Q—Investigations, Violations, Sanctions and Judicial Actions

§ 303.200 Investigations.

(a) *General.* The FEA may, in its discretion, initiate investigations relating to compliance by any person with any rule, regulation, or order promulgated by the FEA under the authority of sections 2 and 12 of ESECA, any decree of court relating thereto, or any other agency action. The FEA encourages voluntary cooperation with its investigations. When the circumstances warrant, however, the FEA may issue subpoenas in accordance with and subject to § 303.8. The FEA may conduct investigative conferences and hearings in the course of any investigation in accordance with Subpart N of this part, which determination is within FEA's discretion.

(b) *Investigators.* Investigations will be conducted by representatives of the FEA who are duly designated and authorized for such purposes. Such representtaives have the authority to administer oaths and receive affirmations in any matter under investigation by the FEA.

(c) *Notification.* Any person who is under investigation by the FEA in accordance with this section and who is requested to furnish information or documentary evidence shall be notified as to the general purpose for which such information or evidence is sought.

(d) *Termination.* When the facts disclosed by an investigation indicate that further action is unnecessary or unwarranted at that time, the investigative file will be closed without prejudice to further investigation by the FEA at any time that circumstances so warrant.

(e) *Confidentiality.* Information received in an investigation under this section, including the identity of the person investigated and any other person who provides information during the investigation, shall, unless otherwise determined by the FEA, remain confidential to the extent it is covered under the investigatory file exception to public disclosure contained in 5 U.S.C. 522.

§ 303.201 Violations.

Any practice that circumvents or contravenes or results in a circumvention or contravention of the requirements of any provision of this Part 303, Part 305, or 307 of this chapter or any order issued pursuant thereto is a violation of the FEA regulations stated in such parts and is unlawful.

§ 303.202 Sanctions.

(a) *General.* Any person who violates any provision of this Part 303, Part 305, or 307 of this chapter or any order issued pursuant thereto shall be subject to penalties and sanctions as provided herein.

(1) The provisions herein for penalties and sanctions shall be deemed cumulative and not mutually exclusive.

(2) Each day that a violation of the provisions of this Part 303, Part 305, or 307 of this chapter or any order issued pursuant thereto continues shall be deemed to constitute a separate violation within the meaning of the provisions of this part relating to criminal fines and civil penalties.

(b) *Criminal Fines.* Any person who willfully violates any provision of this Part 303, Part 305, or 307 of this chapter or any order issued pursuant thereto shall be subject to a fine of not more than $5,000 for each violation. Criminal violations are prosecuted by the Department of Justice upon referral by the FEA.

(c) *Civil Penalties.* (1) Any person who violates any provision of this Part 303, Part 305, or 307 of this chapter or any order issued pursuant thereto shall be subject to a civil penalty of not more than $2,500 for each violation. Actions for civil penalties are prosecuted by the Department of Justice upon referral by the FEA.

(2) When the FEA considers it to be appropriate or advisable, the FEA may compromise and settle, and collect civil penalties.

(d) *Other Penalties.* Willful concealment of material facts, or false or fictitious or fraudulent statements or representations, or willful use of any false writing or document containing false, fictitious or fraudulent statements pertaining to matters within the scope of the ESECA or FEAA by any person shall subject such person to the criminal penalties provided in 18 U.S.C. 1001 (1970).

§ 303.203 Injunctions.

Whenever it appears to the FEA that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any regulation or order issued under this part 303, Part 305 or 307 of this chapter, FEA may request the Attorney General to bring a civil action in the appropriate district court of the United States to enjoin such acts or practices and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. The relief sought may include a mandatory injunction commanding any person to comply with any provision of such order or regulation, the violation of which is prohibited by section 12(a) of ESECA.

PART 305—COAL UTILIZATION

2. Chapter II of 10 Code of Federal Regulations is amended to add Part 305, which reads as follows:

Sec.
305.1 Scope.
305.2 Definitions.
305.3 Powerplants.
305.4 Major fuel burning installations.
305.5 Public participation.
305.6 Consultation with EPA.
305.7 Effective date of prohibition orders.
305.8 Modification, rescission and suspension of prohibition orders.
305.9 Consideration of environmental impact.
305.10 Procedures.

AUTHORITY: (Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319); Federal Energy Administration Act of 1974 (Pub. L. 93-275); EO 11790 (39 FR 23185)).

§ 305.1 Scope.

(a) *Applicability.* This part applies to certain powerplants and major fuel burning installations that FEA is authorized to prohibit from burning natural gas or petroleum products as their primary energy source.

(b) *Purpose.* This part, together with Part 303 of this chapter, establishes the methods and procedures by which FEA will exercise its powers under section 2 of ESECA to prohibit a powerplant or major fuel burning installation from burning natural gas or petroleum products as its primary energy source.

§ 305.2 Definitions.

For purposes of this part—

"Action" means a prohibition order, or modification or rescission of such order, issued by FEA pursuant to sections 2 (a) and (b) of ESECA.

"Air pollution requirement" means any emission limitation, schedule or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including the Clean Air Act (except for any requirement prescribed under subsections (c) or (d) of section 119, section 110(a)(2)(F)(v), or section 303 of such Act), and which limits stationary source emissions resulting from combustion of fuels (including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic).

"Clean Air Act" means the Clean Air Act, as amended, 42 U.S.C. 1857, et seq. (1970), as amended by Pub. L. 93-319, 88 Stat. 246.

"Coal" includes coal derivatives.

"Compliance date extension" means an extension issued by the Administrator of EPA in accordance with section 119(c) of the Clean Air Act as a result of which a powerplant or major fuel burning installation may not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to that source, except as otherwise provided in section 119(d)(3) of that Act.

"EPA" means the Environmental Protection Agency.

"ESECA" means the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

"FEA" means the Federal Energy Administration, including the Administrator of FEA or his delegate.

"Interested person" includes members of the public, as well as any person with an interest sought to be protected under ESECA.

"Major fuel burning installation" means an installation or unit other than a powerplant that has or is a fossil-fuel fired boiler, burner, or other combuster of fuel or any combination thereof at a single site, and includes any person who owns, leases, operates or controls any such installation or unit.

"Natural gas" includes dry gas and casinghead gas.

"Person" means any association, firm, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government, including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments, and includes any officer, director, owner or duly authorized representative thereof. The FEA may, in regulations and in any forms issued in this part, treat as a person:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls,

(b) A parent and its consolidated entities,

(c) An unconsolidated entity, or

(d) Any part of a person.

"Petroleum product" means crude oil, residual fuel oil or any refined petroleum product, as that last term is defined in section 3(5) of the Emergency Petroleum Allocation Act of 1973.

"Powerplant" means a fossil-fuel fired steam electric generating unit that produces electric power for purposes of sale or exchange, and includes any person who owns, leases, operates or controls any such unit.

"Primary energy source" means, with respect to a powerplant or major fuel burning installation that utilizes fossil fuels, the fuel that is or will be used for all purposes except for the minimum amounts required for startup, testing, flame stabilization and control; and except for such minimum amounts required to enable such powerplant or major fuel burning installation to comply with applicable primary standard conditions prescribed by EPA in accordance with 40 CFR 55.04: *Provided*, Such minimum amounts of fuel may be used *only* when such primary standard conditions include the utilization of intermittent control systems and only during such temporary periods when use of such minimum amounts is absolutely necessary to meet the terms of the primary standard conditions relating to use of intermittent control systems.

"Proceeding" means the process and activity, and any part thereof, instituted by the FEA, either on its initiative or in response to an application submitted by a powerplant or major fuel burning installation, that may lead to an action by FEA.

"Prohibition order" means a directive issued by FEA pursuant to sections 2 (a) and (b) of ESECA that prohibits a powerplant or major fuel burning installation from burning natural gas or petroleum products as its primary energy source.

"Stationary source fuel or emission limitation" means any emission limitation, schedule or timetable of compliance, or other requirement, which is prescribed under the Clean Air Act (other than sections 119, 111(b), 112, or 303) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110(a)(2)(F)(v) of such Act), and which limits, or is designed to limit, stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic.

"Temporary Suspension" means a suspension issued to any person by the Administrator of EPA in accordance with section 119(b) of the Clean Air Act that results in the temporary suspension of any stationary source fuel or emission limitation as it applies to such person during any period beginning June 22, 1974 and ending on or before June 30, 1975.

Throughout this part the use of a word or term in the singular shall include the plural and the use of the male gender shall include the female gender.

§ 305.3 Powerplants.

(a) Any powerplant shall be prohibited from using natural gas or petroleum products as its primary energy source, by means of the issuance of a prohibition order to such powerplant, if the findings stated in paragraph (b) of this section are made by FEA. FEA may, at its discretion, make these findings for an individual powerplant or for combinations thereof at a single site.

(b) No powerplant shall be prohibited from burning natural gas or petroleum products as its primary energy source unless FEA finds that:

(1) The powerplant on June 22, 1974 had the "capability and necessary plant equipment" to burn coal. For purposes of determining whether a powerplant had capability and necessary plant equipment, FEA will evaluate coal and ash handling facilities and appurtenances—internal and external; availability of land for the storage of coal; and other equipment such as a boiler, unloaders, conveyors, crushers, pulverizers, scales, burners, soot blowers, and special coal-burning instrumentation and controls. The absence of any one or combination of these facilities or equipment is not grounds, however, for concluding that the plant lacked the capability and the necessary plant equipment to burn coal.

(2) The prohibition of the utilization of natural gas or petroleum products is "practicable and consistent with the purposes of ESECA." For purposes of this finding—

(i) The determination of the "practicability" of a prohibition shall include an analysis of the reasonableness of additional costs associated with burning coal, including, but not limited to, fuel costs, costs of equipment for coal burning, the costs of complying with the requirements of the Clean Air Act, and the costs of complying with other applicable environmental protection requirements; as well as the financial capabilities of the powerplant owner. The analysis concerning the costs associated with the requirements of the Clean Air Act shall be based on the facts that are available to FEA prior to the time of issuance of the order.

(ii) The prohibition shall be considered to be "consistent with the purposes" of ESECA if it serves as a means to discourage the use of natural gas and petroleum products and to encourage increased or continued use of coal by powerplants in a manner that is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(3) Coal and coal transportation facilities will be available during the period the prohibition is in effect. For purposes of this finding—

(i) The availability of coal shall be determined by evaluating the type of coal that it is anticipated that the powerplant will be able to utilize, and the location of such coal; evaluating the practicability of coal production, including the possibility of new mines being opened, and anticipated demand; and evaluating State or local laws or policies limiting the extraction or utilization of coal.

(ii) The availability of coal transportation facilities shall be determined by evaluating the method by which coal is or could be transported to the powerplant, including the availability of rolling stock and trucks, barges, pipelines and other relevant means of transportation.

(4) The prohibition will not "impair the reliability of service" in the area served by the powerplant. For purposes of this finding—

(i) Whether there will be an impairment of the "reliability of service" shall be determined by an analysis of the loads of the electric power dispatching system of which the powerplant is a part, the net dependable electrical capacity and energy resources of such system in relation to the powerplant's electric power and energy output as a result of a prohibition order, and an evaluation of the effects on such system of any scheduled outage the powerplant might experience in ceasing the burning of natural gas or petroleum products as its primary energy source.

(ii) "Impairment" means a significant increase in the probability of loss of load on the dispatching system of which the powerplant is a part that would result from such powerplant being prohibited from burning natural gas or petroleum products as its primary energy source, which increase in probability of loss is sufficient to result in a substantial hazard to commerce or the public health and safety.

(c) A powerplant may be prohibited from using natural gas or petroleum products as its primary energy source as a result of FEA action taken on its initiative or at the conclusion of a proceeding initiated by an application.

(d) Prior to issuance of a prohibition order to a powerplant that is applicable for the period ending prior to or on June 30, 1975, FEA shall take into account the likelihood that such powerplant will be permitted to burn coal after June 30, 1975. FEA may consider, in determining "likelihood," the potentiality that environmental or economic constraints would prevent the powerplant from burning coal after June 30, 1975.

§ 305.4 Major fuel burning installations.

(a) A major fuel burning installation may be prohibited from using natural gas or petroleum products as its primary energy source by means of the issuance of a prohibition order to such installation if the findings stated in paragraph (b) of this section are made by FEA. FEA may, at its discretion, make these findings for an individual fossil-fuel boiler, burner or other combuster of fuel, or for combinations thereof at a single site.

(b) No major fuel burning installation shall be prohibited from burning natural gas or petroleum products as its primary energy source unless FEA finds that:

(1) The major fuel burning installation has a design firing rate of 100 million Btu's per hours or greater and on June 22, 1974 had the capability and necessary plant equipment to burn coal. For purposes of determining whether a major fuel burning installation had capability and necessary plant equipment, FEA will evaluate coal and ash handling facilities and appurtenances—internal and external; availability of land for the storage of coal; and equipment such as a boiler, burner or other combuster of fuel, unloaders, conveyors, crushers, pulverizers, scales, burners, soot blowers, and special coal-burning instrumentation and controls. The absence of any one or combination of these facilities or equipment is not grounds, however, for concluding that the installation lacked the capability and the necessary plant equipment to burn coal.

(2) The prohibition of the utilization of natural gas and petroleum products is "practicable and consistent with the purposes of ESECA." For purposes of this finding—

(i) The determination of the "practicability" of a prohibition shall include an analysis of the reasonableness of additional costs associated with burning coal, including, but not limited to, fuel costs, costs of equipment for coal burning, costs of complying with the requirements of the Clean Air Act, and the costs of complying with other applicable environmental protection requirements; as well as the financial capabilities of the owner of the major fuel burning installation. The analysis concerning the costs associated with the requirements of the Clean Air Act shall be based on the facts that are available to FEA prior to the time of issuance of the order.

(ii) The prohibition shall be considered to be "consistent with the purposes" of ESECA if it serves as a means to discourage the use of natural gas and petroleum products and to encourage the use of coal as a primary energy source by major fuel burning installations in a manner consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(3) Coal and coal transportation facilities will be available during the period the prohibition order is in effect. For purposes of this finding—

(i) The availability of coal shall be determined by evaluating the type of coal that it is anticipated that the major fuel burning installation will be able to utilize and the location of such coal; evaluating the practicability of coal production, including the possibility of new mines being opened during the period the prohibition order is in effect, and anticipated demand; and evaluating State or local laws or policies limiting the extraction or the utilization of coal.

(ii) The availability of coal transportation facilities shall be determined by evaluating the method by which coal is or could be transported to the major fuel burning installation, including the availability of rolling stock and trucks, barges, pipelines and other relevant means of transportation.

(c) In selecting a major fuel burning installation for an order prohibiting that installation from burning natural gas or petroleum products as its primary energy source, the FEA shall consider, among other factors, the following: The location of the installation, the production or output of the installation, the purpose for which coal would be burned, the quantity of natural gas or petroleum product presently burned, and the practicability of burning coal given the short-term variation of demand for output by the installation.

(d) Prior to issuance of a prohibition order to a major fuel burning installation that is applicable for the period ending prior to or on June 30, 1975, FEA shall take into account the likelihood that such installation will be permitted to burn coal after June 30, 1975. FEA may consider, in determining "likelihood," the potentiality that environmental or economic constraints would prevent the installation from burning coal after June 30, 1975.

(e) A major fuel burning installation may be prohibited from burning natural gas or petroleum products as its primary energy source as a result of FEA action taken on its own initiative or at the conclusion of proceedings initiated by an application.

§ 305.5 Public participation.

(a) *Prohibition orders that are applicable for a period ending prior to or on June 30, 1975.* No powerplant or major

fuel burning installation shall be issued an order that is applicable for a period ending prior to or on June 30, 1975 prohibiting that powerplant or installation from burning natural gas or petroleum products as its primary energy source unless prior to issuance of such order there has been published in the FEDERAL REGISTER a notice of FEA's intent to issue a prohibition order and an opportunity given to interested persons to make written presentation of data, views and arguments regarding such order.

(b) *Prohibition orders applicable after June 30, 1975.* No powerplant or major fuel burning installation shall be issued an order that is applicable after June 1975 (or modification of an order to make it applicable after June 30, 1975) prohibiting that powerplant or installation from burning natural gas or petroleum products as its primary energy source unless prior to issuance of such order there has been published in the FEDERAL REGISTER a notice of FEA's intent to issue a prohibition order and an opportunity given to interested persons to make oral and written presentation of data, views and arguments.

§ 305.6 Consultation with EPA.

Prior to issuance of a prohibition order to a powerplant or a major fuel burning installation that is applicable for a period ending prior to or on June 30, 1975, the FEA shall consult with the Administrator of EPA.

§ 305.7 Effective date of prohibition orders.

(a) *Prohibition orders that are applicable for a period ending prior to or on June 30, 1975.* The prohibitions stated in a prohibition order issued to a powerplant or major fuel burning installation that is applicable for a period ending prior to or on June 30, 1975 shall not become effective (1) until the date that the Administrator of EPA certifies, pursuant to section 119(d)(1)(A) of the Clean Air Act, is the earliest date the powerplant or installation will be able to comply with the air pollution requirements that will be applicable to it, and (2) until FEA has served the affected powerplant or major fuel burning installation a Notice of Effectiveness, as provided in §§ 303.10(b) and 303.37 (b) of this chapter. Such order will not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of such Act.

(b) *Prohibition orders applicable after June 30, 1975.* The prohibitions stated in a prohibition order that is applicable after June 30, 1975 (or in a modification of an order that is applicable for the period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975) issued to a powerplant or major fuel burning installation shall not become effective (1) until either (i) the Administrator of EPA notifies the FEA, in accordance with section 119(d)(1)(B) of the Clean Air Act, that the powerplant or installation will be able on and after July 1, 1975 to burn coal and to comply with all applicable air pollution requirements without a compliance date extension, or (ii) if no notification is given, the date that the Administrator of EPA certifies pursuant to section 119(d)(1)(B) of the Clean Air Act is the earliest date that the powerplant or installation will be able to comply with all applicable requirements of section 119 of that Act, and (2) until FEA has taken the actions described in § 305.9 of this part and has served the affected powerplant or major fuel burning installation a Notice of Effectiveness, as provided in §§ 303.10(b) and 303.37(b) of this chapter. Such order (or modification) will not be effective during any period certified by the Administrator of EPA under section 119(d)(3)(B) of such Act.

§ 305.8 Modification, rescission and suspension of prohibition orders.

(a) FEA may modify or rescind any prohibition order, at any time up to and including December 31, 1978. A modification or rescission of a prohibition order may be the result of an FEA action taken on its own initiative or at the conclusion of proceedings initiated by an application. Modification or rescission of issued prohibition orders that are not yet effective will be undertaken only on FEA's initiative.

(b) Notice of intention to modify or rescind any prohibition order (other than the modification of an order that is applicable for a period ending prior to or on June 30, 1975, to make it applicable after June 30, 1975, as provided in § 305.7(b) of this chapter) may be published in the FEDERAL REGISTER. The notice shall provide interested persons with an opportunity to make written presentation of data, views and arguments regarding such action.

(c) Upon notification by the Administrator of EPA, in accordance with section 119(d)(3)(B) of the Clean Air Act, FEA shall notify the powerplant or major fuel burning installation affected that the prohibition order applicable to it is suspended for the time period certified by the Administrator of EPA by service of a notice of the suspension of a prohibition order.

§ 305.9 Consideration of environmental impact.

(a) Prior to any hearings held in connection with notices of intention to issue prohibition orders, FEA shall publish and circulate a final programmatic environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969. Such statement shall include a discussion of the environmental impact of and alternatives to the ESECA coal utilization program and a description of the typical environmental impacts expected to result from the issuance of prohibition orders.

(b) Any notice of intention to issue a prohibition order applicable after June 30, 1975 shall provide that interested persons shall be afforded an opportunity to make written and oral presentations of data, views and arguments, in accordance with the procedures set out in the notice, regarding the environmental impact of the issuance of a prohibition order to the powerplant or major fuel burning installation identified in the notice of intention, including any site-specific environmental impacts not considered in the programmatic environmental impact statement described in paragraph (a) of this section.

(c) Subsequent to the issuance of a prohibition order applicable after June 30, 1975, to a powerplant or major fuel burning installation, but prior to the issuance of a Notice of Effectiveness to any such powerplant or installation, FEA shall perform an analysis of the environmental impact of the issuance of such Notice of Effectiveness. That analysis shall result in either (1) issuance of a declaration that a specific prohibition order or group of prohibition orders will not, if made effective by issuance of a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment, or (2) the preparation of an environmental impact statement covering significant site-specific impacts that are likely to result from a specific prohibition order or group of prohibition orders and that have not been adequately discussed in the programmatic environmental impact statement described in paragraph (a) of this section or in other official documents made publicly available during the FEA proceedings in connection with a prohibition order or by EPA in the course of its determinations with respect to notification or certification pursuant to section 119 of the Clean Air Act, or otherwise made available to the public. If FEA prepares an environmental impact statement covering significant site-specific impacts from a prohibition order or group of such orders, the statement shall be prepared and published for comment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 and prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to § 303.173 of this chapter to comment on the contents of a draft environmental impact statement published pursuant to this paragraph.

(d) Any prohibition order that has been issued to a powerplant or major fuel burning installation for which FEA has prepared a site-specific environmental impact statement, pursuant to paragraph (c) of this section, may be modified or rescinded by FEA on its initiative, based upon the information contained in such statement, prior to issuance of a Notice of Effectiveness.

§ 305.10 Procedures.

(a) All applications for a prohibition order or modification or rescission thereof shall be filed with the FEA in accordance with Subparts B and J, respectively, of Part 303 of this chapter.

(b) Procedures pertaining to issuance of prohibition orders, the modification or rescission thereof, and the appeal of such orders (e.g., notice, hearings, content of order, process of evaluation, appeal) are stated in Subparts B, J and H respectively, of Part 303 of this chapter.

PART 307—NEW POWERPLANTS

3. Chapter II of 10 Code of Federal Regulations is amended to add Part 307, which reads as follows:

Sec.
307.1 Scope.
307.2 Definitions.
307.3 Use of coal as the primary energy source.
307.4 Public participation.
307.5 Effective date of construction orders.
307.6 Identification of powerplants in the early planning process.
307.7 Consideration of environmental impacts.
307.8 Procedures.

AUTHORITY: (Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319); Federal Energy Administration Act of 1974 (Pub. L. 93-275); EO 11790 (39 FR 23185)).

§ 307.1 Scope.

(a) *Applicability.* This part applies to certain powerplants (other than combustion gas turbine(s) or a combined cycle unit(s)) that are in the early planning process.

(b) *Purpose.* This part, together with Part 303 of this chapter, establishes the methods and procedures by which FEA will exercise its powers under section 2 of ESECA to require a powerplant in the early planning process to be designed and constructed to be capable of using coal as its primary energy source.

§ 307.2 Definitions.

For purposes of this part—

"Action" means a construction order, or modification or rescission of such order, issued by FEA pursuant to section 2(c) of ESECA.

"Clean Air Act" means the Clean Air Act, as amended, 42 U.S.C. 1857, et seq. (1970), as amended by Pub. L. 93-319, 88 Stat. 246.

"Coal" includes coal derivatives.

"Combined cycle unit" means an electric power generation unit that consists of a combination of one or more combustion gas turbine units and one or more steam turbine units with the required energy input of the steam turbine(s) provided by and approximately matched to the energy in the exhaust gas from the combustion turbine unit(s). Use of small amounts of supplemental firing for the steam turbine does not preclude the unit from being a combined cycle unit.

"Combustion gas turbine" means an electric power generation unit that is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of a fuel, usually natural gas or a petroleum product, with an electric power generator driven by such engine.

"Construction order" means a directive issued by FEA pursuant to section 2(c) of ESECA that requires a powerplant in the early planning process to be designed and constructed to be capable of using coal as its primary energy source.

"Early planning process" commences 10 years prior to the planned commencement of the sale or exchange of electric power by a powerplant and terminates with commencement of the driving of the foundation piling, or the equivalent foundation structural event, in accordance with approved final drawings for the main boiler of the powerplant.

"EPA" means the Environmental Protection Agency.

"ESECA" means the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

"FEA" means the Federal Energy Administration, including the Administrator of FEA or his delegate.

"Interested person" includes members of the public, as well as any person with an interest sought to be protected under ESECA.

"Natural gas" includes dry gas and casinghead gas.

"Person" means any association, firm, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments, and includes any officer, director, owner or duly authorized representative thereof. The FEA may, in regulations and in any forms issued in this part, treat as a person:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls,

(b) A parent and its consolidated entities,

(c) An unconsolidated entity, or

(d) Any part of a person.

"Petroleum product" means crude oil, residual fuel oil or any refined petroleum product, as that term is defined in section 3(5) of the Emergency Petroleum Allocation Act of 1973.

"Powerplant" means a fossil-fuel fired steam electric generating unit that produces electric power for purposes of sale or exchange, and includes any person who owns, leases, operates or controls any such unit.

"Primary energy source," means with respect to a powerplant that utilizes fossil fuels, the fuel that is or will be used for all purposes except the minimum amounts required for start-up, testing, flame stabilization and control.

"Proceeding" means the process and activity, and any part thereof, instituted by the FEA, either on its initiative or in response to an application submitted by a powerplant, that may lead to an action by FEA.

Throughout this part the use of a word or term in the singular shall include the plural and the use of the male gender shall include the female gender.

§ 307.3 Use of coal as the primary energy source.

(a) Any powerplant in the early planning process (other than a combustion gas turbine or combined cycle unit) may be required by FEA to be designed and constructed to be capable of using coal as its primary energy source, by means of the issuance of a construction order to such powerplant, subject to the findings stated in paragraphs (b) and (c) of this section. FEA may, at its discretion, make these findings for an individual powerplant or for a combination of powerplants at a single site. The requirement that a powerplant be capable of using coal as its primary energy source shall be satisfied if the powerplant is designed and constructed to use only coal as its primary energy source, or to use two or more fuels interchangeably, one of which is coal, as its primary energy source.

(b) A powerplant will not be required to be designed and constructed to be capable of using coal as its primary energy source unless FEA finds that such powerplant is in the early planning process.

(c) No powerplant in the early planning process may be required to be designed and constructed to be capable of using coal as its primary energy source if FEA finds that:

(1) The design or construction of a powerplant with the capability of using coal as its primary energy source is likely to result in an impairment of the reliability or adequacy of service to be provided by such powerplant. For purposes of this finding whether there is likely to be an impairment of the "reliability or adequacy of service" shall be determined by an analysis of the loads of the electric power dispatching system of which the powerplant would be a part, and the net dependable electrical capacity and energy resources of such system in relation to the powerplant's proposed electric power and energy output, and an evaluation of the effects of a delay, if any, in the commencement of the sale or exchange of electric power that might result if FEA required the powerplant to be designed and constructed to be capable of using coal as its primary energy source. ("Impairment" means a significant increase in the probability of loss of load on the dispatching system of which the powerplant would be part as a result of FEA requiring that such powerplant be designed and constructed to be capable of using coal as its primary energy source, which increase in probability of loss would be sufficient to result in a substantial hazard to commerce or the public health and safety.)

(2) An adequate and reliable supply of coal is not reasonably expected to be available. For purposes of this finding, the availability of an adequate and reliable supply of coal shall be determined by evaluating the type of coal that it is anticipated the powerplant will be able to utilize and the location of such coal; evaluating the practicability of coal production, including the possibility that new mines will be opened before the powerplant commences the sale or exchange of electric power, and anticipated demand; and evaluating any State or local laws or policies limiting the extraction or the utilization of coal. The availability of coal transportation facilities shall also be considered.

(d) In making the evaluation whether a powerplant in the early planning process should be required to be designed and constructed to be capable of using coal

as its primary energy source, FEA shall consider, among other factors—

(1) The existence and effects of any contractual commitment for the construction of such powerplant;

(2) The capability of the powerplant to recover any increase in projected capital investment required as a result of a construction order (In evaluating capability, FEA will include in its analysis the owner of the powerplant.);

(3) The potential loss of revenue resulting from a delay in the commencement of the sale or exchange of electric power, if any, resulting from a construction order; and

(4) The relevant regulations or policies of any State or local agency with jurisdiction over the sale or exchange of electric power by powerplants.

(e) A powerplant in the early planning process may be required to be designated and constructed to be capable of using coal as its primary energy source on the basis of FEA action taken on its initiative or at the conclusion of proceedings initiated by an application.

§ 307.4 Public participation.

(a) No powerplant in the early planning process shall be issued a contruction order requiring such powerplant to be designed and constructed to be capable of using coal as its primary energy source unless prior to issuance of the order there has been published in the FEDERAL REGISTER a notice of FEA's intent to issue a construction order, and an opportunity has been given to interested persons to make written presentation of data, views and arguments regarding such action.

(b) Before issuance of an order modifying or rescinding a construction order, FEA may publish in the FEDERAL REGISTER a notice of its intention to issue such order. The notice shall provide interested persons with an opportunity to make written presentation of data, views and arguments regarding such action.

§ 307.5 Effective date of construction orders.

A construction order issued to a powerplant in the early planning process shall not be effective until FEA has taken the actions described in § 307.7 and has served such powerplant a Notice of Effectiveness, as provided in § 303.10(b) and 303.47(b) of this chapter.

§ 307.6 Identification of powerplants in the early planning process.

(a) The identification of powerplants in the early planning process shall be accomplished by requiring the filing of an "Identification Report" with FEA, at the address provided in § 303.12 of this chapter, and by a review of information otherwise on file with or provided to the Federal government. FEA may require additional information from a powerplant subsequent to the filing of an "Identification Report" to determine if such powerplant meets the criteria and other considerations stated in this part pertaining to issuance of a construction order.

(b) An "Identification Report" shall be filed by each powerplant (other than a combustion gas turbine or combined cycle unit,) that is in the early planning process.

(c)(1) The "Identification Report" shall contain the information required by FEA Form C–603–S–0.

(2) The initial "Report" shall be filed, in accordance with a notice of the requirement to file such report published in the FEDERAL REGISTER, by any powerplant that is in the early planning process as of the date specified in such notice. Thereafter, any powerplant that enters the early planning process at any time in a month shall file an "Identification Report" with the FEA, at the address provided in § 303.12 of this chapter, by the fifteenth day of the subsequent month.

§ 307.7 Consideration of environmental impacts.

(a) Prior to issuance of a construction order, FEA shall publish a programmatic environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969. Such statement shall include a discussion of the environmental impact of and alternatives to the ESECA coal utilization program and a description of the typical environmental impacts expected to result from the issuance of construction orders.

(b) A notice of intention to issue a construction order shall provide that interested persons shall be afforded an opportunity to make written presentation of data, views and arguments, in accordance with the procedures set out in the notice, regarding the environmental impact of the issuance of a construction order to the powerplant identified in the notice of intention, including any site-specific environmental impact not considered in the programmatic environmental impact statement described in paragraph (a) of this section.

(c) Subsequent to the issuance of a construction order to a powerplant in the early planning process, but prior to the issuance of a Notice of Effectiveness to any such powerplant, FEA shall perform an analysis of the environmental impact of the issuance of such Notice of Effectiveness. That analysis shall result either in (1) the issuance of a declaration that a specific construction order or group of construction orders, will not, if made effective by a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment, or (2) the preparation of an environmental impact statement covering significant site-specific impacts that are likely to result from a specific construction order or group of construction orders and that have not been adequately discussed in the programmatic environmental impact statement described in paragraph (a) of this section, or in other official documents made publicly available during the FEA proceedings in connection with issuance of a construction order, or otherwise made available to the public. If FEA prepares an environmental impact statement covering significant site-specific impacts from a conversion order or group of such orders, the statement shall be prepared and published for comment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 and prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to § 303.173 to comment on the contents of a draft environmental impact statement published pursuant to this paragraph.

(d) Any prohibition order that has been issued to a powerplant or major fuel burning installation for which FEA has prepared a site-specific environmental impact statement, pursuant to paragraph (c) of this section, may be modified or rescinded by FEA on its initiative, based upon the information contained in such statement, prior to issuance of a Notice of Effectiveness.

§ 307.8 Procedures.

(a) All applications for a construction order or modification or rescission thereof shall be filed with the FEA in accordance with Subparts C and J, respectively, of Part 303 of this chapter.

(b) Procedures pertaining to issuance of construction orders, the modification or rescission thereof, and the appeal of such orders (e.g., notice, hearings, content of order, process of evaluation, appeal) are stated in Subparts C, J, and H respectively, of Part 303 of this chapter.

[FR Doc.75–12195 Filed 5–6–75;10:33 am]

FEDERAL ENERGY ADMINISTRATION

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Intention To Issue Prohibition Orders to Certain Powerplants

The Federal Energy Administration ("FEA") hereby gives notice of its intention to issue prohibition orders, pursuant to the authorities granted it by section 2 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) and in accordance with 10 CFR Parts 303 and 305, to the following powerplants:

Docket No.	Owner	Powerplant No.	Generating station	Location
OFU-001	Ames Electric Utility	7	Ames	Ames, Iowa.
OFU-002	Iowa Electric Light & Power Co.	1	Sutherland	Marshalltown, Iowa.
OFU-003	do.	2	do.	Do.
OFU-004	do.	3	do.	Do.
OFU-005	Iowa Power & Light Co.	10	Des Moines	Des Moines, Iowa.
OFU-006	do.	11	do.	Do.
OFU-007	Iowa Public Service Co.	1	George Neal	Salix, Iowa.
OFU-008	do.	14	Maynard Station	Waterloo, Iowa.
OFU-009	Kansas City Board of Public Utilities	1	Kaw River	Kansas City, Kans.
OFU-010	do.	2	do.	Do.
OFU-011	do.	3	do.	Do.
OFU-012	do.	1	Quindaro No. 3	Do.
OFU-013	do.	2	do.	Do.
OFU-014	Kansas City Power & Light Co.	3	Hawthorne	Kansas City, Mo.
OFU-015	do.	4	do.	Do.
OFU-016	do.	5	do.	Do.
OFU-017	do.	3	Lawrence	Lawrence, Kans.
OFU-018	do.	4	do.	Do.
OFU-019	do.	5	do.	Do.
OFU-020	do.	9	Tecumseh	Tecumseh, Kans.
OFU-021	do.	10	do.	Do.
OFU-022	Nebraska Public Power District	1	Sheldon	Columbus, Nebr.
OFU-023	do.	2	do.	Do.
OFU-024	Springfield City Utilities	3	James River	Springfield, Mo.
OFU-025	do.	4	do.	Do.

FEA hereby also gives notice of the opportunity for oral and written presentation of data, views, and arguments on these proposed prohibition orders.

The proposed orders would prohibit the powerplants listed above from burning natural gas or petroleum products as their primary energy source.

Prior to issuance of a prohibition order to a powerplant, section 2 of ESECA requires that FEA make certain findings. FEA's initial conclusions with respect to, and rationale in support of, these findings are set out, with respect to each of the powerplants, at the conclusion of this notice. These findings and rationales may be amended as a result of comments received by FEA pursuant to this notice and other information available to FEA. The findings will be included, with any amendments, in a prohibition order when it is issued. The period of time which FEA has concluded will be necessary for each powerplant to prepare for the burning of coal, other than time necessary to comply with air pollution requirements, is also set out at the conclusion of this notice.

Upon conclusion of the proceedings described in this notice, FEA may determine to issue prohibition orders to some or all of the powerplants listed above. These prohibition orders will not become effective, however, (1) until either, (a) the Administrator of the Environmental Protection Agency ("EPA") notifies the FEA, in accordance with section 119(d)(1)(B) of the Clean Air Act, that the powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 119, or (b) if no notification is given by EPA, the date that the Administrator of EPA certifies pursuant to section 119(d)(1)(B) of the Clean Air Act is the earliest date that the powerplant will be able to comply with all applicable air pollution requirements of section 119 of that Act; and (2) until FEA has considered the environmental impact of such order pursuant to 10 CFR 305.9 and has served the affected powerplant a Notice of Effectiveness, as provided in 10 CFR 303.10 (b) and 303.37(b). The date the prohibition order will be effective will be stated in the Notice of Effectiveness.

The Notice of Effectiveness will contain a compliance schedule to insure that the powerplant will be able to comply with the prohibition on the burning of natural gas or petroleum products as a primary energy source on the date the order becomes effective.

Public comment on the proposals to issue prohibition orders to the powerplants listed above is invited in the form of written and oral presentation of data, views and arguments. Comments should relate to individual docket numbers and should make clear to which docket number the individual comment is addressed.

Comments should address (1) the adequacy and validity of each of the proposed findings and the rationale in support of the findings; (2) the identification of any site-specific environmental impacts resulting from the proposed prohibition orders that were not identified or described in the Environmental Impact Statement (FES 75-1, dated April 25, 1975) for the FEA program to implement section 2 of ESECA; (3) the proposed period set forth in this notice as the period necessary for the powerplant to prepare for the burning of coal as a primary energy source (other than the period needed to take steps required to satisfy the Clean Air Act); and (4) any other relevant aspects or impacts of the proposed prohibition order.

If oral presentation is to be made, it is requested that any detailed technical data, views, and arguments be made in written comments submitted in support of the oral presentation, and that the oral presentation itself be a summary of those more detailed comments.

A public hearing on the proposed prohibition orders will be held beginning at 9 a.m., c.d.t. on May 20, 1975, in Room Mezzanine, FEA Region VII, 112 East 12th Street, Kansas City, Missouri, to receive oral presentation of data, views and arguments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request, or a verbal request if confirmed in writing, for an opportunity to make oral presentation. That request should be directed to Gene Wenzl, 7AJE, Box 2208, 112 East 12th Street, Kansas City, Missouri 64142, (816) 374-3117 and must be received before 4:30 p.m. c.d.t., May 15, 1975. The request may be hand-delivered to Gene Wenzl, 3rd Floor FEA Region VII, 112 East 12th Street, Kansas City, Missouri between the hours of 8 a.m. and 4:30 p.m. c.d.t., Monday through Friday. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through May 19, 1975. Each person selected to be heard will be so notified by the FEA by 4:30 p.m. c.d.t., May 16, 1975, and must submit 125 copies of the statement to Gene Wenzl, 7AJE, Box 2208, 112 East 12th Street, Kansas City, Missouri, 64142, before 4:30 p.m., May 19, 1975.

The FEA reserves the right to limit the number of representatives of a particular group or class of persons to be heard at the hearing, to schedule their or other person's presentations, and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. During an oral presentation, questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons making oral presentations. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements

were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making an oral presentation at the hearing to FEA Region VII, Gene Wenzl, 7AJE, Box 2208, 112 East 12th Street, Kansas City, Missouri 64142, before 9 a.m. c.d.t., May 20, 1975. Any person who makes an oral statement or any other person who wishes to ask a question at the hearing may submit the questions, in writing, to the presiding officer. The FEA, or the presiding officer if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules necessary for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript will be retained by the FEA and made available for inspection at the FEA Region VII, Library, third floor, 112 East 12th Street, Kansas City, Missouri, and FEA Administrator's Reception Area, Room 3400, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views, or arguments with respect to the proposed prohibition order to Executive Communications, Federal Energy Administration, Box DD, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope in which they are transmitted and on other documents submitted to FEA Executive Communications with the designation "Proposed Prohibition Order for the _____ Powerplant." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., e.d.t., May 22, 1975, all oral presentations and all other relevant information submitted to or otherwise available to FEA will be considered by FEA prior issuance of any prohibition order.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Any questions regarding this notice should be directed to Gene Wenzl, FEA Region VII, 112 East 12th Street, Kansas City, Missouri 64142, (816) 374-3117.

(Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319); Federal Energy Administration Act of 1974 (Pub. L. 93-275); E.O. 11790 (39 FR 23185))

Issued in Washington, D.C., May 5, 1975.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

FINDINGS IN SUPPORT OF PROPOSED PROHIBITION ORDERS

FEA's initial conclusions with respect to, and the rationale in support of, the findings which ESECA requires FEA to make before issuance of a prohibition order are set out below, with respect to each of the powerplants which are the subject of this notice. Also set out below, with respect to each powerplant, is the period of time which FEA believes will be necessary for the powerplant to prepare for burning of coal, other than time necessary to comply with air pollution requirements.

1. OFU-001, AMES ELECTRIC UTILITY, POWERPLANT 7, GENERATING STATION—AMES, AMES, IOWA

(a) Findings and rationale for findings:

(i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, the Powerplant Number 7 at the Ames Generating Station had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant Number 7 at the Ames Powerplant had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA by the City of Ames Electric Utility, no significant equipment or facilities would have to be acquired or substantially refurbished.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by Powerplant Number 7 at the Ames Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(a)(1) Powerplant Number 7 at the Ames Generating Station has acquired or modified, or is currently acquiring or modifying the equipment and facilities necessary for the burning of coal as its primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Ames Electric Utility's current and prospective budgetary plans.

(3)(i) FEA assumes that the decision by the Ames Electric Utility to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of the company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Ames Electric Utility actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to this powerplant during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	Production (million tons)
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand, excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA, is as follows:

Year:	Demand (million tons)
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by this powerplant has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	Production (million tons)
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	Demand (million tons)
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Burlington Northern, Chicago and Northwestern and Penn Central for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds that the prohibition of the Powerplant Number 7 at the Ames Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplant Number 7 is part of the Iowa Power and Light Company dispatching system, which is within the geographic area encompassed by the Mid-Continent Area Reliability Coordination Agreement.

(b) Powerplant Number 7 at the Ames Generating Station currently is burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplant Number 7's primary energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal (other than time necessary to comply with air pollution requirements).

The powerplant is currently capable of burning coal as its primary energy source.

2. OFU-002,003,004, IOWA ELECTRIC LIGHT AND POWER COMPANY, POWERPLANTS 1, 2, AND 3, GENERATING STATION—SUTHERLAND, MARSHALLTOWN, IOWA

(a) Findings and rationale for findings:

(i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant Numbers 1, 2, and 3 at the Sutherland Generating Station each had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant Numbers 1, 2, and 3 at the Sutherland Generating Station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on April 11, 1975 by the Iowa Electric Light and Power Company, no equipment or facilities would have to be acquired or substantially refurbished.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by Powerplants Numbers 1, 2, and 3 at the Sutherland Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(a)(1) The Powerplants Numbers 1, 2, and 3 have acquired or modified, or are currently acquiring or modifying the equipment and facilities necessary for the burning of coal as their primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Iowa Electric Light and Power Company's current and prospective budgetary plans.

(3) (i) FEA assumes that the decision by the Iowa Electric Light and Power Company to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of the company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Iowa Electric Light and Power Company actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand, excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA, is as follows:

Year:	*Demand (million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	*Production (million tons)*
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions, excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA, is as follows:

Year:	*Demand (million tons)*
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Denver and Rio Grande, Burlington Northern and Chicago and Northwestern for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds that the prohibition of the Powerplants Numbers 1, 2 and 3 at the Sutherland Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplants Numbers 1, 2, and 3 at the Sutherland Generating Station are part of the Iowa Electric Light and Power Company as interconnected with the Mid-America Power Pool dispatching system, which is within the geographic area encompassed by the Mid-Continent Area Reliability Coordination Agreement (MARCA).

(b) Powerplants Numbers 1, 2, and 3 currently are each burning coal as its primary energy soruce on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplants Numbers 1, 2, and 3's primary

energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplants.

(b) Time necessary to prepare for the burning of coal, (other than time necessary to comply with air pollution requirements):

The powerplants are currently capable of burning coal as the primary energy source.

3. OFU-005,006, IOWA POWER AND LIGHT COMPANY, POWERPLANTS 10, 11, GENERATING STATION—DES MOINES, DES MOINES, IOWA

(a) Findings and rationale for findings:

(i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant Numbers 10 and 11 at the Des Moines Generating Station each had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant numbers 10 and 11 at the Des Moines Generating Station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on March 17, 1975 by the Iowa Power and Light Company, no equipment or facilities would have to be acquired or substantially refurbished.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by powerplants numbers 10 and 11 at the Des Moines Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(a)(1) Powerplants numbers 10 and 11 at the Des Moines Generating Station had acquired or modified, or are currently acquiring or modifying the equipment and facilities necessary for the burning of coal as their primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Iowa Power and Light Company's current and prospective budgetary plans.

(3)(i) FEA assumes that the decision by the Iowa Power and Light Company to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of Iowa Power and Light Company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Iowa Power and Light Company's actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	*Production (million tons)*
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	*Demand (million tons)*
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Burlington Northern for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds, that the prohibition of the Powerplants numbers 10 and 11 at the Des Moines Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplants numbers 10 and 11 at the Des Moines Generating Station are part of the Iowa Power and Light Company dispatching system, which is within the geographic area encompassed by the Mid-Continent Area Reliability Coordination Agreement.

(b) Powerplants numbers 10 and 11 at the Des Moines Generating Station currently are each burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplants numbers 10 and 11 at the Des Moines Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal, (other than time necessary to comply with air pollution requirements):

The powerplants are currently capable of burning coal as the primary energy source.

4. OFU–007, IOWA PUBLIC SERVICE COMPANY, POWERPLANT 1, GENERATING STATION—GEORGE NEAL, SALIX, IOWA

(a) Findings and rationale for findings: (i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant number 1 at the George Neal generating station had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant number 1 at the George Neal generating station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on March 14, 1975 by the Iowa Public Service Company, no equipment or facilities would have to be acquired or substantially refurbished.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by Powerplant number 1 at the George Neal Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(a)(1) Powerplant number 1 at the George Neal Generating Station has acquired or modified, or is currently acquiring or modifying the equipment and facilities necessary for the burning of coal as its primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Iowa Public Service Company's current and prospective budgetary plans.

(3)(i) FEA assumes that the decision by the Iowa Public Service Company to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of the company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Iowa Public Service Company actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal. FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the production order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to this powerplant during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	Production (million tons)
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	Demand (million tons)
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by this powerplant has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	Production (million tons)
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	Demand (million tons)
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Union Pacific and Chicago and Northwestern for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds that the prohibition of the Powerplant number 1 at the George Neal Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplant number 1 at the George Neal Generating Station is part of the Iowa Public Service Company and is interconnected with the Mid-America Power Pool dispatching system, which is within the geographic area encompassed by the Mid-Continent Area Reliability Coordination Agreement.

