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Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR

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

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

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

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*The Defense and Transportation Departments have submitted magnetic tapes containing the text of the agency's Systems of Records. The full printed text will appear in the *Privacy Act Issuances, 1976 Compilation*, that is being published by the Office of the Federal Register under § 3 of the Privacy Act.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

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

[Lemon Reg. 61]

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 October 10–16, 1976. 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.

§ 910.361 Lemon Regulation 61.

(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 provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the 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 regulation 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 is improved this week. Average f.o.b. price was $5.90 per carton the week ended October 2, 1976, compared to $6.16 per carton the previous week. Track and rolling supplies at 75 cars were down 5 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 rule-making procedure, and postpone the effective date of this regulation 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 regulation is based became available and the time when this regeffectuate the declared policy of the act effecuate 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 regulation, 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 regulation effective during the period herein specified; and compliance with this regulation 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 October 5, 1976.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period October 10, 1976, through October 16, 1976, is hereby fixed at 200,000 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: October 8, 1976.

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

[FR Doc.76–29934 Filed 10–7–76;11:27 am]

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Expenses, Rate of Assessment and Carryover of Unexpended Funds

This document authorizes expenses of $25,930 by the Northwest Fresh Bartlett Pear Marketing Committee, under Marketing Order No. 931, for the 1976–77 fiscal period and fixes a rate of assessment of $0.01 per standard western pear box of Bartlett pears handled in such period to be paid to the committee by each first handler as his pro rata share of such expenses. It also authorizes the carryover, as a committee reserve, of unexpended assessment income from fiscal 1975–76.

On September 14, 1976, notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 39043) regarding proposed expenses and the related rate of assessment for the fiscal period July 1, 1976, through June 30, 1977, and carryover of unexpended 1975–76 assessment income, pursuant to the marketing agreement and Order No. 931 (7 CFR Part 931) regulating the handling of fresh Bartlett pears grown in Oregon and Washington. This notice allowed interested persons until September 30, 1976, to submit written data, views, or arguments pertaining to these proposals. No such material was submitted. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Northwest Fresh Bartlett Pear Marketing Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 931.211 Expenses, rate of assessment, and carryover of unexpended funds.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Northwest Fresh Bartlett Pear Marketing Committee during the fiscal period July 1, 1976, through June 30, 1977, will amount to $25,930.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 931.41, is fixed at $0.01 per standard western pear box of pears, or an equivalent quantity of pears in other containers or in bulk.

(c) *Reserve.* Unexpended assessment funds in excess of expenses incurred during the fiscal period ended June 30, 1976, be carried over as a reserve in accordance with the applicable provisions of § 931.42.

(d) *Terms.* Terms used in the marketing agreement and order shall, when

used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the current crop of Bartlett pears grown in Oregon and Washington are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable pears handled during the aforesaid period; and (3) such period began on July 1, 1976, and said rate of assessment will automatically apply to all such pears beginning with such date.

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

Dated: October 5, 1976.

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

[FR Doc.76-29673 Filed 10-7-76;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of the Treasury

Section 213.3305 is amended to show that one position of Special Assistant to the Special Assistant to the Secretary (Public Affairs) is excepted under Schedule C.

Effective October 8, 1976, § 213.3305 (a) (69) is added as set forth below:

§ 213.3305 Department of the Treasury.

(a) *Office of the Secretary.* * * *

(69) One Special Assistant to the Special Assistant to the Secretary (Public Affairs).

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.76-29255 Filed 10-7-76;8:45 am]

PART 213—EXCEPTED SERVICE

Federal Energy Administration

Section 213.3388 is amended to show that one position of Director of Intergovernmental Relations is excepted under Schedule C.

Effective on October 8, 1976, § 213.3388 (n) (1) is added as set out below:

§ 213.3388 Federal Energy Administration.

* * * * *

(n) *Office of Intergovernmental Relations and Special Programs.* (1) Director of Intergovernmental Relations.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.76-29668 Filed 10-7-76;8:45 am]

Title 9—Animals and Animal Products

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

SUBCHAPTER E—VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS; ORGANISMS AND VECTORS

VETERINARY BIOLOGICS CONTROL PROGRAM

Deletion of Use of Special Licenses

• *Purpose.* To simplify the licensing procedures used in the veterinary biologics control program by deleting the use of special licenses. •

Statement of considerations. The term "special" license is presently used to designate a product about which the Deputy Administrator desires additional information, and over which the Deputy Administrator desires to exert periodic review until a regular license can be issued or the product is removed from the market.

The term "special" is deleted from the regulations because it has been found that it has led to confusion and misunderstandings among persons licensed under the regulations, as well as other affected members of the public. The use of the term has, among other things, created the mistaken belief that the term "special" refers to the quality of the product involved, rather than merely being an administrative term.

The deletion of this term from the regulations is administrative only and does not make any substantive changes in the requirements presently imposed by these regulations. Therefore, these amendments remove references to a special license by deletion or revision from § 101.2(m), § 101.2(u), § 102.1, § 102.2, § 102.4 (c), § 102.4(f), § 102.6, § 105.1(a), § 105.1 (b), § 105.4, § 112.2(a)(3), § 113.163(d) (2), and § 123.1(i). Section 102.2 is further revised for the purpose of clarifying its provisions.

All words in the heading for § 113.163 are to be capitalized.

Section 102.5 is amended by revising paragraph (b) to include items which are to appear on all product licenses.

Section 102.5 is further amended by adding a new paragraph (e) with subparagraphs (1), (2), (2)(i), and (2)(ii). The authority now given to the Deputy Administrator under § 102.5(b) to prescribe restrictive conditions on some product licenses at the time they are issued is restated in the new paragraph (e) of § 102.5. Some restrictions which have been imposed on products prepared under special licenses and will be imposed on some products under a regular product license are restated in the new paragraph (e) of § 102.5.

Pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158), Parts 101, 102, 105, 112, 113, and 123, Subchapter E, Chapter I of Title 9 of the Code of Federal Regulations are amended by making the following administrative changes:

PART 101—DEFINITIONS

1. Part 101 is amended by revising § 101.2(m) and (u) to read:

§ 101.2 Administrative terminology.