(b) Powerplant number 1 at the George Neal Generating Station currently is burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplant number 1 at the George Neal Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal (other than time necessary to comply with air pollution requirements):

The powerplants are currently capable of burning coal as the primary energy source.

5. OFU-008, Iowa Public Service Company, Powerplant 14, Generating Station-Maynard Station, Waterloo, Iowa

(a) Findings and rationale for findings: (i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant Number 14 at Maynard Generating Station had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant Number 14 at Maynard Generating Station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on March 14, 1975 by the Iowa Public Service Company, no equipment or facilities would have to be acquired or substantially refurbished.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by Powerplant Number 14 at Maynard Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(1) Powerplant Number 14 has acquired or modified or is currently acquiring or modifying the equipment and facilities necessary for the burning of coal as its primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Iowa Public Service Company's current and prospective budgetary plans.

(3) (i) FEA assumes that the decision by the Iowa Public Service Company to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of the company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel

costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Iowa Public Service Company actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to this powerplant during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by this powerplant has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	*Production (million tons)*
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these suply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Union Pacific, Illinois Central Gulf and Waterloo for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds that the prohibition of the Powerplant Number 14 at the Maynard Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplant Number 14 at the Maynard Generating Station is part of the Iowa Public Service Company as interconnected with the Mid-America Power Pool dispatching system, which is within the geographic area encompassed by the Mid-Continent Area Reliability Coordination Agreement.

(b) Powerplant Number 14 at the Maynard Generating Station currently is burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplant Number 14 at the Maynard Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal (other than time necessary to comply with air pollution requirements).

The powerplant is currently capable of burning coal as its primary energy source.

requirements)

6. OPU–009, 010, 011, KANSAS CITY BOARD OF PUBLIC UTILITIES, POWERPLANTS 1, 2, 3, GENERATING STATION-KAW RIVER, KANSAS CITY, KANSAS.

(a) Findings and rationale for findings:

(i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant Numbers 1, 2, and 3 at the Kaw River Generating Station had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant Numbers 1, 2, and 3 at the Kaw River Generating Station each had in place on June 22, 1974 a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on March 20, 1975, by the Kansas City Board of Public Utilities, the following significant equipment or facilities would have to be acquired or substantially refurbished:

1. Coal and ash handling equipment;
2. Coal unloading facilities.

FEA assumes that on June 22, 1974, Units 1, 2 and 3 at the Kaw River Powerplant had all other significant equipment and facilities associated with the burning of coal.

(c) Within the meaning of ESECA and the regulations promulgated pursuant thereto, the equipment and facilities listed in paragraph (b) do not individually or in combination constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by Powerplants Numbers 1, 2, and 3 at the Kaw River Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below:

(a) (1) Powerplants Numbers 1, 2, and 3 at the Kaw River Generating Station have acquired or modified or are currently acquiring or modifying the equipment and facilities necessary for the burning of coal as its primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Kansas City Board of Public Utilities' current and prospective budgetary plans.

(3) (i) FEA assumes that the decision by the Kansas City Board of Public Utilities to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of the company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore, that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Kansas City Board of Public Utilities actions described above, and other information available to FEA, FEA concludes that the burning of coal by the company is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978, is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (Million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	*Demand (Million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	*Production (million tons)*
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA

actions under the authority of section 2 of ESECA is as follows:

Year:	Demand (million tons)
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 3, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the St. Louis-San Francisco, Kansas City Southern, Missouri-Kansas-Texas and Missouri Pacific for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplants.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds that the prohibition of the Powerplants Numbers 1, 2, and 3 at the Kaw River Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplants Numbers 1, 2, and 3 at the Kaw River Generating Station are part of the Kansas City Board of Public Utilities as interconnected with the Missouri-Kansas Power Pool dispatching system, which is within the geographic area encompassed by the Southwest Power Pool Reliability Council (SWPP).

(b) Powerplants Numbers 1, 2, and 3 at the Kaw River Generating Station currently are each burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplants Numbers 1, 2, and 3 at the Kaw River Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal (other than time necessary to comply with air pollution requirements).

In order to provide for adequate coal and ash handling, an estimated 15 months will be necessary.

7. CFU–012, 013, KANSAS CITY BOARD OF PUBLIC UTILITIES, POWERPLANTS 1, 2, GENERATING STATION-QUINDARO #3, KANSAS CITY, KANSAS

(a) Findings and rationale for findings: (i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplants 1 and 2 at the No. 3 Quindaro Generating Station each had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplants 1 and 2 at the No. 3 Quindaro Generating Station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplants may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on March 20, 1975 by the Kansas City Board of Public Utilities, the following significant equipment or facilities would have to be acquired or substantially refurbished:

1. Coal and ash handling equipment;
2. Coal unloading facilities.

FEA assumes that on June 22, 1974, powerplants 1 and 2 at the No. 3 Quindaro Generating Station, had all other significant equipment or facilities associated with the burning of coal.

(c) Within the meaning of ESECA and the regulations promulgated pursuant thereto, the equipment and facilities listed in paragraph (b) do not individually or in combination constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by powerplants #1 and 2 at #3 Quindaro Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(a)(1) The powerplants #1 and 2 at #3 Quindaro Generating Station have acquired or modified, or are currently acquiring or modifying the equipment and facilities necessary for the burning of coal as its primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Kansas City Board of Public Utilities' current and prospective budgetary plans.

(3)(i) FEA assumes that the decision by the Kansas City Board of Public Utilities to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of the company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Kansas City Board of Public Utilities' actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA action under authority of section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	*Production (million tons)*
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Union Pacific and Missouri Pacific for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds, that the prohibition of the Powerplants Numbers 1 and 2 at the Quindaro Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplants Numbers 1 and 2 at the Quindaro Generating Station are part of the Kansas City Board of Public Utilities as interconnected with the Missouri-Kansas Power Pool dispatching system, which is within the geographic area encompassed by the Mid-Continent Area Reliability Coordination Agreement.

(b) Powerplants Numbers 1 and 2 at the Quindaro Generating Station currently are each burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplants Numbers 1 and 2 at the Quindaro Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal (other than time necessary to comply with air pollution requirements).

In order to provide for adequate coal and ash handling, an estimated 15 months will be necessary.

8. OFU–014, 015, 016, KANSAS CITY POWER AND LIGHT COMPANY, POWERPLANTS 3, 4, 5, GENERATING STATION—HAWTHORNE, KANSAS CITY, MISSOURI—

(a) Findings and rationale for findings: (i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant Numbers 3, 4, and 5 at the Hawthorne Generating Station each had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant Numbers 3, 4, and 5 at the Hawthorne Generating Station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on a letter filed with FEA on March 19, 1975, by the Kansas City Power and Light Company, "no additional facilities are or will be required to burn coal exclusively as the primary energy source for Hawthorne Units 3, 4, and 5".

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by Powerplants Numbers 3, 4, and 5 at the Hawthorne Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(a)(1) The powerplants #3, 4, and 5 at the Hawthorne Generating Station have acquired or modified, or are currently acquiring or modifying the equipment and facilities necessary for the burning of coal as their primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Kansas City Power and Light Company's current and prospective budgetary plans.

(3)(i) FEA assumes that the decision by the Kansas City Power and Light Company to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of the Kansas City Power and Light Company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore that the Kansas City Power and Light Company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Kansas City Power and Light Company actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	*Production (million tons)*
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	– bearoff 0.3
1976	– bearoff 1.6
1977	3.5
1978	– bearoff 4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Union Pacific, Kansas City Southern and St. Louis-San Francisco for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds that the prohibition of the Hawthorne Units #3, 4 and 5 from burning natural gas or

petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) *Interconnections and Power Dispatching.* (1) The Hawthorne Units are within the geographical area of the Southwest Power Pool (SWPP) regional electric reliability council.

(2) It is interconnected with and coordinated with the Missouri-Kansas (Mo-Kan) power pool.

(3) Dispatching of electric power is controlled by Kansas City Power and Light Co.

(4) "Dispatching system" as used later in this finding means Kansas City Power and Light Company.

(b) *Forecast Peak Loads.* (1) Forecast of peak loads for the dispatching system during the year in which the Hawthorne Units are expected to be implementing the herein prohibition order is as follows:

Summer Load Period (June–Aug.) 1975 Peak 1940 MWe July.
Fall Load Periods (Sept.–Nov.) 1975 Peak 1500 MWe Sept.
Winter Load Period (Dec.–Feb.) 1975–76 Peak 1200 MWe Dec.
Spring Load Period (March–May) 1976 Peak 1250 MWe May.

(2) The peak loads forecast have been compared with peak loads in previous similar periods and the compound load growth rate for these forecasts is 6 percent, which is considered reasonable.

(c) *Capacity.* (1) The present net dependable capacity of all powerplants of the dispatching system that now are engaged in the sale or exchange of electric power is 2396 MWe.

(2) Additions, retirements, and powerplant reratings during the period in which Hawthorne Units will be implementing the herein prohibition order, as listed below, will cause the following changes in net dependable capacity of such dispatching system:

Powerplant designation	Fuel	Type of change	Capacity change	Status and effective data
Northeast	Oil	Addition	116 MWe-summer 140 MWe-winter	Under construction. Start of commercial operation, April 1975.

(d) *Scheduled Outages.* Planned maintenance of other powerplants rated 100 MWe or higher and nuclear plant refueling during the period the powerplant will be implementing the herein prohibition order within the dispatching system are as listed below:

Powerplant designation	Fuel	Capacity	Type of outage	Period of outage
Hawthorne 3	Coal/gas	119	Sched main	Summer.
Montrose 2	Coal	178	do	Fall.
Montrose 2	do	180	do	Fall and winter.
Hawthorne 4	Coal/gas	133	do	Winter.
Lacygne 1	Coal	412	do	Do.
Hawthorne 5	Coal/gas	520	do	Spring.

(e) *Net Dependable Capacity.* The forecast net dependable capacity for the dispatching system during the period (shown as quarter years) in which the powerplant is expected to be implementing the herein prohibition order and the next quarter following is:

	Megawatts
Summer 1975	2,396
Fall 1975	2,396
Winter 1975–76	1,767
Spring 1976	2,396

(f) *Gross Reserve Margin-Dispatching System.* (1) The expected minimum gross reserve margin (difference between net system capability and peak load in percent of peak load) of the dispatching system for the load periods specified are as follows:

	Percent
Summer	23.5
Fall	60.0
Winter	47.0
Spring	92.0

(2) After deducting the net capacity of units scheduled for maintenance or refueling during these same load periods and including imports and exports scheduled. The expected minimum reserve margins are:

	Percent
Summer	−3.0
Fall	13.0
Winter	−30.5
Spring	50.0

(g) *Derating.* The powerplants were originally designed to obtain full rating on either coal or gas. Kansas City Power and Light Company are now having a study made to ascertain what, if anything, needs to be done to upgrade coal firing equipment so that no derating occurs.

(h) *System stability.* Available information regarding system stability for the dispatching system has been evaluated for each of the load periods stated in paragraph (e) and the issuance of a prohibition order to the powerplant will not cause a significant system stability problem.

(i) *Reliability of service.* (1) The estimated gross reserve margin of the dispatching system during the implementation period associated with the commencement the burning of coal as a primary energy source is forecast to range between −30.5 percent and 50.0 percent, depending upon the date of the period of powerplant outage. By scheduling the implementation period during the Spring load period, the estimated gross dispatching system's reserve margin will be approximately 50 percent, and the Federal Power Commission considers these to be acceptable reserve margins.

(2) If dispatching system conditions at the time of the implementation period are as presently forecast by FEA in this finding, there will be no impairment of reliability of service, within the meaning of ESECA and the regulations promulgated thereunder, in the area served by Kansas City Power and Light Company.

(3) Existing transmission system interconnections with other utilities are presently scheduled to transfer approximately 194 megawatts into the dispatching system; with the capacity to transfer approximately 1000 additional megawatts of power into the dispatching system. This capacity will provide emergency resource of electric power during the implementation period and will enhance the reliability of service.

(b) Time necessary to prepare for the burning of coal, (other than time necessary to comply with air pollution requirements):

The powerplants are currently capable of burning coal as the primary energy source.

9. OFU–017, 018, 019, KANSAS POWER AND LIGHT COMPANY, POWERPLANTS 3, 4, 5, GENERATING STATION—LAWRENCE, LAWRENCE, KANSAS

(a) Findings and rationale for findings: (1) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, powerplant numbers 3, 4, and 5 at the Lawrence Generating Station each had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant numbers 3, 4, and 5 at the Lawrence Generating Station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on April 10, 1975 by the Kansas Power and Light Company, the following significant equipment or facilities would have to be acquired or substantially refurbished:

1. A coal dust suppression system at the unloading hopper and transfer points;
2. The railroad track system and locomotive for switching coal cars from the main line into the plant site;
3. An additional soot blowing air compressor;

4. A new bottom and fly ash disposal system for boiler numbers 3 and 4;
5. The coal handling facilities.

FEA assumes that on June 22, 1974, Powerplants 3, 4 and 5 at the Lawrence facility had all other significant equipment and facilities associated with the burning of coal.

(c) Within the meaning of ESECA and the regulations promulgated pursuant thereto, the equipment and facilities listed in paragraph (b) do not individually or in combination constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by Powerplants numbers 3, 4, and 5 at the Lawrence Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(a)(1) Lawrence Generating Station has acquired or modified, or is currently acquiring or modifying the equipment and facilities necessary for the burning of coal as their primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Kansas Power and Light Company's current and prospective budgetary plans.

(3)(i) FEA assumes that the decision by the Kansas Power and Light Company to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability the company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Kansas Power and Light Company actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	*Production (million tons)*
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Union Pacific and Atchison, Topeka, & Santa Fe for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds, that the prohibition of the Powerplant numbers 3, 4, and 5 at the Lawrence Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplant numbers 3, 4, and 5 at the Lawrence Generating Station are part of the Kansas Power and Light Company as interconnected with the Missouri-Kansas Power Pool dispatching system, which is within the geographic area encompassed by the Southwest Power Pool Regional Electric Reliability Council (SWPP).

(b) Powerplant numbers 3, 4, and 5 at the Lawrence Generating Station currently are burning coal as their primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Lawrence Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal (other than time necessary to comply with air pollution requirements).

It is estimated that 24 months is necessary for upgrading of the ash and coal handling systems.

10. OFU—020, 021, KANSAS POWER AND LIGHT COMPANY, POWERPLANTS 9, 10 GENERATING STATION—TECUMSEH, TECUMSEH, KANSAS

(a) Findings and rationale for findings: (i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant Numbers 9 and 10 at the Tecumseh Generating Station each had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant Numbers 9 and 10 at the Tecumseh Generating Station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on April 10, 1975 by the Kansas Power and Light Company, the following significant equipment or facilities would have to be acquired or substantially refurbished:

1. A coal dust suppression system at the unloading hopper and transfer points;
2. The railroad track system and locomotive for switching coal cars from the main line into the plant site;
3. An additional soot blowing air compressor;
4. Additional soot blowers;
5. A new bottom and fly ash disposal system;
6. The coal handling system.

FEA assumes that on June 22, 1974, Units 9 and 10 at the Tecumseh Powerplant had all other significant equipment and facilities associated with the burning of coal.

(c) Within the meaning of ESECA and the regulations promulgated pursuant thereto, the equipment and facilities listed in paragraph (b) do not individually or in combination constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that the burning of coal by powerplants #9 and 10 at the Tecumseh Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumputions stated below:

(a)(1) The Powerplants #9 and 10 at the Tecumseh Generating Station had acquired or modified, or are currently acquiring or modifying the equipment and facilities necessary for the burning of coal as their primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Kansas Power and Light Company's current and prospective budgetary plans.

(3)(i) FEA assumes that the decision by the Kansas Power and Light Company to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of such powerplant to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operation and maintenance and fuel costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Kansas Power and Light Company's actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under au-

thority of section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	Production (million tons)
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	Demand (million tons)
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the Union Pacific and Atchison, Topeka, & Santa Fe for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds, that the prohibition of the Powerplants numbers 9 and 10 at the Tecumseh Generating Station from burning natural gas or petroleum products as their primary energy source will not impair the reliability of service in the area served by such powerplants. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplants numbers 9 and 10 at the Tecumseh Generating Station are part of the Kansas Power and Light and interconnected with the Missouri-Kansas Power Pool dispatching system, which is within the geographic area encompassed by the Southwest Power Pool Regional Electric Reliability Council.

(b) Powerplants numbers 9 and 10 at the Tecumseh Generating Station currently are each burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the powerplants numbers 9 and 10 at the Tecumseh Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output, and therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal (other than time necessary to comply with air pollution requirements)

It is estimated that 18 months is necessary for upgrading of the ash and coal handling systems.

11. OFU-022, 023, NEBRASKA PUBLIC POWER DISTRICT, POWERPLANTS 1, 2, GENERATING STATION SHELDON, COLUMBUS, NEBRASKA

(a) Findings and rationale for findings: (i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant Numbers 1 and 2 at the Sheldon Generating Station each had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant Numbers 1 and 2 at the Sheldon Generating Station had in place, on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on April 9, 1975 by the Nebraska Public Power District, the following significant equipment or facilities would have to be acquired or substantially refurbished:

1. Coal Hammermills;
2. Coal Shut Off Gates;
3. Coal Sampling System;
4. Dust Collection System;
5. Control and Relay Panels;
6. Reclaim Feeders;
7. Reclaim Grinders;
8. Magnetic Separator;
9. Belt Scales;
10. Motor Starters;
11. Motor Control Centers;
12. Dust Suppression System;
13. Conveyors;
14. Miscellaneous Steel;
15. Circuit Breakers;
16. Instrumentation.

FEA assumes that on June 22, 1974, Units 1 and 2 at the Sheldon Powerplant had all other significant equipment and facilities associated with the burning of coal.

(c) Within the meaning of ESECA and the regulations promulgated pursuant thereto, the equipment and facilities listed in paragraph (b) do not individually or in combination constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that

the burning of coal by Powerplant Numbers 1 and 2 at the Sheldon Generating Station in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below:

(a) (1) The Powerplants Numbers 1 and 2 at Sheldon Generating Station had acquired or modified, or are each currently acquiring or modifying, the equipment and facilities necessary for the burning of coal as its primary energy source, and such actions are not being undertaken as a result of (or in contemplation of) the issuance of a prohibition order. These acquisitions or modifications include those necessary for compliance with the requirements of the Clean Air Act.

(2) The costs associated with the acquisitions and modifications necessary for the burning of coal are identified in the Nebraska Public Power District's current and prospective budgetary plans.

(3) (i) FEA assumes that the decision by the Nebraska Public Power District to acquire or modify such equipment and facilities in order to burn coal as a primary energy source was based on an analysis of the financial capability of the company to assume such costs (including any requirement to obtain a rate increase) as well as any costs relating to operating and maintenance and fuel costs, and therefore that the company has concluded that the burning of coal in lieu of petroleum products or natural gas is practicable.

(ii) On the basis of the Nebraska Public Power District's actions described above and other information available to FEA, FEA concludes that the burning of coal by such powerplant is practicable within the meaning of ESECA and the regulations promulgated thereunder, and will continue to be practicable for the period that the order is in effect.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a (1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	*Production (million tons)*
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	*Demand (million tons)*
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	*Demand (million tons)*
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b(1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the St. Louis-San Francisco and Chicago, Rock Island, & Pacific for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds, that the prohibition of the Powerplant Numbers 1 and 2 at the Sheldon Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by such powerplant. This finding is based

on the facts, assumptions and interpretations stated below:

(a) Powerplant Numbers 1 and 2 at the Sheldon Generating Station are part of the Nebraska Public Power District as interconnected with the Mid-America Power Pool dispatching system, which is within the geographic area encompassed by the Mid-Continent Area Reliability Coordination Agreement (MARCA).

(b) Powerplant Numbers 1 and 2 at the Sheldon Generating Station currently are each burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplant Numbers 1 and 2 at the Sheldon Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplants.

(d) Time necessary to prepare for the burning of coal, (other than time necessary to comply with air pollution requirements):

The powerplants are currently capable of burning coal as the primary energy source.

12. OFU-024, 025, SPRINGFIELD CITY UTILITIES, POWERPLANTS 3, 4, GENERATING STATION—JAMES RIVER, SPRINGFIELD, MISSOURI

(a) Findings and rationale for findings: (i) *Capability and necessary plant equipment to burn coal.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that on June 22, 1974, Powerplant Numbers 3 and 4 at the James River Generating Station had the capability and necessary plant equipment to burn coal. This finding is based on facts, interpretations and assumptions stated below:

(a) Powerplant Numbers 3 and 4 at the James River Generating Station each had in place on June 22, 1974, a boiler that was capable of burning coal, in that such boiler had been designed and constructed, or had been modified, to enable it to burn coal as its primary energy source, or to burn coal and another fossil fuel interchangeably as its primary energy source, notwithstanding the fact that on June 22, 1974, such powerplant may not have been burning coal as its primary energy source.

(b) Based on information filed with FEA on April 11, 1975 by the Springfield City Utilities, the following significant equipment or facilities would have to be acquired or substantially refurbished:

1. Wheel loader;
2. Reclaim hopper and conveyor;
3. Four sets of scales;
4. Coal driers and positive feeders;
5. Pulverizers;
6. Four soot blowers;
7. Ash handling equipment;
8. Ash pond enlargement;
9. One set of boiler make-up water treating equipment.

FEA assumes that on June 22, 1974, powerplants 3 and 4 of the James River generating station had all other significant equipment and facilities associated with the burning of coal.

(c) Within the meaning of ESECA and the regulations promulgated pursuant thereto, the equipment and facilities listed in paragraph (b) do not individually or in combination constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

(ii) *Burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* Based on an analysis of the information submitted or otherwise available to FEA, FEA hereby finds that the burning of coal by Powerplants #3 and 4 at the James River Generating Station, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of ESECA. This finding is based on the facts, interpretations and assumptions stated below.

(a) (1) *Revenue requirements.* (a) The investment costs that result from the acquisition and (or) refurbishment of equipment and facilities associated with the burning of coal by the Powerplants #3 and 4 at the James River Generating Station are estimated to be approximately $4,033,000. This estimate is based on existing FEA information and on information filed with the FEA by the generating station concerning items of equipment and facilities that would have to be acquired or refurbished and the costs of such acquisition or refurbishment.

(i) Costs of acquisition or refurbishing equipment are allocated as follows:

(A) $2,000,000 to comply with air pollution control requirements of the Clean Air Act.

(B) $2,033,000 to make those technical plant and equipment adjustments associated with the burning of coal, as well as to comply with environmental requirements other than those imposed by the Clean Air Act.

(b) The increase in operating costs other than fuel costs that result from the burning of coal are estimated to be approximately $0 per year.

(c) (1) The price of natural gas available to the powerplant is approximately 65¢ to 75¢ per million Btus. The price of coal of the type used by Powerplants #3 and 4 at the James River Generating Station is approximately 85¢ to 95¢ per million Btus. The burning of coal by powerplants #3 and 4 at the James River Generating Station will result in an increase of 10¢ to 40¢ per million Btus or $500,000 to $2,000,000 per year.

(ii) The Missouri Public Utility Commission permits the inclusion of increased fuel costs in the rate base through a fuel adjustment clause and, if there is a decrease in the cost of fuel as a result of burning coal, there will be a decrease in such rate base.

(d) The total annual incremental increase in revenue requirements resulting from costs associated with burning coal as opposed to oil is $4,033,000.

(2) *Financial capabilities.* (a) Based on the most recent financial statements and capital expenditure programs of Springfield City Utilities, as well as other information available to FEA, it has been determined that the prohibition order for the Powerplants #3 and 4 at the James River Generating Station is practicable. This financial assessment included an evaluation of generally accepted financial ratios; effects on capitalization as a result of the costs of burning of coal; impact on current and future construction programs; and possible impacts on rates. This assessment incorporated, but was not limited to, consideration of: The $4.033-million investment requirement (or 5 percent) in relation to net property and plant of Springfield City Utilities of $80-million and 1975–1977 construction budget of Springfield City Utilities of $99-million (or 4 percent); the total capitalization of Springfield City Utilities of $111-million; the change in 1974 to 1975 construction budgets of $11.5-million to $43.3-million; and the 23 year remaining useful life of the plant. These assessments, the above findings, and other evaluations of the general financial health of Springfield City Utilities were the basis of this finding.

(b) Because the issuance of this prohibition order will discourage the use of natural gas or petroleum products and encourage the increased use of coal, FEA concludes that it is consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels. Further, on the basis of the environmental analyses conducted by FEA, the analyses of air quality impacts which EPA is required to conduct prior to effectiveness of a prohibition order, as well as the necessity for the powerplant to comply with the Clean Air Act and other applicable environmental protection requirements, FEA concludes that the prohibition order is consistent with the purpose of ESECA to provide for a means to meet essential fuel needs in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

(iii) *Coal and coal transportation facilities will be available during the period the prohibition order is in effect.* Based on an analysis of the information submitted to or otherwise available to FEA, FEA hereby finds that coal and coal transportation facilities will be available to these powerplants during the period until December 31, 1978. The period until December 31, 1978 is the period during all or part of which the prohibition order to which these findings relate will be in effect. This finding is based upon the following facts, interpretations, and assumptions:

a(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	Production (million tons)
1975	662
1976	679
1977	707
1978	735

(2) The estimated national demand excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA is as follows:

Year:	Demand (million tons)
1975	640
1976	664
1977	688
1978	716

(3) The estimated additional national demand for coal resulting from the prohibition order to which this finding relates, and from FEA actions under authority of section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	.7
1976	4.0
1977	13.6
1978	16.2

(4) Coal of the specific type required for use by these powerplants has been identified in the reserves of the Midwest, Gulf, and Northern Great Plains coal supply regions.

(5) It is estimated that it will be practicable to produce coal from the Midwest, Gulf, and Northern Great Plains coal supply regions as follows:

Year:	Production (million tons)
1975	219
1976	234
1977	250
1978	267

(6) The regional and national production estimates stated in items (1) and (5) assume a surge capacity, or ability to increase production over normal levels, of approximately 4 percent. In response to an industry survey in late 1974, the coal industry indicated a surge capacity of up to 8 percent. A study by the Bureau of Mines, Department of the Interior, indicates a surge capacity of approximately up to 6 percent. By comparison, the increased national demand for coal resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA, is less than one tenth of a percent in 1975, increasing to a maximum of 2.3 percent in 1978 of estimated national demand stated in item (2). A market survey of traditional coal suppliers to FEA Region 7 consumers suggests substantial evidence of ample production capability to support increased demand for coal from this region resulting from the prohibition order to which this finding relates and other FEA actions under section 2 of ESECA.

(7) The FEA is unaware of any State or local laws or policies limiting the extraction of this coal which would affect these production estimates.

(8) The estimated demand for coal from these supply regions excluding any increased demand resulting from FEA actions under the authority of section 2 of ESECA is as follows:

Year:	Demand (million tons)
1975	212
1976	224
1977	240
1978	255

(9) The estimated additional demand for coal from these supply regions resulting from the prohibition order to which this finding relates and from other FEA orders under section 2 of ESECA, will be as follows:

Year:	Demand (million tons)
1975	0.3
1976	1.6
1977	3.5
1978	4.0

(10) On the basis of the above information, FEA has concluded that the estimated production of coal of the specific type required for use by this powerplant exceeds the estimated demand for such coal by amounts adequate to support a conclusion that such coal will be available to the powerplant during the period until December 31, 1978.

b (1) Adequate rail facilities exist between these coal supply regions and the powerplant to transport the coal that will be used by such powerplant pursuant to this order.

(2) There is a spur line which will be able to deliver this coal from the main rail line to the powerplant.

(3) Sufficient rolling stock will be available to the St. Louis-San Francisco for transporting this coal during the period until December 31, 1978.

(iv) *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA, and after consultation with the Federal Power Commission, FEA hereby finds, that the prohibition of the Powerplants Numbers 3 and 4 of the James River Generating Station from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service, in the area served by such powerplant. This finding is based on the facts, assumptions and interpretations stated below:

(a) Powerplants Numbers 3 and 4 of the James River Generating Station are part of the Springfield City Utilities as interconnected with the Southwest Power Administration dispatching system.

(b) Powerplants Numbers 3 and 4 of the James River Generating Station currently are each burning coal as its primary energy source on a regular basis. Natural gas has been used on an as-available basis.

(c) Prohibition of the use of natural gas or petroleum products as the Powerplants Numbers 3 and 4 of the James River Generating Station's primary energy source will not result in any scheduled outage or reduction in electric power output, and, therefore, such prohibition will not result in an impairment of the reliability of service, within the meaning of ESECA and the regulations promulgated pursuant thereto, by such powerplant.

(b) Time necessary to prepare for the burning of coal (other than time necessary to comply with air pollution requirements).

It is estimated that 24 months is necessary to acquire and install pulverizing, coal and ash handling, and water treating equipment.

[FR Doc.75-12163 Filed 5-6-75;10:34 am]

federal register

FRIDAY, MAY 9, 1975
WASHINGTON, D.C.
Volume 40 ■ Number 91

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

■

MEDICAL ASSISTANCE PROGRAMS

Providing for Services

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

Contracts for Providing or Paying for Services

Notice of proposed regulations was published on June 5, 1974 (39 FR 20042), which set forth requirements applicable to contracts between State agencies administering the medical assistance program under title XIX, Social Security Act, and organizations which provide or pay for services under the program. The proposal revised and updated the existing regulations on contracts in 45 CFR 249.82, and added requirements relating to health maintenance organizations (HMOs) and health care project grant centers.

Comments were received from 25 respondents, including State and local Medicaid agencies, community service organizations, insuring and group practice organizations, professional groups, legal services organizations, consulting firms, and others. Major changes made as a result of comments are summarized as follows:

1. The definition of "Contractor" has been expanded to include "or other medical provider reimbursed on a prepaid capitation basis for medical services to enrolled recipients" (§ 249.82(b)(1)). This same phrase has been added to the paragraph headings of § 249.82(c) (5) and (6), which set forth specific requirements relating to such providers. These additions clarify that the general and specific requirements of this regulation (§ 249.82(c) (1), (5) and (6)) are applicable to all such organizations performing services under contract with the single State agency. Organizations which are paid on an ordinary fee-for-service basis are subject to the same rules as any other Medicaid provider.

2. In response to comment from the health insurance industry, the word prepaid has been deleted from the title of "health insuring organization" and the words "or subscription charge" have been inserted after "premium" in references to payment to a health insuring organization. Also, the definition has been legally clarified by including the essential element of "underwriting risk" in the definition itself (§ 249.82(b)(2)).

3. Several respondents questioned failure to include all title XIX mandated services in the minimum services to be provided by an HMO. Omission of laboratory and x-ray services was inadvertent, and this has now been added. Of the other mandated services, some may be impractical to capitate (e.g. chronic long-term care), while for others (e.g. family planning, and early and periodic screening, diagnosis and treatment), the State may have made other arrangements more feasible under the circumstances. To mandate that these services be included under capitation in an HMO might prove unnecessarily duplicative. Also, many HMOs do not include dental services, which must be provided under the early screening program. The State will still have the option of including these services under the HMO contract. If it does not, it must provide them to eligible recipients through other qualified providers or through other effective means (§ 249.82(c)(5)(xi)).

4. The word "hospital" has been removed from "outpatient hospital services" in the HMO definition, and a clarifying parenthetic clause added to eliminate any possible misconception that ambulatory services must be provided in a hospital-based facility (§ 249.82(b)(9)). This provision is consistent with the reference to outpatient services in the HMO definition in the regulations under the HMO Act, Pub. L. 93-222 (42 CFR § 110.101(b)(2)).

5. The HMO definition has been revised to provide for individual physicians who provide health care under contract with the HMO, rather than as employees of or partners in the HMO (§ 249.10(b)(9)(iii)(A)).

6. In response to a suggestion regarding the provisions in the proposed regulations on underwriting risk and reinsurance, these provisions have been expanded, clarified, and made more specific (§ 249.82(c)(2)(iv), (v) and (vi)).

7. Several comments questioned the open enrollment requirement for HMOs. The annual minimum thirty-day open enrollment period has been eliminated. The requirement that the HMO must accept individuals in the order in which they apply for enrollment up to the limits of its capacity has been retained. Under the requirement, as amended, HMOs may continue to open enrollment for a limited period of time each year if their contract with the State so provides; however, it is anticipated that most contracts with HMOs will provide for year-round Medicaid recipient enrollment (§ 249.82(c)(5)(i)).

8. It was suggested that the applicability of the regulations to subcontracts be indicated. Accordingly, subcontract provisions have been added to the general requirements in § 249.82(c)(1)(x).

9. The provisions on termination (§ 249.82(c)(5)(v)) have been revised to specifically address termination by the enrollee as well as by the contractor. The enrollee must be permitted to terminate enrollment without cause within thirty days of enrollment, and may be permitted to do so at any time if so provided in the contract.

10. The rates for Federal financial participation for the several types of contracts have been clarified (§ 249.82(d)(2)).

11. In response to several objections to the requirement that fiscal agent contracts give states the option to purchase computer programs, this has been clarified to require the fiscal agent to offer one or more of the following options to the State: Purchase, lease, or buying the use of such programs (§ 249.82(c)(3)(i)).

12. Several comments stated that the regulation provided insufficient protection against marketing abuses. Accordingly, § 249.82(c)(6)(v) now requires that the State have written criteria for approval of marketing plans, procedures and materials, and prohibits certain specific marketing abuses; the language of the modification is consistent with the proposed title XVIII HMO regulations (20 CFR 405.2023(d)(2) and (3)). Paragraph (c)(6)(vi) requires dissemination of accurate information through appropriate health or social service agencies.

13. In response to several requests for more specificity in the requirement for an internal quality assurance system, § 249.82(c)(5)(xi) now adds appropriate details of an acceptable quality assurance system consistent with the HMO regulations under the HMO Act, Pub. L. 93-222 (42 CFR 110.108(j)).

14. In response to several general requests for better protection of the enrolled recipients, and taking cognizance of recent recommendations of the Comptrollers General (September 10, 1974, GAO report on better controls for Medicaid HMOs), provisions have been added for improved capitation rate-setting systems (§ 249.82(c)(2)(v), and (c)(6)(ix)), better State monitoring of enrollment and disenrollment practices (§ 249.82(c)(6)(x)), and more adequate assurance of quality of care through periodic medical audits (§ 249.82(c)(6)(iv)).

Suggestions which were not accepted include:

1. Inclusion of provider appeal rights similar to the reconsideration provisions accorded States under § 249.82(d)(1) in cases where the Department determines that the contract has not been carried out properly. No change has been made since this provision relates to denial of Federal financial participation to the State, not to State denials of payment to contractors. Also, appeal rights for providers are established by the State, not by the Federal government.

2. Revision of the requirement (§ 249.-82(c)(5)(ii)) t hat Medicare/Medicaid enrollment be limited to no more than 50 percent of the enroled members. Without including both Medicare and Medicaid in the maximum percentage, an HMO could have all poor or elderly clientele and would not be "broadly representative" of the population in the area served. Also, the enrollment of more than 50 percent of such members may raise a question of economic viability of the HMO. Serious problems in meeting the requirement can be resolved by use of the provision for waivers where good cause is shown.

In addition to the changes listed above, a number of editorials, procedural and technical changes have been made, including addition of a requirement for SRS prior approval of certain contracts, and relocating certain elements of the definition of an HMO in the proposed regulations (§ 249.82(b)(9) (iv), (v), (vi), (vii), (viii), (ix)) to more appropriate locations under State plan requirements (§ 249.82(c)(5), (i), (ii), (xiii); (c)(6) (i), (ii), (iii).

It should be stressed that no FFP will be available for payments made to a

contractor unless a contract meeting the requirements of the regulations executed between the single State agency and the contractor is in effect for all periods in which FFP is claimed. Moreover, no FFP will be available for such payments if the Secretary determines as a result of investigation that for such period there was a substantial failure of either party to the contract to fulfill it in accordance with its terms or the provisions of the regulations. Finally, a failure either to have such contracts in effect or to fulfill them in accordance with the regulations will raise a compliance issue under section 1904 of the Social Security Act. Accordingly, the proposed regulations as modified are adopted.

Section 249.82 of Part 249, Chapter II, Title 45 of the Code of Federal Regulations is revised to read as follows:

§ 249.82 Contracts with fiscal agents, health care project grant centers, and providers reimbursed on a prepaid capitation basis.

(a) *Purpose.* This section sets forth the requirements for certain State contracts for the provision of or payment for medical and remedial services under title XIX of the Social Security Act.

(b) *Definitions.* (1) "Contractor" means a health insuring organization, a health maintenance organization or other medical provider reimbursed on a prepaid capitation basis, for medical services to enrolled recipients, a private nonmedical institution, a health care project grant center, or a fiscal agent which contracts with the single State agency, under the terms of this section, to pay for or provide medical services under a State medical assistance plan, in consideration of a payment.

(2) "Health insuring organization" means an organization legally operating within the State which pays for the cost of medical services available under the State plan to eligible recipients in exchange for a premium or subscription charge paid by the State agency, and which assumes an underwriting risk. A "Health insuring organization" includes a health maintenance organization or other medical provider which is reimbursed on a prepaid capitation basis if an underwriting risk is assumed by the contractor under the contract.

(3) "Fiscal agent" means a contractor which processes and pays vendor claims on behalf of the single State agency.

(4) "Private nonmedical institution" means a facility such as a child-care institution or a maternity home, whose regular business is not that of a prepaid health insuring organization, or community health care center, but which provides medical care through contracts or other arrangements with medical providers, and which receives payments on a prepaid capitation basis through contract with the single State agency. No assumption of underwriting risk is borne by the institution.

(5) "Health care project grant center" means an organization supported in whole or in part by Federal project grant financial assistance which provides or arranges for medical services to an enrolled population and receives payment for services to eligible recipients through contract with the single State agency.

(6) "Premium or subscription charge" means the per capita amount paid by the single State agency to a contractor for each eligible recipient enrolled under a contract for the provision of medical and remedial care and services under the State plan, whetehr or not they receive such medical or remedial care and services during the contract period.

(8) "Enrolled recipient" means an eligible recipient who has entered into an agreement to receive services from a medical provider reimbursed under the terms of a prepaid capitation contract with the State title XIX agency under the provisions of paragraphs (c)(5) and (6) of this section.

(9) "Underwriting risk" means at least a significant risk of loss assumed by the contractor who receives the premium or subscription charge under an insuring arrangement with the single State agency for providing or paying for covered medical services to eligible recipients. Such risk arises because the cost of services provided directly or paid for by the contractor plus the administrative expenses of the contractor may exceed the premiums or subscription charges such contractor has received during the contract period.

(10) "Health maintenance organization (HMO)" means a public or private organization which:

(i) Provides, either directly or through arrangements with others, health services to individuals enrolled with such organization on a prepayment basis;

(ii) Provides, either directly or through arrangements with others and through institutions, entities, and persons meeting the requirements established for providers under title XIX of the Social Security Act, those health services which a defined population might reasonably require in order to be maintained in good health, including, as a minimum, inpatient hospital services, outpatient services (including diagnostic, treatment and rehabilitative services to ambulatory patients, whether or not provided in a hospital-based facility), physicians' services, and laboratory and x-ray services; and

(iii) Provides physicians' services (A) directly through physicians who are either employees or partners of such organization, or who are under contract to the organization to provide health care services, or (B) under arrangements with one or more groups of physicians (organized on a group practice or individual practice basis) under which each such group is reimbursed for its services primarily on the basis of an aggregate fixed sum or on a per capita basis, regardless of whether the individual physician members of any such group are paid on a fee-for-service or other basis;

(c) *State plan requirements for contracts under this section.*—(1) *All contractors.* A State plan under title XIX of the Social Security Act which provides part or all of its medical assistance, or provides for processing or paying vendor claims for medical assistance, through arrangements with contractors must provide that the contract shall be in writing and will:

(i) Specify the contract period;

(ii) Specify the functions of the contractor;

(iii) Identify the population to be covered by the contract and specify any necessary procedures for their enrollment or reenrollment;

(iv) Specify the amount, duration and scope of medical assistance to be provided or paid for;

(v) Provide that the single State agency and the Department shall have the right to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under such contract, and to audit and inspect any books and records of such contractor which pertain to services performed and determination of amounts payable under such contract;

(vi) Establish provisions and criteria for extension, renegotiation and termination of the contract. Termination procedures must include provisions requiring the contractor to supply promptly all information necessary for the reimbursement of any outstanding claims of enrolled participants;

(vii) Provide that the contractor shall establish and maintain an appropriate record system for services rendered title XIX enrollees and that these records shall be preserved for the period of time specified by the Secretary.

(viii) Provide that the contractor shall conform to the requirements of § 205.50 of this chapter regarding confidentiality of information about eligible recipients;

(ix) Specify how the requirements of § 250.31 of this chapter with respect to third party liability will be carried out by the contractor and by the State agency; and

(x) Specify which functions undertaken by the contractor may be carried out under subcontracts and that all such subcontracts shall be in writing and fulfill the provisions of this section which are appropriate to the service or activity delegated under the subcontract. No subcontract can terminate the legal responsibility of the contractor to the State agency to assure that all the activities under the contract will be carried out.

(2) *Health insuring organizations.* In addition to the requirements specified in paragraph (c)(1) of this section, a State plan which provides for contracts with health insuring organizations (including contracts with health maintenance organizations and other medical providers reimbursed on a prepaid capitation basis which have assumed an underwriting risk under the contract) must also provide that such contracts will:

(i) Provide that the premium or subscription charge must be reasonable, and

may not exceed the amount set forth in § 250.30 of this chapter;

(ii) Provide that the premiums or subscription charges paid on behalf of each enrolled recipient shall not be subject to renegotiation during the contract period if the contract is for one year or less, or more often than annually if the contract period is for more than one year, except when changes in Federal or State law or regulations so require. The premium or subscription charge may be renegotiated more often with respect to eligible persons who are not enrolled recipients at the time of the renegotiation. This restriction applies to contracts entered into by the State agency after the effective date of these regulations;

(iii) Provide that the premiums or subscription charges shall not include payment for recoupment of any losses incurred by the contractor for which he has assumed the risk under the same or any prior contract between the parties;

(iv) Provide, for the assumption by the contractor of the underwriting risk. Where the contractor has assumed the full underwriting risk, the contract must provide that the premium or subscription charge paid to the contractor in the contract period constitutes the full discharge of all responsibility of the State agency for the costs of medical care and services covered under the contract and provided to enrolled recipients during such period. In other situations, a risk contract must specify the apportionment of the underwriting risk;

(v) Specify how any "savings" (excess of premiums over allowable costs) will be apportioned between the contractor and the State agency;

(vi) Specify whether the contractor may obtain reinsurance. In the case of health maintenance organizations or other medical providers reimbursed on a prepaid capitation basis and which have assumed an underwriting risk under the contract, the contract shall require the contractor to retain, after reinsurance, a substantial portion of the risk; and

(vii) Specify the actuarial basis for computation of the premium rate or subscription charge specified in the contract.

(3) *Fiscal agents.* In addition to the requirements specified in paragraph (c)(1) of this section, a State plan which provides for contracts with fiscal agents must also provide that such contracts will:

(i) Include termination procedures requiring the contractor to supply promptly all material necessary for the continued operation of the payment and related systems. In the event the fiscal agent or his subcontractors have proprietary rights to this material, the contracts and subcontracts must provide that the fiscal agent or subcontractor offer to the State one or more of the following options: Purchase, lease, or buying the use of such material. Such material includes:

(A) Computer programs;

(B) All necessary data files;

(C) User and operation manuals, and other documentation;

(D) System and program documentation; and

(E) Training programs for State agency staff, their agents or designated representatives, in the operation and maintenance of the system;

(ii) Establish the amount to be paid the contractor for performing the required functions, the basis for the amount and when payment is to be made; and

(iii) Provide that payment to providers shall be made in accordance with § 250.30 of this chapter.

(4) *Private nonmedical institutions.* In addition to the requirements specified in paragraph (c)(1) of this section, a State plan which provides for contracts for prepayment of services from private nonmedical institutions must also provide that such contracts will:

(i) Specify the capitation amount which shall be based on the cost of services provided (in accordance with § 250.30 of this chapter);

(ii) Specify when the capitation amount shall be paid.

(5) *Additional requirements for contracts with health maintenance organizations and other medical providers reimbursed on a prepaid capitation basis for medical services to enrolled recipients.* In addition to the requirements specified in paragraphs (c)(1) and (2) of this section, a State plan for medical assistance which provides for contracts with health maintenance organizations and other medical providers reimbursed on a prepaid capitation basis for medical services to enrolled recipients, must also provide that such contracts will:

(i) Specify the period during which enrollment shall be open and provide that the contractor will accept persons eligible to be covered under the contract in the order in which they apply for enrollment without restrictions, except as may be authorized by the Secretary, up to the limits authorized in the contract with the State;

(ii) Provide, in the case of an HMO, that the contractor will serve a population broadly representative of the various age, social, and income groups within the area it serves, except that within two years after the effective date of the contract no more than 50% of the enrolled members may be individuals receiving benefits under Title XVIII and individuals receiving assistance under Title XIX of the Social Security Act. Any contractor under contract with the single State agency prior to the effective date of this regulation must conform to this requirement within two years after such effective date. The provisions of this subdivision may be waived by the Secretary for good cause shown.

(iii) Provide that enrollment is voluntary;

(iv) Specify the period of enrollment, which shall be for a reasonable period of time, so as to assure continuity of care and avoid excessive costs due to rapid turnover of enrollment;

(v) Specify the reasons for which a recipient's enrollment may be terminated. Such reasons may not include termination by the contractor because of an adverse change in a recipient's health status. The contract must provide that the recipient shall have the right to terminate his enrollment without cause within 30 days of such enrollment, and may allow termination without cause at any time during the contract period. Each termination by the contractor shall have the approval of the director of the medical assistance unit of the single State agency or his designee.