* * * * *

(m) *Licensee.* A person to whom an establishment license and at least one product license has been issued.

* * * * *

(u) [Reserved]

* * * * *

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

2. Part 102 is amended as follows:

a. The Table of Contents is amended to read:

Sec.
102.1 Licenses issued by the Deputy Administrator.
102.2 Licenses required.
102.3 License applications.
102.4 U.S. Veterinary Biologics Establishment License.
102.5 U.S. Veterinary Biological Product License.
102.6 [Reserved]

AUTHORITY: 37 Stat. 832–833; (21 U.S.C. 151–158).

b. Section 102.1 is revised to read:

§ 102.1 Licenses issued by the Deputy Administrator.

The Deputy Administrator shall issue a U.S. Veterinary Biologics Establishment License for each qualified establishment maintained to produce biological products, and a U.S. Veterinary Biological Product License for each biological product authorized to be produced in a licensed establishment.

c. Section 102.2 is revised to read:

§ 102.2 Licenses required.

Every person who prepares biological products subject to the Virus-Serum-Toxin Act shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biologics Establishment License and at least one unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License issued by the Deputy Administrator to prepare a biological product other than an autogenous biologic in such establishment: *Provided*, That, if the applicant for an establishment license wishes to prepare an autogenous biologic, then a nonautogenous biological product must be licensed for production in such establishment in order to meet the requirements of this section.

d. Paragraphs (c) and (f) of § 102.4 are revised to read:

§ 102.4 U.S. Veterinary Biologics Establishment License.

* * * * *

(c) U.S. Veterinary Biologics Establishment Licenses shall be numbered and shall be in the following form:

U.S. VETERINARY BIOLOGICS ESTABLISHMENT LICENSE

No. ------,

Washington, D.C., ----------.

This is to certify that, pursuant to the terms of the Act of Congress approved March 4, 1913 (37 Stat. 832) governing the preparation, sale, barter, exchange, shipment, and importation of viruses, serums, toxins, and analogous products intended for use in the treatment of domestic animals --------

---------- is hereby authorized to maintain at ---------- an establishment for the preparation of biological products specified in one or more unexpired, unsuspended, and unrevoked product licenses and designated to be produced in this establishment. This license is subject to termination as provided in the regulations made under the authority contained in said Act, and to suspension of revocation if the licensee violates or fails to comply with said Act or the regulations made thereunder.

Deputy Administrator, Veterinary Services Animal and Plant Health Inspection Service.

* * * * *

(f) When a licensee no longer holds an unexpired, unsuspended, or unrevoked product license authorizing the preparation of a biological product other than an autogenous biologic, any establishment license and any product licenses for autogenous biologics shall be submitted to the Deputy Administrator for termination.

* * * * *

e. Section 102.5 is amended by revising paragraph (b) and by adding a new paragraph (e) to read:

§ 102.5 U.S. Veterinary Biological Product License.

* * * * *

(b) The U.S. Veterinary Biologics Establishment License Number for the establishment in which the product is packaged and labeled as required by the regulations and from which the product is released for marketing shall appear on the U.S. Veterinary Biological Product License with the true name of the product, the product code number, the date of issuance, and any restrictions designated by the Deputy Administrator under paragraph (e) of this section. When necessary to comply with paragraph (e) (2) of this section, the termination date shall also appear on the product license.

* * * * *

(e) When the Deputy Administrator determines that the nature of a product necessitates the restriction of its use for the protection of domestic animals, or the public health, interest, or safety, or both, the product shall be subject to such additional restrictions as are prescribed on the license. Such restrictions may include, but not be limited to, those provided in this paragraph.

(1) The biological product may be restricted for use by veterinarians, or under the supervision of veterinarians, or both.

(2) Subject to the conditions in subparagraphs (2) (i) and (ii) of this paragraph, production of a licensed biological product may be restricted to a predetermined time period, in which case, the termination date for the license shall be established at the time of issuance.

(i) Immediately prior to the termination date, the licensee may request reissuance of the license. At that time, the licensee shall be given an opportunity to substantiate such request with all available data and information obtained since the license was issued.

(ii) After reviewing the matter with the licensee and considering all data and information obtained from any source, the Deputy Administrator shall either reissue the product license or allow it to terminate.

f. Section 102.6 is reserved as follows:

§ 102.6 [Reserved]

PART 105—SUSPENSION OF BIOLOGICS LICENSES OR PERMITS

3. Part 105 is amended by revising the introductory portion of § 105.1(a), and by revising paragraph 105.1(b) and § 105.4 to read:

§ 105.1 Suspension or revocation.

(a) An establishment license, product license, or permit issued under the Virus-Serum-Toxin Act may be formally suspended or revoked after opportunity for hearing has been accorded the licensee or permittee as provided in Part 123 of this subchapter if the Secretary is satisfied that the license or permit is being used to facilitate or effect the preparation, sale, barter, exchange, shipment, or importation contrary to said Act of any worthless, contaminated, dangerous, or harmful biological product. Such use may be found to exist if:

* * * * *

(b) In case of willfulness or where the public health, interest, or safety so required the Secretary may, without hearing, informally suspend such establishment license, product license, or permit upon the grounds set forth in paragraph (a) of this section pending determination of formal proceedings under Part 123 of this subchapter for suspension or revocation of the license or permit.

* * * * *

§ 105.4 Termination of licenses for inactivity.

If a licensed biological product has not been prepared by the licensee for a period of 5 years, the Deputy Administrator may require that the licensee show intent to resume production within 6 months or the product license be terminated.

PART 112—PACKAGING AND LABELING

4. Section 112.2 is amended by revising paragraph (a) (3) to read:

§ 112.2 Final container label, carton label, and enclosure.

(a) * * *

(3) The license or permit number assigned by the Department which shall be shown only in one of the following forms respectively: "U.S. Veterinary License No. ----," or "U.S. Vet. License No. ----," or "U.S. Vet Lic. No. ----," or "U.S. Veterinary Permit No. ----," or "U.S. Permit No. ----."

* * * * *

PART 113—STANDARD REQUIREMENTS

5. Section 113.163 is amended by revising paragraph (d) (2) to read:

§ 113.163 Fowl Laryngotracheitis Vaccine.