(vi) Provide that to the extent feasible and appropriate, each enrollee is afforded the choice of a health professional providing services who will supervise and coordinate his care;

(vii) Provide that all medical services covered under the contract which are required on an emergency basis be available on a 24-hour, seven-day-a-week basis, either in the contractor's own facilities, or through arrangements, to be approved by the single State agency, with another provider;

(vii) Provide for prompt payment by the contractor, in accordance with § 250.30 of this chapter of all in-area or out-of-area services which are required by the contract and rendered by providers with which the contractor does not have arrangements, and which are medically urgent, that is, they are necessary to prevent jeopardization of the patient's health or infliction of severe pain and discomfort which would occur if use of the contractor's facilities were required;

(ix) Provide for an internal enrollee grievance procedure, approved in writing by the director of the medical assistance unit of the single State agency. Such procedure shall provide for expeditious resolution of grievances by personnel at a decisionmaking level with authority to require corrective action;

(x) Provide for an internal quality assurance system consistent with Federal requirements under title XIX. This system shall provide for review by appropriate health professionals of the process followed in the provision of health services; and shall utilize systematic data collection of performance and patient results, provide interpretation of such data to the practitioners, and provide for instituting needed change;

(xi) Provide that the contractor shall submit to the single State agency for prior approval its marketing plans, procedures and materials.

(xii) Provide that enrollees with be advised concerning the appropriate use of health care and the contributions they can make to the maintenance of their own health;

(xiii) Provide for development of a medical record-keeping system through which all pertinent information relating to the medical management of the enrollee is accumulated and is readily available to appropriate professionals; and

(xiv) Provide, in contrasts in which the contractor does not assume any underwriting risk, that payment to the contractor for services provided under the contract (including any necessary retroactive adjustments) will not exceed the amounts which could be paid for

such covered medical and remedial care and services actually delivered by the contractor to eligible recipients under the requirements imposed for specific provider services as set forth in § 250.30 of this chapter.

(6) *Additional State plan requirements relating to health maintenance organizations and other medical providers reimbursed on a prepaid capitation basis for medical services to enrolled recipients.* In addition to the requirements specified in paragraph (c) (1), (2), and (5) of this section, a State plan which provides for contracts with health maintenance organizations and other medical providers reimbursed on a prepaid capitation basis for medical services to enrolled recipients must also provide:

(i) That the single State agency will obtain from the contractor proof of financial responsibility, including adequate protection against the risk of insolvency, and proof of capability to provide the services under the contract efficiently, effectively, and economically;

(ii) That the single State agency will determine that adequate feasibility and planning studies have been made for the enrollment of a sufficient number of members to assure the economic viability of the organization;

(iii) That the single State agency will obtain assurances that the health services required by its members will be received promptly as appropriate and that the services which are received will meet quality standards;

(iv) That the single State agency will establish a system of periodic medical audits (at least once a year for each contractor) to assure quality and accessibility of health care to Medicaid enrollees. Such system will provide for the identification and collection of management data for use by medical audit personnel, including reasons for enrollment and disenrollment, and use of services;

(v) For the establishment and implementation of a system for approval of marketing plans, procedures and materials for enrolling eligible recipients in a health maintenance organization, including written criteria for such approval; such system shall include provisions that the contractor will not engage in marketing practices which would mislead, misinform, confuse or defraud recipients or the single State agency, for example, claims that the recipient must enroll or lose his Medicaid coverage;

(vi) For dissemination through appropriate health or social service agencies to eligible recipients in the service area of the contractor of factually accurate information, presented in clear, readable and concise form, regarding at least coverage, locations and hours of service, and enrollment and disenrollment practices;

(vii) That payment will not be made on the enrolled recipient's behalf to providers other than the contractor for services rendered during the term of the contract if such services are available under the contract;

(viii) That upon termination of a contract or upon termination of enrollment of an enrollee, arrangements will be made to enable recipients formerly enrolled in the HMO to obtain without delay the services to which they are entitled;

(ix) That the single State agency will document the basis for computation of the premium rates or subscription charges it negotiates with the contractor or, if these rates or charges are fixed by the single State agency without negotiation, it will document the basis for computation of these fixed rates or charges;

(x) For the establishment of procedures to monitor enrollment and disenrollment practices and insure proper implementation of grievance procedures of the contractor; and

(xi) Provide that, where the contract does not include all services available under the State plan, those services not included shall be accessible and available either by referral arrangements with the contractor or by some other effective means; services in addition to those available under the State plan may be covered under the contract in accordance with § 249.10(a)(6)(vii) of this chapter.

(d) *Federal financial participation.* (1) Federal financial participation shall be available for payments made to a contractor under this section only if a contract between the single State agency and the contractor, fulfilling all the requirements of this section and the appropriate requirements of Part 74 of this title, is in effect for all periods for which Federal financial participation is claimed. The Secretary may deem such a contract not to be in effect, for the purposes of this paragraph, for any period, if the Secretary, as a result of investigation determines that for such period there was a substantial failure of either party to the contract to carry it out in accordance with its terms or the requirements of this section. States, upon request, will receive, in accordance with section 1116(d) of the Act, a reconsideration of the Secretary's determination under the provisions of this paragraph.

(2) For purposes of Federal financial participation,

(i) All expenditures which can reasonably be expected to exceed $100,000 in total during the contract must be approved in writing by the Regional Commissioner prior to the execution of the contract;

(ii) Under all contracts in which an underwriting risk is assumed, the total amount paid for carrying out the provisions of the contract will be regarded as a medical assistance cost;

(iii) Under other contracts in which no underwriting risk is assumed, the amounts paid for furnishing medical care and services to eligible recipients will be regarded as a medical assistance cost. Amounts paid for performing other agreed-upon functions will be regarded as an administrative cost; and

(iv) Under contracts with fiscal agents the amount paid to the provider of medical services will be considered as a medical assistance cost, and the amount paid to the contractor for performing the agreed-upon functions will be regarded as an administrative cost.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

Effective date. The regulations in this section shall be effective August 9, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: April 30, 1975.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved: May 2, 1975.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.75-12091 Filed 5-8-75;8:45 am]

federal register

FRIDAY, MAY 9, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 91

PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AND

SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION

■

Confidentiality of Alcohol and Drug Abuse Patient Records

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION

[42 CFR Ch. I]

CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS

Notice of Proposed Joint Rulemaking

Notice is hereby given that the Department of Health, Education, and Welfare and the Special Action Office for Drug Abuse Prevention jointly propose to issue regulations implementing their respective, but substantially identical statutory authorities relating to the confidentiality of alcohol abuse patient records (section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 as amended by Pub. L. 93-282, 42 U.S.C. 4582) and to the confidentiality of drug abuse patient records (section 408 of the Drug Abuse Office and Treatment Act of 1972 as amended by Pub. L. 93-282, 21 U.S.C. 1175).

It is proposed to promulgate the regulations by amending Subchapter A of Chapter I, Title 42 Code of Federal Regulations to add a new Part 2 entitled, "Confidentiality of Alcohol and Drug Abuse Patient Records". Because it is anticipated that the new regulations will become effective on June 29, 1975, immediately prior to the date (June 30, 1975) of the transfer of authority to issue regulations applicable to the confidentiality of drug abuse patient records from the Director of the Special Action Office for Drug Abuse Prevention to the Secretary of Health, Education, and Welfare (see section 303(b) of Pub. L. 93-282, 88 Stat. 138), it has been determined not to promulgate the proposed regulations as a revision of 21 CFR Part 1401, the existing Special Action Office for Drug Abuse Prevention interpretative regulations on the confidentiality of drug abuse patient records which were issued prior to the amendment of section 408 of the Drug Abuse Office and Treatment Act of 1972 by Pub. L. 93-282. 21 CFR Part 1401 will, of course, be revoked when the proposed regulations become effective as final regulations.

The proposed regulations were published as an Advance Notice of Proposed Joint Rulemaking on August 22, 1974 (39 FR 30426). A period of 74 days was provided for the submission of written comments on the regulations proposed in the Advance Notice. In addition, hearings were held in 11 cities throughout the United States in accordance with the schedule of hearings published as part of the Advance Notice except that an additional day (October 24, 1974) of hearings was conducted in San Francisco. In addition to the testimony of the 84 witnesses who appeared at these hearings, 173 written comments were received. Transcripts of the hearings as well as copies of the written comments are and will continue to be available for public inspection at the Office of the General Counsel, Special Action Office for Drug Abuse Prevention, Room 3026, 726 Jackson Place, NW., Washington, D.C. 20506 on weekdays during regular business hours.

If, as is intended, these regulations represent a sound step in the evolution of a relatively new field of law, such a result could not have been achieved without the generous contribution of time, effort, and thought on the part of those who testified or submitted written comments. Every effort has been made to accommodate as far as possible the great diversity of views presented while still effectively achieving the purposes of the authorizing legislation. While it was obviously impossible to adopt all the diverse, and sometimes conflicting, viewpoints, every view was reviewed and carefully considered.

However, because of this diversity and volume of the written comments and of the testimony presented at the public hearings, no detailed summarization thereof is attempted. Instead, significant comments are noted and summarized in the "basis and purpose" sections which highlight and explain the substantive changes in the previous regulations and the August 22, 1974 proposal. In addition to those substantive changes, there has been some rearrangement in the order of appearance of certain sections and minor technical and clarifying changes. On the basis of legal and practical difficulties which were pointed out at the hearings and in written comments the provisions of one section of the August 22, 1974 proposed regulations (§ 1401.10 "Employment information; evasion prohibited.") have been deleted. These provisions would have prohibited certain types of inquiries by employers about drug or alcohol abuse by actual or prospective employees. The deletion is based upon a determination that publication of the regulations should not be delayed until such time, if any, as the problems associated with these provisions can be resolved and is not to be construed as an administrative interpretation that any such provision would be beyond the legally authorized scope of the regulations.

It should also be noted that a new subpart A, Introductory Statement, has been added to the proposed regulations. This subpart describes the manner in which the regulations will be administered and enforced, explains the format of the proposed regulations and quotes fully the authorizing statutory provisions. The inclusion of the authorizing statutory provisions will enable the reader to refer to one document containing both the statutory and regulatory provisions. As is explained in § 2.5, each section in Subparts B through E which sets forth the rules on a given topic is followed by a section having the same number, but with the suffix -1 added, which sets forth the basis and purpose for the rules.

Interested persons are invited to submit written comments, views, or arguments with respect to the proposed regulations within 30 days of the date of publication of this notice to the Office of the General Counsel, Special Action Office for Drug Abuse Prevention, Room 3026, 726 Jackson Place NW., Washington, D.C. 20506, telephone (202) 456-6660. Comments received will be available for public inspection at that address on weekdays during regular business hours. The comments will also be available for public inspection on weekdays during regular business hours at the Office of the Administrator, Alcohol, Drug Abuse and Mental Health Administration, Rm. 13C-06, 5600 Fishers Lane, Rockville, Maryland 20852.

Accordingly, pursuant to the authority of section 408 of the Drug Abuse Office and Treatment Act of 1972, as amended by Pub. L. 93-282 (21 U.S.C. 1175), and section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Pub. L. 93-282 (42 U.S.C. 4582), the Special Action Office for Drug Abuse Prevention, and the Department of Health, Education, and Welfare, propose to amend Subchapter A of Chapter I, Title 42, Code of Federal Regulations, by adding a new Part 2 to read as set forth below.

Dated: May 1, 1975.

[s] THEODORE COOPER,
Acting Assistant Secretary for Health, Department of Health, Education, and Welfare.

Approved: May 6, 1975.

[s] STEPHEN KURZMAN,
Acting Secretary of Health, Education, and Welfare.

Dated: May 7, 1975.

GRASTY CREWS, II,
General Counsel, Special Action Office for Drug Abuse Prevention.

Dated: April 16, 1975.

ROBERT DUPONT,
Director, Special Action Office for Drug Abuse Prevention.

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Subpart A—Introductory Statement

§ 2.1 Statutory authority—drug abuse.

(a) *Statutory provisions effective May 14, 1974.* Insofar as the provisions of this part pertain to any program or activity relating to drug abuse education, training, treatment, rehabilitation, or research, such provisions are authorized under section 408 of Pub. L. 92–255, the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1175) as amended by section 303 of Pub. L. 93–282 (88 Stat. 137). That section reads as follows:

§ 408 Confidentiality of patient records.

(a) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (c), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b)(1) The content of any record referred to in subsection (a) may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g).

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

(f) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) The Director of the Special Action Office for Drug Abuse Prevention, after consultation with the Administrator of Veterans' Affairs and the heads of other Federal departments and agencies substantially affected thereby, shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Director are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) *Amendments effective June 30, 1975.* Effective on the date specified in section 104 of the Drug Abuse Office and Treatment Act of 1972 (June 30, 1975), the first sentence of section 408(g) above, will be amended by striking "Director of the Special Action Office for Drug Abuse Prevention" and inserting in lieu thereof "Secretary of Health, Education, and Welfare", and the second sentence of such section will be amended by striking "Director" and inserting "Secretary" in lieu thereof. Also effective on that date, section 408, above, will be further amended by (1) striking out "The" and inserting in lieu thereof "Except as provided in subsection (h) of this section, the" in the first sentence of subsection (g) of such section; and (2) adding at the end of such section the following new subsection:

(h) The Administrator of Veterans' Affairs, through the Chief Medical Director, shall, to the maximum feasible extent consistent with their responsibilities under title 38, United States Code, prescribe regulations making applicable the regulations established by the Secretary under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from drug abuse. In prescribing and implementing regulations pursuant to this subsection, the Administrator shall, from time to time, consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

§ 2.2 Statutory authority—alcohol abuse.

Insofar as the provisions of this part pertain to any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, such provisions are authorized under section 333 of Pub. L. 91–616, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. 4582), as amended by section 122(a) of Pub. L. 93–282, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974 (88 Stat. 131). As so amended, that section reads as follows:

CONFIDENTIALITY OF RECORDS

SEC. 333. (a) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b)(1) The content of any record referred to in subsection (a) may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g).

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

(f) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(h) The Administrator of Veterans' Affairs, through the Chief Medical Director, shall, to the maximum feasible extent consistent with their responsibilities under title 38, United States Code, prescribe regulations making applicable the regulations prescribed by the Secretary under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from alcohol abuse or alcoholism. In prescribing and implementing regulations pursuant to this subsection, the Administrator shall, from time to time, consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

§ 2.3 Previous regulations as controlling authority.

Attention is called to the interpretative regulations, 21 CFR Part 1401, issued by the Special Action Office for Drug Abuse Prevention (37 FR 24636, November 17, 1972, as revised 38 FR 33744, December 6, 1973, referred to hereinafter in this part as the "previous regulations"). Those regulations have been given a special status as controlling authority by the provisions of section 303(d) of Pub. L. 93–282, as well as the references in the legislative history of that act to the precedents established under section 408 of Pub. L. 92–255. Such references appear at page 11 of House Committee Report No. 93–759 and at page H3563 of the Congressional Record for May 6, 1974. The latter citation is to a detailed analysis of the bill in its final form which was submitted for the Record by its floor manager, Chairman Staggers of the Interstate and Foreign Commerce Committee, when the bill was up for final action by the House of Representatives.

§ 2.4 General purposes.

(a) *Policy objectives.* The purpose of the regulations set forth in this part is to implement the authorizing legislation in a manner that, to the extent practicable, takes into account two streams of legal thought and social policy. One has to do with enhancing the quality and attractiveness of treatment systems. The other is concerned with the interests of patients as citizens, most particularly in regard to protecting their rights of privacy. Within each stream there are cross-currents, and it should come as no surprise that areas of turbulence are to be found at their confluence.

(b) *Limited purpose.* The regulations contained in this part are not intended to direct the manner in which substantive functions, such as research, treatment, and evaluation, should be carried out, but rather to define the minimum requirements for the protection of confidentiality of patient records which must be satisfied in connection with the conduct of those functions in order to carry out the purposes of the authorizing legislation. This does not mean that observance of only the minimum legal requirements is always the wisest course, but in framing these regulations, allowance has necessarily been made for a diversity of emphasis and approach in the many different jurisdictions and by the great variety of public and private agencies which must find a way to function within the limits here prescribed.

§ 2.5 Format.

(a) *Basis and purpose sections.* Each section setting forth rules on any given topic in Subparts B through E of this part is followed by a section setting forth their basis and purpose. In many cases, the basis and purpose section is itself an interpretative rule regarding the legal authority of the rulemakers. In other instances, it summarizes historical or evidentiary material relevant to the validity and interpretation of the section which precedes it.

(b) *Statutory rules fully incorporated.* Although, for convenience of reference, the statutory basis for this part is set out in full in §§ 2.1 and 2.2. The regulations in Subparts B through E of this part are intended to include all of the operative statutory provisions.

§ 2.6 Administration and enforcement in general.

It is not contemplated that any particular agency will be set up specifically to enforce compliance with this part. Programs which receive Federal grants may be monitored for compliance with this and other applicable Federal law as an incident to the grant administration process. Similarly, FDA inspections of methadone programs will include inspection for compliance with this part, which is incorporated by reference in the methadone regulation (21 CFR 310.505).

§ 2.7 Reports of violations.

Any violation may be reported to the United States Attorney for the judicial district in which the violation occurs. Violations on the part of methadone programs may be reported to the regional offices of the Food and Drug Administration. Violations on the part of a Federal grantee or contractor may be reported to the Federal agency monitoring the grant or contract.

Subpart B—General Provisions

§ 2.11 Definitions and usages.—Rules.

(a) *Authorizing legislation.* The term "authorizing legislation" means section 408 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1175) and section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4582), as such sections may be amended and in effect from time to time.

(b) *Construction of terms.* The definitions and rules of construction set forth in this section are applicable for the purposes of this part. To the extent that they refer to terms used in the authorizing legislation, they are also applicable for the purposes of such legislation.

(c) *Alcohol abuse.* The term "alcohol abuse" includes alcoholism.

(d) *Drug abuse.* The term "drug abuse" includes drug addiction.

(e) *Diagnosis and treatment.* The terms "diagnosis" and "treatment" include interviewing, counselling, and any other services or activities carried on for the purpose of or as an incident to diagnosis, treatment, or rehabilitation with respect to drug abuse or alcohol abuse, whether or not conducted by a member of the medical profession.

(f) *Program.*

(1) The term "program", when referring to an individual or organization, means either an individual or an organization furnishing diagnosis, treatment, or referral for alcohol abuse or drug abuse.

(2) The term "program", when not used in the sense defined in paragraph (f)(1), means a plan or procedure, whether functional or organizational, and whether or not governmental, for dealing with alcohol abuse or drug abuse problems from either an individual or a social standpoint.

(g) *Program evaluation.*

The term "program evaluation" means an evaluation of—

(1) The effectiveness, efficiency, compliance with applicable therapeutic, legal, or other standards, or other aspects of the performance, of a program as defined in paragraph (f)(1) of this section, or

(2) The validity, effectiveness, efficiency, practicability, or other aspects of the utility or success of a program in the sense defined in paragraph (f)(2) of this section.

(h) *Program director.* The term "program director" in the case of a program which is an individual means that individual, and in the case of a program which is an organization, the individual, if any, who is the principal, or, in the case of organizations consisting of partners or under the control of a board of directors, board of trustees or other governing body, the individual designated as program director, managing director, or otherwise vested with executive authority with respect to the organization.

(i) *Patient.* The term "patient" means any individual (whether referred to as a patient, client, or otherwise) who has applied for or been given diagnosis or treatment for drug abuse or alcohol abuse and includes any individual who, after arrest on a criminal charge, is interviewed and/or tested in connection with drug or alcohol abuse preliminary to a determination as to eligibility to participate in a treatment or rehabilitation program.

(j) *Patient identifying information.* The term "patient identifying information" means the name, address, social security number, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a patient identifying number assigned by a program.

(k) *Alcohol abuse or drug abuse prevention function.* The term "alcohol abuse or drug abuse prevention function" means any program or activity relating to alcohol abuse or drug abuse education, training, treatment, rehabilitation, or research, and includes any such function even when performed by an organization whose primary mission is in the field of law enforcement or is unrelated to alcohol or drugs.

(l) *Service organization.* The term "service organization" means an individual or organization which provides services to a program such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services.

(m) *Qualified service organization.* The term "qualified service organization" means a service organization which has entered into a written agreement with a program pursuant to which the service organization—

(1) Acknowledges that in receiving, storing, processing, or otherwise dealing with any information from the program about patients in the program, it is fully bound by the provisions of this part;

(2) Undertakes to institute appropriate procedures for safeguarding such information, with particular reference to patient identifying information; and

(3) Undertakes to resist in judicial proceedings any efforts to obtain access to information pertaining to patients otherwise than as expressly provided for in this part.

(n) *Records.* The term "records" includes any information, whether recorded or not, relating to a patient, received or acquired in connection with the performance of any alcohol abuse or drug abuse prevention function, whether such receipt or acquisition is by a program, a qualified service organization, or any other agency or entity.

(o) *Communications not constituting disclosure.* The following types of communications do not constitute disclosures of records:

(1) Communications of information within a program between or among personnel having a need for such information in connection with their duties.

(2) Communications between a program and a qualified service organization of information needed by the organization to perform its services to the program.

(3) Communications of information which includes neither patient identifying information nor identifying numbers assigned by the program to patients.

(p) *Previous regulations.* The term "previous regulations" refers to the interpretative regulations issued by the Special Action Office for Drug Abuse Prevention, 21 CFR Part 1401, originally published November 17, 1972, 37 FR 24636, as revised December 6, 1973, 38 FR 33744.

(q) *State law.* The term "State law" refers to the law of a State or other jurisdiction, such as the District of Columbia, as distinguished from that Federal law which is applicable to transactions taking place within the States. As applied to transactions which do not take place in any State or other similar jurisdiction, the term refers to Federal common law as modified by any applicable Federal statutes and regulations.

(r) *Third party payer.* The term "third party payer" means any organization (or person acting as agent or trustee for an organization or fund) which pays or agrees to pay for diagnosis or treatment furnished or to be furnished to a particular individual, where such payment or agreement to pay is on the basis of an individual relationship between the payer and the patient (or a member of the patient's family in the case of self-and-family insurance coverage or similar arrangements) evidenced by a contract, and insurance policy, a certificate of membership or participation, or similar documentation.

(s) *Funding source.* The term "funding source" means any individual or any public or private organization, including any Federal, State, or local governmental agency, which makes payments in support of a program. A funding source is not, as such, a third party payer, even where its payments are based directly or indirectly on the program's patient load with or without respect to specified categories of eligible persons.

(t) *August 22, 1974 draft.* References to the "August 22, 1974 draft" are to the draft regulations set out in the Advance Notice of Proposed Joint Rulemaking published in the FEDERAL REGISTER on August 22, 1974, 39 FR 30426, by the Department of Health, Education, and Welfare and the Special Action Office for Drug Abuse Prevention.

§ 2.11–1 Definitions and usages.—Basis and purpose.

(a) *In general.* The definitions are based upon the legislative history of and experience with the authorizing legisla-

tion, and are intended as aids to construing the provisions of this part to carry out the purposes of those statutes.

(b) *Coverage of applicants for treatment.* Section 2.11(i) is intended to make it clear that records of the identity and other information about a person whose application is rejected or withdrawn are fully as much covered by this part as records pertaining to a patient actually accepted for treatment.

(c) *Program terminology for patients not controlling.* While many programs prefer to use "client" or some other term instead of "patient" to describe the recipients of their services, it is believed preferable to use terminology in this part which is consistent with that used in the authorizing legislation. It should be clearly understood, however, that the records of any individual who fits the definition set forth in § 2.11(i) are covered, no matter what terminology the program may use to designate his status.

(d) *Origin of "prevention function" terminology.* The definition of alcohol abuse or drug abuse prevention function in § 2.11(k) is adapted from the definition of drug abuse prevention function in section 103(b) of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1103(b)). Although there was no corresponding defined term available to the draftsman of the 1974 amendment to section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4582), it is clear from the legislative history that the coverage of alcohol abuse patient records was intended to be fully as wide as the coverage of drug abuse patient records, and the definition in § 2.11(k) reflects that intention.

(e) *Ambiguity of the term "program".* It is recognized that it is ordinarily poor drafting technique to use the same term in senses which are as different, yet related, as those in §§ 2.11(f)(1) and 2.11(f)(2). This part, however, has to be read both in conjunction with the Food and Drug Administration's Methadone Regulation and the Drug Abuse Office and Treatment Act of 1972. The Methadone Regulation (21 CFR 310.505) clearly uses the term "program" in the § 2.11(f)(1) sense. In section 103(b) of the Act (21 U.S.C. 1103(b)), it is clearly used in the § 2.11(f)(2) sense, and the usage in section 408(b)(2)(B) of the Act has from its original enactment been administratively interpreted to include both senses. As used in this part, the context should indicate the intended meanings with sufficient clarity to make this preferable to creating and defining new terminology which would be different from that used in related regulations and the authorizing legislation.

(6) *Construction of disclosures.* Section 2.11(o) is intended to clarify the status of communications which are carried on within a program or between a program and persons or organizations which are assisting it in providing patient care. The authorizing legislation was not intended to prohibit programs from carrying on accepted practices in terms of obtaining specialized services from outside organizations. In conjunction with the definition of qualified service organizations, set forth in § 2.11(m), the provisions of § 2.11(o) should prevent the development of abuses in this area.

§ 2.12 Applicability.—Rules.

(a) *In general.* Except as provided in paragraph (b) of this section, this part applies to records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any alcohol abuse or drug abuse prevention function—

(1) Which is conducted in whole or in part, whether directly or by grant, contract, or otherwise, by any department or agency of the United States,

(2) For the lawful conduct of which in whole or part any license, registration, application, or other authorization is required to be granted or approved by any department or agency of the United States,

(3) Which is assisted by funds supplied by any department or agency of the United States, whether directly through a grant, contract, or otherwise, or indirectly by funds supplied to a State or local government unit through the medium of contracts, grants of any description, general or special revenue sharing, or otherwise, or

(4) Which is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program conducting such function, or by a way of a tax-exempt status for such program.

(b) *Armed Forces and Veterans' Administration.*

(1) The provisions of this part do not apply to any interchange, entirely within the Armed Forces, within those components of the Veterans' Administration furnishing health care to veterans, or between such components and the Armed Forces, of records pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice.

(2) Except as provided in paragraph (b)(1) of this section, this part applies to any communication between any person outside the Armed Forces and any person within the Armed Forces.

(3) Except as provided in paragraph (b)(1) of this section, this part applies, insofar as it pertains to any drug abuse prevention function, to any communication between any person outside those components of the Veterans' Administration furnishing health care to veterans and any person within such components, until such date as the Secretary of Health, Education and Welfare exercises his authority (conferred by an amendment effective June 30, 1975) to prescribe regulations under section 408 of Pub. L. 92-255 (21 U.S.C. 1175). After such date, this part applies thereto to such extent as the Administrator of Veterans' Affairs, through the Chief Medical Director, by regulation makes the provisions of this part applicable thereto.

(4) Except as provided in paragraph (b)(1) of this section, this part applies, insofar as it pertains to any alcohol abuse prevention function, to any communication between any person outside those components of the Veterans' Administration furnishing health care to veterans and any person within such components, to such extent as the Administrator of Veterans' Affairs, through the Chief Medical Director, by regulation makes the provisions of this part applicable thereto.

(c) *Period covered as affecting applicability.* The provisions of this part apply to records of identity, diagnosis, prognosis, or treatment pertaining to any given individual maintained over any period of time which, irrespective of when it begins, does not end before March 21, 1972, in the case of diagnosis or treatment for drug abuse or before May 14, 1974, in the case of diagnosis or treatment for alcohol abuse.

§ 2.12-1 Applicability.—Basis and purpose.

(a) The broad coverage provided by § 2.12(a) is appropriate in the light of the remedial purposes of the statutes as well as the practical desirability of certainty and uniformity. Sections 2.12(a)(1) and 2.12(a)(2) simply follow the terms of subsection (a) of the statutes, with some expansion for the sake of clarity and explicitness.

(b) Sections 2.12(a)(3) and 2.12(a)(4) are based upon the use by Congress of the phrase "directly or indirectly assisted by any department or agency of the United States". In the light of the multiplicity and extent of Federal programs and policies which can be of assistance to drug and alcoholism programs, this wording strongly suggests an intention to provide the broadest coverage consistent with the literal terms of the statutes. Many programs commence with direct Federal assistance, financial, technical, or both, and later continue with State aid and private, tax-deductible contributions. It would be manifestly contrary to the general policy sought to be effectuated by the legislation if the confidential status of a program's records were to terminate, or even be called into question, by the cessation of direct Federal assistance.

(c) With regard to § 212(a)(3), it seems clear that whenever a State or local government is assisted by the Federal government by way of revenue sharing or other unrestricted grants, all of the programs and activities of the State or local government are thereby indirectly assisted, and thus meet that aspect of the statutory criteria for coverage.

(d) Section 2.12(a)(4) follows the doctrine established in *McGlotten v. Connally*, 338 F. Supp. 448 (D.C. D.C., 1972), in which it was held that the deductible status of contributions to an organization constitutes "Federal financial assistance" within the meaning of section 601 of the 1964 Civil Rights Act (42 U.S.C. 2000d). The inclusion of the ad-

jective "indirect" as a modifier of the term "assistance" as used in the provisions of law authorizing this part suggests an intention to provide coverage at least as broad, if not broader than, section 601 of the Civil Rights Act in respect of financial assistance. See, also, *Green v. Connally*, 330 F. Supp. 1150 (D.C. D.C., 1971) aff'd sub. nom. *Coit v Green*, 404 U.S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (1971).

(e) Section 2.12(b) essentially repeats the interpretation given in § 1401.02(b) of the previous regulation except that it takes account of the special provisions inserted in the new law with reference to the Veterans Administration, and makes clear that the exemption for communications within the military-VA system does not generally apply to records pertaining to civilians.

(f) Section 2.12(c), which deals with the question of how the period covered by any given set of records affects the applicability of these regulations to them, restates the principle set forth in § 1401.-02(a) of the previous regulations, and applies it to records in the field of alcohol abuse as well as drug abuse. The authorizing legislation contains no effective date provisions. A construction which would apply the statutes to records of completely closed treatment episodes, records necessarily made and maintained prior to the enactment of the legislation, would create serious administrative problems. It seems doubtful, in any case, whether such records have been "maintained," within the meaning of the statutes, during any period of time after their enactment. On the other hand, if treatment is actually carried on after the enactment of the applicable statute, then all the records should be covered irrespective of when treatment was begun, because such records clearly are being "maintained" after the enactment of the legislation.

§ 2.13 General rules regarding confidentiality.—Rules.

(a) *In general.* Records to which this part applies shall be confidential and may be disclosed only as authorized by this part, and may not otherwise be divulged in any civil, criminal, administrative, or legislative proceeding conducted by any Federal, State, or local authority, whether such proceeding is commenced before or after the effective date of this part.

(b) *Unconditional compliance required.* The prohibition upon unauthorized disclosure applies irrespective of whether the person seeking disclosure already has the information sought, has other means of obtaining it, enjoys official status, has obtained a subpoena, or asserts any other justification or basis for disclosure not expressly authorized under this part.

(c) *Information covered by prohibition.* The prohibition on unauthorized disclosure covers all information about patients, including their attendance or absence, physical whereabouts, or status as patients, whether or not recorded, in the possession of program personnel, except as provided in paragraph (d) of this section.

(d) *Crimes on program premises or against program personnel.* Where a patient commits or threatens to commit a crime on the premises of the program or against personnel of the program, nothing in this part shall be construed as prohibiting personnel of the program from seeking the assistance of, or reporting such crime to, a law enforcement agency, but such report shall not identify the suspect as a patient. In any such situation, immediate consideration should be given to seeking an order under Subpart E of this part to permit the disclosure of such limited information about the patient as may be necessary under the circumstances.

(e) *Implicit and negative disclosures prohibited.* The disclosure that a person (whether actual or fictitious) answering to a particular description, name, or other identification is not or has not been attending a program, whether over a period of time or on a particular occasion, is fully as much subject to the prohibitions and conditions of this part as a disclosure that such a person is or has been attending such a program. Any improper or unauthorized request for any disclosure of records or information subject to this part must be met by a noncommittal response.

§ 2.13–1 General rules regarding confidentiality.—Basis and purpose.

(a) Section 2.13(a) enunciates the general principle of the statutory provisions, and is unchanged from § 1401.03 of the previous regulations.

(b) Sections 2.13(b) and 2.13(c) have been added on the basis of written comments on the draft regulations published August 22, 1974, in which there was a documented report that counsel for a program had advised the program that it could furnish information to the FBI about patients without their written consent and without completing a full judicial proceeding in accordance with Subpart E of this part. Sections 2.13(b) and 2.13(c) should clarify the original intent of the statutes and regulations to the extent of precluding such errors in the future.

(c) In the situation described in § 2.13(d), the desirability of the general prophylactic rule prohibiting disclosures by program personnel about patients regardless of whether such disclosures are from a written record must yield to the practical necessity to permit protection from, and prompt reporting of, criminal acts. In the preface to the first set of regulations issued under 21 U.S.C. 1175, it was emphasized that the operation of that section "in no way creates a sanctuary for criminals." (37 FR 24636, November 17, 1972). Section 2.13(d) is consistent with that contemporaneous administrative construction.

(d) Section 2.13(e) is adapted from § 1401.11 of the August 22, 1974 draft. The suggestion that this part be cited when declining to give information has been deleted on the basis of comments that correctly pointed out that such a citation, if given by an institution or program maintaining some records covered by this part and some not, would serve to identify the records inquired about as pertaining to treatment covered by this part.

§ 2.14 Penalty for violations.—Rules.

(a) *Penalty provided by law.* Any person who violates any provision of the authorizing legislation or any provision of this part shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(b) *Application to subsequent offenses.* Where a defendant has committed one offense under either section authorizing this part or any provision of this part authorized by that section, any offense thereafter committed under the same section or any provision of this part authorized under that section shall be treated as a subsequent offense.

§ 2.14–1 Penalty for violations.—Basis and purpose.

(a) Section 2.14 states the criminal penalty provided for in subsection (f) of the sections authorizing this part. It is included in this part for convenience and completeness. Some of the comments received on this section when originally proposed suggested that criminal penalties for violation should include imprisonment, but such a change would have to be made by legislation rather than rulemaking.

(b) Section 2.14(b) clarifies the intention that the "subsequent offense" need not be identical to the first offense, as long as it is committed with respect to the same statutory section. For example, a person whose first offense had consisted of improperly releasing the name of a patient in an alcoholism treatment program would be punishable for a "subsequent offense" if he later gives out information from the diagnostic work-up of an alcoholism patient.

§ 2.15 Minor patients.—Rules.

(a) *Definition of minor.* The term "minor" means a person who has not attained the age of 18 years or, in a State where a different age is expressly provided by State law as the age at which a person ceases to be a minor, the age prescribed by the law of such State.

(b) *Consent to disclosure in general.* Except as provided in paragraph (c), where consent is required for any disclosure under this part, such consent in the case of a minor must be given by both the minor and his parent, guardian, or other person authorized under State law to act in his behalf, but any disclosure made after the patient has ceased to be a minor may be consented to only by the patient.

(c) *Rule when State law authorizes treatment without parental consent.* Whenever a patient, acting alone, has the legal capacity under the applicable State law to apply for and obtain such diagnosis, counselling, administration of medication, or other services as actually are or were provided to him by the program

with respect to which he is or was a patient, any consent required for disclosure under this part may be given only by the patient, notwithstanding the fact that the patient may be a minor.

(d) *Initial contacts.* When a minor applies for services under circumstances other than those described in paragraph (c) of this section, the fact of such application may not be disclosed, except as an incident to a communication authorized under paragraph (f) of this section, without consent of the applicant, to the applicant's parent, guardian, or other person authorized under State law to act on behalf of the applicant. When such an applicant refuses consent, it must be explained to the applicant that while he or she has the right (subject to the provisions of paragraph (f) of this section) to withhold such consent, the services applied for cannot be provided without it.

(e) *Collection or attempted collection of payment for services.* Where State law authorizes the furnishing of services to a minor without the consent of the minor's parent or guardian, no inquiry may be made of the parent's or guardian's financial responsibility, and no bill, statement, request for payment, or any other communication in respect of such services may be transmitted directly or indirectly to such parent or guardian, without the express written consent of the patient. Such consent may not be made a condition of the furnishing of services except in the case of a program which is not required by law, and does not in fact hold itself out as willing, to furnish services irrespective of ability to pay.

(f) *Applicant lacking capacity for rational choice.* When, in the judgment of a program director a minor applicant for services, because of extreme youth or mental or physical condition, lacks the capacity to make a rational decision on whether to consent to the notification of a parent or guardian, and the situation of the applicant poses a substantial threat to the life or physical well being of the applicant or any other individual, and such threat might be reduced by communicating the relevant facts to a parent or guardian of the applicant, such facts may be so communicated by the program director or by program personnel authorized by the director to do so.

§ 2.15–1 Minor patients.—Basis and purpose.

(a) The statutes authorizing this part are totally silent on the issue of the capacity of a minor to give consent for disclosures, and there is nothing in the legislative history to suggest that the question was ever considered by Congress. The question is, however, one which arises repeatedly, and it is therefore appropriately addressed under the general rulemaking authority conferred by subsection (g) of the authorizing legislation.

(b) Perhaps no legal issues are more highly charged than those affecting the relationship of parent and child. Since Congress has not evidenced an intention to affect this relationship, it is clear that local law should govern, and the task of rulemaking is limited to that insuring, as far as possible, that the results under Federal law are consistent with local policy.

(c) Where a State has authorized the furnishing of treatment or other services of a given type to a minor without notice to or consent by the parent or guardian, it seems clear that a consistent Federal policy with respect to disclosure requires that consent for any disclosure of the treatment record be given by the minor. This policy, moreover, should not be frustrated by attempts to enforce parental financial responsibility in a situation where the State itself has determined that the minor should have a right to obtain services without involving the parent.

(d) A much more difficult problem is presented in the case of a minor who applies for services in a jurisdiction which has not determined that a minor should have the right to obtain them without parental knowledge or consent. The question may arise as to whether the clinician has an ethical or legal duty to notify the parent which conflicts with a duty of nondisclosure. The rules in § 2.15 are based upon the theory that Federal law should not invalidate a State policy which prohibits treatment without parental consent, but that keeping confidential a mere application for treatment is not ordinarily a sufficient transgression of such a State policy as to require an exception to the general Federal policy prohibiting disclosure of an application for services without the consent of the applicant.

(e) Section 2.15(f) deals with the case of the minor applicant who lacks the capacity to make a rational choice about consenting to disclosure. It is based upon the theory that where a person is actually as well as legally incapable of acting in his own interest, disclosures to a person who is legally responsible for him may be made to the extent that the best interests of the patient clearly so require. Any other rule could subject clinicians to an intolerable choice between violating the provisions of this part on the one hand, or failing to take action to avoid a preventable tragedy involving a minor, on the other. The statutes authorizing this part should not be read as requiring such a choice.

§ 2.16 Incompetent and deceased patients.—Rules.

(a) *Incompetent patients other than minors.* Where consent is required for any disclosure under this part, such consent in the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs may be given by the guardian or other person authorized under State law to act in the patient's behalf.

(b) *Deceased patients.*

(1) *In general.* Except as provided in paragraph (b)(2) of this section, where consent is required for any disclosure of this part, such consent in the case of records of a deceased patient may be given by an executor, administrator, or other personal representative. If there is no appointment of a personal representative, such consent may be given by the patient's spouse, or if none, by any responsible member of the patient's family.

(2) *Vital statistics.* In the case of a deceased patient, disclosures required under Federal or State laws involving the collection of death and other vital statistics may be made without consent.

§ 2.16–1 Incompetent and deceased patients.—Basis and purpose.

Section 2.16 essentially repeats the substance of § 1401.04 of the previous regulations, broadened to reflect the fact that the statutes now allow any consensual disclosures permitted by the regulations, and to cover the situation of deceased patients for whom no formal appointment of an executor, administrator, or other personal representative has been made. Written comments were received to the effect that the power to consent to disclosure in the case of a deceased patient should be limited to a personal representative. The expense of probate or administration in some jurisdictions could cause financial hardship to survivors, and on balance it is believed that where the assets of an estate are insufficient to justify the appointment of a personal representative, the public interest is served by permitting others to consent to disclosure.

§ 2.17 Security precautions.—Rules.

(a) *Precautions required.* Appropriate precautions must be taken for the security of records to which this part applies. Records containing any information pertaining to patients shall be kept in a locked file cabinet, safe, or other similar container when not in use.

(b) *Policies and procedures.* Depending upon the type and size of the program, appropriate policies and procedures should be instituted for the further security of records. For example, except where this function is personally performed by the program director, a single member of the program staff should be designated to process inquiries and requests for patient information, and a written procedure should be in effect regulating and controlling access by those members of the staff whose responsibilities require such access, and providing for accountability.

§ 2.17–1 Security precautions.—Basis and purpose.

The enormous variations in both the size and the type of programs to which this part is applicable preclude the formulation of specific requirements with respect to the physical security of records. Almost any requirement which could be laid down would, under some circumstances, either be impracticable or perverse in its effects. For example, in a facility handling a variety of medical records, all of which are confidential and so marked, a requirement that those pertaining to drug or alcohol treatment be marked in any distinctive way would merely serve to identify such records as

pertaining to drug or alcohol treatment—precisely the opposite of the intended result. The purpose of this section, which is based upon § 1401.25 of the previous regulations, is to alert programs to the necessity of exercising due care with respect to the security of patient records.

§ 2.18 Extent of disclosure.—Rule.

Any disclosure made under this part, whether with or without the patient's consent, shall be limited to information necessary in the light of the need or purpose for the disclosure.

§ 2.18–1 Extent of disclosure.—Basis and purpose.

(a) Section 2.18 expresses the general principle, which has application in many different contexts, that any disclosure from records covered by this part should be limited to information necessary in the light of the need or purpose for the disclosure. It is identical to § 1401.06 of the previous regulations.

(b) This section should not be misunderstood as imposing a limitation on the scope of records which may or should be made available to health agencies conducting inspections as described in § 2.55. All of the records maintained by a program may be relevant to such inspection. The Congress has determined that disclosure under such circumstances is not a violation of the statutes authorizing this part; where such disclosure is required by Federal or State law, and the inspecting agency is a qualified State health agency as defined in § 2.55(e)(1), it becomes the responsibility of that agency to protect the confidentiality of information it acquires in the course of its lawful activities.

§ 2.19 Undercover agents and informants.—Rules.

(a) *Definitions.* As used in this section, § 2.19–1, §§ 2.67, and 2.67–1,—

(1) The term "undercover agent" means a member of any Federal, State, or local law enforcement or investigative agency whose identity as such is concealed from either the patients or personnel of a program in which he enrolls or attempts to enroll.

(2) The term "informant" means a person who, at the request of a Federal, State, or local law enforcement or investigative agency or officer, carries on observation of one or more persons enrolled in or employed by a program in which he is enrolled or employed, for the purpose of reporting to such agency or officer information concerning such persons which he obtains as a result of such observation subsequent to such request.

(b) *General prohibition.* Except as otherwise provided in paragraph (c) of this section, or as specifically authorized by a court order granted under § 2.67,—

(1) No undercover agent or informant may be employed by or enrolled in any alcohol or drug abuse treatment program;

(2) No supervisor or other person having authority over an undercover agent may knowingly permit such agent to be or remain employed by or enrolled in any such program; and

(3) No law enforcement or investigative officer may recruit or retain an informant with respect to such a program.

(c) *Exceptions.* The enrollment of a law enforcement officer in a treatment program shall not be deemed a violation of this section if (1) such enrollment is solely for the purpose of enabling the officer to obtain treatment for his own abuse of alcohol or drugs, and (2) his status as a law enforcement officer is known to the program director.

§ 2.19–1 Undercover agents and informants.—Basis and purpose.

(a) In many instances, persons who are patients in treatment programs are making their first tentative efforts toward re-integration into productive society. They may be both vulnerable and suspicious, and the presence in a treatment program of undercover law enforcement agents or informants can have a devastating effect on the program's morale and therapeutic effectiveness. Moreover, it would appear that the purpose of such agents or informants may be to obtain precisely the type of personal information which might be revealed by inspection of counselor notes and other patient records maintained by the program. Thus, the placing of an undercover agent or informant in a program, either as a patient or as an employee, would appear to be contrary to the purposes for which the provisions of law authorizing this part were enacted, and properly subject to prohibition under regulations expressly authorized to carry out those purposes.

(b) From a policy standpoint, § 2.19 is based on the reasoning that while the use of undercover agents and informants in treatment programs is ordinarily to be avoided, there may occasionally arise circumstances where their use may be justified. Accordingly, where a showing is made in an application for an order under § 2.67 that the criteria set forth in that section are satisfied, the court may grant such an order.

(c) When this section of the regulations was proposed, numerous written comments were received urging that there be an absolute prohibition on the use of undercover agents and informants, and most of the witnesses at the hearings who addressed the issue at all testified to the same effect. A number of comments were received to the effect that § 2.19 should be dropped altogether, but this request was always clearly and often explicitly predicated on the assumption that failure to say anything about undercover agents and informants would make their use illegal. Our view is to the contrary: we think that the statutes, standing alone, do not prohibit the practice, and thus that in the absence of a specific prohibition in these regulations, the use of undercover agents and informants in treatment programs would not be unlawful. Since this is a view which we believe to be shared by the law enforcement and investigative agencies which are affected by § 2.19, there is as a practical matter no alternative to predicating these regulations upon its correctness.

(d) However desirable it may be to limit the use of undercover agents and informants in treatment programs, we think a strong argument can be made against our power to impose an absolute prohibition. To the extent that the practice is susceptible to regulation through the rulemaking process at all; it is on the theory that it opens the way to disclosure of information which is or should be in program records, and thus is contrary to the purposes of the statutes. Since subsection (g) of the statutes confers express rulemaking authority to carry out these purposes, regulation of the use of undercover agents and informants is a proper subject for the exercise of that authority. But even the express statutory prohibition against direct disclosure of the content of patient records is subject to the power of the courts to authorize such disclosure under subsection (b)(2)(C) of the statutes. It seems difficult to argue that Congress intended to confer on rulemaking agencies the authority to impose an absolute prohibition even though its own restrictions (other than those on disclosures of patient identities from secondary records) are subject to being set aside by court order in particular cases. Since we have not attempted to exercise such an authority, it is not necessary to decide at this time whether it was conferred.