* * * * *

(d) * * *

(2) *Safety test.* Final container samples of completed product from each serial of modified live virus vaccine shall be tested for safety as provided in this paragraph. Live virus vaccine not prepared with modified live virus shall be tested for safety as provided in the filed Outline of Production.

* * * * *

PART 123—RULES CF PRACTICE

6. Part 123 is amended by revising § 123.1(i) to read:

§ 123.1 Definitions.

* * * * *

(i) *Licensee.* A person to whom an establishment license and at least one product license has been issued.

* * * * *

(21 U.S.C. 151 and 154, FR 28477; 38 FR 19141)

These amendments provide administrative changes in the licensing procedures used in the veterinary biologics control program administered in accordance with the Virus-Serum-Toxin Act. In order to be of maximum benefit, they must be made effective immediately; except that label changes necessitated by these amendments shall be made by all licensees at their next printing of labels to which these changes apply following the effective date of these amendments, but in all cases not later than April 8th, 1977.

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

The foregoing amendments shall become effective October 8th, 1976.

Done at Washington, DC, this 4th day of October 1976.

J. M. HEJL,
Deputy Administrator,
Veterinary Services.

[FR Doc.76-29686 Filed 10-7-76;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Emergency Amendment Increasing Permissible Inventory Accumulation of Propane and Butane by Industrial Users

The Federal Energy Administration (FEA) hereby amends, effective immediately, the Mandatory Petroleum Allocation Regulations concerning permissible inventory accumulation of propane and butane by industrial users.

On August 29, 1975, FEA issued amendments to the Mandatory Petroleum Allocation and Price Regulations concerning propane and butane imports other than from Canada (40 FR 40821; September 4, 1975). Two of the amendments changed §§ 211.86(g) and 211.96 (e) regarding inventory accumulation by industrial users of propane and butane, respectively. The changes adopted were designed primarily to permit industrial users to acquire non-Canadian imported propane and butane free of the inventory limitations imposed by those sections.

In adopting these amendments, FEA did not intend to modify the limitation on inventory accumulation of Canadian and domestic propane and butane, which was 120 percent of the volumes used for all industrial uses during the period April 1, 1972 through March 31, 1973. However, the language adopted altered the limitation to 120 percent of the volumes used for all industrial uses during the base period. Since the base period for propane and butane is a calendar quarter (10 CFR 211.82 and 211.92), these changes inadvertently resulted in a substantial lessening of the volumes of propane and butane industrial users could accumulate in inventory. The effect of these amendments was not appreciated at the time of their issuance because most industrial users had already filled their propane and butane inventories for use in the 1975–1976 heating season. The impact of these provisions, however, became apparent in mid-August of 1976.

The problems for industrial users presented by the changes in §§ 211.86 and 211.96 have been aggravated by increasing difficulties for some propane and butane suppliers to make deliveries during the winter months. In 1972, suppliers had relatively little problem in making deliveries during the winter. However, the growing number of natural gas curtailments has resulted in an increased demand for propane and butane during the heating season. This development makes it difficult and costly for suppliers to make deliveries throughout the winter heating season, especially in the southeastern United States. Suppliers have the ability to make large volume deliveries of propane and butane to industrial users during the summer and early fall, because there is relatively small demand placed on the distribution system at that time of year. Hence, it is desirable to allow industrial users to fill their inventories during this period. However, under the limitations imposed by the previous amendments to §§ 211.86 and 211.96, many industrial users could not purchase the large volumes of propane and butane when they were readily available for placement into inventory without exceeding the inventory accumulation limitations. By changing the reference period for inventory accumulation from the quarterly base period to the 12-month period April 1, 1972–March 31, 1973, most industrial users will be able to place sufficient volumes of propane and butane into inventory, without exceeding the inventory accumulation limitations, during the summer and early fall, when there is relatively little problem in suppliers' making deliveries.

In view of these considerations, FEA is amending 10 CFR 211.86 and 211.96, effective October 1, 1976, to correct its prior inadvertent change in those regulations as they affect inventory accumulations by industrial users of propane and butane. The amendments issued today limit inventory accumulation to 120 percent of the volumes used during the period April 1, 1972 through March 31, 1973.

It should be noted that the amendments adopted today only affect the permissible inventory accumulation of propane and butane by industrial users. Such users remain limited in the volume of propane and butane they may use during a base period. That limitation is 100 percent of base period use pursuant to 10 CFR 211.10(g)(8).

FEA has concluded that these amendments must be made effective immediately and prior to opportunity for comment, because under the previous limitations industrial users could not acquire sufficient inventories of propane and butane before the start of the 1976–1977 heating season (approximately November 1, 1976). Accordingly, the provisions of section 7(i)(B) of the Federal Energy Administration Act of 1974 (FEAA), as amended (Pub. L. 93–275), with respect to notice and opportunity for comment, are hereby waived upon a finding that strict compliance therewith would cause serious harm and injury to the public welfare.

As required by section 7(c)(2) of the FEAA, a copy of this notice was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments on this proposal.

The amendments adopted today have been reviewed in accordance with Executive Order 11821 and Office of Management and Budget Circular No. A–107 and have been determined not to require evaluation of their inflationary impact as provided for therein.

Because these amendments are being issued on an emergency basis, an opportunity for oral presentation of views is not possible prior to the implementation of these amendments. A public hearing, however, will be held beginning at 9:30 a.m., on October 28, 1976, in Room 2105, 2000 M Street, N.W., Washington, D.C., to receive comments 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 for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., October 22, 1976. Such a request may be hand delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays. 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 October 27, 1976. Each person selected to be heard will be so notified by the FEA before 5:30 p.m., e.s.t., October 26, 1976, and must submit 50 copies of his or her statement to Office of Allocation Regulation Development, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461, before 9:00 a.m., e.s.t., October 26, 1976.

The FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. 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. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearing will be based on all information available to the FEA. At the conclusion of all initial oral statements, 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 a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., October 21, 1976. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, 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 answers.