(e) A careful reading of the definitions set forth in § 2.19(a) is crucial to an understanding of the prohibitions which are imposed by § 2.19. Objections to the section were made informally but vigorously on behalf of the Drug Enforcement Administration, on the ground that the testimony of informants or undercover agents is frequently if not normally essential to the successful prosecution of cases arising under the Controlled Substances Act. It was said that in the form originally proposed, the section would cut off from treatment those who might agree to cooperate with law enforcement authorities, a result both inhumane and counterproductive. As the definition of an informant is intended to make clear, however, it is his function vis-a-vis personnel and fellow patients in the program in which he is enrolled which is controlling, and not his relationship, *per se*, with an investigative agency.

(f) Finally, the definition of informant is intended to clarify the distinction between an informant and an ordinary witness. It is the element of prearrangement which is crucial. In one of the comments received on §2.19 as proposed, it was urged that treatment programs should be considered as sanctuaries, but such a result was explicitly disclaimed in the initial publication of the previous regulations (37 FR 24636). In so saying, we are by no means insensitive to the anxieties repeatedly expressed in both testimony and comments on this section, but we

believe that the prohibition contained in § 2.19 and the procedures and criteria set forth in § 2.67 provide a measure of relief which is consistent with the structure and intent of the underlying statutes.

§ 2.20 Identification cards.—Rules.

(a) *Required use prohibited.* No program may require or request any patient to carry in his or her possession, while away from the program premises, an identification card or other form of identification which is issued by the program or which would tend to identify the bearer as a participant in it or any similar program.

(b) *Conditions of voluntary use.* Nothing in this section prohibits a program from issuing an identification card to a patient if the patient's counsellor or other authorized member of the program staff has explained to the patient that acceptance and use of the card is entirely voluntary and that neither an initial rejection nor a subsequent discontinuation of its use will in any way prejudice his or her record or standing in the program. In the case of any patient to whom an identification card or similar device was issued prior to the effective date of this section, or subsequent thereto in violation of this section, a counsellor or other authorized member of the program staff shall explain to the patient his right to turn it in without prejudice at any time.

(c) *On-premises exemption.* Nothing in this section prohibits a program from maintaining and using on its premises cards, photographs, tickets, or other devices, or using passwords or other information, to assure positive identification of patients, correct recording of attendance or medication, or for other proper purposes, as long as no pressure is brought on any patient to carry any such device when away from the program premises.

§ 2.20–1 Identification cards.—Basis and purpose.

Section 2.20 is in furtherance of one of the basic purposes of the statutes authorizing this part, namely, protection of patients from improper disclosure of their status as such. Regrettably, there appear to be areas where possession of a treatment program identification card can be prejudicial to a person under arrest or subjected to a search. In any part of the country, the accidental display or circulation of such a card by reason of its loss or theft could have adverse consequences for a variety of reasons. Since programs have other means of achieving the ends which identification cards are meant to serve, patients who do not wish to assume whatever risks may be involved in carrying such cards should not be compelled to do so.

§ 2.21 Disclosure to funding sources.—Rules.

(a) *Disclosure prohibited.* Patient identifying information may not be disclosed to a funding source as such, whether with or without patient consent.

(b) *Audits not prohibited.* This section does not prohibit a funding source from requiring that any program which it funds be audited for, among things, compliance with conditions of eligibility with respect to patients in that part of its patient load so funded in whole or part, but under no circumstances may any such funding source require that programs directly or indirectly report patient identifying information to it. Any such audit shall be subject to the requirements of §§ 2.53(d) and 2.53(e) and all other applicable provisions of this part, including § 2.54.

(c) *Contrary arrangements void.* Any provision or condition of any contract, grant, or other agreement or arrangement which is contrary to the provisions of this section is void and unenforceable, whether entered into before or after the effective date of this section.

§ 2.21–1 Disclosure to funding sources.—Basis and purpose.

In view of the fact that a very high proportion of the programs subject to this part are supported by various public and private agencies as funding sources, it is clear that the Congress did not intend funding sources, as such, to have access to patient identifying information. Any other construction of the statutes authorizing this part would make a mockery of them by permitting a flow of sensitive information to such a number and variety of outlets that it would be, for all practical purposes, uncontrollable. It is the purpose of § 2.21 to forestall any such construction unequivocally and finally.

§ 2.22 Disposition of program records.—Rules.

(a) *In general.* Except where such records are held for the purpose of conducting long-term research or evaluation projects, records maintained by a program containing patient identifying information shall be destroyed, or completely purged of patient identifying information, in accordance with the provisions of this section.

(b) *Programs continuing in operation.* Not more than five years after a patient's participation in a program has been formally terminated or not more than five years after the last entry in any records held by that program (or any transferee program) pertaining to such patient, whichever is earlier, the program's records shall be completely purged of any patient identifying information with respect to such patient, except that the program may, for not more than two years thereafter, maintain patient identifying information with respect to such patient in a special log or record of patients with respect to whom its entire record system has otherwise been urged of patient identifying information.

(c) *Programs discontinuing operation.* (1) When a program discontinues operations or is taken over or acquired by another program, its records to which this part applies with respect to any patient may, with the written consent of that patient, be turned over to the acquiring program or, if nose, to any other program specified in the patient's consent. Except as otherwise provided in this paragraph, any records to which this part applies, but for the transfer of which patient consent is not obtained, shall be either completely purged of patient identifying information, or destroyed.

(2) Where records are required by law to be kept for a specified period, and such period does not expire until after the discontinuation or acquisition of the program, and patient consent for their transfer is not obtained, such records shall be sealed in envelopes or other containers marked or labelled as follows: "Records of [insert name of program] required to be maintained pursuant to [insert citation to law or regulation requiring that records be kept] until a date not later than December 31, [insert appropriate year]."

(3) Records marked and sealed in accordance with paragraph (c)(2) of this section may be held by any lawful custodian, but may be disclosed by such custodian only under such circumstances and to such extent as would be permissible for the program in which they originated. As soon as practicable after the date specified on the label or legend required to be affixed pursuant to paragraph (c)(2), of this section, the custodian shall destroy the records. In the case of any program terminated by reason of bankruptcy, the expense of compliance with this paragraph shall be an expense of administration of the bankrupt estate.

§ 2.22–1 Disposition of program records.—Basis and purpose.

Testimony received at the hearings on the August 22, 1974 draft regulations, as well as further experience with the regulations then in force, clearly indicated a need for guidance in the matter of records disposition. Any limitations on the length of time records can be held are of necessity somewhat arbitrary, but the periods prescribed in § 2.22 appear to be consistent with practical experience.

§ 2.23 Former employees and others.—Rules.

The prohibitions of this part on disclosure of patient records or information contained therein apply to all individuals who are personnel of treatment programs, researchers, auditors, evaluators, service organizations, or others having access to such records or information, and continue to apply to such individuals with respect to such records or information after the termination of their employment or other relationship or activity giving rise to such access.

§ 2.23–1 Former employees and others.—Basis and purpose.

The prohibition contained in § 2.23 is arguably an interpretation of the authorizing legislation which would be necessary as a matter of law even in the absence of this part; its validity as an exercise of the rulemaking power conferred by subsection (g) of the authorizing legislation seems beyond dispute.

§ 2.24 Relationship to State laws.—Rules.

The enactment of the provisions of law authorizing this part was not intended to preempt the field of law covered thereby to the exclusion of State laws not in conflict therewith. If a disclosure permitted under the provisions of this part, or under a court order issued pursuant thereto, is prohibited under State law, nothing in this part or in the provisions of law authorizing this part may be construed to authorize any violation of such State law. No State law, however, may either authorize or compel any disclosure prohibited by this part.

§ 2.24–1 Relationship to State laws.—Basis and purpose.

Section 2.24 sets forth publicly an interpretation which, in informal communications, has consistently been given to 21 U.S.C. 1175 since its original enactment, and clearly has equal applicability to 42 U.S.C. 4582.

§ 2.25 Relationship to section 303(a) of Public Health Service Act and section 502(c) of Controlled Substances Act.—Rules.

(a) *Research privilege description.* In some instances, there may be concurrent coverage of a program or activity by the provisions of this part and by a regulation or other administrative action under section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) or section 502(c) of the Controlled Substances Act (21 U.S.C. 872(c)). The latter two provisions of law, referred to hereinafter in this section as the research privilege sections, confer on the Secretary of Health, Education, and Welfare, and on the Attorney General, respectively, the power to authorize researchers to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subject of such research. The Secretary of Health, Education, and Welfare may grant this privilege with respect to any "research on mental health, including research on the use and effect of alcohol and other psychoactive drugs." The Attorney General's power is conferred as part of a section authorizing research related to enforcement of laws under his jurisdiction concerning substances which are or may be subject to control under the Controlled Substances Act, but is not expressly limited to such research. Regardless of whether a grant of research privilege is made by the Secretary or by the Attorney General, it is expressly provided that persons who obtain it "may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify" the subjects of research for which the privilege was obtained.

(b) *Comparison with authority for this part.* Although they deal, in a sense, with the same subject matter, and may on occasion concurrently cover the same transactions, it is important to note the differences between the research privilege sections (21 U.S.C. 872(c) and 42 U.S.C. 242a(a)) and the provisions of law (21 U.S.C. 1175 and 42 U.S.C. 4582) which authorize this part. Briefly, these differences are as follows:

(1) Although they contain broad grants of express rulemaking authority, the provisions of law by which this part is authorized are self-executing in the sense that they are operative irrespective of whether the rulemaking authority is exercised. The protection afforded by the research privilege sections, on the other hand, can only come into existence as a result of affirmative administrative action.

(2) The provisions of law authorizing this part, as well as the provisions of this part itself, impose affirmative duties with respect to the records to which they apply, and the violation of such duties is subject to criminal penalties. To the extent that a privilege is thereby created, it grows out of the duties thus imposed. The research privilege sections, by contrast, impose no duties by their own terms, and if any duties are implied from their existence, they would have to be enforced on the basis of an implicit civil liability for damages or by equitable relief, as there are no criminal or administrative sanctions available.

(3) The exercise of the authority conferred by the research privilege sections is subject to administrative discretion, whereas in the case of the duties imposed under this part there is judicial discretion, within the limits and subject to procedures and criteria prescribed by statute and regulation, to grant relief in particular cases.

(c) *Grant of research privilege not affected by (b)(2)(C) order.* The issuance of an order under subsection (b)(2)(C) of either of the sections authorizing this part (21 U.S.C. 1175 and 42 U.S.C. 4582) in no way affects the continuing effectiveness of any exercise of the authority of the Secretary of Health, Education, and Welfare under 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) or the Attorney General under section 502(c) of the Controlled Substances Act (21 U.S.C. 872(c)).

§ 2.25–1 Relationship to section 303(a) of Public Health Service Act and section 502(c) of Controlled Substances Act.—Basis and purpose.

(a) In Pub. L. 93–282, the Congress expressly amended (by sections 122(a) and 303(a), 88 Stat. 131 and 137) the provisions of law which authorize this part, expressly amended (by section 122(b), 88 Stat. 132) the research privilege section under the Secretary's jurisdiction, and made explicit reference (in section 303(d), 88 Stat. 139) to the regulations previously issued by the Special Action Office for Drug Abuse Prevention reconciling the provisions of section 408 of the Drug Abuse Office and Treatment Act of 1972 with the provisions of the research privilege sections. When the bill which became Pub. L. 93–282 was before the House of Representatives for its last Congressional consideration before transmission to the President, its floor manager, Chairman Staggers of the Committee on Interstate and Foreign Commerce, inserted in the Record a detailed analysis of the bill in its final form (Congressional Record, daily edition, May 6, 1974, page H3563). This analysis contained the following paragraph:

> The relationship of section 303(a) of the Public Health Service Act, authorizing the administrative grant of absolute confidentiality for research, to section 408 of the Drug Abuse Office and Treatment Act of 1972, requiring that Federally-connected drug abuse patient records generally be kept confidential, has been correctly described in an interpretative regulation, 21 C.F.R. 1401.61 and 1401.62, which was upheld in *People v. Newman*, 32 N.Y. 2d 379, [reversing] 336 N.Y.S. 2d 127, 298 N.E. 2d 651 (1973); *certiorari* denied, [414] U.S. [1163], 94 S. Ct. 927, [39 L. Ed. 2d 116] (1974). For that reason, among others, section 303(d) of the Senate amendment expressly continues the effectiveness of the current regulation promulgated by the Director of the Special Action Office for Drug Abuse Prevention. Thus, although section 502(c) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is not explicitly referred to in this legislation, the congressional intent is clear that the authority conferred by that section was not modified by Pub. L. 92–255, and is not intended to be modified by the bill now before the House.

(b) Sections 2.25 and 2.61 restate, in substance, the interpretative rules (§§ 1401.61 and 1401.62 of the previous regulations) referred to in the passage quoted in paragraph (a) of this section, modified to reflect the amendment made to section 303(a) of the Public Health Service Act (42 U.S.C. 242(a)) by Pub. L. 93–282.

Subpart C—Disclosures With Patient's Consent

§ 2.31 Written consent required.—Rules.

(a) *Form of consent.* Except as otherwise provided, a consent for a disclosure under this part must be in writing and must contain the following:

(1) The name of the program which is to make the disclosure.

(2) The name of the person or organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose or need for the disclosure.

(5) The specific type of information to be disclosed.

(6) A statement that the consent is subject to revocation at any time and, unless an earlier date is specified, that it expires in any event 60 days after it is signed, except as otherwise specifically provided hereinafter in this part.

(7) The date on which the consent is signed.

(8) The signature of the patient and, when required under § 2.15, the signature of a person authorized to give consent under that section; or, when required under § 2.16, the signature of a person authorized to sign under that section in lieu of the patient.

(b) *Disclosure prohibited with deficient consent.* No program may disclose any information on the basis of a consent form—

(1) which on its face substantially fails to conform to any of the requirements set forth in paragraph (a), of this section, or

(2) which is known, or in the exercise of reasonable care should be known, to the responsible personnel of the program to be materially false in respect to any item required to be contained therein pursuant to paragraph (a) of this section.

(c) *Falsification prohibited.* No person may knowingly make, sign, or furnish to a program any consent form which is materially false with respect to any item required to be contained therein pursuant to paragraph (a) of this section.

§ 2.31–1 Written consent required.—Basis and purpose.

(a) The use of a consent form containing all of the elements specified in § 2.31(a) is necessary to assure compliance with the requirements of this subpart. Under § 1401.21 of the previous regulations, a much more abbreviated form was permissible, because the circumstances under which any consent could be given were very strictly limited. Now that the authorizing legislation permits disclosure with consent "to such extent, under such circumstances, and for such purposes as may be allowed under regulations," the consent form should show on its face information sufficient to indicate compliance with the regulations.

(b) Sections 2.31(b) and 2.31(c) are an exercise of the general rulemaking authority in subsection (g) of the authorizing legislation. Section 2.31(b) imposes a legal liability on programs and their personnel for disclosure of information on the basis of a materially deficient consent, and § 2.31(c) imposes liability on any person who submits a falsified consent form to a program.

§ 2.32 Prohibition on redisclosure.—Rules.

(a) *Notice to accompany disclosure.* Whenever a written disclosure is made under authority of this subpart, except a disclosure to a program or other person whose records pertaining to the patient are otherwise subject to this part, the disclosure shall be accompanied by a written statement substantially as follows: "This information has been disclosed to you from records whose confidentiality is protected by Federal law. Federal regulations (42 CFR Part 2) prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure may be accompanied or followed by such a notice.

(b) *Consent required for redisclosure.* A person who receives information from patient records and has been notified substantially in accordance with paragraph (a) of this section is prohibited from making any disclosure of such information except with the specific written consent of the person to whom it pertains, or as otherwise permitted under this part.

(c) *Restriction on redisclosure.* Whenever information from patient records is needed by any person, such information must be obtained directly from the program maintaining such records and not from another person to whom disclosure thereof has been made, except where the initial disclosure was intentionally and expressly made for the purpose of redisclosure (as for example in the case of an employment agency), or the information is no longer available from the program and redisclosure is not prohibited by any other provision of this part.

§ 2.32–1 Prohibition on redisclosure.—Basis and purpose.

(a) Section 2.32 is intended to provide a reasonable protection against unauthorized disclosure of information disclosed with consent in accordance with this subpart. There is, of course, no problem where those to whom such disclosures are made are themselves engaged in functions which bring their patient records under this part: In that event, all such records, from whatever source derived, are covered. The difficulty arises when the disclosure is made to those whose records are not otherwise affected by this part. To attempt to make all of the provisions of this part applicable to such recipients with respect to such information might raise serious problems of legality, administrative feasibility, and fairness, but where they are given actual notice that specific patient consent is normally required for redisclosure, we think they can and should be bound by it.

(b) Oral disclosures are not mandatorily covered because they should rarely be made to any recipient with whom the program does not have a continuing relationship. Where such a relationship exists or the program is otherwise satisfied that the recipient understands and will respect the confidential nature of the information supplied, there seems no need to add to the already heavy load of paperwork with which programs must contend.

§ 2.33 Diagnosis, treatment, and rehabilitation.—Rules.

(a) *Disclosure authorized.* Where consent is given in accordance with § 2.31, disclosure of information subject to this part may be made to medical personnel or to treatment or rehabilitation programs where such disclosure is needed in order to better enable them to furnish services to the patient to whom the information pertains.

(b) *Incarcerated and hospitalized patients on medication.* Where a patient on medication is incarcerated or hospitalized, or is otherwise unable to deliver a written consent to his treatment program at the time the disclosure is needed, confirmation of the patient's status and information necessary to appropriately continue or modify his medication may be given to medical personnel in a position to provide services to the patient upon the oral representation of such personnel that the patient has requested medication and consented to such disclosure. Any program making a disclosure in accordance with this paragraph shall make a written memorandum showing the name of the patient, or the patient's case number assigned by the program, the date and time the disclosure was made, the information disclosed, and the names of the individuals by whom and to whom it was made.

§ 2.33–1 Diagnosis, treatment, and rehabilitation.—Basis and purpose.

(a) Section 2.33(a) is a restatement of the policy set forth in § 1401.22(a) of the previous regulations, expanded to make explicit reference to nonmedical counselling and other treatment and rehabilitative services.

(b) Section 2.33(b) clarifies the corresponding provision in § 1401.22(a) of the previous regulations by specifying how and through whom oral consent can be given, and limiting the disclosure to that necessary to determine appropriate medication.

§ 2.34 Prevention of certain multiple enrollments.—Rules.

(a) *Definitions.* For the purposes of this section and § 2.55—

(1) The terms "administer", "controlled substance", "dispense", "maintenance treatment", and "detoxification treatment" shall respectively have the meanings defined in paragraphs (2), (6), (10), (27), and (28) of section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) The term "program" means a program which offers maintenance treatment or detoxification treatment.

(3) The term "permissible central registry" means a qualified service organization which collects or accepts, from two or more programs (referred to hereinafter as member programs) all of which are located either within a given State or not more than 75 miles from the nearest point on the border of such State, patient identifying information about persons applying for maintenance treatment or detoxification treatment for the purpose of enabling the member programs to prevent any individual from being concurrently enrolled in more than one such program.

(b) *Use of central registries prohibited except as expressly authorized.* The furnishing of patient identifying information by a program to any central registry which fails to meet the definition of a permissible central registry set forth in paragraph (a)(3) of this section is prohibited, and the furnishing of patient identifying information to or by any central registry except as authorized in this section is prohibited.

(c) *Safeguards and procedures required.* To minimize the likelihood of disclosures of information to impostors or others seeking to bring about unauthorized or improper disclosure, any communications carried on by programs pursuant to this section must be con-

ducted (1) by authorized personnel designated in accordance with § 2.17(b), and (2) in conformity with procedures established in accordance with that section.

(d) *Disclosures with respect to patients in treatment.* A member program may supply patient identifying information and information concerning the type of drug used or to be used in treatment and the dosage thereof, with relevant dates, to a permissible central registry with respect to any patient—

(1) When the patient is accepted for treatment,

(2) When the type or dosage of the drug is changed, and

(3) When the treatment is interrupted, resumed, or terminated.

(e) *Disclosures with respect to applications.* When any person applies to a program for maintenance treatment or detoxification treatment, then for the purpose of inquiring whether such person is currently enrolled in another program for such treatment, the program may furnish patient identifying information with respect to such person—

(1) To any permissible central registry of which the program is a member, and

(2) To any other program which is not more than 200 miles distant and which is not a member of any central registry of which the inquiring program is a member.

(f) *Program procedure in case of apparent concurrent enrollment.* When an inquiry pursuant to paragraph (e)(2) is made of another treatment program and its response is affirmative, the two programs may engage in such further communication as may be necessary to establish whether an error has been made, and if none, the programs should proceed in accordance with sound clinical practice and any applicable regulations pertaining to the type of treatment involved.

(g) *Registry procedure in case of apparent concurrent enrollment.* When an inquiry pursuant to paragraph (e)(1) is made of a permissible central registry and its response is affirmative, it may advise the inquiring program of the name, address, and telephone number of the other program, or it may advise the other program of the identity of the patient and the name, address, and telephone number of the inquiring program, or it may do both, and in any case the two programs may then communicate as provided in paragraph (f) above.

(h) *Advice to patients.* When the policies and procedures of any program involve any disclosures pursuant to this section, before any patient is accepted for or continued in treatment (other than detoxification treatment) after September 30, 1975, written consent in accordance with § 2.31 shall be obtained. Such consent shall set forth a current list of the names and addresses either of any programs or of any central registries to which such disclosures will be made. Notwithstanding the requirement of § 2.31(a)(2), such consent shall be effective with respect to any other such program thereafter established within 200 miles, or any registry serving such programs, and shall so state. Such consent shall be effective for as long as the patient remains enrolled in the program to which it is given.

§ 2.34–1 Prevention of certain multiple enrollments.—Basis and purpose.

Section 2.34 is based upon § 1401.43 of the previous regulations. It was omitted from the August 22, 1974 draft, but comments on the omission made it clear that in certain areas of the country, central registries are a functional component of the treatment system, and that regulations to guide their operations are needed.

§ 2.35 Legal counsel for patient.—Rules.

When a bona fide attorney-client relationship exists between an attorney-at-law and a patient, disclosure of any information in the patient's records may be made to the attorney upon the written application of the patient endorsed by the attorney. Information so disclosed may not be further disclosed by the attorney.

§ 2.35–1 Legal counsel for patient.—Basis and purpose.

Section 2.35 simplifies and broadens the statement of the policy embodied in § 1401.25 of the previous regulations. Its purpose is to assure the availability to the attorney, with his client's consent, of any information needed as a basis for advice and counsel. The purpose of the prohibition on further disclosure by the attorney is to guard against the possibility that the attorney might be forced to serve as a conduit for otherwise prohibited disclosures to third parties. Ordinarily, the attorney-client privilege would suffice, but that privilege is subject to waiver by the client, whereas this prohibition is not. Where there is a need for disclosure to a third party of any given information about any patient, this prohibition in no way affects the availability of other sections of this part to authorize such disclosure by the program.

§ 2.36 Patient's family and others.—Rule.

Where consent is given in accordance with § 2.31, information evaluating his current or past status in a treatment program may be furnished to any person with whom the patient has a personal relationship unless, in the judgment of the person responsible for the patient's treatment, the disclosure of such information would be harmful to the patient.

§ 2.36–1 Patient's family and others.—Basis and purpose.

Section 2.36 expresses the same policy as it embodied in § 1401.27 of the previous regulations, broadened to reflect the expanded authority for consensual disclosure under the authorizing legislation.

§ 2.37 Third party payers.—Rules.

(a) *Disclosures to third party payers.* Where consent is given in accordance with § 2.31, a program may disclose the following information and no other to a third party payer as such:

(1) The patient's name and address.

(2) Any policy number and identification number assigned to the patient by the third party payer.

(3) The type, dates, and cost of the services provided by the program.

(b) *Disclosure by third party payers.* No third party payer may, for any purpose or in any manner, disclose patient identifying information or any information with respect to an identified patient except to the program or patient concerned, or in connection with a bona fide audit, or as authorized pursuant to a court order obtained under subpart E.

(c) *Duty to protect against improper disclosures.* Every third party payer which maintains records of information not subject to this part, and makes disclosures therefrom which would be prohibited if such records were subject to this part, shall segregate the records subject to this part or institute other appropriate procedures to assure that no improper disclosures are made of information which is subject to this part, and otherwise to assure compliance with this part.

(d) *Duty to clear files.* Not more than two years after the termination of any relationship between any person and an individual which gives the person the status of a third party payer with respect to such individual, the person shall clear its files of all patient identifying information with respect to such individual, or of all indications, implicit or explicit, that the records pertaining to that individual were of a character subject to the provisions of this part.

§ 2.37–1 Third party payers.—Basis and purpose.

Section 2.37 is based upon the general authority to prescribe regulations to carry out the purposes of the authorizing legislation. Its purpose is to limit disclosures to third party payers to those reasonably necessary in determining the patient's eligibility for benefits and the amount of benefits due, and to protect against further disclosure of information in the hands of third party payers.

§ 2.38 Employers and employment agencies.—Rules.

(a) *Disclosure permitted.* Where consent is given in accordance with § 2.31, a program may make disclosures in accordance with this section.

(b) *Eligible recipients.* A program may make disclosures under this section to public or private employment agencies, employment services, or employers.

(c) *Scope of disclosure.* Ordinarily, disclosures pursuant to this section should be limited to a verification of the patient's status in treatment or a general evaluation of progress in treatment. More specific information may be furnished where there is a bona fide need for such information to evaluate hazards which the employment may pose to the patient or others, or where such information is otherwise directly relevant to the employment situation.

(d) *Criteria for approval.* A disclosure under this section may be made if, in the judgment of the program director or his authorized representative appointed as

provided in § 2.17(b), the following criteria are met:

(1) The program has reason to believe, on the basis of past experience or other creditable information (which may in appropriate cases consist of a written statement by the employer), that such information will be used for the purpose of assisting in the rehabilitation of the patient and not for the purpose of identifying the individual as a patient in order to deny him employment or advancement because of his history of drug or alcohol abuse.

(2) The information sought appears to be reasonably necessary in view of the type of employment involved.

§ 2.38–1 Employers and employment agencies.—Basis and purpose.

Section 2.38 is based on the rulemaking power conferred by subsection (b)(1) of the authorizing legislation, and is adapted from § 1401.26 of the previous regulations. Its purpose is to allow disclosures reasonably necessary and appropriate to facilitate the employment of patients and former patients, while protecting patients against unnecessary or excessively broad disclosures. It was urged in a comment received on the August 22, 1974 draft that disclosures to employers be flatly prohibited on the ground that the employer's sole legitimate concern is with on-the-job performance. While we are not unsympathetic to this view, a countervailing consideration is that in the case of an employee or applicant who is known by the employer to have a problem with drugs or alcohol, knowledge by the employer of a genuine effort by the employee to deal with it can make the difference between a job and no job.

§ 2.39 Patient's benefit in general.—Rules.

(a) *Criteria for approval.* In any situation not otherwise specifically provided for in this subpart, where consent is given in accordance with § 2.31, a program may make a disclosure from the records of a patient if, in the judgment of the program director or his authorized representative appointed as provided in § 2.17, all of the following criteria are met:

(1) There is no suggestion in the written consent or the circumstances surrounding it, as known to the program, that the consent was not given freely, voluntarily, and without coercion.

(2) Granting the requests for disclosure will not cause substantial harm to the relationship between the patient and the program or to the program's capacity to provide services in general.

(3) Granting the request for disclosure will not be harmful to the patient.

(b) *Circumstances deemed beneficial.* For the purposes of this section, the circumstances under which disclosure may be deemed to be beneficial to a patient include, but are not limited to, those in which the disclosure may assist the patient in connection with any public or private claim, right, privilege, gratuity, grant or other interest accruing to, or for the benefit of, the patient or the patient's immediate family. Examples of the foregoing include welfare, medicare, unemployment, workmen's compensation, accident or medical insurance, public or private pension or other retirement benefits, and any claim or defense asserted or which is an issue in any civil, criminal, administrative or other proceeding in which the patient is a party or is affected.

§ 2.39–1 Patient's benefit in general.—Basis and purpose.

(a) Section 2.39 is based upon § 1401.23 of the previous regulations, amended to reflect the expansion made by the change in the law with respect to the permissible scope of consensual disclosures.

(b) A strong case can be made for the proposition that section 2.39 should, in effect if not expressly, require a program to make any disclosure requested by a patient. The discretion vested in the program, it can be argued, is at best an expression of overprotective paternalism, and at worst, an invitation to programs to cover up material potentially embarrassing to themselves. Bearing in mind, however, that persons who have obtained the type of treatment to which this part applies are more vulnerable to pressures of various kinds than are patients in general, it seems preferable to retain some responsibility on the part of the program to protect the best interests of its patients in this very sensitive area. This, like many other choices which these regulations reflect, is a determination which can be reviewed and revised from time to time in the light of experience.

§ 2.40 Criminal justice system referrals and functions.—Rules.

(a) *Definitions and rules of construction.* For the purposes of this section—

(1) The term "responsible criminal justice system personnel" means prosecuting attorneys, judges, court officials, probation or parole officials or agencies, or other governmental personnel having official duties or responsibilities with respect to the custody, supervision, prosecution, sentencing, or other disposition of a person who has been arrested for a criminal offense.

(2) The term "correctional agency" means the Bureau of Prisons of the United States Department of Justice, and any State or local penal or correctional agency.

(3) Treatment or other services are provided by a correctional agency if the agency retains responsibility for and control of the services, whether they are performed by personnel of the agency itself, or are performed under contract by an individual or organization otherwise outside the agency, for the benefit of specific individuals designated by the correctional agency. Treatment or other services are not provided by an agency merely because of referrals made by the agency to the provider of services, even where the agency is a funding source for the provider of services.

(b) *Extent of permissible disclosures.* Where consent is given in accordance with § 2.31 by an individual referred to a treatment program by responsible criminal justice system personnel, the program may disclose to such personnel—

(1) A description or identification of the services provided or to be provided by the program to that individual;

(2) The location of the clinics or other facilities at which such services are performed;

(3) The dates such services are begun and ended;

(4) The name of the physician, counsellor, or other individual primarily responsible for the patient's care; and

(5) A general evaluation of his progress in treatment.

(c) *Duration of consent.* Where consent is given for disclosures described in paragraph (b), the maximum duration of any consent under these circumstances shall be for the greater of 60 days or, in the case of a person who has been—

(1) Arrested, until such person is formally charged or unconditionally released from arrest;

(2) Formally charged, until the charges have been dismissed with prejudice, or the trial of such person has been commenced;

(3) Brought to a trial which has commenced, until such person has been acquitted or sentenced;

(4) Sentenced, until the sentence has been fully executed.

(d) *Grandfather clause.* Notwithstanding the provisions of paragraphs (b) and (c), a program which, prior to March 1, 1975, supplied information other than that described in paragraph (b) of this section may continue to supply the same type of information to criminal justice system personnel until December 31, 1976, on the basis of patient consent in conformity with § 1401.21 of the previous regulations.

(e) *Treatment or referral by correctional agencies.* Where treatment or referral is provided by a correctional agency, this part does not prohibit disclosures within such agency with respect to such treatment or referral, but disclosures of records of such treatment or referral to persons outside such agency are subject to the provisions of this part.

(f) *Probation and parole officers.* Where referral or counselling is provided by a probation or parole officer, nothing in this part shall be construed as prohibiting such officer from making reports to the court or other authority to which he is responsible, but to the extent that such reports constitute records maintained in connection with the performance of a function subject to this part, disclosure thereof by such authority is subject to the provisions of this part.

§ 2.40–1 Criminal justice system referrals and functions.—Basis and purpose.

(a) Section 2.40(a) makes an important change in the extent of disclosures permissible in connection with patients

referred by the criminal justice system. It limits disclosures with respect to such patients to two general matters: First, the extent, duration, and person responsible for the services provided, and second, a general evaluation of the patient's progress in treatment. We have considered carefully the arguments presented for unrestricted access to the treatment record by various elements of the criminal justice system, including in particular the courts. The argument that the degree of detail in reports about a person conditionally released should be a matter for the discretion of the authority granting the release is a powerful one. It is said that the denial of such discretion will result in the refusal of some judges to participate in referral programs. That would be an unfortunate result—it is a matter for concern where even one individual is incarcerated if he and society would be better served by his release for treatment—but we question whether it will occur on a large scale with respect to genuinely useful programs. On balance, we think that disclosure of detailed clinical data to criminal justice system personnel can serve no purpose which is not better served by other means. Broadly, these purposes fall into two categories: those pertaining to the patient, and those pertaining to the program.

(b) The purposes pertaining to the patient can be summarized by saying that detailed data either permits criminal justice system personnel to substitute their judgment for that of the program with respect to the patient's progress in treatment, or aids them in their general supervision of the patient. As to the first of these, it is sufficient to say that if a given program's clinical judgment is normally inferior to that of criminal justice system personnel, it is questionable whether patients should be referred to that program under any conditions.

(c) To the extent that the criminal justice system is asking the treatment system to assume custodial as opposed to therapeutic responsibilities, a role conflict may be created which may severely handicap if it does not completely vitiate the treatment process. For example, one step in changing attitudes is to face them. If, as is required under one of the consent forms submitted with a written comment on the August 22, 1974 draft of this part, the counsellor is required to report regularly the patient's attitude. an honest exploration of attitude in the patient-counsellor encounter may be foreclosed to those who need it most.

(d) The criminal justice system has an entirely legitimate need for information about persons who are conditionally released from custody. Nothing in this part inhibits it from obtaining that information directly from such persons. Treatment programs can and should be in communication with the criminal justice system about what is expected of their clientele by that system. Treatment programs can and should encourage their clients to comply with the conditions of their release, including reporting to their probation or parole officers whatever information about themselves may be required. But where the treatment system itself is made the conduit for detailed personal information to be reported to the criminal justice system, the risk of subverting its purposes appears to us to outweigh the administrative convenience achieved.

(e) The other major justification offered for the submission of detailed patient data is that it permits the criminal justice system to participate in the design of objective criteria, such as attendance records and urinalysis results, for determining success or failure in treatment, and to assure itself that those criteria are adhered to in practice. We regard both purposes as legitimate, but there is nothing in these regulations to prohibit discussion and agreement between criminal justice and treatment personnel on such criteria. Moreover, where this is deemed necessary or desirable, the courts, referral agencies, or other elements of the criminal justice system involved can ascertain the degree of adherence to such criteria on the part of the program by means of independent audits.

(f) The audit reports cannot, of course, include data identifying individual patients, and this is precisely the reason why the audit is a better way of assessing program performance. In § 2.32–1(a), we briefly touched on the general problem of controlling redisclosure of information provided on a consensual basis. The practical difficulties of dealing with this problem when it arises in an environment wholly within the criminal justice system are particularly severe. When there is added to this consideration the obvious fact that a person referred by the criminal justice system is often in no position to argue very effectively about the conditions of his release, the case for a meaningful exercise of the rulemaking power conferred by subsection (b)(1) of the authorizing legislation becomes compelling. That subsection expressly limits consensual disclosure "to such extent, under such circumstances, and for such purposes as may be allowed under regulations". We think that the limitation here prescribed, under the circumstances here involved, is necessary and appropriate to effectuate the purposes of the authorizing legislation.

(g) To prevent the disruption of referral programs already underway in conformity with the previous regulations, but which involve disclosures impermissible under the regulations here prescribed, § 2.40(d) allows continued operation on the basis of the previous regulations until the end of 1976. This will provide a period of more than a year and one-half for practices not in conformity with the new regulations to be reviewed and revised. Referral programs commenced after March 1, 1975, must comply with the new regulations after July 1, 1975.

(h) Sections 2.40(e) and 2.40(f) address the situation which arises when functions covered by this part are directly performed by responsible criminal justice system personnel or provided by correctional agencies. It is true that the activities of such personnel and agencies, to the extent that they constitute "prevention functions" and involve a "patient", as those terms are respectively defined in § 2.11(k) and § 2.11(l), are covered by this part. But it has uniformly been the construction of the authorizing legislation that where such functions are performed by an organization, communications taking place within the organization do not constitute disclosures within the meaning of the statutes. The general problem that thus arises is to define the boundaries of the relevant organization. In the present context, especially, there is no solution to this problem which is wholly satisfactory from any standpoint, whether practical or theoretical, but the accommodation to practicality which these rules allow appears to fall within at least the outer limits of a permissible theoretical justification.

(i) It was not the intention of the authorizing legislation to discourage probation and parole officers from hearing about their clients' problems with alcohol and drugs or from referring them to appropriate treatment agencies. Such officers are accustomed to hearing about a variety of sensitive matters, and their clients are generally not under any illusions about the context in which these communications take place. Thus, there seems little to be gained and much to be lost by a rule which would here define the relevant organization more narrowly than the court in the case of probation or the paroling authority in the case of parole.

(j) Similar considerations apply in the case of treatment for drug abuse which is directly provided within a penal institution, or is furnished to specific individuals by a correctional agency, regardless of whether it uses its own personnel or employs a contractor to perform this service. In either case, the recipient of the services knows by what agency they are being afforded to him, and that he is dealing with members or representatives of that agency. To define the relevant organization in a manner which would exclude the rest of such an agency could very well have the effect of eliminating programs which experience has shown to be helpful.

Subpart D—Disclosures Without Patient Consent

§ 2.51 Medical emergencies.—Rules.

(a) *In general.* Disclosure to medical personnel, either private or governmental, is authorized without the consent of the patient when and to the extent necessary to meet a bona fide medical emergency.

(b) *Food and Drug Administration.* Where treatment involves the use of any drug, and appropriate officials of the Food and Drug Administration determine that the life or health of patients may be endangered by an error in the manufacture or packaging of such drug, disclosure of the identities of the recipients of the drug may be made without their consent to appropriate officials of the Food and Drug Administration to enable them to notify the patients or their physicians of the problem in order that corrective action may be taken.

(c) *Incapacitated persons.* Where a patient is incapacitated and information concerning the treatment being given him by a program is necessary to make a sound determination of appropriate emergency treatment, such information may be given without the patient's consent to personnel providing such emergency treatment.

(d) *Record required.* Any program making an oral disclosure under authority of this subsection shall make a written memorandum showing the patient's name or case number, the date and time the disclosure was made, the information disclosed, and the names of the individuals by whom and to whom it was disclosed.

§ 2.51–1 Medical emergencies.—Basis and purpose.

The provisions of § 2.51 are adapted from § 1401.42 of the previous regulations, and are based on subsection (b)(2)(A) of the authorizing legislation. The provision in the previous regulations with respect to patients who may be incarcerated is now covered in § 2.33(b).

§ 2.52 Research, audit, and evaluation.—Rules.

(a) *Research, audit, and evaluation.* Subject to any applicable specific provision set forth hereinafter in this subpart, the content of records pertaining to any patient which are maintained in connection with the performance of a function subject to this part may be disclosed, whether or not the patient gives consent, to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner. For the purposes of this subpart and for the purposes of subsection (b)(2)(B) of the authorizing legislation, the term "qualified personnel" means persons whose training and experience are appropriate to the nature and level of the work in which they are engaged and who, when working as part of an organization, are performing such work with adequate administrative safeguards against unauthorized disclosures.

(b) *Use of disclosures of patient identifying information.*

(1) Where a disclosure made to any person pursuant to paragraph (a) of this section includes patient identifying information with respect to any patient, such information may not be further disclosed, and may not be used in connection with any legal, administrative, supervisory, or other action whatsoever with respect to such patient, except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) The inclusion of patient identifying information in any written or oral communication between a person to whom a disclosure has been made pursuant to paragraph (a) and the program making such disclosure does not constitute the identification of a patient in a report or otherwise in violation of paragraph (a).

(3) Where a disclosure is made pursuant to paragraph (a) of this section to a person qualified to determine, on the basis of such disclosure, the presence of a substantial risk to the health and well being, whether physical or psychological, of any patient, and, in the judgment of such person, such a risk exists and the situation cannot be dealt with solely by means of communications as described in paragraph (b)(2) of this section without intensifying or prolonging the risk as compared with other means of dealing with it, then the initial disclosure under paragraph (a) and any subsequent disclosure or redisclosure of patient identifying information for the purpose of reducing the risk to the patient involved shall be subject to the provisions of § 2.51.

§ 2.52–1 Research, audit, and evaluation.—Basis and purpose.

(a) *General purpose.* Subsection (a) of this section is adapted directly from subsection (b)(2)(B) of the authorizing legislation. The purpose of each is the same: To facilitate the search for truth, whether in the context of scientific investigation, administrative management, or broad issues of public policy, while at the same time safeguarding the personal privacy of the individuals who are the intended beneficiaries of the process or program under investigation. This subpart in particular, and this part as a whole, are intended to aid in carrying out that purpose.

(b) The succeeding sections of this subpart deal with problems which arise in connection with disclosures made for certain specific purposes which have been interpreted as falling within the general purposes embraced by § 2.52. Those sections will be best understood, however, in the light of some discussion of the underlying premises of the general rule, and its relationship to two other legal concepts: the right of privacy, and the duty to obtain informed consent from research subjects.

(c) *The Right of Privacy.* So far as is relevant to this discussion, we may consider the right of privacy in two aspects. One, a protection against improper governmental activity, is the right to be secure against unreasonable searches and seizures guaranteed by the Fourth Amendment, with some expansion from the penumbras of the Fifth and Sixth Amendments. The protections afforded to patients by the authorizing legislation, not to mention these regulations, go far beyond those which are constitutionally required.

(d) The other aspect of the right of privacy, which has sometimes been described as the right to be left alone, is the notion that an individual has a right not to be hurt by intrusions into his essentially personal concerns, or to have essentially private information exploited for commercial gain, whether or not the intrusion or exploitation is in connection with any possible governmental action against him. The courts have spoken of a right of privacy in a wide variety of contexts, but they have repeatedly and explicitly rejected the notion that anyone has a right to go about his daily affairs encapsulated in an impenetrable bubble of anonymity. The courts have been careful to weigh the competing interests, and the social interest in valid research and evaluation is clearly of sufficient moment to be considered in this process.

(e) In defense of the position that disclosure of patient identifying information even for carefully guarded scientific research should be permitted only on a consensual basis, two dominant lines of argument, somewhat interrelated, have emerged. One is that retrospective studies are of questionable value in any case, and the other is that a sampling technique involving informed consent on the part of the members of the sample can always be used to develop the information sought. Neither line of argument will withstand careful scrutiny.

(f) It is true, of course, that the efficacy of a given therapeutic agent can often best be evaluated by means of a well-designed prospective study in which special recordkeeping procedures, special criteria for patient selection, and an appropriate control have all been established with a view to the purpose of the study. There are, however, many important investigations which simply do not lend themselves to such a format. Sometimes the desirability or even the possibility of a particular study does not suggest itself except in retrospect. Another important consideration is the fact that knowledge that an investigation is going on may influence the behavior of patients, clinicians, or both. Where such knowledge can influence the make-up of a sample, it will normally do so in the direction of favorable outcomes, but to an unknown degree, thus tending to invalidate the results reported.

(g) While the sample technique has its uses, especially with populations that are unmanageably large, it is often less difficult and expensive, and less likely to interfere with the actual conduct and outcomes of treatment or rehabilitation processes, to use the full population under study. Even more important than economy and administrative convenience in carrying out a study, there may be an overriding advantage in terms of eliminating any question as to the validity of the results of the study on the ground of bias in the selection of the sample.

(h) *Informed Consent.* The duty to obtain informed consent is obvious and compelling in situations where an individual is exposed to the possibility of harm, either physical or psychological, as a consequence of medical procedures, research, or similar activities. Where such a situation exists the person conducting the research or medical procedure violates his duty to the subject or patient if he proceeds without obtaining the voluntary informed consent from the individual or his legally authorized representative. Thus, in conducting an activity which places the subject or patient at risk the practitioner may not give precedence to a hidden agenda,

even for so lofty a motive as the advancement of knowledge.

(i) It is apparent that the foregoing rationale for requiring informed consent does not apply to the same degree in situations involving the disclosure of clinical records for research in the form of follow-up or retrospective studies. Under these circumstances the risk to the subject is that some disclosure or misuse of information from which he could be identified might result in embarrassment, lost opportunities, or other forms of psychological or social injury. While that possibility of harm could be reduced by requiring consent to every review of clinical records for research purposes, a similar result can be achieved by the less restrictive method of limiting further disclosure of identifying information by the researcher. Given the applicability of this alternative, equally effective means for protecting a patient or subject from the possibility of a harmful public disclosure, it is unreasonable to insist upon informed consent to every review of clinical records for the purposes of conducting legitimate research, particularly since such insistence could lead to the ultimate absurdity of prohibiting efforts to identify the nature and source of an unknown plague simply because the patients or researcher lacked the clairvoyance to have consent forms signed prior to the onset of the affliction.

(j) In sum, there are restraints on certain means of governmental acquisition of information about individuals which are operative irrespective of how the information is used, and there are restraints on the uses of information which are independent of how or by whom it is acquired, but they do not and should not add up to the proposition that the use of information about a person is either morally or legally the absolute prerogative of that person to determine.

(k) For all of these reasons, the authorizing legislation expressly provides that patient consent is not required with respect to disclosures for research, audit, and evaluation, nor does it prohibit individual patient identification in connection with such disclosures. While it is entirely appropriate to impose safeguards and procedures in connection with these activities, it would be wholly inappropriate to use the rulemaking process to impose an absolute requirement of patient consent with respect to activities which by statute may be conducted without it.

(l) *Classification of activities.* It is clear that Congress intended a balancing of the social interest in the validity of the results of inquiry, on the one hand, with the individual interest in anonymity, on the other, all within the limits set by the legislation and the constitution. With that objective in mind, we may now turn to the various categories of activities which come within the purview of this subpart.

(m) These activities may be classified first, in regard to whether participation is voluntary from the standpoint of the program, and second, as to whether the objective is to ascertain compliance with predetermined standards (examinations as defined in § 2.54, and program evaluation as defined in § 2.11(g)(1)), or to ascertain the validity of a given standard or hypothesis (scientific research, and program evaluation as defined in § 2.11(g)(2)). The application of the foregoing classifications logically results in the creation of four categories of activities. Three of them are specifically dealt with in the succeeding sections of this subpart and need not detain us here; the fourth is discussed below.

(n) *Scientific research and evaluation.* Beyond the bare restatement of the authorizing legislation set forth in § 2.52, these regulations are deliberately silent with respect to purely voluntary scientific research and program evaluation in the sense defined in § 2.11(g)(2). Testimony and written comments received on the August 22, 1974 draft regulations were noteworthy in two respects. First, no instances of abuse on the part of persons acquiring patient identifying information under these circumstances were cited. Second, while there was some well-founded criticism of the attempt in that draft to provide guidelines for determining what is scientific research and who is qualified to do it, no usable alternatives—indeed, almost no alternatives at all—were forthcoming.

(o) In one of the written comments, the writer cautioned against any assumption "that our major remaining problems in drug and alcohol abuse treatment are prevention of illicit diversion and protection of confidentiality," and suggested "that we still have a problem in discovering, testing and evaluating improved treatment techniques. To do this," he continued, "one should place minimal obstacles in the way of bona fide clinical and epidemiologic research!"

(p) The result of leaving the rule as it is in the statute, without attempting to sharpen its outlines or define its terms, will be to leave it for interpretation on a case-by-case basis by those who must apply it in practice: the researchers who seek the information, and the programs which supply it. This does not foreclose the possibility of amending the regulations on the basis of experience if it appears either that clinicians are becoming so cautious that research and evaluation studies are being choked off, or that abuses are occurring in the use of information disclosed. But until a need for more detailed regulation in this area is demonstrated, we think its imposition would do more harm than good.

§ 2.53 Governmental agencies.—Rules.

(a) *In general.* Where research, audit, or evaluation functions are performed by or on behalf of a State or Federal governmental agency, the minimum qualifications of personnel performing such functions may be determined by such agency, subject to the provisions of this part, with particular reference to the organizational requirements and limitations on the categories of records subject to review by different categories of personnel.

(b) *Financial and administrative records.* Where program records are reviewed by personnel who lack either the responsibility for, or appropriate training and supervision for, conducting scientific research, determining adherence to treatment standards, or evaluating treatment as such, such review should be confined as far as practicable to administrative and financial records. Under no circumstances should such personnel be shown caseworker or counsellor notes, or similar clinical records. Programs should organize their records so that financial and administrative matters can be reviewed without disclosing clinical information and without disclosing patient identifying information except where necessary for audit verification.

(c) *Scientific research and long-term evaluation studies.* No State and no agency or political subdivision of a State may require, as a condition to funding, licensing, or otherwise, that any program furnish patient identifying information for the purpose of conducting scientific research or long-term evaluation studies unless the recipient of such information is legally required to hold such information in confidence, is prohibited from taking any administrative, investigative, or other action with respect to any individual patient on the basis of such information, and is prohibited from identifying, directly or indirectly, any individual patient in any report of such research or evaluation, or otherwise disclosing patient identities in any manner.

(d) *Opinion and description to be furnished program.* Before any patient identifying information is required to be submitted by a program under the circumstances described in paragraph (c), the program shall be furnished—

(1) An opinion by the attorney general or other chief legal officer of the State to the effect that the conditions specified in paragraph (c) are fulfilled with respect to such program or with respect to all programs in such State similarly situated, and

(2) A description of the administrative procedures and physical limitations on access or other measures to provide for the security of the data, but such description shall not be in such detail as to furnish guidance for wrongful attempts to breach such security.

(e) *Exclusiveness of procedures.* No State or local governmental agency may require any treatment program to furnish patient identifying information to itself or any other recipient except in conformity with this section or § 2.54. No Federal agency may require any treatment program to furnish patient identifying information to itself or any other recipient except in conformity with this section other than paragraph (d)(1) thereof) or § 2.54.

§ 2.53–1 Governmental agencies.—Basis and purpose.

Section 2.53 is an implementation of the authority contained in subsection (g) of the authorizing legislation to provide safeguards and procedures to effec-

tuate the purposes of such legislation. It makes clear that whenever information is required of a program, whether by law or by the terms or conditions of a contract or grant, the procedures and safeguards required under this section are applicable.

§ 2.54 Patient identifying information in connection with examinations.—Rules.

(a) *Definitions.* For the purposes of this section—

(1) The term "examination" means any examination to which this section is made applicable by paragraph (b) of this section.

(2) The term "examiner" means any individual or any public or private organization, including any Federal, State, or local governmental agency, which conducts an examination to which this section applies.

(b) *Applicability.* This section applies to any examination of the records of a treatment program which is carried out for the purpose of or as aid to ascertaining the accuracy or adequacy of its financial or other records, or the efficiency or effectiveness of its financial, administrative, or medical management, or its adherence to financial, legal, medical, administrative, or other standards, regardless of whether such examination is called an audit, an evaluation, an inspection, or by any other name.

(c) *Statement required for disclosure of patient identifying information in connection with examination.* No program may make, and no examiner may require, any disclosure of patient identifying information in connection with an examination unless the examiner furnishes to the program a written statement—

(1) that no record of patient identifying information will be made or retained by or on behalf of the examiner in connection with the examination without notice to the program in accordance with paragraph (c)(2) of this section, or

(2) setting forth the specific purpose for which a record of patient identifying information is being retained by or on behalf of the examiner, the location at which such information will be kept, and the name, official title, address, and telephone number of a responsible individual to whom any inquiries by the program about the disposition of such record should be directed.

(d) *Disposition of record of patient identifying information in connection with examination.* After any record of patient identifying information retained in connection with an examination has served its purpose, or within the time prescribed in paragraph (e) of this section, whichever is earlier, the examiner shall destroy or return to the program all records (including any copies thereof) containing patient indentifying information which have been in its possession in connection with such examination.

(e) *Maximum time allowed for disposition.* The action required by paragraph (d) shall be completed—

(1) Except as provided in paragraph (e)(2) of this section not more than two years after the record was acquired by or on behalf of the examiner, or

(2) Where the record is needed in connection with a formal legal proceeding against the program commenced or to be commenced not more than two years after the record was acquired, and written notice to this effect is furnished to the program within two years after the record was acquired, not later than the termination of such proceeding.

(f) *Notice of final disposition.* When an examiner disposes of records as required by paragraph (d) of this section, or not later than the time prescribed by paragraph (e) of this section, whichever is earlier, the examiner shall furnish to the program concerned a written statement—

(1) That there has been compliance with this section and with the provisions of this part prohibiting any disclosure of patient identifying information from records held by auditors or evaluators, or

(2) Specifying the particulars in which there has been a failure of compliance.

§ 2.54–1 Patient identifying information in connection with examinations.—Basis and purpose.

Confidence on the part of treatment program personnel in the integrity of auditing and regulatory processes is important to the effective functioning of the treatment system. It is the purpose of § 2.54 to foster practices which will both justify and engender such confidence.

§ 2.55 Supervision and regulation of narcotic maintenance and detoxification programs.—Rules.

(a) *Definition of "registrant".* For the purposes of this section, the term "registrant" means a practitioner who (1) has pending an application for registration under section 303(g) of the Controlled Substances Act (21 U.S.C. 823(g)), or (2) has been registered under such section and whose registration has not expired or been surrendered or revoked.

(b) *Drug Enforcement Administration.* Duly authorized agents of the Drug Enforcement Administration shall have access to the premises of registrants for the purpose of ascertaining compliance (or ability to comply) with standards established by the Attorney General under section 303(g)(2) of the Controlled Substances Act (21 U.S.C. 823(g)(2)) respecting the security of stocks of narcotic drugs and the maintenance of records (in accordance with section 307 of the Controlled Substances Act, 21 U.S.C. 827) on such drugs. Registrants shall maintain such records separate from and in addition to patients' clinical records required to be maintained under 21 CFR 310.505 (d)(7)(iii), which shall not be available to such agents except as authorized under a court order in accordance with Subpart E of this part. Records maintained by registrants for the purposes of section 307 of the Controlled Substances Act (21 U.S.C. 827) need not identify patients by name, address, social security number, or otherwise except by an identifying number assigned by the registrant, but where such a system is used, the registrant shall maintain on a current basis a cross-index referencing each identifying number to the name and address of the patient to whom it refers. Upon request at any time and wtihout advance notice, but subject to the provisions of § 2.54, such agents shall be granted immediate access to any such index. Such agents may use names and addresses so obtained strictly for the purposes of auditing or verifying program records, and shall exercise all reasonable precautions to avoid inadvertent disclosure of patient identities to third parties. Names and other identifying information so obtained may not be compiled or used in any registry or personal data bank of any description.

(c) *Food and Drug Administration.* Duly authorized agents of the Food and Drug Administration shall have access to the premises of registrants and to all records maintained by registrants, for the purpose of ascertaining compliance (or ability to comply) with standards established by the Secretary of Health, Education and Welfare under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (42 U.S.C. 257a), sections 303(g)(1) and 303(g)(3) of the Controlled Substances Act (21 U.S.C. 823(g)(1) and 823(g)(3)), and sections 505 and 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 and 371(a)). When necessary in the conduct of their duties, and subject to the provisions of § 2.54, agents may use names and addresses of patients strictly for the purposes of auditing or verifying program records, and shall exercise all reasonable precautions to avoid inadvertent disclosure of patient identities to third parties. Names and other identifying information on patients obtained pursuant to this section or by any other compulsory process may not be compiled or used in any registry or personal data bank of any description. Except as authorized under this paragraph or by a court order granted under Subpart E of this part, (1) such agents may not, either orally or in writing, except in conversation with personnel of the registrant while on the premises of the registrant, identify any patient otherwise than by reference to an identifying number assigned by the registrant, and (2) such agents may not remove from the premises of the registrant any notes, documents, or copies thereof which contain patient identifying information.

(d) *State drug law enforcement agencies.* Duly authorized agents of any State drug law enforcement agency having jurisdiction and specific responsibility by statute or otherwise for the enforcement of criminal laws relating to controlled substances (as defined in the Controlled Substances Act) shall have access to the premises of any registrant for the purposes (with respect to corresponding provisions, if any, of State law) and subject to the restrictions and limitations set forth in paragraph (b) of this section, and subject to § 2.54.

(e) *State health authorities.*

(1) *Definition of "qualified State health agency".* As used in this paragraph, the term "qualified State health

agency" means an agency of State government (i) which has express legal responsibility to ascertain that registrants under its jurisdiction comply with appropriate medical standards; (ii) which is legally and administratively separate from any agency of State government responsible for investigation of violations of, or enforcement of, criminal law generally or criminal laws relating to controlled substances; (iii) whose personnel are qualified by training or experience to conduct inspections of health care facilities to ascertain compliance with treatment standards; and (iv) whose personnel are by State law, or by published administrative directive enforced by effective sanctions, required to maintain the confidentiality of any information concerning the identity of patients which they may acquire in the course of their official duties.

(2) *Access.* Duly authorized agents of a qualified State health agency shall have access to the premises of registrants and to all records maintained by registrants, for the purpose of ascertaining compliance (or ability to comply) with treatment standards (including those relating to quantities of narcotic drugs which may be provided for unsupervised use by individuals in treatment) established under State law. Such access, and the use of any information thereby obtained, shall be subject to the restrictions and limitations set forth in paragraph (c) of this section, and subject to § 2.54.

§ 2.55–1 Supervision and regulation of narcotic maintenance and detoxification programs.—Basis and purpose.

(a) Section 2.55 is addressed to the general problem described in the following passage from the legislative history of Pub. L. 93–282:

> A major element of the task of fashioning new regulations pursuant to the express rulemaking authority conferred by this legislation will be to reconcile the sometimes conflicting interests of research, audit, and evaluation with rights of privacy and the confidentiality of the relationship between patient and clinician. Such a reconciliation becomes particularly crucial where the functions of research, audit, or evaluation are conducted by a governmental agency with regulatory powers and responsibility, and the treatment involves the use of a drug such as methadone which is in a research status or which is readily susceptible of misuse or illicit diversion.
>
> Because of the difficulty and complexity of the task, the rulemaking authority is intentionally cast in terms broad enough to permit the limitation of the scope, content, or circumstances of any disclosure under subsection (b), whether (b)(1) or (b)(2), in the light of the necessary purposes for which it is made or required. (Congressional Record, daily edition, May 6, 1974, page H3583).

(b) It has been the consistent interpretation of the Special Action Office for Drug Abuse Prevention that the only provision of the authorizing legislation which permits disclosures to compliance officers, whether of DEA, FDA, or state agencies, is subsection (b)(2)(B). That subsection strictly prohibits any further disclosure of names or other identifying information concerning patients, and the statutory prohibition has been buttressed by provisions of these regulations, notably § 2.54, providing safeguards and procedures to assure that the statutory prohibition is respected.

(c) In testimony and written comment on the August 22, 1974 draft of these regulations, it has been urged that access to patient identifying information by law enforcement personnel, even for the limited purposes allowed by statute and regulation, should be prohibited except pursuant to a court order obtained under 21 U.S.C. 1175(b)(2)(C). We believe that such a prohibition is beyond our power to impose.

(d) Section 307(b) of the Controlled Substances Act (21 U.S.C. 827) provides, in pertinent part, "Every * * * record required under this section * * * shall be kept and be available, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General." It is a well known principle of statutory construction that amendments and repeals by implication are not favored. In *People v. Newman*, 32 N.Y.2d 379, 345 N.Y.S.2d 502, 298 N.E.2d 651 (1973), cert. denied 414 U.S. 1163, 94 S.Ct. 927, 39L. Ed. 2d 116 (1974), the United States filed *amicus* briefs with the Court of Appeals of New York and with the United States Supreme Court, arguing that section 408 of Pub. L. 92–255 (21 U.S.C. 1175) did not effect an implied amendment or repeal of the provisions of Pub. L. 91–513 (21 U.S.C. 872(c) and 42 U.S.C. 242a(a)) which confer on the Attorney General and the Secretary of Health, Education, and Welfare the power to grant the so-called research privilege discussed in § 2.25. This position was expressly adopted by the New York court. We cannot now take the inconsistent position that section 408 of Pub. L. 92–255 did indeed amend by implication section 307 of Pub. L. 91–513, particularly in the face of a contrary contemporaneous administrative interpretation by both the Special Action Office for Drug Abuse Prevention and the Department of Justice. In short, if the right of access and copying conferred on Federal agents by 21 U.S.C. 827 is to be amended to provide that it may only be exercised pursuant to a court order in the case of maintenance and detoxification programs, that is a change which must be wrought by the Congress.

(e) In the case of inspections carried out by health supervisory agencies, we think that denial of access to any documents showing patient identifying information may have a serious adverse effect on the validity of the inspection process. Even if a program keeps its own records in terms of patient-identifying numbers assigned by the program, the patient file may contain—may, indeed, be required to contain—documents signed by the patient or originating outside the program. Where signatures, names, and addresses are all obliterated, it is impossible for the inspector to check the file even for apparent internal consistency. We believe that outright forgery is and will remain a rarity, but the temptation to cover improper or inadequate documentation by "accidental misfilings" may be something else again.

(f) From a legal standpoint, the term "audit" has long comprehended the notion of external verification. In a commercial setting, this means that at least some inventory will actually be counted, at least some receivables will be verified by contacting the customers, and so on. To rule that this crucial aspect of the audit process cannot be carried out with respect to a treatment program until after the auditor goes through the procedure of obtaining a specific court order under subsection (b)(2)(C) would seem to contravene the intent of subsection (b)(2)(B).

(g) In all of this, our decisions must be illuminated by a balanced consideration of the best interests of the patient no less than a desire to foster the implementation of cherished values in society at large. If protection of the patient's right to privacy is achieved by means which seriously impair our ability to protect him from exploitation and malpractice, not to mention the diversion of funds intended for his benefit, it would be a hollow victory indeed. We believe that the procedures and safeguards which these regulations impose on the conduct of audits and evaluations will avoid that result, while affording substantial and meaningful new protection to the confidentiality of patient records.

§ 2.56 Prohibition on disclosure of patient identities from research, audit, or evaluation records—rules.

Where the content of patient records has been disclosed pursuant to this subpart for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State. This prohibition does not affect the accessibility of the original records under authority of a court order referred to in subpart E.

§ 2.56–1 Prohibition on disclosure of patient identities from research, audit, or evaluation records—basis and purpose.

Section 2.56 restates the prohibition on further disclosure which is contained in subsection (b)(2)(B) of the authorizing legislation. The relationship of the provisions authorizing court orders to the provisions authorizing disclosure for research, audit, and evaluation, is dealt with in § 2.62.

Subpart E—Court Orders

§ 2.61 Legal effect of order—Rules.

Subsection (b)(2)(C) of the sections which authorize this part (21 U.S.C. 1175 and 42 U.S.C. 4582) empowers the courts, in appropriate circumstances, to author-

ize disclosures which would otherwise be prohibited by subsection (a) of those sections. Subsection (b)(2)(C) operates only as a mechanism for the relief of the duty imposed by subsection (a) and not as an affirmative grant of jurisdiction to authorize or compel disclosures prohibited or privileged by other provisions of law, whether Federal or State. An order or provision of an order based on some other authority, or a subpoena, or other appropriate legal process, is required to compel disclosure. To illustrate, if a person who maintains records subject to this part is merely requested, or is even served with a subpoena, to disclose information contained therein in a manner prohibited in the absence of a court order, he must refuse such a request unless, and until, an order is issued under subsection (b)(2)(C). Such an order would remove the prohibition, but could not, of its own force, require disclosure. If there were no subpoena or other compulsory process, or a subpoena had been issued but had expired or been quashed, the custodian of the records would have discretion as to whether to disclose the information sought unless and until disclosure were ordered by means of appropriate legal or administrative process, the authority for which would have to be found in some source other than subsection (b)(2)(C) of the sections authorizing this part.

§ 2.61–1 Legal effect of order—basis and purpose.

(a) Subsection (a) of this section is a restatement of the interpretative rules embodied in §§ 1401.61 and 1401.62 of the previous regulations. Both the positioning of the authority to issue court orders in S. 2097 as initially passed by the Senate (92nd Congress, 1st Session, December 2, 1971) and the explicit cross-reference in section 408(a) of Pub. L. 92–255 make clear the congressional intent that section 408(b)(2)(C) operate as a mechanism for the relief of the 408(a), strictures and not as an affirmative grant of jurisdiction to authorize disclosures prohibited by other provisions of law, whether Federal or State.

(b) The amendment made by Pub. L. 93–282 to section 333 of the Alcoholism Act (42 U.S.C. 4582) was enacted with the same language and structure as section 408 in this regard in order to make the interpretative rules set forth in § 2.61 applicable to it.

§ 2.62 Inapplicability to secondary records—rules.

The authority which subsection (b)(2)(C) of the sections which authorize this part (21 U.S.C. 1175 and 42 U.S.C. 4582) confers on courts to issue orders authorizing the disclosure of records applies only to records referred to in subsection (a) of such sections, that is, the records maintained by treatment or research programs which have patients, and not to secondary records generated by the disclosure of the subsection (a) records to researchers, auditors, or evaluators pursuant to subsection (b)(2)(B).

§ 2.62–1 Inapplicability to secondary records—basis and purpose.

(a) The interpretative rule set forth in § 2.62 is an essential and basic limitation on the scope of (b)(2)(C) orders. It was part of the original regulations under section 408 of Pub. L. 92–255 published November 17, 1972 (37 FR 24638), and was carried forward unchanged in the amended regulations published December 6, 1973 (38 FR 33748), the special status of which has already been noted in § 2.3. See, also, § 2.61–1.

(3) Where the secondary records are generated under the circumstances described in § 2.54, of course, this argument does not apply. In that situation, if preliminary examination suggests that the records may be needed for compliance or other administrative or judicial proceedings, the person conducting the audit or other examination should promptly seek the authority of a court order to copy the original records. The use of secondary records thus generated under authority of a court order would then be limited by the terms and purposes of the order, rather than subsection (b)(2)(B) of the authorizing legislation, and thus the rule set forth in § 2.62 would not apply.

(2) Although this rule is well supported by the history and technical structure of the legislation, the policy considerations in its favor are even more compelling. In § 2.52–1, we have discussed the urgent necessity for access, even without patient consent, to patient records on the part of qualified personnel engaged in scientific research and evaluation. Where this access includes patient identifying information, as it sometimes must if vital work is to be done, there must not be any question whatsoever about the legal inviolability of its confidential status in the hands of the researcher. Granted, there may occur rare occasions when the original records are for some reason not available, where a (b)(2)(C) order would lie as to the original records, and where there would seem to be some advantage in the administration of justice for such an order to permit disclosure of identifying information by the researcher. But compared to the damage which the mere potentiality for access does to the whole research enterprise, the advantage in terms of ability to deal with rare and anomalous cases seems almost trivial. Even in those cases, denial of access to the party seeking the information leaves him in no worse position than if the research or evaluation, which was certainly not undertaken for his benefit, had never been done at all.

§ 2.63 Limitation to objective data—Rules.

(a) *Limitation to objective data.* Except as provided in paragraph (b) of this section, the scope of an order issued pursuant to this subpart may not extend to communications by a patient to personnel of the program, but shall be limited to the facts or dates of enrollment, discharge, attendance, medication, and similar objective data, and may include only such objective data as its necessary to fulfill the purposes for which the order is issued.

(b) *Exception.* When a patient in litigation offers testimony or other evidence pertaining to the content of his communications with a program, an order under this subpart may authorize the submission of testimony or other evidence by the program or its personnel.

§ 2.63–1 Limitation to objective data.—Basis and purpose.

In the three-year period subsequent to the original enactment of 21 U.S.C. 1175, not a single occasion was reported to the Special Action Office for Drug Abuse Prevention on which an attempt was made to secure a (b)(2)(C) order authorizing the disclosure of a confidential communication by a patient to a counsellor or other member of the staff of a treatment program. In all of the comments and testimony received on the draft regulations published August 22, 1974, there was nothing to suggest any circumstances under which a court order authorizing such a disclosure would be either desirable or appropriate. Yet the mere possibility that such an order might be issued is to some a source of anxiety which impairs the effectiveness of treatment. Such an ongoing negative effect clearly outweighs the remote theoretical possibility that some peculiar circumstance might arise in which judicial authorization for such a disclosure might be sought. Accordingly, the limitation imposed by § 2.63 on the scope of (b)(2)(C) orders to preclude that possibility, and hence to eliminate its adverse influence on treatment services, appears to be a proper exercise of rulemaking power.

§ 2.64 Procedures and criteria in general—Rules.

(a) *Identity of patient.* Applications for court orders to authorize disclosure of records pertaining to a known patient shall not use the real name of the patient unless the patient consents thereto voluntarily and intelligently. In the case of an *ex parte* application initiated by the patient, the application should be instituted in the name of a fictious person, such as Jon Doe, unless the patient requests otherwise. The same procedure should be followed in the case of a separate proceeding held in conjunction with a pending criminal or civil action. Any court order should identify the patient fictitiously, and the disclosure of the patient's real name should be communicated to the program in such manner as to protect the confidentiality of the patient's identity.

(b) *Notice.* In any proceeding not otherwise provided for in this subpart, in which the patient or the program has not been made a party, each shall be given appropriate notice and an opportunity to appear in person or to file a responsive statement, deposition or other form of response consistent with local rules of procedure. The court shall give

due consideration to any such statement, deposition or other response in exercising its discretion as to the existence of good cause and, if deemed necessary or desirable, consistent with local rules of procedure, it may order the program director to appear and give direct testimony.

(c) *Hearings.* All hearings and all evidence in connection therewith shall be held or taken in the judge's chambers, unless the patient requests an open hearing or the court determines that such hearing is consistent with the public interest and the proper administration of justice.

(d) *Good cause.* No order shall be issued unless the record shows that good cause exists, and in assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

(e) *Need for disclosure.* If other competent evidence or sources of information are available, the court should ordinarily deny the application.

(f) *Adverse effects.* If there is evidence that disclosure would have an adverse effect upon successful treatment or rehabilitation of the patient or would impair the effectiveness of the program, or other programs similarly situated, in the treatment or rehabilitation of other patients, the application should be denied unless the court finds that the adverse effects are outweighed by other factors.

(g) *Content of order.* Any order authorizing disclosure shall—

(1) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship and the treatment services.

(h) *Applications not otherwise provided for.* In any case not otherwise provided for in this subpart, application for an order authorizing disclosure of records to which this part applies may be made by any person who has a legally cognizable interest in obtaining such disclosure.

§ 2.64–1 Procedures and criteria in general.—Basis and purpose.

Section 2.64, in accordance with subsection (g) of the authorizing legislation, sets out procedures and criteria for the issuance of (b)(2)(C) orders in general, subject to the more specific provisions with respect to particular types of proceedings covered in the succeeding sections of this subpart.

§ 2.65 Investigation and prosecution of patients.—Rules.

(a) *Applicability.* This section applies to any application by an investigative, law enforcement, or prosecutorial agency for an order to permit disclosure of patient records for the purpose of conducting an investigation or prosecution of an individual who is, or who is believed to be, a present or former patient in a program.

(b) *Notice.* Except where an order under § 2.66 is sought in conjunction with an order under this section, any program with respect to whose records an order is sought under this section shall be notified of the application and afforded an opportunity to appear and be heard thereon.

(c) *Criteria.* A court may authorize disclosure of records pertaining to a patient for the purpose of conducting an investigation of or a prosecution for a crime of which the patient is suspected only if the court finds that all of the following criteria are met:

(1) The crime involved kidnapping, homicide, assault with a deadly weapon, armed robbery, rape, or other acts causing or directly threatening loss of life or serious bodily injury, or was believed to have been committed on the premises of the program or against personnel of the program.

(2) There is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

(3) There is no other practicable way of obtaining the information or evidence.

(4) The actual or potential injury to the physician-patient relationship in the program affected and in other programs similarly situated, and the actual or potential harm to the ability of such programs to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

(a) *Scope.* Both disclosure and dissemination of any information from the records in question shall be limited under the terms of the order to assure that no information will be unnecessarily disclosed and that dissemination will be no wider than necessary. Under no circumstances may an order under this section authorize a program to turn over patient records in general, pursuant to a subpoena or otherwise, to a grand jury or a law enforcement, investigative, or prosecutorial agency.

(5) *Counsel.* Any application to which this section applies shall be denied unless the court makes an explicit finding to the effect that the program has been afforded the opportunity to be represented by counsel independent of counsel for the applicant, and in the case of any program operated by any department or agency of Federal, State, or local Government, is in fact so represented.

§ 2.65–1 Investigation and prosecution of patients—Basis and purpose.

(a) The need for objective criteria for the issuance of court orders in connection with investigation or prosecution of patients seems particularly pressing. In the absence of such criteria, the assurance of confidentiality otherwise provided for by the authorizing legislation may be felt to be of little value.

(b) It has not been found possible to frame entirely satisfactory rules for the scope of orders under § 2.65, but an illustration may be helpful. Where a witness to a crime is believed capable of identifying a suspect by appearance, and the criteria set forth in § 2.65(c) are met, and the program has photographs of its patients, the witness alone may be permitted to view the photographs, with no names attached. If the witness failed to identify any photograph as being a picture of the suspect, that would end the matter. If there was such an identification, the program would be authorized to give any information in its possession as to the suspect's identity and whereabouts to appropriate authorities.

(c) It is not the purpose of this section to substitute a mechanical formula for judicial discretion, but rather to provide criteria which define the area within which discretion is to be exercised. The reason for including all crimes committed on program premises or against program personnel is not any special solicitude for programs as opposed to other victims of crime, but is rather the result of the special difficulties which the broad definition of "records" in § 2.11(n) creates for program personnel as complaining witnesses.

(d) In regard to § 2.65(e), experience has demonstrated that independent counsel may be of crucial importance. The leading case construing 21 U.S.C. 1175, *People v. Newman*, 32 N.Y.2d 379, 345 N.Y.S.2d 502, 298 N.E.2d 651 (1973); certiorari denied, 414 U.S. 1163, 94 S.Ct. 927, 39 L. Ed.2d 116 (1974), would never have been presented to the courts but for the fact that legal counsel for Dr. Newman was furnished on a *pro bono publico* basis by a private law firm. In an entirely different case, a United States District Court appears to have issued a wholly inappropriate order under 21 U.S.C. 1175 in a case in which the treatment program involved was operated by an agency of the United States Government, and either was unrepresented, or was represented by the same attorney who represented the agency seeking the order. It is possible, of course, that the order would have been issued in any event, but it seems clear that there was no adequate presentation to the court of arguments or testimony in opposition. It is difficult to see how the purposes of subsection (b)(2)(C) of the authorizing legislation can be carried out if there is inadequate presentation of the issues to the courts which must decide them.

§ 2.66 Investigation and prosecution of programs.—Rules.

(a) *Applicability.* This section applies to any application by an administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency for an order to permit disclosure of patient records or the making of copies thereof (including patient identifying information) for the purpose of conducting an investigation or an administrative or judicial proceeding with respect to any program or any principal, agent, or employee thereof in his capacity as such.

(b) *Notice.* An application under this section may, in the discretion of the court, be granted without notice, but upon the implementation of any order so granted, the program shall be afforded an opportunity to seek the revocation or amendment of such order.

(3) *Scope.* Both disclosure and dissemination of any information from the records in question shall be limited under the terms of the order to assure that patient identities will be protected to the maximum practicable extent, and that names and other identifying characteristics of patients are expunged from any documents placed in any public record. No information obtained pursuant to an order under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 2.65.

§ 2.66–1 Investigation and prosecution of programs—Basis and purpose.

The principal purpose of § 2.66 is to enable a regulatory agency whose inspection or other source of information has disclosed a need for follow-up, or which has been refused access to patient records, to obtain the necessary authorization for access and copying. There may also be rare instances, such as those involving financial fraud, tax evasion, or other offenses where access by other investigative agencies is necessary, subject to the requirements and protections of this part.

§ 2.67 Undercover agents and informants—Rules.

(a) *Applicability.* This section applies to any application by an administrative, regulatory, supervisory, investigative, or law enforcement agency for an order to permit such agency to have an undercover agent or informant in a program under circumstances which would otherwise be prohibited under § 2.19.

(b) *Notice.* An order under this section may be granted without notice where the criminal conduct for the investigation of which it is granted is believed to be carried on by the program director or by any employee or agent of the program with the knowledge of the program director or under such circumstances that in the exercise of reasonable care the program director should know of such conduct. Under any other circumstances, an order under this section may be granted only after the program director has been afforded notice and opportunity for hearing.

(c) *Criteria.* An order under this section may be granted only where there is reason to believe that a program or any principal, agent, or employee thereof is engaged in serious criminal misconduct, and that other means of securing evidence of such criminal misconduct are not available or would not be effective.

(d) *Scope.* An order granted pursuant to this section may authorize the use by the applicant of an undercover agent or informant, either as a patient or as an employee, of the program in question.

(e) *Time periods.* An order under this section may not authorize the use of an undercover agent for an initial period exceeding 60 days. At any time prior to the expiration of such 60-day period, the applicant may apply for an order extending such period for an additional period not to exceed 60 days, but in no event may the use of an undercover agent in any program be authorized for more than 180 days in any period of 12 consecutive months.

(f) *Duty of agent.* Except to the extent expressly authorized in an order under this section, which shall be limited to disclosure of information directly related to the purpose for which the order is granted, an undercover agent or informant which for the purposes of this part be deemed an agent of the program within which he is acting as such, and as such shall be subject to all of the prohibitions of this part applicable to disclosures of any information which he may acquire.

§ 2.67–1 Undercover agents and informants—Basis and purpose.

The legal rationale underlying this section has been set forth in § 2.19–1. It is expected that this section will find its principal and perhaps its exclusive application in the area of drug law enforcement. Experience has demonstrated that medical personnel, no matter how credentialed, can engage in the illicit sale of drugs on a large scale, and that the use of undecover agents and informants is normally the only effective means of securing evidence sufficient to support a successful prosecution.

[FR Doc.75–12415 Filed 5–8–75;8:45 am]

[21 CFR Part 1401]

CONFIDENTIALITY OF DRUG ABUSE PATIENT RECORD

Proposed revocation of Part

Notice is hereby given that the Special Action Office for Drug Abuse Prevention proposes to revoke Part 1401 of Title 21 of the Code of Federal Regulations by reason of the proposed incorporation of its subject matter in a new Part 2 of Title 42 of the Code of Federal Regulations.

Interested persons are invited to submit written comments, views, or arguments with respect to the proposed revocation, within 30 days of the date of publication of this notice, to the Office of the General Counsel, Special Action Office for Drug Abuse Prevention, Room 3026, 726 Jackson Place, NW., Washington, D.C. 20506, telephone (202) 456–6660. Any such comments, views, or arguments may be made a part of, and will in any event be considered with, comments, views, and arguments submitted with respect to the proposed new Part 2 of Title 42 of the Code of Federal Regulations.

Accordingly, pursuant to the authority of section 408 of the Drug Abuse Office and Treatment Act of 1972, as amended by Pub. L. 93–282 (21 U.S.C. 1175), and under the authority delegated to the General Counsel (29 FR 17901, May 21, 1974), Part 1401 of Title 21 of the Code of Federal Regulations is proposed to be revoked, effective June 29, 1975.

Dated: May 7, 1975.

GRASTY CREWS, II,
General Counsel, Special Action Office for Drug Abuse Prevention.

[FR Doc.75–12416 Filed 5–8–75;8:49 am]

federal register

FRIDAY, MAY 9, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 91

PART V

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions, Modifications and Supersedeas Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of the Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 F.R. 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR, Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR, Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

NEW GENERAL WAGE DETERMINATION DECISIONS

Maryland	MD75–3052

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

California:	
CA75–5052; CA75–5053	Apr. 18, 1975
Indiana:	
IN75–2018; IN75–2020; IN 75–2025; IN75–2026; IN 75–2029	Jan. 31, 1975
IN75–2017; IN75–2019; IN 75–2023; IN75–2024; IN 75–2027; IN75–2028; IN 75–2030	Feb. 7, 1975
IN75–2045	Feb. 21, 1975
Pennsylvania:	
AR–2092	Nov. 29, 1974
Virginia:	
MD73–3003	Jan. 3, 1975
Washington, D.C.:	
DC75–3002	Do.
Wisconsin:	
AR–3157	Oct. 11, 1974

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Indiana:	
IN75–2022 (IN75–2085)	Feb. 7, 1975
Idaho:	
ID75–5024 (ID75–5056)	Feb. 21, 1975
Massachusetts:	
MA75–2002 (MA75–2069); MA75–2003 (MA75–2070); MA75–2010 (MA75–2074); MA75–2011 (MA75–2075); MA75–2012 (MA75–2076)	Jan. 17, 1975
Nebraska:	
AR–76 (NE75–4085)	Nov. 15, 1974
Nevada:	
NV75–5005 (NV75–5057)	Jan. 24, 1975

Signed at Washington, D.C., this 2nd day of May 1975.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

NEW DECISION

STATE: MARYLAND

COUNTIES: Caroline, Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico and Worcester

DECISION NO.: 75MD-3052

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION

DATE: Date of Publication

23-MD-3-A

HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Carpenters	$5.40				
Cement Masons	4.00				
Ironworkers, reinforcing	5.00				
Laborers	3.00				
Truck Drivers:					
1-1/2 tons and under	3.50				
Power Equipment Operators:					
Bulldozers	5.00				
Cranes, derricks & draglines	6.00				
Gradalls	5.25				
Loaders (all types)	4.25				
Motor patrols, graders	5.15				
Oilers, greasers	3.00				
Rollers:					
Base	3.70				
Finish	5.00				
Scrapers, pans, scoops	5.50				

DECISION #CA75-5052 - Mod. #1
(40 FR 17476 - April 18, 1975)
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, Eldorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Plumas, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties, California

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Asbestos Workers	$10.90	.90	.87	1.07	.06
Boilermakers	10.55	.65	1.00	.50	.02
Line Construction:					
Del Norte, Modoc and Siskiyou Counties					
Tree trimmer helper; Groundman	7.12	.35	1%	.10	1/2%
Head groundman; Head groundmen (Chipper); Powderman; Jackhammerman	7.56	.35	1%	.10	1/2%
Line equipment men	8.65	.35	1%	.10	1/2%
Linemen Polesprayer; Heavy line equipment men; Certified lineman; Welder	10.04	.35	1%	.10	1/2%
Tree Trimmer	9.06	.35	1%	.10	1/2%
Cable Splicer; Leadman; Polesprayer	11.12	.34	1%	.10	1/2%
Piledrivermen, bridge, wharf and dock builders	10.13	.72	1.15	.75	.04

DECISION #CA75-5053 - Mod. #1
(40 FR 17494 - April 18, 1975)
Alameda, Alpine, Amador, Calaveras, Contra Costa, Del Norte, Eldorado, Fresno, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Solano, Sonoma, Sutter, Tehama, Tuolumne, Yolo and Yuba Counties, California

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Asbestos Workers	$10.90	.90	.87	1.07	.06
Boilermakers	10.55	.65	1.00	.50	.02
Piledrivermen, bridge, wharf and dock builders	10.13	.72	1.15	.75	.04

DECISION #IN75-2017 - Mod. #2 (40 FR 6024 - February 7, 1975) Allen County, Indiana	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Change:					
Elevator constructors:					
Elevator constructors	$9.03	.445	.29	3%+b	.02
Helpers	6.32	.445	.29	3%+b	.02
Helpers (Prob.)	4.515				
Laborers:					
Group A	6.25	.35	.35		.09
Group B	6.45	.35	.35		.09
Group C	6.55	.35	.35		.09
Group D	7.25	.35	.35		.09
Marble setters	8.39	.30	.25		.01
Roofers	8.40		.10		
Omit:					
Marble setters' helpers	6.05				
Terrazzo workers' helpers	6.05				
Tile setters' helpers	6.05				

DECISION #IN75-2018 - Mod. #2 (40 FR 4809 - January 31, 1975) Bartholomew County, Indiana					
Change:					
Carpenters:					
Camp Atterbury:					
Carpenters	9.45	.47	.50		.06
Millwrights & Piledrivermen	9.45	.47	.50		.06
Soft floor layers	7.55	.47			.06
Laborers:					
Group A	6.40	.35	.35		.09
Group B	6.60	.35	.35		.09
Group C	6.70	.35	.35		.09
Group D	7.40	.35	.35		.09
Lathers	9.50	.45			.04
Plumbers & Steamfitters:					
Camp Atterbury	9.40	.40	.70		.02

DECISION #IN75-2018 Cont'd	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Truck drivers:					
Group 1	$6.85	11.50a	12.00a	b	
Group 2	6.90	11.50a	12.00a	b	
Group 3	6.95	11.50a	12.00a	b	
Group 4	7.00	11.50a	12.00a	b	
Group 5	7.05	11.50a	12.00a	b	
Group 6	7.10	11.50a	12.00a	b	
Group 7	7.20	11.50a	12.00a	b	
Group 8	7.25	11.50a	12.00a	b	
Group 9	7.30	11.50a	12.00a	b	
Group 10	7.35	11.50a	12.00a	b	
Group 11	7.50	11.50a	12.00a	b	

DECISION #IN75-2019 - Mod. #2 (40 FR 6027 - February 7, 1975) Benton & Tippecanoe Counties, Indiana					
Change:					
Laborers:					
Group A	6.25	.35	.35		.09
Group B	6.45	.35	.35		.09
Group C	6.55	.35	.35		.09
Group D	7.25	.35	.35		.09
Lathers	7.74	.30	.25		.01
Plumbers & Steamfitters	9.14	.36	.40		.10
Sheet metal workers	8.85	.40	.30		.04
Truck drivers:					
Single axle straight trucks	6.30	16.00b	13.00b	c	
Warehousemen	6.30	16.00b	13.00b	c	
Helpers, Greasers & Tiremen	6.25	16.00b	13.00b	c	
Tandem axles, straight trucks & doglegs	6.40	16.00b	13.00b	c	
Bituminous distributors	6.45	16.00b	13.00b	c	
Semi-trucks & mechanics	6.60	16.00b	13.00b	c	
Omit:					
Painters:					
Brush	7.25				
Erected steel	7.50				
Spray	10.52				

DECISION #IN75-2019 Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Add:					
Painters:					
Brush	$7.65				
Structural steel	7.90				
Spray	10.92				
DECISION #IN75-2020 - Mod. #2					
(40 FR 4812 - January 31, 1975)					
Dearborn County, Indiana					
Change:					
Bricklayers & Stonemasons	8.25				
Glaziers	10.10		.35		.005
Ironworkers:					
Reinforcing	9.445	.55	1.05		.02
Laborers:					
Group A	6.40	.35	.35		.09
Group B	6.60	.35	.35		.09
Group C	6.70	.35	.35		.09
Group D	7.40	.35	.35		.09
Lathers	10.345		.25		.025
Pipefitters	9.90	.70	.975		.06
Truck drivers:					
Group 1	6.85	11.50a	12.00a	b	
Group 2	6.90	11.50a	12.00a	b	
Group 3	6.95	11.50a	12.00a	b	
Group 4	7.00	11.50a	12.00a	b	
Group 5	7.05	11.50a	12.00a	b	
Group 6	7.10	11.50a	12.00a	b	
Group 7	7.20	11.50a	12.00a	b	
Group 8	7.25	11.50a	12.00a	b	
Group 9	7.30	11.50a	12.00a	b	
Group 10	7.35	11.50a	12.00a	b	
Group 11	7.50	11.50a	12.00a	b	
Omit:					
Painters:					
Commercial					
Brush & Roller	6.90				
Spray	7.40				
Industrial					
Brush	7.25				
Spray	7.50				

DECISION #IN75-2020 Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Add:					
Carpenters:					
Millwrights & Piledrivermen	$7.85	.30	.35		.03
DECISION #IN75-2023 - Mod. #2					
(40 FR 6035 - February 7, 1975)					
Lake County, Indiana					
Change:					
Cement masons:					
Building:					
Hammond Area	9.57	.60	.55		.01
Remainder of County	9.47	.60	.65		.01
Elevator constructors:					
Elevator constructors	10.35	.445	.29	3%+4%	.02
Helpers	7.245	.445	.29	3%+4%	.02
Helpers (Prob.)	5.175				
Laborers (Building, Sewer, & Tunnel Construction):					
Group A	7.15	.35	.40		.09
Group B	7.35	.35	.40		.09
Group C	7.45	.35	.40		.09
Group D	8.15	.35	.40		.09
Plasterers:					
Remainder of County	8.30	.60	.25		.01
Plumbers:					
Remainder of County	10.10	.50	1.00		.02
Sheet metal workers	9.87	.48	.67		.10
Sprinkler fitters:					
Within 30 Mile Radius of Chicago City Hall	10.00	.60	.70		.15
DECISION #IN75-2024 - Mod. #2					
(40 FR 6039 - February 7, 1975)					
LaPorte County, Indiana					
Change:					
Elevator constructors:					
Elevator constructors	9.02	.445	.29	3%+4%	.02
Helpers	6.31	.445	.29	3%+4%	.02
Helpers (Prob.)	4.51				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
DECISION #IN75-2024 -Cont'd					
Ironworkers:					
Remainder of County	$9.05	.55	.65		.01
Laborers (Building, Sewer, & Tunnel Construction):					
Group A	6.95	.35	.40		.09
Group B	7.15	.35	.40		.09
Group C	7.25	.35	.40		.09
Group D	7.95	.35	.40		.09
Lathers	8.87	.33	.25		.01
Plumbers & Steamfitters:					
Remainder of County	10.10	.50	1.00		.02
Sheet metal workers	9.87	.48	.67		.10
Power Equipment Operators (Heavy and Highway Const.):					
Class I	9.40	.40	.50		.05
Class II	9.05	.40	.50		.05
Class III	8.40	.40	.50		.05
Class IV	7.60	.40	.50		.05
Class V	6.70	.40	.50		.05
DECISION #IN75-2025 - Mod. #2 (40 FR 4815 - January 31, 1975) Marion County, Indiana					
Change:					
Bricklayers:					
Bricklayers & Stonemasons	9.45	.30	.20		.06
Terrazzo workers	8.75	.30	.20		
Cement masons	8.76				.04
Elevator constructors	9.455	.445	.29	3%+b+c	.02
Helpers	6.62	.445	.29	3%+b+c	.02
Helpers (Prob.)	4.73				
Laborers:					
Group A	6.40	.35	.35		.09
Group B	6.60	.35	.35		.09
Group C	6.70	.35	.35		.09
Group D	7.40	.35	.35		.09
Lathers	9.50	.45			.04
Plumbers	9.40	.40	.70		.02
Truck drivers:					
Up to & incl. 3 tons & helpers	6.585	a	e	f	
Over 3 tons; semi-trailers; tandem (double bottom), winch trucks when used with winch	6.735	a	e	f	
Truck mechanics	6.66	a	e	f	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
DECISION #IN75-2025 Cont'd					
FOOTNOTES: a. $16.00 per man per week who has been on the payroll 30 days or more e. $17.00 per week for each employee who works 2 days or parts of 2 days f. Each employee who has been in the employ of the same employer for 1 year & has accumulated 1000 hours of service shall receive 1 week's vacation with pay of 40 hours at straight time; each employee who has been in the employ of the same employer for 10 years or more & has accumulated 1000 hours of service shall receive 3 weeks' vacation with pay of 120 hours at the straight time hourly rate					
DECISION #IN75-2026 - Mod. #2 (40 FR 4817 - January 31, 1975) Monroe County, Indiana					
Change:					
Electricians	$8.65	.30	1%+.30		.1%
Elevator constructors:					
Elevator constructors	9.455	.445	.29	3%+a+b	.02
Helpers	6.62	.445	.29	3%+a+b	.02
Helpers (Prob.)	4.73				
Ironworkers	9.65	.55	.80		.05
Laborers:					
Group A	6.40	.35	.35		.09
Group B	6.60	.35	.35		.09
Group C	6.70	.35	.35		.09
Group D	7.40	.35	.35		.09
Lathers	9.50	.45			.04
Truck drivers:					
Group 1	6.85	11.50a	12.00a	b	
Group 2	6.90	11.50a	12.00a	b	
Group 3	6.95	11.50a	12.00a	b	
Group 4	7.00	11.50a	12.00a	b	
Group 5	7.05	11.50a	12.00a	b	
Group 6	7.10	11.50a	12.00a	b	
Group 7	7.20	11.50a	12.00a	b	
Group 8	7.25	11.50a	12.00a	b	
Group 9	7.30	11.50a	12.00a	b	
Group 10	7.35	11.50a	12.00a	b	
Group 11	7.50	11.50a	12.00a	b	