Any further procedural rules needed 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 Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Anyone may buy a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to these emergency amendments to Executive Communications, Federal Energy Administration, Box JC, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Limitation on Inventory Accumulation of Propane and Butane." Fifteen copies should be submitted. All comments received by October 21, 1976, and all relevant information, will be considered by the Federal Energy Administration.

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.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385; E.O. 11790 (39 FR 23185).)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective October 1, 1976.

Issued in Washington, D.C., October 5, 1976.

MICHAEL F. BUTLER,
General Counsel.

1. Section 211.86 is amended by revising subparagraph (3) of paragraph (g) to read as follows:

§ 211.86 Method of allocation.

* * * * *

(g) *Inventory accumulation.* * * *

(3) Industrial users (including petrochemical feedstock users and refinery fuel users) may accumulate propane in inventory pursuant to paragraph (g)(1) of this section but only up to an amount equal to one hundred twenty (120) percent of the volumes used for all industrial uses (including standby volumes) during the period April 1, 1972 through March 31, 1973, except that propane imported other than from Canada pursuant to § 211.12(g) shall not be subject to this limitation.

* * * * *

2. Section 211.96 is amended by revising subparagraph (3) of paragraph (e) to read as follows:

§ 211.96 Method of allocation.

* * * * *

(e) *Inventory accumulation.* * * *

(3) Industrial users (including petrochemical feedstock users and refinery fuel users) may accumulate butane in inventory pursuant to paragraph (e)(1) of this section but only up to an amount equal to one hundred twenty (120) percent of the volumes used for all industrial uses (including standby volumes) during the period April 1, 1972 through March 31, 1973, except that butane imported other than from Canada pursuant to § 211.12(g) shall not be subject to this limitation.

* * * * *

[FR Doc.76-29767 Filed 10-6-76;10.03 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. AA; Docket No. R-0056]

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Consumer Complaint Procedure; State Member Banks

The Federal Trade Commission Act as amended (Pub. L. 93-637) requires each of the Federal bank supervisory agencies to establish a separate division of consumer affairs and to institute a procedure for handling consumer complaints regarding unfair or deceptive acts or practices of banks under their jurisdiction. Pursuant to section 18(f) of that Act, the Board of Governors has instituted a procedure for receiving and handling consumer complaints regarding State-chartered banks that are members of the Federal Reserve System.

In August 1974, in anticipation of the passage of Pub. L. 93-637, the Board established a separate Office of Saver and Consumer Affairs which administers the consumer legislation for which the Board has been given responsibility. Among these statutes are the Truth in Lending Act, the Fair Credit Reporting Act, the Fair Credit Billing Act, the Equal Credit Opportunity Act, the Federal Trade Commission Act as amended, and the Home Mortgage Disclosure Act.

The Board instituted a formal System-wide procedure for handling consumer complaints regarding State member banks in January 1976. The procedure is designed to serve two purposes. First, it assures consumers of prompt and responsive action on their complaints involving State member banks. Second, it provides a mechanism for identifying those acts or practices of commercial banks that may require further investigation and possible regulatory action by the Board. In order to provide the Board with comprehensive current information on complaints against commercial banks not under its direct supervision, the other two Federal bank supervisory agencies (the Comptroller of the Currency and the Federal Deposit Insurance Corporation) have established ongoing procedures by which the Board receives quarterly reports on the number and substance of complaints against national and insured nonmember State banks.

The Board's complaint procedure is not limited to those persons who are customers of the State member bank in question or to those acts or practices that are already the subject of Federal regulation. Any person with knowledge of an act or practice of a State member bank that the person considers unfair or deceptive may utilize the complaint procedure. Similiarly, while a consumer complaint may arise under an existing Federal statute or Board regulation, a complaint may also be directed at an act or practice that is either expressly authorized or not prohibited by current Federal or State laws or regulations. However, the complaint procedure does not apply to requests for general information or publications such as statistical data. Nor does it apply to complaints regarding such matters as monetary policy, fiscal agency functions, or Treasury issues.

Complaints regarding State member banks should be addressed to the Director, Office of Saver and Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Such complaints may also be addressed to the Federal Reserve Bank serving the district in which the State member bank is located. The locations of these Federal Reserve Banks and names and addresses to whom complaints may be addressed follow:

Mr. Luther M. Hoyle, Jr., Vice President, Federal Reserve Bank of Boston, 30 Pearl Street, Boston, Massachusetts 02106.

Mr. Edward F. Kipfstuhl, Manager, Bank Regulations Department, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.

Mr. Lawrence C. Murdoch, Jr., Vice President and Secretary, Federal Reserve Bank of Philadelphia, 100 North 6th Street, Philadelphia, Pennsylvania 19105.

Mr. Harry Huning, Vice President, Federal Reserve Bank of Cleveland, 1455 East Sixth Street, Cleveland, Ohio 44101.

Mr. James Slate, Assistant Counsel, Federal Reserve Bank of Richmond, 100 North Ninth Street, Richmond, Virginia 23261.

Mr. Harris C. Buell, Jr., Assistant Vice President, Federal Reserve Bank of Chicago, 230 South La Salle Street, Chicago, Illinois 60690.

Mr. Harold E. Uthoff, Vice President, Federal Reserve Bank of St. Louis, 411 Locust Street, St. Louis, Missouri 63166.

Mr. Sheldon Azine, Assistant Counsel and Assistant Secretary, Federal Reserve Bank of Minneapolis, 250 Marquette Street, Minneapolis, Minnesota 55480.

Mr. Robert Scott, Chief Examiner, Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, Missouri 64198.

Mr. George C. Cochran III, Vice President, Federal Reserve Bank of Dallas, 400 South Akard Street, Dallas, Texas 75222.

Mr. Jack Sicard, Assistant Vice President, Federal Reserve Bank of Atlanta, 104 Marietta Street, NW., Atlanta, Georgia 30303.

Mr. Oscar Celli, Credit and Consumer Affairs Officer, Federal Reserve Bank of San Francisco, 400 Sansome Street, San Francisco, California 94120.

Complaints regarding banks other than State member banks are not sub-

ject to the Board's consumer complaint procedures. Such complaints should be addressed to the agency having jurisdiction with respect to that institution. Following is a list of the appropriate Federal agencies to which complaints should be addressed and the types of institutions for which the agencies are responsible:

NATIONAL BANKS

Comptroller of the Currency, Washington, D.C. 20219.

NONMEMBER INSURED BANKS

Federal Deposit Insurance Corporation Regional Director for the Region in which the nonmember insured bank is located.

The provisions of 5 U.S.C. 553 with respect to notice of proposed rulemaking, opportunity for comment, and delayed effective date are deemed inapplicable to this rule because it constitutes a rule of agency organization, procedure or practice, within the meaning of 5 U.S.C. 553 (b) (A). The rule is effective immediately.

Pursuant to section 18(f) of the Federal Trade Commission Act as amended by Pub. L. 93-637, the Board hereby amends 12 CFR Chapter II by adding a new Part 227, to read as follows:

Sec.
227.1 Definition.
227.2 Consumer complaint procedure.

AUTHORITY: Sec. 18(f), Federal Trade Commission Act, as amended by Pub. L. 93-637.

§ 227.1 Definitions.

For the purposes of this Part,[1] unless the context indicates otherwise, the following definitions apply:

(a) "Board" means the Board of Governors of the Federal Reserve System.

(b) "Consumer complaint" means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a State member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a Federal statute, or in violation of any other Act or regulation under which the bank must operate.

(c) "State member bank" means a bank that is chartered by a State and is a member of the Federal Reserve System.

(d) Unless the context indicates otherwise, "bank" shall be construed to mean a "State member bank," and "complaint" to mean a "consumer complaint."

§ 227.2 Consumer complaint procedure.

(a) *Submission of complaints.* (1) Any consumer having a complaint regarding a State member bank is invited to submit it to the Federal Reserve System. The complaint should be submitted in writing, if possible, and should include the following information:

(i) A description of the act or practice that is thought to be unfair or deceptive, or in violation of existing law or regulation, including all relevant facts;

(ii) The name and address of the bank that is the subject of the complaint; and

(iii) The name and address of the complainant.

(2) Consumer complaints should be made to:

(i) The Director, Office of Saver and Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; or

(ii) The Federal Reserve Bank of the District in which the bank is located. The addresses of the Federal Reserve Banks are as follows:

Federal Reserve Bank of Boston, 30 Pearl Street, Boston, Massachusetts 02106.
Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.
Federal Reserve Bank of Philadelphia, 100 North 6th Street, Philadelphia, Pennsylvania 19105.
Federal Reserve Bank of Cleveland, 1455 East Sixth Street, Cleveland, Ohio 44101.
Federal Reserve Bank of Richmond, 100 North Ninth Street, Richmond, Virginia 23261.
Federal Reserve Bank of Chicago, 230 South La Salle Street, Chicago, Illinois 60690.
Federal Reserve Bank of St. Louis, 411 Locust Street, St. Louis, Missouri 63166.
Federal Reserve Bank of Minneapolis, 250 Marquette Street, Minneapolis, Minnesota 55480.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, Missouri 64198.
Federal Reserve Bank of Dallas, 400 South Akard Street, Dallas, Texas 75222.
Federal Reserve Bank of Atlanta, 104 Marietta Street NW., Atlanta, Georgia 30303.
Federal Reserve Bank of San Francisco, 400 Sansome Street, San Francisco, California 94120.

(b) *Response to complaints.* Within 15 business days of receipt of a written complaint by the Board or a Federal Reserve Bank, a substantive response or an acknowledgment setting a reasonable time for a substantive response will be sent to the individual making the complaint.

(c) *Referrals to other agencies.* Complaints received by the Board or a Federal Reserve Bank regarding an act or practice of an institution other than a State member bank will be forwarded to the Federal agency having jurisdiction over that institution.

By order of the Board of Governors, September 27, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-29625 Filed 10-7-76;8:45 am]

[1] The words "this part," as used herein, mean Title 12, Chapter II, Part 227 of the Code of Federal Regulations, cited as 12 CFR Part 227 and designated as Regulation AA.

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regulations No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950.....)

Subpart C—Basic Computation of Benefits and Lump Sums

On March 23, 1976, there was published in the FEDERAL REGISTER (41 FR 12018) a notice of proposed rulemaking with a proposed revision of Subpart C of 20 CFR Part 404 (Regulations No. 4 of the Social Security Administration). The proposed amendments reflected current policies and procedures relating to computations and the amendments to the Social Security Act made by sections 201 and 202 of Pub. L. 92-336, which provide for cost-of-living increases in monthly benefit amounts; and by sections 101, 103, 104, 120, 134, and 142 of Pub. L. 92-603, which provide for additional types of benefit recomputations and recalculations. These proposed amendments provided the first comprehensive revision of Subpart C of Regulations No. 4 since 1955. For ease of reference, this subpart was organized into four divisions: Introduction, Current Methods of Computing Benefits, Current Methods of Recomputing Benefits, and Special Computations and Recomputations with Limited Current Applicability.

The major substantive changes in this subpart were as follows:

1. Definitions of the most common terms used throughout this subpart were provided in the introductory material.

2. An explanation was provided as to how an insured individual's basic benefit (called a "primary insurance amount") is determined from a table in section 215(a) of the Social Security Act based either upon: (a) the individual's average monthly wage over the years from 1951 through the year before he or she reaches retirement age (disregarding five low earnings years, years before age 22, and years of disability); or (b) the individual's basic benefit under a formula applied to the individual's average monthly wage over the years from 1937 through the year before he or she reaches retirement age (also disregarding five low earnings years, years before age 22, and years of disability).

3. A provision was added to reflect a provision of the 1972 Amendments to the Social Security Act, which permits a special minimum "primary insurance amount" of up to $180 to be computed without regard to an individual's average monthly wage. Under this provision an individual's "primary insurance amount" equals $9.00 times the number of years in which he or she earned at least one-fourth the yearly maximum amount creditable for social security purposes (but disregarding the first ten such years).

4. A provision was added to reflect provisions of the 1972 Amendments which reduced the retirement age for men who attained age 62 after 1974, and deemed men who attained age 62 in 1973 or 1974 to have attained retirement age in 1975 for such purposes.