DECISION #IN75-2027 - Mod. #2 (40 FR 6044 - February 7, 1975) Porter County, Indiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Change:					
Bricklayers:					
Tile setters	$9.10	.35	.55	.50	.01
Cement masons:					
Building					
Eastern ½ of County	8.73	.45	.70		.03
Western ½ of County	9.47	.60	.65		.01
Electricians	9.55	3½%	5½%	4%	.2%
Elevator constructors:					
Elevator constructors	10.35	.445	.29	3%+a+b	.02
Helpers	7.245	.445	.29	3%+a+b	.02
Helpers (Prob.)	5.175				
Ironworkers	10.63	.50	.75		.05
Laborers (Building, sewer, & tunnel construction - North of U. S. Hwy. #20):					
Group A	7.15	.35	.40		.09
Group B	7.35	.35	.40		.09
Group C	7.45	.35	.40		.09
Group D	8.15	.35	.40		.09
Laborers (Building, sewer, & tunnel construction - South of U. S. Hwy. #20):					
Group A	6.95	.35	.40		.09
Group B	7.15	.35	.40		.09
Group C	7.25	.35	.40		.09
Group D	7.95	.35	.40		.09
Plasterers (Eastern ½ of County)	8.73	.45	.70		.03
Plumbers	10.10	.50	1.00		.02
Power equipment operators (Heavy and Highway):					
Class I	9.40	.40	.50		.05
Class II	9.05	.40	.50		.05
Class III	8.60	.40	.50		.05
Class IV	7.60	.40	.50		.05
Class V	6.70	.40	.50		.05
Sheet metal workers	9.87	.48	.67		.10

DECISION #IN75-2028 - Mod. #2 (40 FR 6049 - February 7, 1975) St. Joseph County, Indiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Change:					
Cement masons:					
Building	$8.61	.40	.50		.01
Elevator constructors:					
Elevator constructors	9.02	.445	.29	3%+a+b	.02
Helpers	6.31	.445	.29	3%+a+b	.02
Helpers (Prob.)	4.51				
Ironworkers	9.05	.55	.65		.01
Lathers	8.87	.33	.25		.01
Plasterers	8.77	.40	.50		.01
Power equipment operators (Heavy and Highway):					
Class I	9.30	.40	.50		.05
Class II	8.95	.40	.50		.05
Class III	8.50	.40	.50		.05
Class IV	7.50	.40	.50		.05
Class V	6.60	.40	.50		.05
Sheet metal workers	9.45	.48	.50		
Omit:					
Painters:					
Brush, roller & spray	7.63		.20		
Add:					
Painters:					
Brush, Taping	7.55		.40		
Spray, Sandblasters	8.30		.40		

DECISION #IN75-2029 - Mod. #2 (40 FR 4820 - January 31, 1975) Vanderburgh County, Indiana					
Change:					
Elevator constructors:					
Elevator constructors	9.31	.445	.29	3%+a+b	.02
Helpers	6.52	.445	.29	3%+a+b	.02
Helpers (Prob.)	4.655				
Laborers:					
Group A	6.40	.35	.35		.09
Group B	6.60	.35	.35		.09
Group C	6.70	.35	.35		.09
Group D	7.40	.35	.35		.09

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
DECISION #IN75-2030 - Mod. #2 (40 FR 6053 - February 7, 1975) Vigo County, Indiana					
Change:					
Elevator constructors:					
Elevator constructors	$9.455	.445	.29	3%+a+b	.02
Helpers	6.62	.445	.29	3%+a+b	.02
Helpers (Prob.)	4.73				
Laborers:					
Group A	6.40	.35	.35		.09
Group B	6.60	.35	.35		.09
Group C	6.70	.35	.35		.09
Group D	7.40	.35	.35		.09
Sheet metal workers	8.90	.31	.45		.05
Truck drivers:					
Class I	7.085	.50	13.00a		
Class II	7.585	.50	13.00a		
Class III	7.785	.50	13.00a		
Class IV	7.935	.50	13.00a		
DECISION #IN75-2045 - Mod. #1 (40 FR 7828 - February 21, 1975) Delaware County, Indiana					
Change:					
Boilermakers	10.05	.50	1.00		.01
Bricklayers:					
Bricklayers & Stonemasons	8.75	.40	.25		.01
Marble masons	8.75	.40	.25		.01
Tile setters	8.50	.40	.25		.01
Cement masons	8.40	.40			
Elevator constructors:					
Elevator constructors	9.455	.445	.29	3%+a+b	.02
Helpers	6.62	.445	.29	3%+a+b	.02
Helpers (Prob.)	4.73				
Ironworkers:					
Northeastern 1/3 of County	9.70	.55	.55		.01
Southern 2/3 of County	9.65	.55	.80		.05
Laborers:					
Group A	6.25	.35	.35		.09
Group B	6.45	.35	.35		.09
Group C	6.55	.35	.35		.09
Group D	7.25	.35	.35		.09

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
DECISION #IN75-2045 Cont'd					
Painters:					
Brush	$7.55		.40		
Spray	8.30		.40		
Plumbers	9.28	.40	.35	d	.10
Steamfitters	9.28	.40	.35	d	.10
Truck drivers:					
Group 1	6.85	11.50a	12.00a	b	
Group 2	6.90	11.50a	12.00a	b	
Group 3	6.95	11.50a	12.00a	b	
Group 4	7.00	11.50a	12.00a	b	
Group 5	7.05	11.50a	12.00a	b	
Group 6	7.10	11.50a	12.00a	b	
Group 7	7.20	11.50a	12.00a	b	
Group 8	7.25	11.50a	12.00a	b	
Group 9	7.30	11.50a	12.00a	b	
Group 10	7.35	11.50a	12.00a	b	
Group 11	7.50	11.50a	12.00a	b	
Add:					
Footnote:					
d. 2 paid holidays: C & D					
Decision #AR-2092 - Mod. # 4 (39 FR 41701 - November 29, 1974) Lackawanna, Wayne & Wyoming Counties, Pennsylvania					
Change:					
Modification # 3, in 40 FR 18283, dated April 18, 1975, to include Susquehanna County.					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Decision No. MD75-3003 - Mod. # 2 (40 FR 937 - January 3, 1975) Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, the city of Alexandria and Dulles International Airport, Virginia.					
Change:					
Bricklayers	$9.85	.60	.60		.10
Decision #DC75-3002 - Mod. # 3 (40 FR 948 - January 3, 1975) Washington, D. C.					
Change:					
Building, Heavy, Sewer & Water Lines:					
Bricklayers	$9.85	.60	.60		.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
DECISION #AR-3157 - Mod. #1 (39 FR 36833 - October 11, 1974) Green Lake, Marquette, Waupaca Waushara and Winnebago Counties, Wisconsin					
Change:					
Asbestos Workers	$ 8.56	.45	.20	.55	.06
Boilermakers	8.90	.70	1.00		.02
Boilermakers' helpers	8.725	.70	1.00		.02
Electricians	9.15	.38	1%		
Elevator Constructors	9.185	.445	.29	3%+a+b	.02
Elevator Constructors' helpers	70%JR	.445	.29	3%+a+b	.02
Elevator Constructors' helpers (Prob.)	50%JR				
Painters					
Brush & Structural Steel	6.85	.30	.10		
Paperhanging	6.85	.30	.10		
Spray and Sandblasting	7.35	.30	.10		
Roofers	6.48	.50	.35		
Sheetmetal workers	7.97	.40	.25	.80	
Sprinkler fitters	9.40	.30	.40		.05
Truck Drivers					
Regular	7.12	a	d		
Semi and Tandem	7.20	a	d		
FOOTNOTES:					
a. Employer contributes $52.30 per month					
d. $17.00 per week					
Omit:					
Lathers					
Marble Setters					
Marble Setters' helpers					

SUPERSEDEAS DECISION

STATE: INDIANA COUNTY: Grant
DECISION NUMBER: IN75-2035 DATE: Date of Publication
Supersedes Decision No. IN75-2022, dated February 7, 1975 in 40 FR 6032
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ASBESTOS WORKERS	$9.95	.35	.55		
BOILERMAKERS	10.05	.50	1.00		.01
BRICKLAYERS:					
Bricklayers; Marble masons; Stonemasons; Terrazzo workers; & Tile setters	8.40	.40	.30		
CARPENTERS:					
Carpenters; Soft floor layers	7.78	.35	.45		.05
Piledrivermen	7.98	.35	.45		.05
Millwrights	8.03	.35	.45		.05
CEMENT MASONS	8.40	.40			
ELECTRICIANS	8.95	.30	11%+.30		.2%
ELEVATOR CONSTRUCTORS:					
Elevator constructors	9.03	.445	.29	3%+4b	.02
Helpers	6.32	.445	.29	3%+4b	.02
Helpers (Prob.)	4.515				
GLAZIERS	9.89				
IRONWORKERS	9.70	.55	.55		.03
LATHERS	8.15		.25		.01
LEADBURNERS	9.25	.35		c	.01
PAINTERS:					
Brush; Roller	7.49	.32	.25		.07
Sandblasting; Spray	8.49	.32	.25		.07
PLASTERERS	7.75	.40			.01
PLUMBERS; Steamfitters	9.41	.40	.30		.04
ROOFERS	6.40		.10		
SHEET METAL WORKERS	9.19	.35	.30		.06
SPRINKLER FITTERS	9.40	.50	.70		.08

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Holidays: A through F.

b. Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

c. Holidays: A through F plus Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regularly scheduled work days immediately preceding and following the holiday.

DECISION NO. IN75-2085 INDIANA-15-LAB AREA I

LABORERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP A	$6.25	.35	.35		.09
GROUP B	6.45	.35	.35		.09
GROUP C	6.55	.35	.35		.09
GROUP D	7.25	.35	.35		.09

CLASSIFICATIONS

GROUP A: Building and Construction Laborers, scaffold builders other than for mason or plasterers, ironworkers' helpers, mechanic helpers, mechanic tenners, window washers and cleaners, roofers' helpers, railroad laborers, cement finishers helper, carpenter helper, all portable water pumps with discharge up to 3", mason tenders

GROUP B: Asphalt rakers and lutemen, kettlemen, air tool operators, vibrators, chipping hammer operator, jackmen and sheeting men working in ditches deeper than 6', laborers working in ditches 6' in depth or deeper, assembly of unicrete pump, chain saw operators, tile layers (sewer or field), sewer pipe layers (metallic and non-metallic) motor-driven wheelbarrows and concrete buggies, hyster opera-pump crete assemblers, conveyor assemblers, core drill operators, cement, lime or silica clay handlers (bulk or bag), pneumatic spikers, deck engine and winch operator, water main and cable ducking (metallic and non-metallic)

GROUP C: Plaster tenders, Mortar mixers, Welders (acetylene or electric), cutting torch or burner, cement nozzle laborers, cement gun operator, scaffold builders when working for plasterer or mason, mason tenders

GROUP D: Dynamite Men

IN75-2085

LINE CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
Linemen and Technician	$8.18	.35	1%		.5%	
Heavy Equipment Operator "A"	7.77	.35	1%		.5%	
Heavy Equipment Operator "B"	6.40	.35	1%		.5%	
Powderman and Equipment Mechanic	6.25	.35	1%		.5%	
Senior Groundman Truck Driver W/Winch	5.35	.35	1%		.5%	
Groundman Truck Driver W/Winch	5.14	.35	1%		.5%	
Groundman Truck Driver WO/Winch	4.50	.35	1%		.5%	
Senior Groundman After 5 Years	5.13	.35	1%		.5%	
Senior Groundman after 12 Months	4.99	.35	1%		.5%	
Groundman 0-12 Months	4.23	.35	1%		.5%	

Decision #IN75-2085

POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP 1	$ 9.15	.40	.40		.05
GROUP 2	8.30	.40	.40		.05
GROUP 3	7.45	.40	.40		.05
GROUP 4	6.75	.40	.40		.05

CLASSIFICATIONS

GROUP 1: Air Compressor (pressurizing shafts, tunnels and divers), Air Tugger, Auto Patrol, Backfiller, Backhoe, Boom Cat, Boring Machine, Bulldozer, Caisson Drilling Machine, Cherry Picker, Compactor (w/dozer blade) Concrete Plant, Concrete Pump, Crane w/all attachments, Crane-Electric Overhead, Derrick, Ditching Machine (18" and over), Dredge, Elevator (when hoisting material or tool) Forklift (machinery), Formless Paver, Generator (power for welders or compressors), Gradall, Helicopter, Helicopter Winch Operator, Highlift-Front End Loader, Hoist, Locomotive, Mechanic on job site, Mucking Machine, Panel Board, Concrete Plant, Piledriver, Push Cat, Scoop and Tractor, Scraper-rubber-tired, Spreader-tractor mounted, Straddle Carrier-Ross type, Sub-base Finish, Machine (C.M.I. or similar tower crane), Tractor w/backhoe (over ½ yd.) Welder

GROUP 2: A-Frame Truck, Batcher Plant (automatic dry batch), Bending Machine-power driven, Bituminous Mixer, Bituminous Paver, Bituminous Plant Engineer, Boatman, Bullfloat, Compactor or Tamper-self-propelled, Concrete Mixer (21 cu. ft. or over), Concrete spreader-power driven, Dinkey Engine, Ditching Machine (less than 18"), Drilling Machine, Finish Machine and Bullfloat, Finishing Machine, Fireman, Piledriving and Boilers, Forklift-Masonry and Material, Gunnite Machine, Head Greaser, Mechanic in Shop, Mesh Depresser-mesh placer, P.C.C.-Concrete Belt Placer, Roller-Asphalt Stone and Sub-base, Sheepstone Roller self-propelled, Shop Mule, Spreader or Base Paver-self-propelled, Subgrader, Throttle Valve w/air compressor or boiler, Tractor w/backhoe (½ yard and under), Tractor-High lift-Farm-type, Tractor-Industrial type, Tractor w/winch, Well Points, Winch Truck

GROUP 3: Air Compressor (210 cu. ft. and over); Bituminous Distributor, Chair Cart, Concrete Curing Machine, Concrete Saw, Dope pot-power agitated, Flexplane, Form Grader, Hydrohammer, Jacks-Hydraulic-power driven, Minor Equipment Operator, Paving Joint Machine, Post Hole Digger, Roller-earth, Throttle Valve, Track Jack-power driven, Tractor-farm type, Truck Crane Driver

GROUP 4: Air Compressor (less than 210 cu. ft.) Concrete Mixer (under 21 cu. ft.), Conveyor, Generator, Mechanical Heater, Oiler, Power Broom, Pump, Welding Machine, Helpers

DECISION NO. IN75-2085 IND-7-TD-1

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP 1	$6.85	11.50a	12.00a	b	
GROUP 2	6.90	11.50a	12.00a	b	
GROUP 3	6.95	11.50a	12.00a	b	
GROUP 4	7.00	11.50a	12.00a	b	
GROUP 5	7.05	11.50a	12.00a	b	
GROUP 6	7.10	11.50a	12.00a	b	
GROUP 7	7.20	11.50a	12.00a	b	
GROUP 8	7.25	11.50a	12.00a	b	
GROUP 9	7.30	11.50a	12.00a	b	
GROUP 10	7.35	11.50a	12.00a	b	
GROUP 11	7.50	11.50a	12.00a	b	

CLASSIFICATIONS

GROUP 1: Drivers on single axle, lowboy helper or flagman, drivers on air compressors and welding machines including those pulled by cars, pick-up trucks, tractors, fork-lifts, dumpsters

GROUP 2: Drivers on Mixer Trucks 2 yards

GROUP 3: Mechanic Helpers and Greasers

GROUP 4: Drivers on Batch Trucks wet or dry 3 batches or under

GROUP 5: Drivers on Tandem Axle Trucks (including Dog-Legs), Drivers on Oil Distributors Drivers on Mixers Trucks 3 yards, Winch Trucks

GROUP 6: Drivers on Single axle, semi-trucks, Drivers on batch trucks wet or dry or dry over 3 batches, Drivers on pavement breakers

GROUP 7: Drivers on Tandem-Axle semi-trucks, Drivers on trac-o-trucks, Euclids, Tournapull when pulling other than self-loading equipment up to and including 10 yards, Drivers on mixer trucks 4 yards, Mechanics

GROUP 8: Drivers on Tri-axle Trucks

GROUP 9: Drivers on Low-Boy, Drivers on Tandem, Tandem Axle Semi-trucks

GROUP 10: Drivers on Trac-O-Trucks, Euclids, Tournapulls when pulling other than self-loading equipment 11 yards to and including 16 yards, Drivers on mixer trucks above 4 yards

GROUP 11: Drivers on Trac-O-Trucks, Euclids, Tournapull when pulling other than self-loading equipment over 16 yards, Helicopter pilot

FOOTNOTES:

a. Per week per employee

b. 1 week paid vacation after 1 year service, 2 weeks after 3 years, and 3 weeks after 10 years.

SUPERSEDEAS DECISION

STATE: Idaho
DECISION NUMBER: ID75-5056
COUNTIES: Statewide
DATE: Date of Publication
Supersedes Decision No. ID75-5024 dated February 21, 1975, In 40 FR 7803
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy and highway construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ASBESTOS WORKERS:					
Benewah, Bonner, Boundary, Clearwater, Northern half of Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties	$9.70	.44	.75		
Remainder of Counties and Southern half of Idaho County	8.71	.50	.82		
BOILERMAKERS	8.90	.65	1.00	.50	.02
BRICKLAYERS; Stonemasons:					
Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls Counties	7.40	.25			
Bingham (South half), Bannock, Bear Lake, Caribou, Franklin, Oneida, Power Counties	8.75	.30	.50		
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington Counties	8.15	.40	.30		
Idaho, Clearwater, Latah, Lewis, Nez Perce Counties	9.16	.50	.50		
Benewah, Bonner, Boundary, Kootenai, Shoshone Counties	9.00				
CARPENTERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho (North of the Northern boundary of Township 29 North), Kootenai, Latah, Lewis Nez Perce, Shoshone Counties					
Carpenters	8.34	.50	.55		.045
Piledrivermen; Sawfilers; Stationary Power Woodworking Tool Operator; Floor Layer; Floor Finisher; Floor Sander	8.49	.50	.55		.045
Shingler (wood and composition)	8.54	.50	.55		.045
Carpenters (burned, charred, creosoted or similarly treated material); Boom Man	8.59	.50	.55		.045
Millwrights and Machine Erector	8.84	.50	.55		.045
Piledriver (creosoted material)	8.74	.50	.55		.045

DECISION NO. ID75-5056

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CARPENTERS: (Cont'd)					
Remainder of Counties and Idaho County (South of the Northern boundary of Township 29 North)					
Carpenters; Floor Layer; Shingler; Drywall Applicator and Installer	$7.62	.42	.30	.40	.10
Saw Filer; Piledriverman; Bridgeman and Wharf Builders	7.79	.42	.30	.40	.10
Millwrights; Machine Erectors; Piledriverman's Boom Man	7.91	.42	.30	.40	.10
CEMENT MASONS:					
Benewah, Bonner, Boundary, Clearwater, Idaho (North of 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Cos.					
Cement Masons	8.25	.45	.60		.04
Gunnite; Power Machine; Power Tools; Power Troweling Machine; Troweling Magnesite or other material with oxichloride base	8.38	.45	.60		.04
Remainder of Counties and Idaho County (South of 46th Parallel)					
Cement Masons	7.40	.40	.35	.25	.10
Power Trowel; Power Grinder; Gunnite and Composition Floor Layer	7.60	.40	.35	.25	.10
ELECTRICIANS:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties					
Electricians	8.05	.35	1%+.40		.02
Cable Splicers	8.45	.35	1%+.40		.02
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington Counties					
Electricians	8.48	.40	1%+.25		1%
Cable Splicers	9.328	.40	1%+.25		1%
Remaining Counties					
Electricians - Technicians	8.50	.40	1%+.25		1%
Cable Splicers	9.35	.40	1%+.25		1%

DECISION NO. ID75-5056

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ELEVATOR CONSTRUCTORS:					
Benewah, Bonner, Boundary, Clearwater, Idaho (North of 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Cos.					
Elevator Constructors	$8.975	.445	.29	3%+a	.02
Elevator Constructors' Helpers	70%JR	.445	.29	3%+a	.02
Elevator Constructors' Helpers (Prob.)	50%JR				
Remainder of Counties and Idaho County (South of 46th Parallel)					
Elevator Constructors	8.05	.445	.29	3%+a	.02
Elevator Constructors' Helpers	70%JR	.445	.29	3%+a	.02
Elevator Constructors' Helpers (Prob.)	50%JR				
GLAZIERS:					
Bonner, Boundary, Kootenai, Shoshone Counties	7.455	.31	.10	.345	
Benewah, Clearwater, Idaho (North of 46th Parallel), Latah, Lewis, Nez Perce Counties	7.28	.31	.25	.28+b	
Ada, Adams, Boise, Canyon, Elmore, (except Mt. Home AFB), Gem, Gooding, (Western part of County from a line running north and south through the eastern limits of Bliss), Idaho (Southern part of County from a line running east and west through the North limits of Elk City), Owyhee, Payette, Valley, Washington Counties	6.14	.25	.30	.23	
IRONWORKERS (Ornamental-Structural-Reinforcing)					
Adams, (North of the Weiser-Gibbonsville Line), Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lemhi (North of the Weiser-Gibbonsville Line), Lewis, Nez Perce, Shoshone, Valley, (North of the Weiser-Gibbonsville Line), Washington (North of the Weiser-Gibbonsville Line) Counties	9.15	.48	.80		.05

DECISION NO. ID75-5056

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
IRONWORKERS (Ornamental-Structural-Reinforcing) (Cont'd)					
Remaining Counties and Adams, Lemhi, Valley, Washington Counties South of the Weiser-Gibbonsville Line	$8.54	.50	.75		.02
LATHERS:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington and Idaho County (South of the 46th Parallel)	6.65				
Benewah, Bonner, Boundary, Clearwater, Idaho (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties	8.88	.45			
MARBLE SETTERS:					
Clearwater, Idaho, Latah, Lewis, Nez Perce Counties	9.16	.50	.50		
Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minnidoka, Twin Falls Counties	7.40	.25			
PAINTERS:					
Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding (except Bliss and Western 1/3 of County), Jefferson, Jerome, Lemhi, Lincoln, Madison, Minnidoka, Oneida, Power, Teton, Twin Falls Counties					
Brush; Perfatapers	6.31	.25	.10		
Structrual Steel; Swing Stage; Spray	6.76	.25	.10		
Ada, Adams, Boise, Canyon, Elmore, (except Mt. Home AFB), Gem, Gooding, (Western 1/3 of County including Bliss), Owyhee, Payette, Idaho (South of the 46th Parallel), Valley, Washington Counties					
Brush, Paperhangers; Drywall Tapers	7.26	.25	.25		.02
Steel; Sign Painters	7.36	.25	.25		.02
Bazooka Operator	7.46	.25	.25		.02

DECISION NO. ID75-5056

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
PAINTERS: (Cont'd)					
Spray; Sandblasting; Toxic and Chemical Material	$7.73	.25	.25		.02
Elmore (Mt. Home AFB)					
Brush; Paperhangers; Drywall Tapers	8.26	.25	.25		.02
Structural Steel; Sign Painters	8.36	.25	.25		.02
Spray Gun; Sandblasting; Pot Tenders; Application of toxic material	8.73	.25	.25		.02
Bazooka Operator	8.46	.25	.25		.02
Benewah, Bonner, Boundary, Clearwater, Idaho (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Cos.					
Brush	8.46	.31	.60		.02
Spray; Steel; Steam Cleaning; Rollers (over 9" or 10" handle); Finish Drywall Taper	8.71	.31	.60		.02
Swing Stage and over 30 ft. high	8.81	.31	.60		.02
Bitumastic; Sand Blast; Bridges; Towers; Stacks; Steeples; Tanks on legs	8.86	.31	.60		.02
Electric, TV and Radio Transmission Towers	9.21	.31	.60		.02
PLASTERERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	8.88	.45			
Remaining Counties	7.50	.32	.20	.20	
PLUMBERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties	9.60	.33	.85	.60	.10
Remaining Counties and Idaho County (South of the 46th Parallel)					
Plumbers	8.79	.37	.40		.10
Utility Helpers	70%JR	.37	.40		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ROOFERS:					
Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power and Teton Counties	$8.00		.20		
Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Idaho (South of the 46th Parallel), Lemhi, Owyhee, Payette, Valley and Washington Counties					
Roofers; Kettlemen	7.40	.33	.20		
Roofers working with coal tar and pitch products	8.90	.33	.20		
Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties					
Roofers	7.39	.40	.25		.01
Roofers working with pitch products	8.59	.40	.25		.01
Clearwater, Idaho (North of the 46th Parallel), Latah, Lewis, Nez Perce, Counties					
Roofers; Kettlemen; Waterproofers	8.25				
SHEET METAL WORKERS:					
Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone Cos.	9.95	.37	.50		
Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power, Teton Counties	8.03	.32	.24		.02
Remaining Counties	8.36	.32	.30		.04
SOFT FLOOR LAYERS:					
Bannock, Bear Lake, Bingham, (South from a line running east and west thru northern limits of Blackfoot including AEC Test Site), Blaine, Butte (South from a line running east and west thru northern limits of the AEC Test Site), Bonneville (South from a line running east and west thru					

DECISION NO. ID75-5056

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
SOFT FLOOR LAYERS: (Cont'd)					
northern limits of Blackfoot), Camas, Caribou, Cassia, Clark, Franklin, Fremont, Gooding, Jefferson, (that portion containing AEC Test Site), Jerome, Lemhi, Lincoln, Madison, Minnidoka, Oneida, Power, Teton, Twin Falls Counties	$6.70				
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	7.89	.25	.40	.31	
Ada, Adams, Boise, Canyon, Elmore (except Mt. Home AFB), Gem, Gooding (Western 1/3 of County including Bliss), Owyhee, Payette, Idaho (South of the 46th Parallel), Valley and Washington Counties	6.00	.25	.10		.10
SPRINKLER FITTERS	9.40	.50	.70		.08
TERRAZZO WORKERS and TILE SETTERS:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington Counties	7.00	.40	.30		
Bannock, Bear Lake, Bingham, (Southern half), Caribou, Franklin, Oneida, Power Counties	7.95	.30	.50		
Benewah, Bonner, Boundary, Kootenai, Shoshone Counties	8.75				
Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minnidoka, and Twin Falls Counties	7.40	.25			
TERRAZZO WORKERS' and TILE SETTERS' HELPERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties					
Terrazzo and Tile Setters' Helpers	6.10				
Finisher Helper	6.55				
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. ID75-5056

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer credits 4% basic hourly rate of employee with over 5 years' service, 2% basic hourly rate for 6 months to 5 years' service to Vacation Plan. Six Paid Holidays: A through F.

b. All employees who have been employed for a period of one year shall have two weeks vacation with pay. Also 7 paid holidays: A through F plus Washington's Birthday.

DECISION NO. ID75-5056

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LINE CONSTRUCTION (AREA 1) (Benewah, Bonner, Boundary, Clearwater, Kootenai, Idaho, Latah, Lewis, Nez Perce and Shoshone Counties)					
Cable Splicers; Leadman Pole Sprayer	$11.12	.35	1%	.10	1/2%
Lineman; Pole Sprayer; Heavy Line Equipment Man; Certified Lineman Welder	10.04	.35	1%	.10	1/2%
Tree Trimmer	9.06	.35	1%	.10	1/2%
Line Equipment Man	8.65	.35	1%	.10	1/2%
Head Groundman (chipper); Head Groundman; Powderman; Jackhammer Man	7.56	.35	1%	.10	1/2%
Groundman; Tree Trimmer Helper	7.12	.35	1%	.10	1/2%
LINE CONSTRUCTION (AREA 2) (Remaining Counties)					
All work over 34.5 KV and all work on steel towers and/or multiple wood structures and all sub-stations of 1,000 KVA or greater capacity, all communications, underground work, 34.5 KV, street and highway lighting and motor traffic controls:					
Groundman	6.40	.35	1%		3/4%
Equipment Operators	7.74	.35	1%		3/4%
Lineman	8.50	.35	1%		3/4%
Cable Splicer	9.35	.35	1%		3/4%
All power construction of 34.5 KV and under when performed for an operating utility. Street lighting when performed for an operating utility or municipality					
Groundman	6.16	.35	1%		3/4%
Equipment Operator	7.22	.35	1%		3/4%
Lineman	8.02	.35	1%		3/4%

DECISION NO. ID75-5056

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LABORERS (AREA 1) (Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel)					
Group 1	$ 6.85	.45	.65		.02
Group 2	7.00	.45	.65		.02
Group 3	7.10	.45	.65		.02
Group 4	7.15	.45	.65		.02
Group 5	7.20	.45	.65		.02
Group 6	7.25	.45	.65		.02
Group 7	7.30	.45	.65		.02
Group 8	7.50	.45	.65		.02
Group 9:					
Class A	6.90	.45	.65		.02
Class B	6.95	.45	.65		.02
Class C	7.35	.45	.65		.02
Class D	7.40	.45	.65		.02
LABORERS (AREA 2) (Remaining Counties and that portion of Idaho County South of the 46th Parallel)					
Group 1	5.97	.45	.45	.20	.10
Group 2	6.07	.45	.45	.20	.10
Group 3	6.17	.45	.45	.20	.10
Group 4	6.27	.45	.45	.20	.10
Group 5	6.32	.45	.45	.20	.10
Group 6	6.57	.45	.45	.20	.10
Group 7	6.82	.45	.45	.20	.10
UNDERGROUND WORK					
Group 8	6.12	.45	.45	.20	.10
Group 9	6.27	.45	.45	.20	.10
Group 10	6.57	.45	.45	.20	.10

DECISION NO. ID75-5056

POWER EQUIPMENT OPERATORS - (Area 1)

(Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel)	Basic Hourly Rates ZONE 1*	Basic Hourly Rates ZONE 2*	Basic Hourly Rates ZONE 3*	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Group 1	$7.50	$8.00	$8.45	.65	.75		.03
Group 2	7.80	8.30	8.75	.65	.75		.03
Group 3	8.35	8.85	9.30	.65	.75		.03
Group 4	8.50	9.00	9.45	.65	.75		.03
Group 5	8.65	9.15	9.60	.65	.75		.03
Group 6	8.90	9.40	9.85	.65	.75		.03
Group 7	9.15	9.65	10.10	.65	.75		.03

*ZONE 1: Within a 15 mile radius from the City center of the following Cities: Coeur d' Alene and Lewiston, Idaho; and Spokane, Washington.
*ZONE 2: From a 15 to 45 mile radius from the center of the above named Cities.
*ZONE 3: Over a 45 mile radius from the center of the above named Cities.

POWER EQUIPMENT OPERATORS-(AREA 2) (Remaining Counties and that portion of Idaho County South of the 46th Parallel)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Group 1	$7.05	.50	.55		.10
Group 2	7.21	.50	.55		.10
Group 3	7.53	.50	.55		.10
Group 4	7.84	.50	.55		.10
Group 5	8.01	.50	.55		.10
Group 6	8.19	.50	.55		.10
Group 7	8.60	.50	.55		.10
Group 8	8.83	.50	.55		.10
Group 9	9.06	.50	.55		.10
Group 10	9.30	.50	.55		.10

DECISION NO. ID75-5056

TRUCK DRIVERS - (AREA 1) (Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Group 1	$ 7.60	.82	.65		
Group 2	7.65	.82	.65		
Group 3	7.70	.82	.65		
Group 4	7.80	.82	.65		
Group 5	8.00	.82	.65		
Group 6	8.05	.82	.65		
Group 7	8.10	.82	.65		
Group 8	8.15	.82	.65		
Group 9	8.25	.82	.65		
Group 10	8.30	.82	.65		
Group 11	8.60	.82	.65		
Group 12	8.75	.82	.65		
Group 13	8.90	.82	.65		
Group 14	9.05	.82	.65		

TRUCK DRIVERS - (AREA 2) (Remaining Counties and that portion of Idaho County South of the 46th Parallel)					
Group 1	6.80	.55	.55	.15	.10
Group 2	6.86	.55	.55	.15	.10
Group 3	6.92	.55	.55	.15	.10
Group 4	6.98	.55	.55	.15	.10
Group 5	7.03	.55	.55	.15	.10
Group 6	7.24	.55	.55	.15	.10
Group 7	7.30	.55	.55	.15	.10
Group 8	7.36	.55	.55	.15	.10
Group 9	7.47	.55	.55	.15	.10
Group 10	7.53	.55	.55	.15	.10
Group 11	7.59	.55	.55	.15	.10
Group 12	7.65	.55	.55	.15	.10
Group 13:					
Class A	7.13	.55	.55	.15	.10
Class B	7.24	.55	.55	.15	.10
Class C	7.47	.55	.55	.15	.10
Class D	7.65	.55	.55	.15	.10
Class E	7.76	.55	.55	.15	.10
Class F	7.88	.55	.55	.15	.10
Class G	8.21	.55	.55	.15	.10
Class H	8.44	.55	.55	.15	.10
Class I	8.67	.55	.55	.15	.10
Group 14	8.09	.55	.55	.15	.10

DECISION NO. ID75-5056

LABORERS (AREA 1)

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel

Group 1: Brush Hog Feeder; Carpenter Tender; Concrete Crewman (to include stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, pumpcrete machine, handling the nozzle of squeezecrete or similar machine - 6" and smaller); Concrete Signalman; Crusher Feeder; Demolition (to include clean-up, burning, loading, wrecking and salvage of all material); Driller Helper; Dumpman; Fence Erector (to include guard rails, guide and reference posts, sign posts, and right of way markers); General Laborer; Grout Machine Header Tender; Nipper; Riprap Man; Scaleman; Stake Jumper; Structural Mover (to include separating foundation preparation, cribbing, shoring, jacking and unloading of structure); Tailhoseman (water nozzle); Track Laborer (RR); Truck Loader; Timber, Bucker and Faller (by hand); Window Cleaner (prior to completion of construction)

Group 2: Cement Finisher Tender; Cement Handler; Demolition Torch; Dope Pot Fireman, non-mechanical; Form Cleaning Machine - reeder, stacker; Form Setter, paving; Driller Helper (when required to move and position machine); Nozzleman, water and air or steam; Pipe layer, corrugated metal culvert; Pipewrapper; Pot Tender; Powderman Helper; Power Tool Operator, gas, electric, pneumatic; Sandblast Tailhoseman; Scaffold Erector, wood or steel; Railroad Equipment, power driven, except dual mobile power spiker or puller; Rodder and Spreader; Wheelbarrow, power driven; Well-point Man; Vibrator up to 4"

Group 3: Asphalt Raker; Asphalt Roller, walking; Chain Saw Operator with attachments; Concrete Saw Walking; Grade Checker, using level; Jackhammer Operator; Multi-section Pipe Layer; Nozzleman (to include squeeze and flo-crete nozzle); Pavement Breaker; Power Buggy Operator; Railroad Power Spiker or Puller, dual mobile; Tamper (to include operation of Barco, Essex and similar tamper and pavement breakers); Trencher, Shawnee; Water Pipe Liner; Wagon Drills

Group 4: Chain Saw (faller); Laser Beam Operator; Pipe Layer (Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker, Shorer and Lagger but not including laying corrugated metal culvert pipe)

Group 5: Concrete Stack; Mortar Mixer

Group 6: Caisson Worker, free air; High Scaler

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LABORERS (AREA 1) (Cont'd)

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel

Group 7: Brush Machine (to include Horizontal Construction Joint Clean-up Brush Machine, power propelled); Drills (to include Down-the-hole Drills with 3½ inch piston or larger and Out-of-the-hole Drills with 4½ inch piston or larger); Gunnite (to include operation of machine and nozzle); Hod Carrier; Monitor Operator, Air Track or similar mounting; Nozzleman (to include Jet Blasting Nozzleman over 1,200 pounds, Jet Blast Machine, power propelled, Sand Blast Nozzle); Vibrator, 4 inches and over

Group 8: Air Track Drills with Dual Masts and Drills; Powderman

TUNNEL AND SHAFT, FREE AIR

Group 9:
Class A: Bull Gang, Pump Crete Crewman including distributing pipe, assembling and dismantle and Nipper
Class B: Brakeman, Dumpman
Class C: Miner and Nozzleman for concrete and Laser Beam Operator on tunnels
Class D: Raise and Shaft Miner and Laser Beam Operator on raises and shafts

LABORERS (AREA 2)

Remaining Counties and that portion of Idaho County South of the 46th Parallel

Group 1: General Laborers, Sloper, Clearing and Grading; Form Stripper; Concrete Crew; Concrete Curing Crew; Carpenter Tender; Asphalt Laborer; Hopper Tender; Flagman, (including Pilot Car), Watchman, Heater Tender; Stake Jumper, Choker Setter; Spreader and Weighman; Power Wheelbarrow; Scouring Concrete; Rip Rap Man (hand placed); Fence Erector and Installer - manual or mechanical (includes the installation and erection of fences, guard rails, median rails, reference posts, guide posts and right-of-way markers); Crusher Helper; Cribbing and Shoring (in open ditches); Machinery and Parts Cleaner; Leverman - manual or mechanical; Demolition - salvage; Landscaper; Tool Room Man; Janitor

LABORERS (AREA 2) (Cont'd)

Remaining Counties and that portion of Idaho County South of the 46th Parallel

Group 2: Chuck Tender; Driller Helper; Air Tampers; Gunite Nozzleman Tender; Pipewrapper Tar Pot Tender; Concrete Sawyer; Signalman, handling cement; Dumpman; Steam Nozzleman; Air and Water Nozzleman (Green Cutter, concrete); Vibrator (less than 4"); Pumpcrete and Grout Pump Crew; Hydraulic Monitor

Group 3: Pipelayer, including sewer, drainage, sprinkler systems and water lines; Free Air Caisson; Jackhammer; Paving Breaker; Powderman Helper; Asphalt Raker, Gasoline Powered Tamper; Electric Ballast Tamper; Sand Blasting Form Setter - Airport Paving; Gunman (Gunite); Manhole Setter; Hand Guided Machines, such as Roto Tillers, Trenchers, Post Hole Diggers, Walking Garden Tractors, etc.; Form Setter (Highway Curb and Gutter); Vibrator (4" and over); Timber Faller and Bucker; Metal Pan Installer

Group 4: Hod Carrier; Mason Tender; Plaster Tender; Mason Tender (concrete); Terrazzo-Tile Tender

Group 5: Highscaler; Wagon Drill; Grade Checker; Gunite Nozzleman; Diamond Drillers on Drills.

Group 6: Drill with Manufacturers' rating 3" or over

Group 7: Powderman

UNDERGROUND WORK

Group 8: Reboundman; Chucktender; Nipper; Dumpman; Vibrator (less than 4"); Brakeman; Muckers; Bullgeng

Group 9: Form Setter and Mover

Group 10: Miners; Machinemen; Timbermen; Steelmen; Drill Doctors; Spaders and Tuggers; Spiling and/or Caisson Workers, Vibrator (on 4")

POWER EQUIPMENT OPERATORS (AREA 1)

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel

Group 1: Bit Grinders; Bolt Threading Machine; Compressors, under 2,000 cu. ft. per minute gas, diesel or electric power; Crusher Feeder (mechanical); Deckhand; Drillers' Helper; Fireman and Heater Tender; Grade Checker; Helper (mechanic or welder, H.D.); Oiler; Oiler and Cable Tender, Mucking Machine; Pumpman; Rollers, all type on subgrade (farm type, Case, John Deere and similar - or compacting or vibrator) except when pulled by dozer with operable blade; Steam Cleaner; Welding Machine

POWER EQUIPMENT OPERATORS (Area 1) (Cont'd)

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel

Group 2: A-Frame Truck (single-drum); Assistant Refrigeration Plant (under 1,000 tons); Assistant Plant Operator, Fireman or Pugmixer (asphalt); Bagley or Stationary Scraper; Batch Plant and Wet Mix Operator, single unit (concrete); Belt Finishing Machine; Bending Machine (pipeline); Blower Operator (cement); Cement Hog; Compressor (2,000 cu. ft. or over, 2 or more - gas, diesel, or electric power); Concrete Saw (multiple cut); Distributor Leverman; Elevator Hoisting Materials; Dope Pots (power agitated); Fork Lift or Lumber Stacker, Hydra-lift and similar; Gin Trucks (pipeline); Hoist, single drum; Loader (Bucket Elevators and Conveyors); Longitudinal Float; Mixer (portable-concrete); Pavement Breaker (Hydra-hammer and similar); Post Hole Auger or Punch; Power Broom; Railroad Ballast Regulation Operator, (self-propelled); Railroad Power Tamper Operator, (self-propelled); Railroad Power Tamper Jack Operator, (self-propelled); Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Ross and similar on construction job site); Tractor (farm type R/T with attachments except Backhoe); Tugger Operator; Ditch Witch or similar

Group 3: A-Frame Truck (2 or more drums); Assistant Refrigeration Plant and Chiller Operator (over 1,000 tons); Backfillers (Cleveland and similar); Belt-crete Conveyors with Power pack or similar; Belt Loader (Kocal or similar); Blade Operator (motor patrol and attachments); Boat Operators; Boom Cats (side); Boring Machine (earth); Boring Machine (rock under 8" bit)(Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Linning Machine (concrete); Chipper (without crane); Cleaning and Doping Machine (pipeline); Concrete Pumps (squeeze-crete, flow-crete, pumpcrete, Whitman and similar); Drills (Churn, Core, Calyx, or Diamond); Elevating Belt-type Loader (Euclid, Barber Greene, or similar); Elevating Grader-type Loader (Dumor, Adams, or similar); Equipment Serviceman, Greaser and Oiler; Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Hoist, (2 or more drums or tower hoist); Loaders (overhead and front-end under 4 yards, R/T); Locomotive Engineer; Mixer-mobile; Mucking Machines; Paver or Curb Extruder (asphalt and concrete); Pump (Grout or Jet); Rollerman (finishing pavement); Rubber-tired Scraper (one motor with one scraper, under 40 yards); Screed Operator; Soil Stabilizer (P & H or similar); Spreader Machine; Tractor (Crawler, including Dozer, Scraper, Drills, Booms, Rollers, etc.); Traverse Finishing Machine; Trenching Machines (under 7 feet depth capacity); Turnhead Operator; Vacuum Drill (reverse circulation drill, under 8")

POWER EQUIPMENT OPERATORS (AREA 1) (Cont'd)

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel

Group 4: Asphalt Plant Operator; Crusher, Grizzle and Screening Plant Operator; H. D. Mechanic; H. D. Welder; Refrigeration Plant Engineer (under 1,000 ton); Rubber-tired Scraper, Multi-engine power, with one scraper (Euclid, TS-24 and similar); Rubber-tired Scrapers, one motor with one scraper (40 yards and over); Surface Heater and Planer Machine; Turnhead (with re-screening)

Group 5: Automatic Subgrader (ditches and trimmers) (Autograde, ABC, R.A. Hansen and similar on grade wire); Backhoes (under 3 yards); Batch and Wet Mix Operator - multiple units (2 and including 4); Chipper (with crane); Clamshell Operator (under 3 yards); Concrete Slip Form Paver; Cranes all (under 65 tons); Derricks and Stifflegs (under 65 tons); Draglines (under 3 yards); Drilling Equipment (8" bit and over)(Robbin's Reverse Circulation and similar); Loader Operator (Front end and Overhead 4 yards to 8 yards); Piledriving Engineers; Paver (dual drum); Quad-track or similar equipment; Railroad Track Liner Operator (self-propelled); Rubber-tired Scrapers, multi-engine, power with one scraper (Euclid, TS-24 and similar); Push Pull or Help Mate in use; Rubber-tired Scrapers, multiple engines with two scrapers; Shovels (under 3 yards); Refrigeration Plant Engineer (1,000 tons and over); Signalmen (Whirleys, Highline Hammerheads or similar); Trenching Machines (7 feet depth and over); Multiple Dozer units with single blade

Group 6: Backhoes (3 yards and over); Batch Plant (over 4 units); Cableway Controller - Dispatcher; Cableway Operator; Clamshell Operator (3 yards and over); Cranes, all - 65 tons and over; Derricks and Stifflegs (65 tons and over); Draglines (3 yards and over); Elevating Belt (Holland type); Loader (360 degrees revolving Koehring Scooper or similar); Loaders (overhead and front-end over 8 to 12 yards); Rubber-tired Scrapers (multiple engine with three or more scrapers); Shovels (3 yards and over); Tower Crane; Whirleys and Hammerheads (all)

Group 7: Helicopter Pilot; Loaders (overhead and front-end - Over 12 yards)

POWER EQUIPMENT OPERATORS (AREA 2)

Remaining Counties and that portion of Idaho County, South of the 46th Parallel

Group 1: Brakemen; Crusher; Plant Feeder (mechanical); Deckhand; Drill Helpers; Grade Checkers; Heater Tender; Land Plane; Oilers; Pumpman; Rear Chainman

POWER EQUIPMENT OPERATORS (AREA 2) (Cont'd)

Remaining Counties and that portion of Idaho County, South of the 46th Parallel

Group 2: Air Compressor, Assistant Refrigeration Plant Operator, Bell Boy, Bit Grinder Operator, Blower Operator (cement), Bolt Threader Machine Operator, Broom, Cement Hog, Concrete Mixer, Concrete Saw - Multiple Cut, Discing - Harrowing or Mulching (regardless of motive power), Distributor Leverman, Drill Steel Threader Machine Operator, Fireman - All, Heavy Duty Mechanic Helper or Welder Helper, Head Chainman, Hoist - single drum, Hydraulic Monitor Operator - skid mounted, Oiler (single piece of equipment), Pugmixer - Box or Screed Operator, Spray Curing Machine, Tractor - Rubber Tired Farm type using attachments

Group 3: A-Frame Truck (Hydra Lift, Swedish Cranes, Ross Carrier, Hyster on construction jobs), Battery Tunnel Locomotive, Belt Finishing Machine, Cable Tenders (Underground), Chip Spreader Machine (self-propelled), Hoist - 2 or more drums or Tower Hoist, Hydralift - Fork Lift and similar (when hoisting), Oilers (Underground), Power Loader (Bucket Elevator, Conveyors), Rodman, Road Roller (regardless of motive power).