5. A description was provided of how benefits are increased by the percentage rise in the cost-of-living over a base period when certain conditions are met.

6. A provision was added to explain how an individual's "primary insurance amount" is automatically recomputed to include in the computation of this amount earnings which were not included when the "primary insurance amount" was previously computed. Essentially, the individual's "primary insurance amount" is computed again as if

he or she were filing for retirement insurance benefits in the year in which the recomputation is made. Instead of waiting for the automatic recomputation, an individual may request that the recomputation be made as soon as the year in which he or she had additional earnings ends.

7. A description was provided of certain special computations and recomputations which may apply when an individual has military service, compensation for railroad employment, or credits for internment during World War II in a United States facility for interning United States citizens of Japanese ancestry.

8. A description was provided of "delayed retirement credits" which individuals may qualify for, if they were eligible for retirement insurance benefits between age 65 and age 72, but were not paid such benefits because of continued work and earnings, or because of failure to file a timely application for the benefits. The "delayed retirement credit" equals $\frac{1}{2}$ of 1 percent of the individual's primary insurance amount for each month in such a period for which the individual could have received a retirement insurance benefit but did not for one of these reasons.

Interested parties were given the opportunity to submit, within 60 days, data, views, and arguments with regard to the proposed changes. No adverse comments were received. Since these amendments were published with a Notice of Proposed Rule Making and there were no comments, the spirit and intent of the Secretary's policies regarding the development of regulations, announced July 25, 1976, have been complied with. Further participation by the public does not appear to be warranted. Therefore, the proposed amendments are hereby adopted except for changes to correct typographical errors and an editorial change in § 404.278(c)(1), and are set forth below.

Effective date. These amendments shall be effective October 8, 1976.

(Catalog of Federal Domestic Assistance Program Nos. 13.802, Social Security-Disability Insurance and 13.803, Social Security-Retirement Insurance.)

Dated: August 26, 1976.

THOMAS C. PARROTT,
Acting Commissioner of Social Security.

Approved: October 1, 1976.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

Subpart C of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart C—Basic Computation of Benefits and Lump Sums

INTRODUCTION

Sec.
404.201 Scope of this subpart.
404.203 Definition of terms.

CURRENT METHODS OF COMPUTING BENEFITS

Sec.
404.205 General.
404.207 Use of table to determine primary insurance amounts.
404.209 Use of average monthly wage to determine primary insurance amounts.
404.211 Computing an individual's average monthly wage.
404.213 Computing an individual's primary insurance benefit.
404.215 Special rules for computing primary insurance benefits under prior law which may still apply.
404.217 Determining current primary insurance amount from primary insurance amount previously in effect.
404.219 Special minimum primary insurance amounts.
404.221 Cost-of-living benefit increases.
404.223 Table for determining primary insurance amounts and maximum family benefits after May 1975.
404.225 Table for determining primary insurance amounts and maximum family benefits for June 1974 through May 1975.
404.227 Table for determining primary insurance amounts and maximum family benefits for March 1974 through May 1974.

CURRENT METHODS OF RECOMPUTING BENEFITS

404.240 General.
404.242 When a recomputation applies.
404.244 "Automatic" recomputations.
404.246 Request for immediate recomputation.
404.248 Waiver of recomputation.
404.250 Continued applicability of certain recomputations in effect prior to the 1965 amendments.

SPECIAL COMPUTATIONS AND RECOMPUTATIONS WITH LIMITED CURRENT APPLICABILITY

404.270 General.
404.272 Recalculation of primary insurance amount.
404.274 Recalculations and recomputations to include compensation for railroad service.
404.276 Recalculations and recomputations to include military service credits.
404.278 Recalculation to include wage credits for individuals interned during World War II.
404.280 Special recomputations when certain old-age insurance beneficiaries die before age 65.
404.282 Increases in old-age insurance benefits due to delayed retirement credits.

AUTHORITY: Secs. 202, 205, 215, and 1102, Social Security Act, 49 Stat. 623, as amended; 53 Stat. 1368, as amended; 64 Stat. 506, as amended, 49 Stat. 647, as amended, 42 U.S.C. 402, 405, 415, and 1302.

INTRODUCTION

§ 404.201 Scope of this subpart.

This subpart describes how an insured individual's basic benefit amount, called the "primary insurance amount," is computed under current law. The primary insurance amount determines the amount of all monthly benefits payable on the earnings record of an insured individual—except for benefits for transitionally insured individuals (§ 404.113(a)) and payments for certain uninsured individuals age 72 or older (§ 404.374). Also described in this subpart is the way in which an individual's primary insurance amount is recomputed or recalculated to consider additional earnings not used in the previous computation or to make necessary corrections in that computation. In addition, an explanation of the way in which a primary insurance amount is increased due to rises in the cost of living is provided, as well as a description of how an individual's old-age insurance benefit is increased due to "delayed retirement credits" (which are increments for each month an individual was entitled to a full old-age insurance benefit between age 65 and 72, but was not paid the benefit because the individual's earnings were too high to permit payment under the retirement test described in Subpart E of this part or was eligible for such benefits in this period but did not file application for them).

§ 404.203 Definition of terms.

(a) *Primary insurance amount.* The primary insurance amount, which is an amount computed on the basis of a worker's "average monthly wage," is the measure for determining the amounts of all benefits payable under title II of the Act except for benefits for transitionally insured individuals (§ 404.113a) and special payments to certain uninsured individuals age 72 or over (§ 404.374). It is equal to the monthly old-age insurance benefit to which an eligible individual can be entitled when such benefit is not reduced because of entitlement before age 65 (§ 404.412) or increased because of delayed retirement credits (§ 404.282).

(b) *Primary insurance benefit.* The primary insurance benefit is the amount which is used to determine the primary insurance amount when earnings prior to 1951 are used in computing the "average monthly wage." Prior to September 1950 it was the direct measure for determining the amounts of benefits payable under title II of the Act. It is now used for purposes of conversion to a corresponding primary insurance amount.

(c) *Average monthly wage.* The average monthly wage is the monthly average determined by dividing the total creditable earnings in the "benefit computation years" by the total number of months in those years. (See §§ 404.209–404.211.)