Group 4: Boring Machine (Earth or Rock) Quarrymaster - Joy - Tractor mounted, Drills: Churn - Core - Calyx or Diamond, Front End and Overhead Loaders and similar Machines - (up to and including 4 yards) - (Rubber-tired), Grout Pump, Hydra-hammer, Instrument Man, Locomotive Engineer, Longitudinal Float Machine, Mixermobile, Spreader Machine, Tractor - Rubber-tired - using Backhoe, Transverse Finishing Machine, Trenching Machines, Waggoner Compactor and similar, Asphalt Spreaders

Group 5: Concrete Plant Operator, Concrete Road Paver (Dual), Elevating Grader Operator, Euclid Elevating Loader, Generator Plant Operator-Mechanic (diesel electric), Post Hole Auger or Punch Operator, Power Shovels and Draglines - under 1 yard, Pumpcrete, Refrigeration Plant Operator, Road Roller (Finishing High Type Pavement), Skidder - Rubber-tired, Sub Grader, Multiple Station Beltline Operator (Teton Dam Project only); Service Oiler

Group 6: Asphalt Pavers - self-propelled, Asphalt Plant Operator, Blade Operator (Motor Patrol), Concrete Slip Form Paver, Cranes - up to and including 50 ton, Crusher Plant Operator, Derrick Operator, Drilling Equipment (Bit under 8 inches) (Robbins Reverse Circulation and similar), Front End and Overhead Loaders and similar Machines-(over 4 yards to and including 7 yards), Koehring Scooper, Heavy Duty Mechanic or Welder, Mucking Machine (Underground), Multi-batch Concrete Plant Operator, Piledriver Engineer, Power Shovels and Draglines (1 yard to and including 3½ yards), Tower Crane Operator, Tractor - Crawler Type - including all attachments, Refrigeration Plant Operator (over 1,000 tons), Trimmer Machine Operator, Tournapulls - Euclid and similar - to and including 40 yards

DECISION NO. ID75-5056

POWER EQUIPMENT OPERATORS (AREA 2) (Cont'd)

Remaining Counties and that portion of Idaho County South of the 46th Parallel

Group 7: Cableway Operator, Continuous Excavator (Barber Greene WL-50), Cranes - over 50 ton, Dredges, Drilling Equipment (Bit 8 inches and over) (Robbins Reverse Circulation and similar), Fine Grader - CMI or Equivalent, Front End and Overhead Loaders and similar Machines - (over 7 yards), Power Shovels and Draglines over 3-½ yards, Quad type Tractors with all attachments, Tournapulls - Euclid and similar - over 40 yards to and including 50 yards, Multiple Scraper Units.

Group 8: Tournapulls - Euclid and similar - over 50 yards to and including 75 yards

Group 9: Tournapulls - Euclids and similar - over 75 yards to and including 100 yards

Group 10: Tournapulls - Euclids and similar - over 100 yards

TRUCK DRIVERS (AREA 1)

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel

Group 1: Flat Bed Truck, single rear axle; Escort Driver; Fish Truck; Fork Lift, 3,000 pounds and under; Fuel Truck Driver (Steam Cleaner and Washer); (Helper and Swamper; Leverperson loading (trucks at bunkers; Pickup hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired pulling trailer or similar equipment); Water Tank Truck 1,800 gallons.

DECISION NO. ID75-5056

TRUCK DRIVERS (AREA 1) (Cont'd)

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel

Group 2: Bus Driver or Employeehaul Driver; Flat bed truck, dual rear axle; Power Boat hauling employees or material; Tireperson No. 1; Warehouseperson

Group 3: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power Operated Sweeper; Semi-trailer, low bed, truck and trailer; Straddle Carrier (Ross Hyster and similar); Transit Mixers and trucks hauling concrete (3 yards and under); Trucks, side, end, and bottom dump (under 6 yards); Water tank truck (1,801 - 4,000 gallons)

Group 4: Auto Crane - 2,000 pounds capacity; Bulk Cement Spreader; Dumptor (6 yards and under); Flaherty Spreader, Box Driver; Flat bed truck (using power take off); Fork Lift (over 3,000 pounds); Oil Distributor Driver (road, bootperson, leverperson helper); Rubbertired tunnel jumbo; Scissor truck; Slurry Truck Driver; Transit mixers and trucks hauling concrete (over 3 yards to 6 yards); Water tank truck (4,001 - 6,000 gallons); Wrecker and tow trucks

Group 5: Low Boy (under 50 tons); Service Greaser; Tireperson No. 2 Truck, side, end, and bottom dump (over 6 yards to 12 yards)

Group 6: A-Frame (Swedish Crane, Iowa 3,000, Hydrolift); Water tank truck (over 6,001 - 8,000 gallons)

Group 7: Dumptor (over 6 yards); Transit mixers and trucks hauling concrete (6 yards to 10 yards); Trucks, side, end, and bottom dump (over 12 yards including 20 yards)

Group 8: Low Boy (over 50 tons), Water tank truck (8,001 - 10,000 gallons)

Group 9: Transit mixers and trucks hauling concrete, (10 yards to 15 yards); Trucks, side, end and bottom dump (over 20 yards including 30 yards); Water tank truck (10,001 - 12,000 gallons)

Group 10: Mechanic, field

Group 11: Tournarocker, D.W.'s and similar, with 2 or 4 wheel power tractor with trailer, gallonage or yardage scale, which is greater; Transit Mixers and Trucks hauling concrete (15 yards to 20 yards); Trucks, side, end and bottom dump (over 30 yards to 40 yards); Water tank truck (12,001 - 14,000 gallons)

Group 12: Transit mixers and trucks hauling concrete (over 20 yards); Trucks, side, end and botton dump (over 40 yards to 50 yards)

Group 13: Truck, side, end and bottom dumps, (over 50 yards to 100 yards)

TRUCK DRIVERS (AREA 1) (Cont'd)

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone and that portion of Idaho County North of the 46th Parallel

Group 14: Helicopter Pilot hauling employees or material; Trucks, side, end and bottom dump (over 100 yards)

TRUCK DRIVERS (AREA 2)

Remaining Counties and that portion of Idaho County South of the 46th Parallel

Group 1: Leverman loading at bunkers; Pilot Car or Escort Driver

Group 2; Flat bed - 2 axle and pickup hauling material; Water tank truck (1,800 gallons and under); Fork lift (3,000 and under)

Group 3: Flat bed - 3 axle, fuel truck (1,000 gallons and under); Greaser; Tireman; Serviceman; Buggymobile; Man haul (Shuttle truck or bus)

Group 4: Transit mix truck - 3 yds. and under; Warehouseman; Truck helpers; Slurry or concrete pumping truck

Group 5: Flat bed using power takeoff; Water tank truck (over 1,800 - 4,000 gallons); Semi-trailer - Low boy - up to 96,000 lbs. GVW, Bulk cement tanker - up to 96,000 lbs. GVW; Fork lift - over 3,000 lbs. (Bull lift, Hydro lift); Ross, Hyster and similar straddle equipment; "A" Frame truck (Swedish Crane, Iowa 3,000, Hydro-lift)

Group 6: Transit mix truck, over 3 yds. - 6 yds.

Group 7: Water tank truck - over 4,000 gallons; Fuel truck - over 1,000 gallons; Distributor or spreader truck

Group 8: Transit mix truck - over 6 yds. - 8 yds.; Dumptors; Field Tireman; Serviceman

Group 9: Transit mix truck - over 8 yds. - 10 yds.; Snow Plow (Truck Mounted)

Group 10: Low boy - 96,000 lbs. GVW and over; Bulk cement tanker - 96,000 lbs. GVW and over

Group 11: Transit mix truck - over 10 yds.

Group 12: Turnarocker and similar equipment

TRUCK DRIVERS (AREA 2) (Cont'd)

Remaining Counties and that portion of Idaho County South of the 46th Parallel

Group 13:
Truck - side, end and bottom dump
Class A: 6 yds. and under
Class B: Over 6 yds. - including 12 yds.
Class C: Over 12 yds. - including 20 yds.
Class D: Over 20 yds. - including 30 yds.
Class E: Over 30 yds. - including 40 yds.
Class F: Over 40 yds. - including 50 yds.
Class G: Over 50 yds. - including 75 yds.
Class H: Over 75 yds. - including 100 yds.
Class I: Over 100 yds.

Group 14: Truck mechanic

SUPERSEDEAS DECISION

STATE: Massachusetts COUNTY: Barnstable
DECISION NO.: MA75-2069 DATE: Date of Publication
Supersedes Decision No. MA75-2002, dated January 17, 1975 in 40 FR 3095
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy construction and marine construction

1-MASS-1-2-3-a (1-2)

BUILDING, HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ASBESTOS WORKERS:					
Barnstable, Bourne, Falmouth, Mashpee, & Sandwich	$ 9.32	.71	.83		
Remainder of County	9.66	.65	.80		.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYERS; Cement masons; Cement finishers; Plasterers; Stone-masons	9.05	.80	.80		.05
CARPENTERS: Soft floor layers	8.75	.50	.50		.02
ELECTRICIANS:					
Electrical contracts over $12,000.00	9.00	.30	1%+.25		a
Electrical contracts under $12,000.00	7.55	.30	1%+.25		a
ELEVATOR CONSTRUCTORS	10.105	.445	.29	3%+b+c	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.445	.29	3%+b+c	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR	.445	.29	3%+b+c	.02
GLAZIERS	8.68	.47	.40+.25		.01
IRONWORKERS	8.73	.55	1.40		.05
LABORERS (BUILDING):					
Laborers; Carpenter tenders; Cement finisher tenders; Wrecking laborers	7.00	.50	.45		.10
Jackhammer op.; Pavement breakers; Wagon drills; Asphalt rakers; Carbide, core drilling machine, Chain saw op.; Pipelayer; Barco type jumping tampers; Laser beam; Concrete pump; Mason tenders; Mortar tar mixers; Ride-on motorized buggy	7.25	.50	.45		.10
Air track; Block pavers; Tammers; Curb setters	7.50	.50	.45		.10
Blasters; Powdermen	7.75	.50	.45		.10
Open air caisson; Cylindrical work & boring crew					
Laborer; Top man	7.00	.50	.45		.10
Helper; Top man	7.12	.50	.45		.10
Bottom man	7.75	.50	.45		.10
Driller	7.87	.50	.45		.10
LATHERS	9.25	.45	.55		
LEADBURNERS	9.25	.35		d	.01

DECISION NO. MA75-2069

LINE CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Linemen	$10.26	.30	7%	e	3/8of1%
Truck driver - groundman	7.60	.30	7%	e	3/8of1%
Groundmen	6.39	.30	7%	e	3/8of1%
Equipment Operators	9.62	.30	7%	e	3/8of1%
MARBLE SETTERS; Terrazzo Workers	9.05	.70	.80		
MARBLE SETTERS' HELPERS	7.94	.40	.25		
MILLWRIGHTS	8.75	.60	.50		.07
PAINTERS:					
Brush	7.90	.30	.20		
Structural Steel - 1' to 50' and Spray	8.90	.30	.20		
PILEDRIVERMEN	9.50	.50	.50		
PLUMBERS & STEAMFITTERS					
Bourne, & Sandwich	9.50	.45	.70		.05
Remainder of County	9.15	.01	.81		.15
ROOFERS:					
Roofers, kettlemen & Waterproofers	8.40	.50	.05		
Roofers' helpers, Class A	7.70	.50	.05		
SHEET METAL WORKERS	9.30	.45	.45		
SPRINKLER FITTERS	9.63	.50	.70		.08
TERRAZZO WORKERS' HELPERS	8.65	.60	.25		.05
TILE SETTERS	9.05	.70	.80		
TILE SETTERS' HELPERS	7.94	.40	.25		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes $1.00 per journeyman Electrician per week

b. Employer contributes 4% of basic hourly rate for 5 years or more of service of 2% basic hourly rate for 6 months to 5 years' service as vacation pay credit.

c. 6 paid holidays: A through F.

d. 9 paid holidays: A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days during 120 calendar days prior to the holiday & the regular scheduled days immediately preceding and following the holiday.

e. 7 paid holidays: A through F, & Bunker Hill Day, provided the employee has been employed 10 working days prior to the holiday.

MASS-1 - 2-3 L

HEAVY & HIGHWAY CONSTRUCTION LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Class I	$7.00	.50	.45		.10
Class II	7.25	.50	.45		.10
Class III	7.50	.50	.45		.10
Class IV	7.75	.50	.45		.10

CLASSIFICATIONS:

CLASS I
Carpenter tenders, cement finisher tenders, laborers, wrecking laborers

CLASS II
Asphalt rakers, fence and guard rail erectors, laser beam op., mason tender, pipelayer, pneumatic drill op., pneumatic tool op., wagon drill op

CLASS III
Air track op., block pavers, rammers, curb setters

CLASS IV
Blasters, powdermen

MASS-1-PBO-1-E

BUILDING CONSTRUCTION Power Equipment Operators:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$10.36	.75	.65	a	.02
CLASS II	10.24	.75	.65	a	.02
CLASS III	8.65	.75	.65	a	.02
CLASS IV	9.44	.75	.65	a	.02
CLASS V	7.66	.75	.65	a	.02
CLASS VI	8.12	.75	.65	a	.02

CLASSIFICATIONS

CLASS I Cranes, shovels, truck cranes, cherry pickers, draglines, trench hoes, backhoes, three drum machines, derricks, pile drivers, elevator towers, hoists, [illegible], rotary drills, post hole diggers, pumpcrete machines, asphalt plant (on side), concrete batching and/or mixing plant (on site), crusher plant (on site), paving concrete mixers, timber jacks

CLASS II Boom over 150' including jib - additional $.35 per hour; Boom over 185' including jib - additional $.70 per hour; Boom over 210' including jib - additional $1.00 per hour; Boom over 250' including jib - additional $1.50 per hour Boom over 295' including jib - additional $2.00 per hour; Sonic or vibratory hammers, graders, scrapers, tandem scrapers, concrete pumps, bulldozers, tractors, york rakes, mulching machines, portable steam boilers, portable steam generators, rollers, spreaders, tampers (self propelled or tractor drawn), asphalt pavers, mechanics maintenance, paving screed machines, stationary steam boilers, paving concrete finishing machines, cal trucks, ballast regulators, switch tampers, rail anchor machinery, tire trucks (when operated by the employer on the job site)

CLASS III Pumps (1-3 grouped), compressors, welding machines (1-3 grouped), generators, concrete vibrators, lighting plants, heaters (power driven 1-5), well-point systems (operating and installing), syphones-pulsometers, concrete mixers, valves controlling permanent plant air or steam, conveyors, Jackson type tampers, single disphragm pump, lighting plants

CLASS IV Assistant engineers (firemen)

CLASS V Oilers and apprentices (other than truck cranes and gradalls)

CLASS VI Oilers and apprentices on truck cranes and gradalls

PAID HOLIDAYS: A- New Year's Day; B-Memorail Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F, Washington's Birthday, Columbus Day, Veterans Day, and Patriots Day.

MASS-1-PEO-2-3 F

HEAVY & HIGHWAY CONSTRUCTION: POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Group 1	$10.36	.75	.65	a	.02
Hourly premium for boom lenghts including Jib					
Over 150 feet + $ .45					
Over 185 feet + .80					
Over 210 feet + 1.15					
Over 250 feet + 1.75					
Over 295 feet + 2.50					
Group 2	10.24	.75	.65	a	.02
Group 3	8.65	.75	.65	a	.02
Group 4	9.44	.75	.65	a	.02
Group 5	7.66	.75	.65	a	.02
Group 6	8.12	.75	.65	a	.02

FOOTNOTE: a. 10 Paid Holidays - New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day, Veterans Day, & Patriots Day.

CLASSIFICATIONS:

GROUP 1
Power Shovels, Cranes, Truck Cranes, Derricks, Pile Drivers, Trenching Machines, Mechanical Joint Pavement Breakers, Cement Concrete Pavers, Dragline, Hoisting Engines, Three Drum Machines, Pumpcrete Machines, Use Loaders, Shovel Dozers, Front End Loaders, Mucking Machines, Shaft Hoists, Steam Engines, Backhoe, Gradalls, Cable Ways, Fork Lifts, Cherry Pickers, Boring Machines, Rotary Drills, Post Hole Hammers, Post Hole Diggers, Asphalt Plant on Job Sute, Concrete Batching and/or Mixing Plant on Job Site, Crusher Plant on Job Site, Paving Concrete Mixers, Timber Jacks

GROUP 2
Sonic or Vibratory Hammers, Graders, Scrapers, Tandem Scrapers, Bulldozers, Tractors, Mechanic Maintenance, York Rakes, Mulching Machines Paving Screed Machines, Stationary Steam Boilers, Paving Concrete Finishing Machines, Grout Pumps, Portable Steam Boilers, Portable Steam Generators, Rollers, Spreaders, Asphalt Pavers, Locomotives or Machines Used in Place Thereof, Tampers, Self Propelled or Tractor Drawn, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers

GROUP 3
Pump (1-3 groupd), Compressors, Welding Machine (1-3 grouped), Generators, Lighting Plants, Heaters (Power Driven) (1-5), Syphons-Pulsometers, Concrete Mixers, Valves Controlling Permanent Plant Air Steam, Conveyors, Wellpoint Systems (Operating and Installing)

GROUP 4
Assistant Engineers (Firemen)

GROUP 5
Oilers (other than truck cranes & gradalls)

GROUP 6
Oilers (on truck cranes & gradalls)

MASS - 1 - TD - 1-2,3 D

TRUCK DRIVERS: BUILDING AND HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Other
Station wagons, panel trucks and pick-up trucks	$6.80	.485	.575	a+b		
Two axle equipment; helpers on low bed when assigned at the discretion of the employer, warehousemen, forklift opers.	6.95	.485	.575	a+b		
Three axle equipment and tiremen	7.00	.485	.575	a+b		
Four and five axle equipment	7.10	.485	.575	a+b		
Specialized earth moving equipment under 35 tons other than conventional type trucks, low bed, vachaul, mechanics, paving restoration equipment, Mechanics	7.20	.485	.575	a+b		
Specialized earth moving equipment over 35 tons	7.45	.485	.575	a+b		
Trailers for earth moving equipment, (double bookup)	7.70	.485	.575	a+b		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day;
C-Independence Day; D-Labor Day;
E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months.
b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day, and Patriots' Day, provided an employee works two days of the calendar week in which the holiday falls.

MA75-2069
MARINE CONSTRUCTION

POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP I	$ 9.81	.60	.60	a	.02
GROUP II	10.81	.60	.60	a	.02
GROUP III	9.76	.60	.60	a	.02
GROUP IV	9.69	.60	.60	a	.02
GROUP V	8.22	.60	.60	a	.02
GROUP VI	8.96	.60	.60	a	.02
GROUP VII	7.30	.60	.60	a	.02
GROUP VIII	7.73	.60	.60	a	.02
GROUP IX	8.125	.60	.60	a	.02

CLASSIFICATIONS

GROUP I Shovels, cranes, truck cranes, cherry pickers, derricks, pile drivers, two or more drum machines, lighters, derricks boats, trenching machines, mechanical hoist pavement breakers, cement concrete pavers, draglines, hoisting engines, pumpcrete machines, elevating graders, shovel dozers, front end loaders, backhoes, gradalls, cable ways, boring machines, rotary drills, post hole hammers, post hole diggers, fork lifts, timber jacks, asphalt plant (on site), concrete batching &/or mixing plant (on site), crusher plant, (on site), paving concrete mixers; Booms over 150' including jib - additional $.35 per hour; Booms over 185' including jib - additional $.70 per hour; Booms over 210' including jib - additional $1.00 per hour; Booms over 250' including jib - additional $1.50 per hour; Booms over 295' including jib - additional $2.00 per hour

GROUP II Master Mechanic

GROUP III Swinger Engines

GROUP IV Portable steam boilers, portable steam generators, sonic or vibratory hammers, graders, scrapers, tandem scrapers, concrete pumps, bulldozers, tractors, york rakes, mulching machines, rollers, spreaders, tampers self-propelled or tractor drawn, asphalt pavers, concrete mixers with side loaders, mechanics - maintenance, cal tracks,ballast regulator, switch tampers, rail anchor machines, tire trucks

GROUP V Pumps, compressors, welding machines, heaters (power driven), valves controlling permanent plan air or steam, wellpoint systems, augers - powered by independent engines & attached to pile drivers, hydraulic saws, generators, lighting plants, syphons-pulsometers, concrete mixers, conveyors

GROUP VI Assistant engineers (firemen)

GROUP VII Oilers and apprentices (other than truck cranes and gradalls)

GROUP VIII Oilers and apprentices on truck cranes and gradalls

GROUP IX Oilers on booms

PAID HOLIDAYS: A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day E- Thanksgiving Day; F-Christmas Day

FOOTNOTE:
a. 10 paid holidays: A through F; Washington's Birthday; Patroits' Day; Columbus Day; & Veterans' Day.

SUPERSEDERAS DECISION

STATE: Massachusetts COUNTY: Berkshire
DECISION NO.: MA75-2070 DATE: Date of Publication
Supersedes Decision NO: MA75-2003, dated January 17, 1975 in 40 FR 3099
DESCRIPTION OF WORK: Building construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy and Highway construction.

BUILDING, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Asbestos workers	$ 9.50	.44	.45		.01
Boilermakers	10.00	.60	.10%		.01
Bricklayers, cement masons, marble masons, palsterers, stone masons, terrazzo workers and tile setters:					
Twps. of Adams, N. Adams, Cheshire, Florida, Savoy, Clarksburg and Williamstown	9.60				
Twps. of Becket, Otis and Sandisfield	9.55	.55	.55		.03
Carpenters & Soft floor layers:					
N. Adams, Clarksburg, Savoy, Florida, Adams and Williamstown:	8.085	.40	.50	.375	.04
Remainder of County	8.59	.50	.50		.04
Electricians	9.15	.45	16%+.10		.02
Elevator Constructors	9.505	.445	.29	3%+a+b	.02
Elevator Constructors' helpers	70%JR	.445	.29	3%+a+b	.02
Elevator Constructors' ehlpers (Prob.)	50%JR	.445	.29	3%+a+b	.02
IronWorkers, structural, ornamental and reinforcing	8.84	.55	.85		.04
Laborers (Building):					
Laborers, carpenter tenders, cement finisher tender, & wrecking laborers	7.00	.50	.45		.10
Jackhammer ops, pavement breakers, wagon drills, asphalt rakers, carbide core drilling machine, chain saw ops, piplayers, barco type jumping tampers, laser beam ops, concrete pump ops, mason tenders, mortar mixers, ride-on motorized buggy	7.25	.50	.45		.10
Air track; block pavers; rammers, curb setters	7.50	.50	.45		.10
Blasters, powdermen	7.75	.50	.45		.10
Lathers	8.45	.45	.25		.01
Lead burners	9.25	.35		o	.01

DECISION NO. MA75-2070

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Lime Construction:					
Linemen	$10.16	.40	1%	f	3/Bof1%
Equipment Operator	9.48	.40	1%	f	3/Bof1%
Driver Groundmen	7.32	.40	1%	f	3/Bof1%
Marble setters' and tile setters' helpers	8.00				
Millwrights:					
Cheshire, Savoy, New Ashford, Adams, Florida, N. Adams, Clarksburg, Williamstown	8.35	.60	.50		.07
Remainder of County	8.55	.60	.50		.07
Painters:					
Brush and roller	8.32	.50	.35		.03
Spray	11.093	.66	.4667		.04
Swing stage under 40' and steel	8.507	.60	.35		.03
Swing stage over 40' and steel	8.87	.50	.35		.03
Piledrivermen	9.50	.50	.50		
Plumbers and steamfitters:					
Adams, Clarksburg, Florida, N. Adams, Savoy, Williamstown, & northern half of Cheshire, New Ashford	8.15	.65	.50	d+c	.05
Becket, Otis, Sandisfield (Plumbers only)	9.39	.57	.75	e	.01
Becket, Otis, Sandisfield, & New Boston (Steamfitters)	9.38	.57	.70	.08	.02
Remainder of County	9.24	5%	.50		.05
Roofers:					
Composition, damp and waterproof	8.695	.59	.61		
Slate, Tile and precase concrete	9.35	.59	.61		
Sheet Metal Workers	8.81	.75	.97		.02
Sprinkler fitters	9.46	.50	.70		.08
Welders - receive rate prescribed for craft performing iperation to which welding is incidental.					

DECISION NO. MA75-2070

PAID HOLIDAYS
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. Holidays: A through F

c. Holidays: A through F, Washington's Birthday, Good Friday and Christmas Eve providing employee has worked 45 full days during the 120 calendar days prior to the holiday and the regular scheduled work days immediately preceding and following the holiday.

d. Holidays: A through F, plus Good Friday, Veterans' Day, Washington's Birthday, and Columbus Day

e. Employer contribution of $1.00 per hour to a savings fund.

f. Paid Holidays: A through F, Washington's Birthday, and Patriots Day providing employee has worked for a period of five (5) working days prior to the holiday and the regular scheduled work days immediately preceding and following the holiday. There is also one floating holiday per year.

g. July 4th provided worker is employed 7 days prior to holiday.

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
Shovels, Cranes, Hydraulic Cranes 10 ton capacity or over, Draglines, Derricks, Elevators with Chicago Boom, Backhoes, Gradalls, Elevating Graders, Pile Driving Rigs, Concrete Road Pavers, three drum Hoisting and Trenching Machines, Belt-type Loaders, Front End Loaders-5½ yards or over, Dual Drum Paver, Automatic Grader (i. e. C.M.I.) Combination Back Hoe-Loader-3/4 yard hoe or over.	$8.80	.45	.70	a	.05	
Rotary Drill (with mounted compressor), Compressor house (3 to 6 compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Graders, Front End Loaders-4 yards to 5½ yards, two Drum Hoists, High Fork Lifts with capacity of 15 feet and over, Scrapers-21 yards and over (struck load), Sonic Hammer Console.	8.60	.45	.70	a	.05	
Combination Backhoe-Loader-up to 3/4 yard hoe, Bulldozers, Push Cats, Scrapers-up to 21 yards (struck Load)-self propelled or tractor drawn, Tireman, Front End Loaders-up to 4 yards, Asphalt Paver, Asphalt Roller-10 ton or over, Well Drillers, Mechanics, Welders, Pumpcrete Machines, Concrete Pumps, and similar type pumps, Engineer or Fireman on High Pressure Boiler (on job), Self-Loading Batch Plant, Well Point, Electric Pumps used in Well Point System, Pumps-12 inches and over (total discharge), Compressor (one or two) 900 cu. ft. and over, Powered Grease Truck, Automatic Elevators, (manually or remote controls), Grout Pumps, Boom Truck, Hydraulic Cranes-under 10 ton.	8.40	.45	.70	a	.05	
Asphalt Roller-under 10 ton.	8.10	.45	.70	a	.05	

MA75-2070

BUILDING CONSTRUCTION
POWER EQUIPMENT OPERATORS (cont'd.)

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
Single Drum Hoist, Self-Propelled Poller, Self-Propelled Compactors, Power Pavement Breakers, Concrete Pavement Finishing Machines, Two Bag Mixers with Skip, McCarthy and similar drills, Batch Plants (not self-loading) Bulk Cement Plants, Self-Propelled Material Spreaders, A Frame Trucks, Fork Lifts-up to 15 feet.	$7.49	.45	.70	a	.05	
Compressors (one or two) 315 cu. ft. to 900 cu. ft., Pumps-4 inches to 12 inches (total discharge), Tractor (without blade or bucket) Drawing Rollers, Rubber Tire Roller, Compactors or other machines used for pulverizing, Grading or Seeding.	7.08	.45	.70	a	.05	
Compressors (up to 315 cu. ft.), Small Mixers, Pumps (up to 4 inches), Power Heaters, Welding Machines. Conveyors, Oiler, Helpers on Grease Truck and Grease Trucks with hand greasing equipment.	6.42	.45	.70	a	.05	

PAID HOLIDAYS:
A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day.

Footnotes:
a. Holidays: A through F, Veterans' Day and Columbus Day.

MA75-2070

HEAVY & HIGHWAY CONSTRUCTION

POWER EQUIPMENT OPERATORS:

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
Shovels, Crawler and Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Belt-type Loaders, Gradalls, Pile Drivers, Concrete Pavers, on site Processing Plant (Engineer in charge), Dragline, Clam Shell, Cableways, Shaft Hoists, Mucking Machines, Front End Loader-5½ yards and over, Tower Cranes, Self-propelled Hydraulic Cranes-10 tons and over, Dual Pavers, Automatic Grader-Excavator (C.M.I. or equal), Scrapers towing pan or wagon, Tandem Dozers or Push Cats (2 units in tandem), Welder using semi automatic Welding Machine, Shotcrete Machine, Tunnel Boring Machine.	$8.80	.45	.70	a	.05	
Rotary Drill (with mounted Compressor), Compressor House (3 to 6 Compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Grader, Front End Loaders-4 yards to 5½ yards, Scraper-21 yards and over (struck load), Forklifts-7 ft. lift and over or 3 ton capacity and over, Sonic Hammer Console.	8.60	.45	.70	a	.05	
Bulldozer, Push Cats, Scrapers-up to 21 yards (struck load) self-propelled or Tractor Drawn, Self-powered Asphalt Paver, Front End Loaders-up to 4 yards, Mechanics, Welders, Well Driller, Pumpcrete Machine, Engineer or Fireman on High Pressure Boiler (on job), Self-loading Batch Plant (on job), Well Point Operators, Electric Pumps used in Well Point system, Tireman, Pumps-16 inches or over total discharge, Compressors (1 or 2) 900 cu. ft. and over, Powered Grease Truck, Asphalt Roller-10 ton and over. Tunnel Locomotives and Dinkys, Grout Pumps, Hydraulic Jacks (jacking pipe, slip forms, etc.), Boom Truck, Self-Propelled Hydraulic Cranes-up to 10 ton.	8.40	.45	.70	a	.05	
Asphalt Roller-up to 10 ton.	8.10	.45	.70	a	.05	

HEAVY & HIGHWAY CONSTRUCTION

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Others
Hoists, Conveyors, Self-powered Rollers and Compactors, Power Pavement Breaker Self-propelled Material Spreader, Self-powered Concrete Finishing Machine, Two Bag Mixer with skip, McCarthy and similar Drills, Batch Plant (not self-loading), Bulk Cement Plant.	$ 7.49	.45	.70	a	.05	
Compressor (315 cu. ft. to 900 cu. ft., 1 or 2), Pumps 4" to 16" total discharge, Tractor without blade drawing sheeps-foot roller, Rubber tired roller or other type of compactors including machines for pulverizing and aerating soil.	7.08	.45	.70	a	.05	
Compressor (up to 315 cu. Ft.), Small Mixers with skip, Oiler, Pumps up to 4", Grease Truck, Helper on powered Grease Truck, Power Heaters, Welding Machines						
A-Frame Trucks, Forklifts-up to 7 ft. lift and up to 3 ton capacity, Hydro Broom, Parts Man (in repair shop), Power Safety Boat.	6.42	.45	.70	a	.05	

Footnotes:
a. Paid Holidays; New Year's Day; Washington's Birthday; Memorial Day; Independence Day Labor Day; Columbus Day; Veterans' Day; Thanksgiving and Christmas Day.

TRUCK DRIVERS: BUILDING AND HEAVY AND HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Others
Articulated wagons, panel trucks and pick-up trucks	$6.80	.485	.575	a+b		
Two axle equipment; helpers on low bed when assigned at the discretion of the employer, warehousemen, forklift opers.	6.95	.485	.575	a+b		
Three axle equipment and tirenen	7.00	.485	.575	a+b		
Four and five axle equipment	7.10	.485	.575	a+b		
Specialized earth moving equipment under 35 tons other than conventional type trucks, low bed, vachaul, mechanics, paving restoration equipment, Mechanics	7.20	.485	.575	a+b		
Specialized earth moving equipment over 35 tons	7.45	.485	.575	a+b		
Trailers for earth moving equipment, (double hookup)	7.70	.485	.575	a+b		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months.
b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day, and Patriots' Day, provided an employee works two days of the calendar week in which the holiday falls.

MA75-2070

MASS-1 - 2-3 L

HEAVY & HIGHWAY CONSTRUCTION

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Class I	$7.00	.50	.45		.10
Class II	7.25	.50	.45		.10
Class III	7.50	.50	.45		.10
Class IV	7.75	.50	.45		.10

CLASSIFICATIONS:

CLASS I
Carpenter tenders, cement finisher tenders, laborers, wrecking laborers

CLASS II
Asphalt rakers, fence and guard rail erectors, laser beam op., mason tender, pipelayer, pneumatic drill op., pneumatic tool op., vagon drill op

CLASS III
Air track op., block pavers, rammers, curb setters

CLASS IV
Blasters, powdermen

STATE: Massachusetts
COUNTY: Norfolk
DECISION NO.: MA75-2074
DATE: Date of Publication
Supersedeas Decision No. MA75-2010 dated January 17, 1975 in 40 FR 3129.
DESCRIPTION OF WORK: Building Construction, (including Residential), heavy and highway construction.

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BUILDING, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Asbestos Workers:					
Bellingham, Franklin, Plainville, & Wrentham	$ 9.32	.71	.83		
Remainder of County	9.66	.65	.80		.01
Boilermakers	10.00	.60	10%		.01
Bricklayers; Cement masons; Pasterers; & Stonemasons:					
Dover, Needham & Wellesley	9.15	.60	.90		.05
Medfield, Medway & Mills	8.95	1.00	.70		.05
Avon, Holbrook, Randolph & Stoughton	8.85	.75	1.05		.05
Bellingham, Canton, Dedham, Foxboro Franklin, Norfolk, Norwood, Plainville Sharon, Walpole, Westwood & Wrentham	9.20	.80	.65		.05
Braintree, Cohasset, S. Weymouth, Quincy, S. Weymouth, & Weymouth	9.20	.75	.70		.05
Bricklayers; Stonemasons:					
Brookline, & Milton	9.05	.70	.90		.05
Carpenters; Soft floor layers:					
Quincy	9.45	.60	.50		.07
Brookline, Dedham & Milton	9.45	.60	.50		.07
Avon, Holbrook, Randolph & Stoughton	8.75	.50	.50		.02
Bellingham, Franklin, Medfield, Medway & Mills	8.93	.60	.50		.07
Remainder of County	9.45	.60	.50		.07
Cement Masons: Brookline & Milton	9.62	.70	.40		.05
Electricians:					
Avon, Holbrook, Randolph & Stoughton					
Elec. contracts under $20,000	8.30	4%	5%		.5%
Elec. contracts $20,000 or over	10.05	4%	5%		.5%
Residential	6.00	.35	5%		.5%
Plainville	$ 8.80	.38	1%+.50		.02
Residential	5.75	.38	1%+.05		.02
Remainder of County		.50	1%+		.05
Residential	5.25	.35	1%+.95		.05
Elevator Constructors	10.105	.445	.29	3%+a+b	.02
Elevator Constructors' helpers	70%ER	.445	.29	3%+a+b	.02
Elevator Constructors' helpers (prob.)	50%ER	.445	.29	3%+a+b	.02
Glaziers: S. Bellingham	8.68	.47	.40+.25		.01
Remainder of County	9.20	.45	.56		.03
Ironworkers: Plainville	8.73	.55	1.40		.05
Remainder of County	9.29	.55	1.40		.06

LABORERS (BUILDING)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Laborers, carpenter tenders, cement finisher tender, wrecking laborers	$ 7.00	.50	.45		.05
Jackhammer op., pavement breaker, wagon drills, asphalt rakers, carbide core drilling mach., chain saw op., pipelayer, barco type jumping tamper, laser beam, concrete pump, mason tender, mortar mixer, ride-on buggy	7.25	.50	.45		.05
Air track, block paver, rammer, curb setter	7.50	.50	.45		.05
Blasters, powdermen	7.75	.50	.45		.05
Open air caisson, cylindrical work & boring crew:					
Laborer, top man	7.00	.50	.45		.05
Tender	7.12	.50	.45		.05
Bottom men	7.75	.50	.45		.05
Driller	7.87	.50	.45		.05
Lathers	9.25	.45	.55		
Leadburners	9.25	.35		o	.01
Line Construction:					
Linemen	10.26	.30	1%	d	3/8of1%
Equipment operator	9.62	.30	1%	d	3/8of1%
Driver groundman	7.60	.30	1%	d	3/8of1%
Marble setters, Terrazzo workers	9.05	.70	.80		
Marble setters' helpers	7.94	.40	.25		
Millwrights	9.38	.60	.50		.07
Painters:					
Bellingham:					
Brush	8.15	.50	.50		
Steel & Steam cleaning	8.40	.50	.50		
Spray & Potter	9.15	.50	.50		
Dover, Medfield, Medway, Mills, Needham, & Wellesley					
Brush	7.85	.35	.35		
Steel	8.10	.35	.35		
Spray	8.80	.35	.35		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Painters (Cont'd)					
Remainder of County:					
New Construction					
Brush, taper	$ 8.76	.62	.85		.04
Steel	10.88	.62	.85		.04
Spray	9.76	.62	.85		.04
Repaint, Alterations & Residential					
Brush	8.01	.62	.85		.04
Steel	10.88	.62	.85		.04
Spray	e 9.01	.62	.85		.04
Piledrivermen	9.50	.50	.50		
Plasterers: Brookline & Milton	8.55	.45	1.25		.02
Plasterers' Tenders: Avon, Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxboro, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood Plainville, Quincy, Randolph, Sharon, S. Bellingham, Stoughton, Walpole, Wellisley, Westwood, Weymouth, & Wrentham	7.25	.50	.45		.10
Plumbers; Steamfitters: Avon, Holbrook, Randolph, & Stoughton	9.50	.45	.70		.05
Dover, Medfield, Medway, Wellesley	9.77	.53	.55		.05
Plumbers: Gasfitters: Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Foxboro, Franklin, Millis, Milton, Needham, Norfolk, N. Weymouth, Norwood, Plainville, Quincy, Sharon, S. Weymouth, Walpole, Westwood, Weymouth, & Wrentham	10.25	.70	.60		.03
Roofers	9.20	.55	.80		.05
Sheet Metal workers	9.63	.71	.75		.06
Sprinkler fitters	9.63	.50	.70		.08
Steamfitters: Bellingham, Brookline, Canton, Dedham, Foxboro, Franklin, Medway, Milton, Needham, Norfolk, Norwood, Plainville, Quincy, Sharon, Walpole, Westwood & Wrentham	10.36	.66	.85		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Terrazzo Workers' Helpers	38.65	.60	.25		.05
Tile Setters	9.05	.70	.80		
Tile Setters' Helpers	7.94	.40	.25		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C- Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employ contributes 4% of basic hourly rate for 5 years or more of service or 2% of basic hourly rate for 6 months ro 5 years of service as Vacation Pay credit.

b. 6 Paid Holidays: A through F.

c. 9 Paid Holidays: A through F, Washington's Birthday, Good Friday, & Christmas Eve, provided the employee had worked 45 full days during the 120 calendar days prior to the holiday and the regular scheduled work days immediately preceding the following holiday.

d. 7 Paid Holidays: A through F, & Bunker Hill Day provided the employee has been employed 10 working days prior to the listed holidays.

e. Employer pays $5.00 per day extra above the brush rate.

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MASS-1 - 2-3 L

HEAVY & HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LABORERS:					
Class I	$7.00	.50	.45		.10
Class II	7.25	.50	.45		.10
Class III	7.50	.50	.45		.10
Class IV	7.75	.50	.45		.10

CLASSIFICATIONS:

CLASS I
Carpenter tenders, cement finisher tenders, laborers, wrecking laborers

CLASS II
Asphalt rakers, fence and guard rail erectors, laser beam op., mason tender, pipelayer, pneumatic drill op., pneumatic tool op., wagon drill op

CLASS III
Air track op., block pavers, rammers, curb setters

CLASS IV
Blasters, powdermen

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MASS-1-PEO-1-E

BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Power Equipment Operators:					
CLASS I	$10.34	.75	.65	a	.02
CLASS II	10.24	.75	.65	a	.02
CLASS III	8.65	.75	.65	a	.02
CLASS IV	9.44	.75	.65	a	.02
CLASS V	7.66	.75	.65	a	.02
CLASS VI	8.12	.75	.65	a	.02

CLASSIFICATIONS

CLASS I Cranes, shovels, truck cranes, cherry pickers, draglines, trench hoes, backhoes, shear from machines, derricks, pile drivers, elevator towers, hoists, gradalls, shovel dozers, front end loaders, fork lifts, augers, boring machines, rotary drills, post hole hammers, post hole diggers, pumpcrete machines, asphalt plant (on side), concrete batching and/or mixing plant (on site), crusher plant (on site), paving concrete mixers, timber jacks
CLASS II Boom over 150' including jib - additional $.35 per hour; Boom over 185' including jib - additional $.70 per hour; Boom over 210' including jib - additional $1.00 per hour; Boom over 250' including jib - additional $1.50 per hour Boom over 295' including jib - additional $2.00 per hour; Sonic or vibratory hammers, graders, scrapers, tandem scrapers, concrete pumps, bulldozers, tractors, york rakes, mulching machines, portable steam boilers, portable steam generators, rollers, spreaders, tampers (self propelled or tractor drawn), asphalt pavers, mechanics maintenance, paving screed machines, stationary steam boilers, paving concrete finishing machines, cal trucks, ballast regulators, switch tampers, rail anchor machinery, tire trucks (when operated by the employer on the job site)
CLASS III Pumps (1-3 grouped), compressors, welding machines (1-3 grouped), generators, concrete vibrators, lighting plants, heaters (power driven 1-5), well-point systems (operating and installing), syphones-pulsometers, concrete mixers, valves controlling permanent plant air or steam, conveyors, Jackson type tampers, single diaphragm pump, lighting plants
CLASS IV Assistant engineers (Firemen)
CLASS V Oilers and apprentices (other than truck cranes and gradalls)
CLASS VI Oilers and apprentices on truck cranes and gradalls

PAID HOLIDAYS: A- New Year's Day; B-Memorail Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F, Washington's Birthday, Columbus Day, Veterans Day, and Patriots Day.

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MASS-1-PEO-2-3 F

HEAVY & HIGHWAY CONSTRUCTION: POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefit Payments H & W	Pensions	Vacation	App. Tr.
Group 1	$10.36	.75	.65	a	.02
Hourly premium for boom lenghts including Jib					
Over 150 feet + $ .45					
Over 185 feet + .80					
Over 210 feet + 1.15					
Over 250 feet + 1.75					
Over 295 feet + 2.50					
Group 2	10.24	.75	.65	a	.02
Group 3	8.65	.75	.65	a	.02
Group 4	9.44	.75	.65	a	.02
Group 5	7.66	.75	.65	a	.02
Group 6	8.12	.75	.65	a	.02

FOOTNOTE: a. 10 Paid Holidays - New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day, Veterans Day, & Patriots Day.

CLASSIFICATIONS:

GROUP 1
Power Shovels, Cranes, Truck Cranes, Derricks, Pile Drivers, Trenching Machines, Mechanical Hoist Pavement Breakers, Cement Concrete Pavers, Draglines, Hoisting Engines, Three Drum Machines, Pumprete Machines, Tue Loaders, Shovel Dozers, Front End Loaders, Hunking Machines, Shaft Hoists, Steam Engines, Backhoe, Gradalls, Cable Ways, Fork Lifts, Cherry Pickers, Boring Machines, Rotary Drills, Post Hole Hammers, Port Hole Diggers, Asphalt Plant on Job Sute, Concrete Batching and/or Mixing Plant on Job Site, Crusher Plant on Job Site, Paving Concrete Mixers, Timber Jacks

GROUP 2
Sonic or Vibratory Hammers, Graders, Scrapers, Tandem Scrapers, Bulldozers, Tractors, Mechanic Maintenance, York Rakes, Mulching Machines Paving Screed Machines, Stationary Steam Boilers, Paving Concrete Finishing Machines, Grout Pumps, Portable Steam Boilers, Portable Steam Generators, Rollers, Spreaders, Asphalt Pavers, Locomotives or Machines Used in Place Thereof, Tampers, Self Propelled or Tractor Drawn, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers

GROUP 3
Pump (1-3 groupd), Compressors, Welding Machine (1-3 grouped), Generators, Lighting Plants, Heaters (Power Driven) (1-5), Syphons-Pulsometers, Concrete Mixers, Valves Controlling Permanent Plant Air Steam, Conveyors, Wellpoint Systems (Operating and Installing)

GROUP 4
Assistant Engineers (Firemen)

GROUP 5
Oilers (other than truck cranes & gradalls)

GROUP 6
Oilers (on truck cranes & gradalls)

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MACS - 1 - TD - 1-2-3 D

TRUCK DRIVERS: BUILDING AND HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Arp. Tr.	Other
Station wagons, panel trucks and pick-up trucks	$6.80	.485	.575	a+b		
Two axle equipment; helpers on low bed when assigned at the discretion of the employer, warehousemen, forklift opers.	6.95	.485	.575	a+b		
Three axle equipment and firemen	7.00	.485	.575	a+b		
Four and five axle equipment	7.10	.485	.575	a+b		
Specialized earth moving equipment under 35 tons other than conventional type trucks, low bed, vachaul, mechanics, paving restoration equipment, Mechanics	7.20	.485	.575	a+b		
Specialized earth moving equipment over 35 tons	7.45	.485	.575	a+b		
Trailers for earth moving equipment, (double hookup)	7.70	.485	.575	a+b		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day;
C-Independence Day; D-Labor Day;
E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months.
b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day, and Patriots' Day, provided an employee works two days of the calendar week in which the holiday falls.