(d) *Benefit computation years.* Benefit computation years are the actual years which must be used in computing the average monthly wage.

(e) *Computation base years.* Computation base years are the years from which benefit computation years can be selected.

(f) *Elapsed years.* Elapsed years are those years, determined on the basis of a worker's date of birth, date of disability, date of death, and "retirement age," which fix the number of benefit computation years which must be used in computing the average monthly wage.

(g) *Retirement age.* For purposes of this Subpart C, retirement age is 62 for all women and for men who attain age

62 in 1975 or later. Men who attained age 62 in 1973 or 1974 are deemed to have attained retirement age in 1975 for such purposes. For men who attained age 62 before 1973, retirement age is 65.

(h) *Recomputation.* Recomputation is the computing of a primary insurance amount which was previously computed. It must be specifically authorized by statute, can only be used to increase the amount previously determined, and is made in accordance with the law and facts as applicable at the time of such recomputation.

(i) *Recalculation.* Recalculation is made to reopen and correct a previous computation or recomputation of a primary insurance amount. Unlike the recomputation, the recalculation may or may not be specifically provided for by law, can be used to either decrease or increase the previous primary insurance amount, and is made as though it were being made at the time of the initial computation or recomputation.

(j) *Years of coverage.* For purposes of computing the special minimum primary insurance amount (under § 404.219), an individual's "years of coverage" is the sum of:

(1) The individual's total credited wages before 1951 divided by $900, plus

(2) The number of the computation base years after 1950 in which the individual's earnings were at least one-fourth of the maximum amount creditable under § 404.209(c).

(k) *Cost-of-living increases.* Cost-of-living increases are the increases in primary insurance amounts and family maximum amounts payable on an individual's earnings record due to rises in the cost of living as measured by the Department of Labor's Consumer Price Index. (See § 404.221.)

(l) *Delayed retirement credits.* Delayed retirement credits (see § 4004.282) are increments, amounting to one-twelfth of one percent of the "primary insurance amount" for each month that the individual: (1) was entitled to a full old-age insurance benefit from age 65 to 72 but did not receive payment because the individual's earnings were too high to qualify for such payment under the retirement test described in Subpart E of this part; or (2) was eligible for such benefits for months in this period but did not file application for them.

Current Methods of Computing Benefits

§ 404.205 General.

Since the original Social Security Act was enacted in 1935 (Pub. L. 74–271), the methods of computing benefits have been substantially modified by: The Amendments of 1939 (Pub. L. 76–379); the Amendments of 1950 (Pub. L. 81–734); the Amendments of 1952 (Pub. L. 82–590); the Amendments of 1954 (Pub. L. 83–761); the Amendments of 1956 (Pub. L. 84–880); the Amendments of 1958 (Pub. L. 85–840); the Amendments of 1960 (Pub. L. 86–778); the Amendments of 1965 (Pub. L. 89–97); the Amendments of 1967 (Pub. L. 90–248); and the Amendments of 1972 (Pub. L. 92–603). In the following sections, only the methods of computing benefits which are currently applicable are described. Under these methods, an individual's primary insurance amount (the basic benefit amount from which all other benefits are derived) is determined from a table appearing (or deemed to appear) in section 215(a) of the Act, or by the individual's coverage years under the special minimum provision (§ 404.219). (In the case of certain transitionally insured individuals, see § 404.113(a).)

§ 404.207 Use of table to determine primary insurance amounts.

(a) *General.* Unless an insured individual's primary insurance amount computed under the special minimum provision (§ 404.219) would be higher, the individual's primary insurance amount is determined from the applicable table in section 215(a) of the Act (or deemed to appear in that section under the cost-of-living provision—see § 404.221). For purposes of determining primary insurance amounts for months beginning after May 1975, the "applicable" table is the table in § 404.223(a) and the extension of this table appearing in § 404.223(b); for primary insurance amounts beginning June 1974 and ending May 1975, the "applicable" table is the table in § 404.225; for primary insurance amounts for months beginning with March 1974 and ending with May 1974, the "applicable" table is the table in § 404.227. For the "applicable" table for months prior to March 1974, see the appropriate sections of the amendments to the Act referred to in § 404.205.

(b) *How the applicable table is used.* The primary insurance amount for an individual is determined from the "applicable" table (as defined in paragraph (a) of this section) by finding the largest of the following amounts:

(1) The amount in column IV of the applicable table (see paragraph (a) of this section) on the same line on which the individual's average monthly wage as computed under § 404.211 appears in column III;

(2) The amount in column IV of the applicable table (see paragraph (a) of this section) on the same line on which the individual's primary insurance amount as computed for the month immediately preceding the first month for which the new table is effective, appears in column II (see § 404.217);

(3) The amount in column IV of the applicable table (see paragraph (a) of this section) on the same line on which the individual's primary insurance benefit as computed under § 404.213 appears in column I.

§ 404.209 Use of average monthly wage to determine primary insurance amounts.

(a) *General.* The average monthly wage is converted directly to a primary insurance amount under the table provided in section 215(a) of the Act except when it is based, at least in part, upon earnings prior to 1951. In such a case, the average monthly wage is first used to determine the primary insurance benefit which is then converted to a primary insurance amount under the table provided in section 215(a) of the Act. For certain situations in which an average monthly wage is "deemed" for veterans of World War II, see paragraph (d) of this section.

(b) *Earnings considered in determining the average monthly wage.* In determining an individual's average monthly wage to establish the individual's primary insurance amount or primary insurance benefit, the following kinds of earnings may be considered, subject to the limitations in paragraph (c) of this section:

(1) All wages and self-employment income creditable under the provisions of Subparts I and K of this part;

(2) All compensation certified to the Social Security Administration by the Railroad Retirement Board under section 5(k)(3) of the Railroad Retirement Act of 1937 or section 7(b)(7) of the Railroad Retirement Act of 1974 if the compensation is otherwise creditable under Subpart O of this part;

(3) All wages deemed paid to an individual for the individual's service in the active military or naval service of the United States after September 15, 1940, if otherwise creditable under sections 217 and 229 of the Act and Subpart N of this part;

(4) All wages deemed paid to an individual who was interned within the United States in a U.S. Government facility for interning United States citizens of Japanese ancestry, for any period of time from December 7, 1941, through December 31, 1946, if otherwise creditable under section 231 of the Act;

(5) All wage credits which have become conclusive pursuant to section 205(c) of the Act (see § 404.804); *and*

(6) All wage credits established or preserved pursuant to section 2(b) of the Act of June 14, 1948 (62 Stat. 438—see § 404.813).