SUPERCEDEAS DECISION

STATE: Massachusetts COUNTY: Plymouth
DECISION NO.: MA75-2075 DATE: Date of Publication
Supersedeas Decision No. MA75-2011, dated January 17, 1975 in 40 FR 3133
DESCRIPTION OF WORK: Building Construction, (including Residential), heavy and highway construction

12-MASS-1-2-3-Y (1-5)

Building, Heavy and Highway Construction	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
ASBESTOS WORKERS:					
Lakeville, Mattapoisett, Middleboro, Rochester, & Wareham	$ 9.32	.71	.83		
Remainder of County	9.66	.65			.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYERS; Cement masons; & Stonemasons:					
Abington, Bridgewater, Brockton, Carver, Duxbury, E. Bridgewater, Halifax, Hanover, Hanson, Kingston, Marshfield, Middleboro Norwell, Pembroke, Plymouth, Plympton, Rockland, W. Bridgewater, & Whitman	8.85	.75	1.05		.05
BRICKLAYERS: Cement masons; Plasterers; & Stonemasons:					
Hingham, Hull, Scituate, & the Islands of Quincy Bay	9.20	.75	.70		.05
Lakeville	9.20	.80	.65		.05
Marion, Mattapoisett, Rochester, & Wareham	9.05	.80	.80		.05
CARPENTERS; Soft floor layers:					
Duxbury, Hanover, Hingham, Hull, Marshfield, Norwell, Pembroke, Rockland, & Scituate	9.45	.60	.50		.07
Abington, Bridgewater, Brockton, Carver, E. Bridgewater, Halifax, Hanson, Kingston, Plymouth, Plympton, W. Bridgewater, & Whitman	8.75	.50	.50		.02
Lakeville, & Middleboro	8.75	.50	.50		.02
Marion, Mattapoisett, Rochester, & Wareham	8.75	.50	.50		.02
ELECTRICIANS:					
Hingham, Hull	10.10	.50	1%+.35		.05
Residential	5.25	.35	1%+.95		.05
Mattapoisett, Rochester & Wareham:					
Electrical contracts over $12,000.	9.00	.30	1%+.25		a
Electrical contracts under $12,000	7.55	.30	1%+.25		a

DECISION NO. MA75-2075

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
ELECTRICIANS (CONT'D)					
Lakeville & Middleboro	$ 9.50	.50	5%		.5%
Residential	6.50	.50	5%		.5%
Remainder of County:					
Electrical contracts $20,000 or more	10.05	4%	5%		.5%
Electrical contracts under $20,000	8.30	4%	5%		.5%
Residential	6.00	.35	5%		.5%
ELEVATOR CONSTRUCTORS	10.105	.445	.29	3%+b&c	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.445	.29	3%+b&c	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR	.445	.29	3%+b&c	.02
GLAZIERS:					
Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham	8.68	.47	.40+.25		.01
Remainder of County	9.20	.45	.56		.03
IRONWORKERS:					
Bridgewater, Brockton, Hanover, Hanson, Marfield, Norwell, Pembroke, Rockland, Scituate, W. Bridgewater, & Whitman	9.29	.55	1.40		.06
Lakeville, Marion, Mattapoisett, Middleboro, Rochester, & Wareham	8.73	.55	1.40		.05
LABORERS (Building):					
Laborers; Carpenter tenders; Cement finisher tenders; Wrecking laborers	7.00	.50	.45		.05
Jackhammer op; pavement breakers; wagon drills; asphalt rakers; carbide core drilling machine; chain saw ops; pipelayer; barco-type jumping tampers; laser beam ops; concrete pump ops; mason tenders; mortar mixers; ride-on motorized buggy ops.	7.25	.50	.45		.05
Air track; block pavers; rammers; curb setters	7.50	.50	.45		.05
Balsters; powdermen	7.75	.50	.45		.05
Open air caisson; Cylindrical work & boring crew:					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LABORERS (CONT'D)					
Laborer; Top man	$ 7.00	.50	.45		.05
Helper	7.12	.50	.45		.05
Bottom man	7.75	.50	.45		.05
Driller	7.87	.50	.45		.05
Lathers	9.25	.45	.55		
LEADBURNERS	8.75	.30		d	.01
LINE CONSTRUCTION:					
Linemen	10.26	.30	1%	e	3/8of1%
Equipment operators	9.62	.30	1%	e	3/8of1%
Groundmen	6.39	.30	1%	e	3/8of1%
MARBLE SETTERS: TERRAZZO WORKERS	9.05	.70	.80		
MARBLE SETTERS' HELPERS	7.94	.40	.25		
MILLWRIGHTS	8.75	.60	.50		.07
PAINTERS:					
Abington, Bridgewater, Brockton, Carver, Duxbury, E. Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull, Kingston, Marshfield, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate, W. Bridgewater, & Whitman:					
Brush; Taper (New Construction)	8.76	.62	.85		.04
Steel (New Construction)	10.88	.62	.85		.04
Spray (New Construction)	9.76	.62	.85		.04
Brush (repaint, alterations, residential)	8.01	.62	.85		.04
Steel (repaint,alterations, residential)	10.88				
Spray (repaint, alterations, residential)	9.01	.62	.85		.04
Marion, Mattapoisett, Rochester & Wareham:					
Brush; Rollers; Taping	7.90	.30	.20		
Steel 1' to 50' & Spray	8.90	.30	.20		
PILEDRIVERMEN:					
Marion, Mattapoisett, Rochester & Wareham	8.75	.50	.50		.02
Remainder fo County	9.50	.50	.50		
PLASTERERS:					
Norwell	8.55	.45	1.25		.02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
PLASTERERS (CONT'D)					
Abington, Bridgewater, Brockton, Carver, Duxbury, E. Bridgewater, Halifax, Hanover, Hanson, Kingston; Marshfield, Middleboro, Pembroke, Plymouth, Plympton, Rockland, W. Bridgewater & Whitman	$ 8.45	.55	.45		.02
PLASTERERS' TENDERS:					
Abington, Bridgewater, Brockton, Carver, Duxbury, E. Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull, Kingston, Marshfeild, Norwell, Pembroke, Plymouth, Plympton, Rockland, Sciotuate, W. Bridgewater, & Whitman	7.25	.50	.45		.10
PLUMBERS:					
Marion, Mattapoisett, Rochester, & Wareham	9.15	.61	.81		.15
Abington, Bridgewater, Brockton, Carver, Duxbury, E. Bridgewater, Halifax, Hanover, Hanson, Kingston, Marshfield, Norwell, Pembroke, Plymouth, Plympton, Rockland, W. Bridgewater, & Whitman	9.50	.45	.70		.05
PLUMBERS; Gasfitters:					
Hingham, Hull, & Scituate	10.25	.70	.60		.03
PLUMBERS; Steamfitters:					
Lakeville, Middleboro	8.62	.60	.73		
ROOFERS:					
Abington, Bridgewater, E. Bridgewater, Halifax, Hanover, Hanson, Marshfield, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate, & W. Bridgewater	9.20	.55	.80		.05
Brockton	8.00				
Carver, Lakeville, Marion, Mattapoisett, Middleboro, Rochester, & Wareham:					
Roofers; Kettlemen	8.40	.50	.05		
Helpers, Class "A"	7.70	.50	.05		
SHEET METAL WORKERS:					
Marion, Mattapoisett, Rochester & Wareham	9.30	.45	.45		
Remainder of County	9.63	.71	.75		.06

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
SPRINKLER FITTERS	$ 9.63	.71	.75		.06
STEAMFITTER:					
Marshfield	10.36	.51	.65		.05
TERRAZZO WORKERS' HELPERS	8.65	.60	.25		.05
TILE SETTERS	9.05	.70	.80		
TILE SETTERS' HELPERS	7.94	.40	.25		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contribution of $1.00 per journeyman electricians per week

b. Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% of basic hourly rate for 6 months to 5 years of service as vacation pay credit

c. 6 paid holidays: A through F

d. 9 paid holidays: A through F, Washington's Birthday, Good Friday, & Christmas Eve, provided the employee has worked at leat 45 full days during the 120 calendar days immediately prior to the holiday and the regular scheduled work days immediately preceding and following the holiday

e. 7 paid holidays: A through F, and Bunker Hill Day, provided the employee has been employed 5 working days prior to any one of the listed holidays.

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HEAVY & HIGHWAY CONSTRUCTION

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Class I	$7.00	.50	.45		.10
Class II	7.25	.50	.45		.10
Class III	7.50	.50	.45		.10
Class IV	7.75	.50	.45		.10

CLASSIFICATIONS:

CLASS I
Carpenter tenders, cement finisher tenders, laborers, wrecking laborers

CLASS II
Asphalt rakers, fence and guard rail erectors, laser beam op., mason tender, pipelayer, pneumatic drill op., pneumatic tool op., wagon drill op

CLASS III
Air track op., block pavers, rammers, curb setters

CLASS IV
Blasters, powderman

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MASS - 1 - TD - 1-2-3 D

TRUCK DRIVERS: BUILDING AND HEAVY AND HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Other
Station wagons, panel trucks and pick-up trucks	$6.80	.485	.575	a+b		
Two axle equipment; helpers on low bed when assigned at the discretion of the employer, warehousemen, forklift opers.	6.95	.485	.575	a+b		
Three axle equipment and firemen	7.00	.485	.575	a+b		
Four and five axle equipment	7.10	.485	.575	a+b		
Specialized earth moving equipment under 35 tons other than conventional type trucks, low bed, vachaul, mechanics, paving restoration equipment, Mechanics	7.20	.485	.575	a+b		
Specialized earth moving equipment over 35 tons	7.45	.485	.575	a+b		
Trailers for earth moving equipment, (double hookup)	7.70	.485	.575	a+b		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day;
C-Independence Day; D-Labor Day;
E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months.
b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day, and Patriots' Day, provided an employee works two days of the calendar week in which the holiday falls.

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MASS-1-PEO-1-E

BUILDING CONSTRUCTION Power Equipment Operators:	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
CLASS I	$10.36	.75	.65	a	.02
CLASS II	10.24	.75	.65	a	.02
CLASS III	8.65	.75	.65	a	.02
CLASS IV	9.44	.75	.65	a	.02
CLASS V	7.66	.75	.65	a	.02
CLASS VI	8.12	.75	.65	a	.02

CLASSIFICATIONS

CLASS I Cranes, shovels, truck cranes, cherry pickers, draglines, trench hoes, backhoes, three drum machines, derricks, pile drivers, elevator towers, hoists, gracalls, shovel dozers, front end loaders, fork lifts, augers, boring machines, rotary drills, post hole hammers, post hole diggers, pumpcrete machines, asphalt plant (on side), concrete batching and/or mixing plant (on site), crumber plant (on site), paving concrete mixers, timber jacks
CLASS II Boom over 150' including jib - additional $.35 per hour; Boom over 185' including jib - additional $.70 per hour; Boom over 210' including jib - additional $1.00 per hour; Boom over 250' including jib - additional $1.50 per hour Boom over 295' including jib - additional $2.00 per hour; Sonic or vibratory hammers, graders, scrapers, tandem scrapers, concrete pumps, bulldozers, tractors, york rakes, mulching machines, portable steam boilers, portable steam generators, rollers, spreaders, tampers (self propelled or tractor drawn), asphalt pavers, mechanics maintenance, paving screed machines, stationary steam boilers, paving concrete finishing machines, cal trucks, ballast regulators, switch tampers, rail anchor machinery, tire trucks (when operated by the employer on the job site)
CLASS III Pumps (1-3 grouped), compressors, welding machines (1-3 grouped), generators, concrete vibrators, lighting plants, heaters (power driven 1-5), well-point systems (operating and installing), syphones-pulsometers, concrete mixers, valves controlling permanent plant air or steam, conveyors, Jackson type tampers, single disphragm pump, lighting plants
CLASS IV Assistant engineers (firemen)
CLASS V Oilers and apprentices (other than truck cranes and gradalls)
CLASS VI Oilers and apprentices on truck cranes and gradalls

PAID HOLIDAYS: A- New Year's Day; B-Memorail Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F, Washington's Birthday, Columbus Day, Veterans Day, and Patriots Day.

MASS-1-PEO-2-3 F

HEAVY & HIGHWAY CONSTRUCTION: POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefit Payments H & W	Pensions	Vacation	App. Tr.
Group 1	$10.36	.75	.65	a	.02
Hourly premium for boom lenghts including Jib					
Over 150 feet + $ .85					
Over 185 feet + .80					
Over 210 feet + 1.15					
Over 250 feet + 1.75					
Over 295 feet + 2.50					
Group 2	10.24	.75	.65	a	.02
Group 3	8.65	.75	.65	a	.02
Group 4	9.44	.75	.65	a	.02
Group 5	7.66	.75	.65	a	.02
Group 6	8.12	.75	.65	a	.02

FOOTNOTE: a. 10 Paid Holidays - New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day, Veterans Day, & Patriots Day.

CLASSIFICATIONS:

GROUP 1
Power Shovels, Cranes, Truck Cranes, Derricks, Pile Drivers, Trenching Machines, Mechanical Multi Purpose Trenchers, Cement Concrete Pavers, Draglines, Hoisting Engines, three Drum Machines, Pumperete Machines, Tire Loaders, Shovel Dozers, Front End Loaders, Hooking Machines, Shaft Hoists, Steam Engines, Backhoe, Gradalls, Cable Ways, Fork Lifts, Cherry Pickers, Boring Machines, Rotary Drills, Post Hole Hammers, Post Hole Diggers, Asphalt Plant on Job Sute, Concrete Batching and/or Mixing Plant on Job Site, Crusher Plant on Job Site, Paving Concrete Mixers, Timber Jacks

GROUP 2
Sonic or Vibratory Hammers, Graders, Scrapers, Tandem Scrapers, Bulldozers, Tractors, Mechanic Maintenance, York Rakes, Mulching Machines Paving Screed Machines, Stationary Steam Boilers, Paving Concrete Finishing Machines, Grout Pumps, Portable Steam Boilers, Portable Steam Generators, Rollers, Spreaders, Asphalt Pavers, Locomotives or Machines Used in Place Thereof, Tampers, Self Propelled or Tractor Drawn, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers

GROUP 3
Pump (1-3 grouped), Compressors, Welding Machine (1-3 grouped), Generators, Lighting Plants, Heaters (Power Driven) (1-5), Syphons-Pulsometers, Concrete Mixers, Valves Controlling Permanent Plant Air Steam, Conveyors, Wellpoint Systems (Operating and Installing)

GROUP 4
Assistant Engineers (Firemen)

GROUP 5
Oilers (other than truck cranes & gradalls)

GROUP 6
Oilers (on truck cranes & gradalls)

SUPERSEDEAS DECISION

STATE: Massachusetts COUNTY: Suffolk
DECISION NO.: MA75-2076 DATE: Date of Publication
Supersedead Decision No. MA75-2012, dated January 17, 1975 in 40 FR 3137.
DESCRIPTION OF WORK: Building Construction, (Including Residential), heavy and Highway construction, marine construction and dredging

13-MASS-1-2-3-H (1of 2)

BUILDING, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
ASBESTOS WORKERS	$ 9.66	.60	.80		.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYERS; Stonemasons	9.05	.70	.90		.05
CARPENTERS; Soft floor layers	9.45	.60	.50		.07
CEMENT MASONS	9.62	.70	.40		.05
ELECTRICIANS	10.10	.50	7%+.135		.05
ELEVATOR CONSTRUCTORS	10.105	.445	.29	3%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.445	.29	3%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR	.445	.29	3%+a+b	.02
GALZIERS	9.20	.45	.56		.03
IRONWORKERS: Ornamental; Reinforcing; Structural	9.29	.55	1.40		.06
LABORERS (Building) Laborers; Carpenter tenders; Cement finisher tenders; Wrecking laborers	7.00	.50	.45		.05
Jackhammer op.; Pavement breakers; Wagon drills; Asphalt rakers; Carbide core drilling machine; Chain saw op.; Pipelayer; Barco type jumping tampers; Laser beam; Concrete pump; Mason tenders; Mortar mixers; Ridge-on motorized buggy	7.25	.50	.45		.05
Air track; Block pavers; Rammers; Curb setters	7.50	.50	.45		.05
Blasters; Powdermen	7.75	.50	.45		.05
Open air caisson; Cylindrical work & boring crew:					
Laborer; Top man	7.00	.50	.45		.05
Helper	7.12	.50	.45		.05
Bottom man	7.75	.50	.45		.05
Driller	7.87	.50	.45		.05
LATHERS	9.25	.45	.55		
LEADBURNERS	9.25	.35		c	.01
LINE CONSTRUCTION:					
Linemen	10.26	.30	1%	d	3/8of1%
Equipment Operators	9.62	.30	1%	d	3/8of1%
Groundman-truck driver	7.60	.30	1%	d	3/8of1%

DECISION NO MA75-2076

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
MARBLE SETTERS; TERRAZZO WORKERS	$ 9.05	.70	.80		
MARBLE SETTERS' HELPERS	7.94	.40	.25		
MILLWRIGHTS	9.38	.60	.50		.07
PAINTERS:					
Brush; New Construction	8.76	.62	.85		.04
Structural steel	10.88	.62	.85		.04
Spray	9.76	.62	.85		.04
Repaint, alterations, & residential					
Brush	8.01	.62	.85		.04
Structural steel	10.88	.62	.85		.04
Spray	9.01	.62	.85		.04
PILEDRIVERMEN	9.50	.50	.50		
PLASTERERS	8.55	.45	1.25		.02
PLASTERERS' TENDERS	7.25	.50	.45		.10
PLUMBERS	10.25	.70	.60		.03
ROOFERS; Waterproofers	9.20	.55	.80		.05
SHEET METAL WORKERS	9.63	.71	.75		.06
SPRINKLER FITTERS	10.48	.50	.70		.02
STEAMFITTERS	10.36	.66	.85		.05
TERRAZZO WORKERS' HELPERS	8.65	.60	.25		
TILE SETTERS	9.05	.70	.80		
TILE SETTERS HELPERS	7.94	.40	.25		

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. 6 paid holidays: A through F.

c. 9 paid holidays: A through F, Washington's Birthday, Good Friday, & Christmas Eve provided the employee has worked at least 45 full days during the 120 calendar days immediately prior to the holiday and the regular scheduled work days immediately preceding and following the holiday.

d. 7 paid holidays: A through F, Bunker Hill Day, provided the employee has been employed 10 working days prior to any one of the listed holidays.

MA75-2076

TRUCK DRIVERS: BUILDING AND HEAVY AND HIGHWAY CONSTRUCTION

MASS - 1 - TD - 1-2-3 n

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	Apm. Tr.	Others
Station wagons, panel trucks and pick-up trucks	$6.80	.485	.575	a+b		
Two axle equipment; helpers on low bed when assigned at the discretion of the employer, warehousemen, forklift opers.	6.95	.485	.575	a+b		
Three axle equipment and tiremen	7.00	.485	.575	a+b		
Four and five axle equipment	7.10	.485	.575	a+b		
Specialized earth moving equipment under 35 tons other than conventional type trucks, low bed, wachaul, mechanics, paving restoration equipment, Mechanics	7.20	.485	.575	a+b		
Specialized earth moving equipment over 35 tons	7.45	.485	.575	a+b		
Trailers for earth moving equipment, (double bookup)	7.70	.485	.575	a+b		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day;
C-Independence Day; D-Labor Day;
E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months.
b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day, and Patriots' Day, provided an employee works two days of the calendar week in which the holiday falls.

MA75-2076

HEAVY & HIGHWAY CONSTRUCTION

MASS-1 - 2-3 L

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Class I	$7.00	.50	.45		.10
Class II	7.25	.50	.45		.10
Class III	7.50	.50	.45		.10
Class IV	7.75	.50	.45		.10

CLASSIFICATIONS:

CLASS I
Carpenter tenders, cement finisher tenders, laborers, wrecking laborers

CLASS II
Asphalt rakers, fence and guard rail erectors, laser beam op., mason tender, pipelayer, pneumatic drill op., pneumatic tool op., wagon drill op

CLASS III
Air track op., block pavers, rammers, curb setters

CLASS IV
Blasters, powderman

DREDGING	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Other
Dredge operator	$5.935	.225	.25	c+d		
Mates	4.05	.742	.197	c+d		
Scowmen	3.31	.742	.161	c+d		
Deckhand	3.36	.742	.163	c+d		
Tug engineer	4.10	.742	.197	c+d		
Hydraulic Dredges						
Leverman	5.47	.25	.15	a+3%		
Engineer and derrick operators	5.40	.25	.15	a+5%		
Maintenance engineer	5.29	.25	.15	a+5%		
Dredge carpenter, electricians, blacksmith, welders & boilerman	5.17	.25	.15	a+5%		
Mates	4.80	.25	.15	a+5%		
Oiler, Fireman, carpenter's helper, welder's helper & blacksmith helper	4.24	.25	.15	a+3%		
Deckhands and shoreman	4.00	.25	.15	a+5%		
Tug engineer	4.86	.25	.15	a+5%		
Tug deckhand	4.06	.25	.15	a+5%		
Drill Boats						
Engineer	6.3475	.25	.15	b		
Blaster	6.4375	.25	.15	b		
Driller; Welder Machinist	6.3487	.25	.15	b		
Firemen	6.0975	.25	.15	b		
Oiler; Drill helper	5.97	.25	.15	b		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F; Washington's Birthday and Veterans Day.
b. Holidays: A through F; Washington's Birthday and Veterans Day (6½) days of vacation with pay for 104 days of service one additional day of vacation with pay for each additional 21-2/3 days of service, all in one calendar year. Employees not qualifying for vacation to receive 1 day's vacation with pay for each full 24 days of service in one calendar year.
c. Paid Holidays: New Year's Day; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; Christmas Day.
d. One week's vacation after one year of employment.

MA75-2076

MASS-1-FEO-1-E

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.
Power Equipment Operators:					
CLASS I	$10.36	.75	.65	a	.02
CLASS II	10.24	.75	.65	a	.02
CLASS III	8.65	.75	.65	a	.02
CLASS IV	9.44	.75	.65	a	.02
CLASS V	7.66	.75	.65	a	.02
CLASS VI	8.12	.75	.65	a	.02

CLASSIFICATIONS

CLASS I Cranes, shovels, truck cranes, cherry pickers, draglines, trench hoes, backhoes, three drum machines, derricks, pile drivers, elevator towers, hoists, gradalls, shovel dozers, front end loaders, fork lifts, augers, boring machines, rotary drills, post hole hammers, post hole diggers, pumpcrete machines, asphalt plant (on side), concrete batching and/or mixing plant (on site), crusher plant (on site), paving concrete mixers, timber jacks
CLASS II Boom over 150' including jib - additional $.35 per hour; Boom over 185' including jib - additional $.70 per hour; Boom over 210' including jib - additional $1.00 per hour; Boom over 250' including jib - additional $1.50 per hour Boom over 295' including jib - additional $2.00 per hour; Sonic or vibratory hammers, graders, scrapers, tandem scrapers, concrete pumps, bulldozers, tractors, york rakes, mulching machines, portable steam boilers, portable steam generators, rollers, spreaders, tampers (self propelled or tractor drawn), asphalt pavers, mechanics maintenance, paving screed machines, stationary steam boilers, paving concrete finishing machines, cal trucks, ballast regulators, switch tampers, rail anchor machinery, tire trucks (when operated by the employer on the job site)
CLASS III Pumps (1-3 grouped), compressors, welding machines (1-3 grouped), generators, concrete vibrators, lighting plants, heaters (power driven 1-5), well-point systems (operating and installing), syphones-pulsometers, concrete mixers, valves controlling permanent plant air or steam, conveyors, Jackson type tampers, single diaphragm pump, lighting plants
CLASS IV Assistant engineers (firemen)
CLASS V Oilers and apprentices (other than truck cranes and gradalls)
CLASS VI Oilers and apprentices on truck cranes and gradalls

PAID HOLIDAYS: A- New Year's Day; B-Memorail Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F, Washington's Birthday, Columbus Day, Veterans Day, and Patriots Day.

MA75-2076

MASS-1-FCO-2-3 F

HEAVY & HIGHWAY CONSTRUCTION:

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Group 1	$10.36	.75	.65	a	.02
Hourly premium for boom lenghts including Jib					
Over 150 feet + $ .45					
Over 185 feet + .80					
Over 210 feet + 1.15					
Over 250 feet + 1.75					
Over 295 feet + 2.50					
Group 2	10.24	.75	.65	a	.02
Group 3	8.65	.75	.65	a	.02
Group 4	9.44	.75	.65	a	.02
Group 5	7.66	.75	.65	a	.02
Group 6	8.12	.75	.65	a	.02

FOOTNOTE: a. 10 Paid Holidays - New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day, Veterans Day, & Patriots Day.

CLASSIFICATIONS:

GROUP 1
Power Shovels, Cranes, Truck Cranes, Derricks, Pile Drivers, Trenching Machines, Mechanical Hoist Pavement Breakers, Cement Concrete Pavers, Draglines, Hoisting Engines, Three Drum Machines, Pumpcrete Machines, Tug Tenders, Shovel Dozers, Front End Loaders, Mucking Machines, Shaft Hoists, Steam Engines, Backhoe, Gradalls, Cable Ways, Fork Lifts, Cherry Pickers, Boring Machines, Rotary Drills, Post Hole Hammers, Post Hole Diggers, Asphalt Plant on Job Sute, Concrete Batching and/or Mixing Plant on Job Site, Crusher Plant on Job Site, Paving Concrete Mixers, Timber Jacks

GROUP 2
Sonic or Vibratory Hammers, Graders, Scrapers, Tandem Scrapers, Bulldozers, Tractors, Mechanic Maintenance, York Rakes, Mulching Machines Paving Screed Machines, Stationary Steam Boilers, Paving Concrete Finishing Machines, Grout Pumps, Portable Steam Boilers, Portable Steam Generators, Rollers, Spreaders, Asphalt Pavers, Locomotives or Machines Used in Place Thereof, Tampers, Self Propelled or Tractor Drawn, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers

GROUP 3
Pump (1-3 grouped), Compressors, Welding Machine (1-3 grouped), Generators, Lighting Plants, Heaters (Power Driven) (1-5), Syphons-Pulsometers, Concrete Mixers, Valves Controlling Permanent Plant Air Steam, Conveyors, Wellpoint Systems (Operating and Installing)

GROUP 4
Assistant Engineers (Firemen)

GROUP 5
Oilers (other than truck cranes & gradalls)

GROUP 6
Oilers (on truck cranes & gradalls)

MA75-2076
MARINE CONSTRUCTION

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP I	$ 9.81	.60	.60	a	.02
GROUP II	10.81	.60	.60	a	.02
GROUP III	9.76	.60	.60	a	.02
GROUP IV	9.69	.60	.60	a	.02
GROUP V	8.22	.60	.60	a	.02
GROUP VI	8.96	.60	.60	a	.02
GROUP VII	7.30	.60	.60	a	.02
GROUP VIII	7.73	.60	.60	a	.02
GROUP IX	8.125	.60	.60	a	.02

CLASSIFICATIONS

GROUP I Shovels, cranes, truck cranes, cherry pickers, derricks, pile drivers, two or more drum machines, lighters, derricks boats, trenching machines, mechanical hoist pavement breakers, cement concrete pavers, draglines, hoisting engines, pumpcrete machines, elevating graders, shovel dozers, front end loaders, backhoes, gradalls, cable ways, boring machines, rotary drills, post hole hammers, post hole diggers, fork lifts, timber jacks, asphalt plant (on site), concrete batching &/or mixing plant (on site), crusher plant, (on site), paving concrete mixers; Booms over 150' including jib - additional $.35 per hour; Booms over 185' including jib - additional $.70 per hour; Booms over 210' including jib - additional $1.00 per hour; Booms over 250' including jib - additional $1.50 per hour; Booms over 295' including jib - additional $2.00 per hour

GROUP II Master Mechanic

GROUP III Swinger Engines

GROUP IV Portable steam boilers, portable steam generators, sonic or vibratory hammers, graders, scrapers, tandem scrapers, concrete pumps, bulldozers, tractors york rakes, mulching machines, rollers, spreaders, tampers self-propelled or tractor drawn, asphalt pavers, concrete mixers with side loaders, mechanics - maintenance, cal tracks,ballast regulator, switch tampers, rail anchor machines, tire trucks

GROUP V Pumps, compressors, welding machines, heaters (power driven), valves controlling permanent plan air or steam, wellpoint systems, augers - powered by independent engines & attached to pile drivers, hydraulic saws, generators, lighting plants, syphons-pulsometers, concrete mixers, conveyors

GROUP VI Assistant engineers (firemen)

GROUP VII Oilers and apprentices (other than truck cranes and gradalls)

GROUP VIII Oilers and apprentices on truck cranes and gradalls

GROUP IX Oilers on scows

PAID HOLIDAYS: A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day E- Thnaksgiving Day; F-Christmas Day

FOOTNOTE:
a. 10 paid holidays: A through F; Washington's Birthday; Patroits' Day; Columbus Day; & Veterans' Day.

SUPERSEDEAS DECISION

STATE: Nebraska COUNTY: Lancaster

DECISION NO.: NE75-4085 DATE: Date of Publication

Supersedes Decision No. AR-76, dated November 15, 1974, in 39 FR 40462

DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories)

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ASBESTOS WORKERS	$9.68	.40	.40	4½%	.03
BOILERMAKERS	8.35	.60	1.00		.02
BRICKLAYERS: Stonemasons	7.70	.30	.20		
CARPENTERS:					
Carpenters	7.25	.20	.20		
Piledrivermen	7.50	.20	.20		
CEMENT MASONS:					
Cement Masons	7.125	.30	.20		
Swing Stage	7.375	.30	.20		
ELECTRICIANS:					
Electricians:					
Zone A	9.26	.30	1%		.03
Zone B	9.56	.30	1%		.03
Zone C	9.86	.30	1%		.03
Zone D	10.26	.30	1%		.03
Cable Splicers:					
Zone A	9.51	.30	1%		.03
Zone B	9.81	.30	1%		.03
Zone C	10.11	.30	1%		.03
Zone D	10.51	.30	1%		.03

ELECTRICIANS-CABLE SPLICERS'ZONE DEFINITION

Electricians-Cable Splicers from the main Post Office in Lincoln, Nebraska:
Zone A - 0 to 15 miles
Zone B - 15 to 30 miles
Zone C - 30 to 75 miles
Zone D - Over 75 miles

ELEVATOR CONSTRUCTORS	$9.18	.445	.29	2½%+a&b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.445	.29	2½%+a&b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	8.45	.40	.35		.01
IRONWORKERS	8.10	.30	.20	.50	
LABORERS:					
Common Laborers	5.425	.20	.20		
Machine and air tool operators; Mason tenders	5.575	.20	.20		
Plasterer tenders	5.65	.20	.20		
LATHERS	7.62				.01
MARBLE MASONS	7.65		.25		
PAINTERS:					
Brush	6.525	.20	.10		
Spray; Steel; Swing stage	7.025	.20	.10		
Paperhangers; Taper	6.775	.20	.10		

DECISION NO. NE75-4085

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
PLASTERERS	7.475	.30	.20		
PLUMBERS: Pipefitters	8.86	.58	.60		.10
ROOFERS:					
Composition	6.55				
Slate and Tile	6.80				
SHEET METAL WORKERS	7.26	.35	.20		.01
SOFT FLOOR LAYERS	8.00				
SPRINKLER FITTERS	9.40	.50	.70		.08
TERRAZZO WORKERS AND TILE SETTERS	7.65		.25		
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental					

FOOTNOTES:

a. Employer contributes 2% of the basic hourly rate for 6 months to 5 years' service and 4% of the basic hourly rate for over 5 years' service as Vacation Pay Credit.

b. The following paid holidays: A-New Year's Day; B- Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

DECISION NO. NE 75-4085

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LINE CONSTRUCTION:					
Linemen	$ 8.09	.35	1%		1/2%
Cable Splicers	8.49	.35	1%		1/2%
Truck Driver	5.86	.35	1%		1/2%
Equipment Operator	7.61	.35	1%		1/2%
GROUNDMEN:					
(Inexperienced) 1st 6 months	2.75	.35	1%		1/2%
(Inexperienced) 2nd 6 months	4.02	.35	1%		1/2%
Thereafter	5.31	.35	1%		1/2%
POWER EQUIPMENT OPERATORS:					
Group 1	5.75	.125	.10		
Group 2	5.875	.125	.10		
Group 3	5.90	.125	.10		
Group 4	6.075	.125	.10		
Group 5	6.225	.125	.10		
Group 6	[illegible]	.125	.10		
Group 7	6.35	.125	.10		
Group 8	6.40	.125	.10		
Group 9	6.50	.125	.10		
Group 10	6.75	.125	.10		

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATOR'S CLASSIFICATION DEFINITION

GROUP 1: Fitemen Oilers; Greasers; Mechanic's Helpers; Industrial type tractor without attachments
GROUP 2: Pumps - 4 inches and over
GROUP 3: Industrial type tractor with attachments
GROUP 4: Forklift or similar type equipment
GROUP 5: Compressors - 300 cu. ft. or over, or a series of compressors equalling 300 cu. ft. or over
GROUP 6: Economobile
GROUP 7: Single drum trucks or boom hoists; wench trucks; concrete pumps
GROUP 8: One drum hoists; air tugger; mixer with capacity or 1 yard or more; Blade Graders; Bulldozers; front end loaders; hydraulic backhoe on industrial type tractor
GROUP 9: Rubber tired earth moving equipment; hydrocrane
GROUP 10: Two drum hoists; Mechanics; Cranes; Piledrivers; Shovels; Draglines; Clamshells; Orange Peel; Backhoe; All shovel type equipment; All derricks and cranes

DECISION NO. NE 75-4085

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
TRUCK DRIVERS:					
Single Axle	$5.825	.20	.25		
Tandem Axle	5.95	.20	.25		
Trailers and Lowboys	6.075	.20	.25		
Lumber Carriers	6.25	.20	.25		

DECISION NO. NE 75-4085

SITE PREPARSTION, EXCAVATING AND INCIDENTAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Carpenter	$4.90				
Carpenter helper	3.75				
Cement finisher	4.45				
Concrete saw operator	3.65				
Form setter (road)	4.55				
Form setter (structures)	3.65				
Laborer	3.25				
Manhole builder	3.60				
Painter	3.45				
Piledriver leadsman	3.45				
POWER EQUIPMENT OPERATORS:					
All purpose spreader	3.95				
Asphalt distributor	3.95				
Asphalt distributor helper	3.40				
Asphalt heaterman	3.65				
Asphalt paving machine	4.60				
Asphalt paving machine screedman	3.75				
Stationary Pl. (base of stabilization)	3.95				
Stationary Pl. (asphalt or concrete)	4.75				
Beginner Operator	3.95				
Bulldozer:					
Less than 115 drawbar H.P.	4.40				
115 drawbar H.P. and over	4.90				
Cement handler	3.50				
Clamshell, dragline, backhoe, crane, pile driver or shovel	5.00				
Concrete mixer	3.45				
Concrete paver	4.30				
Slip form paver	4.75				
Conveyor	3.45				
Crusher (including those with integral screening plant)	4.50				
Dredge pump under 10"	3.80				
Dredge pump 10" and over	4.30				

DECISION NO. NE 75-4085

SITE PREPARATION, EXCAVATING AND INCIDENTAL PAVING (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
POWER EQUIPMENT OPERATORS (Cont'd)					
Fireman (boiler)	$3.65				
Front End Loader:					
3½ cu. yds. or less	4.25				
over 3½ cu. yds.	4.45				
Mechanic	5.00				
Mechanic helper	4.20				
Motor grader	4.80				
Oiler or greaser	4.10				
Roller, self-propelled (hot mix)	4.35				
Roller or compactor, self-propelled (other)	4.25				
Scraper under 16 cu. yds.	4.45				
Scraper 16 cu. yds. and over	4.75				
Power grade machine (trimmer)	4.65				
TRACTOR:					
Farm type (towing)	3.65				
Farm type (with attachments)	3.95				
Less than 115 drawbar H.P.	4.40				
115 drawbar H.P. and over	4.50				
Traveling plant (stabilization)	4.45				
Traveling plant helper (stabilization)	3.80				
Concrete finishing machine and spreader	4.65				

SUPERSEDEAS DECISION

STATE: Nevada

COUNTIES: Nevada Test Site Including Tonopah Test Range in Clark and Nye Counties

DECISION NUMBER: NV75-5057

DATE: Date of Publication

Supersedes Decision No. NV75-5005 dated January 24, 1975, in 40 FR 14211.

DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy and highway construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ASBESTOS WORKERS	$ 9.67	.78	.87	1.00	
CARPENTERS (Nevada Test Site):					
Carpenters	8.24	.55	.90	.80	.03
Floorlayers	8.265	.55	.90	.80	.03
Millwrights	8.54	.55	.90	.80	.03
CARPENTERS (Tonopah Test Range):					
Carpenters; Power actuated tools	6.86	.55		2.10	
Floorlayers; Shinglers	6.885	.55		2.10	
Power Saw Operator (overhead)	7.005	.55		2.10	
CEMENT MASONS:					
Cement Masons	7.55	.50		1.60	.08
Floor Finishing Machine	7.80	.50		1.60	.08
ELECTRICIANS:					
Electricians; Equipment Operators; Linemen	10.62	.63	1% + .40		.05
Cable Splicers	10.95	.63	1% + .40		.05
Groundman	8.42	.63	1% + .40		.05
IRONWORKERS:					
Reinforcing	9.78	.88	.1375	1.03	.03
Ornamental; Structural	9.78	.88	.1375	1.03	.03
PAINTERS:					
Brush; Roller	8.00	.47	.25	1.00	.02
Paperhangers; Spray; Steel; Sandblasters; Swing Stage; Tapers	8.25	.47	.25	1.00	.02
Buffing; Sandblasters, Steel	8.46	.47	.25	1.00	.02
PLUMBERS; Steamfitters	9.90	.65	1.50	1.60	.08
ROOFERS	10.93	.45			
SHEET METAL WORKERS	8.83	.73	1.30	1.00	.05

DECISION NO. NV75-5057

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LABORERS					
Group 1	$ 6.23	.36	.95	1.00	
Group 2	6.28	.36	.95	1.00	
Group 3	6.31	.36	.95	1.00	
Group 4	6.33	.36	.95	1.00	
Group 5	6.35	.36	.95	1.00	
Group 6	6.36	.36	.95	1.00	
Group 7	6.38	.36	.95	1.00	
Group 8	6.41	.36	.95	1.00	
Group 9	6.42	.36	.95	1.00	
Group 10	6.44	.36	.95	1.00	
Group 11	6.49	.36	.95	1.00	
Group 12	6.52	.36	.95	1.00	
Group 13	6.54	.36	.95	1.00	
Group 14	6.57	.36	.95	1.00	
Group 15	6.59	.36	.95	1.00	
Group 16	6.655	.36	.95	1.00	
Group 17	6.68	.36	.95	1.00	
Group 18	6.75	.36	.95	1.00	
POWER EQUIPMENT OPERATORS (Except Piledriving & Steel Erection)					
Group 1	7.43	.95	1.50	.30	.02
Group 2	7.67	.95	1.50	.30	.02
Group 3	7.91	.95	1.50	.30	.02
Group 4	8.02	.95	1.50	.30	.02
Group 5	8.21	.95	1.50	.30	.02
Group 6	8.31	.95	1.50	.30	.02
Group 7	7.91	.75	1.50	.30	
Group 7-A	7.62	.75	1.50	.30	
Group 7-B	7.51	.75	1.50	.30	
Group 7-C	7.27	.75	1.50	.30	
TRUCK DRIVERS					
Group 1	8.065	.223	.65		
Group 2	8.12	.223	.65		
Group 3	8.17	.223	.65		
Group 4	8.33	.223	.65		
Group 5	8.515	.223	.65		

LABORERS

Group 1: Laborers - General or Construction; Demolition (cleaning of brick, lumber, etc.); Dry packing of concrete and filling of form-bolt holes; Gas and Oil Pipeline; Laborer - temporary water lines (portable type); Window Cleaner

Group 2: Cutting Torch Operator (demolition); Tarman and Mortar Man, Kettleman, Potman and man applying asphalt, Lay-kold Creosote, Lime, and similar type materials

Group 3: Guinea Chaser

Group 4: Fine Grader, highway and street paving, airport, runways and similar type heavy construction; Landscape Gardener and Nursery-man

Group 5: Laborers - packing rod steel and pans

Group 6: Underground Laborer including Caisson Bellowers

Group 7: Chucktender (except tunnels); Scaler; Tank Scaler and Cleaner

Group 8: Cesspool Digger and Installer

Group 9: Concrete Curer-Impervious Membrane and Oiler of all materials; Riprap Stonepaver; Sandblaster (pot tender); Making and Caulking of all non-metallic Pipe Joints

Group 10: Operators and Tenders of Pneumatic and Electric Tools, Vibrating Machines, hand-propelled Trenching Machines, Impact Wrench Multi-plate and similar mechanical tools not separately classified herein; Asphalt Raker, Ironer, Spreader, Lutenan; Buggymobile Man; Cement Dumper (on one yard or larger mixers and handling bulk cement); Concrete Saw Man excluding Tractor type, cutting, scoring old or new concrete; Concrete Core Cutter; Gas and Oil Pipeline Wrapper-pot Tender and Form Man; Operator of Cement Grinding Machine; Roto-scraper; Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type brush shredders

Group 11: Rock Slinger; Scaler (using Bos'n Chair or Safety Belt or Power Tools)

Group 12: Driller and/or Pavement Breaker

Group 13: Oversize Concrete Vibrator Operator, 70 lbs. and over; Laying of all non-metallic pipe, including sewer pipe, drain pipe and underground tile

Group 14: Gas and Oil Pipeline Wrapper - 6 inch pipe and over

Group 15: Cribber or Shorer, Lagging, Sheeting, Trench Bracing, hand guided Lagging Hammer; Powderman-blaster - all work of loading holes, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing

LABORERS (Cont'd)

Group 16: Steel Headboardman

Group 17: Sandblaster (Nozzleman); Driller (Core, Diamond, or Wagon), Joy Driller Model TW-M-2A, Gardner-Denver Model DH 163 and similar type drills

Group 18: Head Rock Slinger

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1: Air Compressor, Pump or Generator; Engineer Oiler and Signal Man; Heavy Duty Repairman's Helper; Switchman or Brakeman

Group 2: Concrete Mixer, Skip type; Conveyor and Beltman; Fireman; Generator, Pump or Compressor (2-5 units inclusive, over 5 units, $0.10 per hour for each additional unit up to 10 units, portable units); Generator, Pump or Compressor Plant; Rotary Drill Helper (oilfield type); Skiploader, Wheeltype, Ford, Ferguson, Jeep or similar type, 3/4 yd. or less (w/o dragtype attachments); Temporary Heating Plant; Truck Crane Oiler; Hydrostatic Pump

Group 3: A-Frame or Winch Truck; Dinky Locomotive or Tunnel Motor; Elevator Hoist; Equipment Greaser; Ford, Ferguson or similar type (with drag-type attachments); Hydra-hammer or similar type equipment; Power Concrete Curing Machine; Power Concrete Saw; Power Driven Jumbo Form Setter; Rodman and Chainman; Ross Carrier; Self-propelled Tar Pipelining Machine; Stationary Pipe Wrapping and Cleaning Machine; Towblade Operator

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixer Box (concrete or asphalt plant); Derrickman (oilfield type); Drilling Machine (including water wells); Highline Cableway Signalman; Instrumentman; Locomotive Engineer; Power Sweeper; Roller, compacting; Screed; Trenching Machine (up to 6 feet depth)

Group 5: Asphalt or Concrete Spreading, Mechanical Tamping or Finishing Machine - Roller (all types and sizes), Soil, Cement, Asphalt - Finish; Asphalt Plant Engineer; Deck Engine; Grade Checker; Heavy Duty Welder; Machine Tool; Pavement Breaker; Pneumatic Heading Shield - Tunnel; Road Oil Mixing Machine; Forklift, under five tons; Rubber Tired, Heavy Duty Equipment (Oshkosh, DW, Euclid, LeTourneau, LaPlant-Choate, or similar type equipment with any type attachments); Skiploader, Wheeltype, over 3/4 yards, up to and including 1½ yds.; Slip Form Pump (power driven hydraulic lifting device for concrete forms); Tractor-drag type Shovel, Bulldozer, Tamper, Scraper and Push Tractor

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 6: Combination Heavy Duty Repairman and Welder; Concrete Mixer - Paving; Concrete Mobile Mixer; Concrete Pump or Pumpcrete Gun; Crushing Plant Engineer; Elevating Grader; Heavy Duty Repairman; Highline Cableway; Hoist (Chicago Boom and Mine); Kolman Belt Loader and similar type; Lift Slab Machine; Loader-Athey, Euclid, Hancock, Sierra or similar type; Motor Patrol (any type or size); Multiple Engine-earth moving machinery; Party Chief; Pneumatic Concrete Placing Machine - Hackley-Presswell or similar type; Rotary Drill, excluding Caisson type; Skiploader, Wheeltype, over 1½ yds.; Surface Heater and Planer; Tractor Loader - crawler type - all types and sizes; Tractor, with boom attachments; Traveling Pipe Wrapping, Cleaning and Bending Machine; Trenching Machine (over 6 feet depth); Universal equipment (Shovel, Backhoe, Dragline, Clamshell, Derrick, Derrick Barge, Crane, Piledriver and Mucking Machine) Forklift, over 5 tons

Group 7: Driller Operator; Fishing Tool Engineer

Group 7-A: Derrickman

Group 7-B: Motorman

Group 7-C: Drillers Helpers

TRUCK DRIVERS

Group 1: Light Duty Driver; Warehouseman

Group 2: Bootman; Truck Greaser; Light Vehicle Dispatcher

Group 3: Tireman; Warehouse Clerk

Group 4: Heavy Duty Driver; Forklift Driver; Equipment Parts; Stockroom Clerk

Group 5: Extra Heavy Duty Driver

[FR Doc.75-11961 Filed 5-8-75;8:45 am]