(c) *Limitations on earnings which may be considered in determining the average monthly wage.* In determining an individual's average monthly wage, the following earnings will not be considered:

(1) Any portion which is not within the individual's "computation base years" (see § 404.203(f)).

(2) Any portion which is entirely within a period of disability unless all periods of disability established for an individual are disregarded (see § 404.312).

(3) Any portion which is in excess of the statutorily-established annual earnings limitations referred to in §§ 404.1027(a) and 404.1068(b).

(d) *Deemed average monthly wage of certain World War II veterans.* If entitlement to any monthly insurance benefit or lump sum is based upon the guarantee of insured status granted a veteran of World War II under section 217(b) of the Act (see § 404.1315), the average monthly wage of the veteran is deemed to be $160.

(e) *Rounding the average monthly wage.* Effective September 1, 1950, an individual's average monthly wage is rounded to the next lower multiple of $1 if it is not already a multiple of $1. Prior to that date, the average monthly wage was not rounded.

§ 404.211 Computing an individual's average monthly wage.

(a) *General.* As explained in § 404.207, an insured individual's primary insurance amount may be determined directly from the individual's average monthly wage by use of a table. Generally, the average monthly wage is computed under the formula provided in section 215(b) of the Act as in effect at the time the insured individual died or became entitled to old-age or disability insurance benefits. However, if the necessary requirements are met for the use of a formula for computing an individual's average monthly wage under the Act as currently in effect and for the use of a formula which was previously in effect, the individual's primary insurance amount is computed under whichever of the two formulas yields the largest amount. The basic formula for computing the average monthly wage of an insured individual who becomes entitled to old-age or disability benefits after 1965 or who dies after 1965 without being so entitled provides than an individual's average monthly wage is the quotient obtained by dividing:

(1) The highest total earnings credited to such individual for the same number of "computation base years" (see paragraph (b) of this section) as that of "elapsed years" determined under paragraph (c) of this section less five (however, in no case may the number of "computation base years" be less than two); *by*

(2) The number of months in the number of all "computation base years" determined under paragraph (a)(1) of this section.

(b) *Determining the "computation base years."* (1) Except as provided in paragraph (b)(2) of this section, an individual's "computation base years," for purposes of computing an individual's average monthly wage under paragraph (a) of this section, includes any calendar year which is after 1950 and before the earlier of:

(i) The year containing the first month for which the individual was entitled to old-age insurance benefits; or

(ii) The year immediately following the year in which the individual died.

(2)(i) Any calendar year which is wholly within a period of disability may not be included as a computation year.

(ii) In determining an individual's primary insurance amount for months for which the individual is entitled to disability insurance benefits, the individual is considered to attain retirement age (as defined in § 404.203(g)) in:

(*a*) The first month of the individual's waiting period (see § 404.308(a)), or

(*b*) If no waiting period is involved (see § 404.308(c)), the first month for which the individual is entitled to disability insurance benefits.

(iii) Where such indivdual's retirement age is 62, the individual's period of disability ends on the last day of the 36th month following the month described in paragraph (b)(2)(ii) (*a*) or (*b*) of this section, because the individual is considered to attain age 65 in the month immediately following such 36th month. In the case of an individual whose retirement age is 65, since the month described in paragraph (b)(2)(ii) (*a*) or (*b*) of this section is the month in which the individual is considered to attain age 65, there is no period of disability excluded as a computation base year.

(c) *Determining the "elapsed years."* (1) For the purpose of determining an individual's average monthly wage under paragraph (a) of this section, "elapsed years" are years after 1950; or, if later, after the year the individual attains age 21; and before:

(i) The year in which the individual died, or

(ii) If it occurred earlier but after 1960, the year in which the individual attained or is deemed to have attained retirement age as defined in § 404.203(g).

(2) A year any part of which is within a period of disability is not considered an elapsed year unless all periods of disability established for the individual are being disregarded (see § 404.312).

(d) *Procedure for computing average monthly wages.* The following example shows how the rules in paragraphs (a)-(c) of this section for computing average monthly wages are applied:

Example. A, an insured worker, files application for old-age insurance benefits in June 1975, the month in which he attains age 62. His elapsed years are the years beginning with 1951 and ending with 1974 (the year before he attains retirement age). The total number of years in this period is 24; 5 years of low earnings are disregarded so that the actual number of elapsed years used in this computation is 19 (24 less 5). Since his elapsed years to be actually used number 19, only earnings in his 19 highest "computation base years" may be used to determine his "average monthly wage." The years thus selected are his "benefit computation years." Each year from 1951 through 1974 is reviewed and the 19 highest earnings years are determined to be 1953, 1955, and 1958 through 1974. The total earnings for these years is $40,000. To determine the average monthly wage, this total ($40,000) is divided by the number of months in the 19 years (228). This yields an average monthly wage of $175. Using the table in § 404.223(a), his primary insurance amount is found to be $174.10 (the amount in column IV on the same line as the $175 average monthly wage figure in column III of the table).

§ 404.213 Computing an individual's primary insurance benefit.

(a) *General.* As explained in § 404.207, an insured individual's primary insurance amount may be determined by first computing the individual's primary insurance benefit and then converting this benefit to a primary insurance amount by use of a table. Individuals who had substantially higher earnings before 1951 than afterward may be entitled to a higher primary insurance amount under this method of computation. The basic formula for computing the primary insurance benefit of an individual who becomes entitled to old-age or disability insurance benefits after January 1968, or who dies after that month without being so entitled, is explained in paragraphs (b), (c), and (d) of this section. When the requirements for use of this formula are met, the primary insurance benefit is equal to 45.6 percent of the first $50 of the individual's average monthly wage (as computed under paragraph (c) of this section) plus 11.4 percent of the next $200. When the requirements for use of this formula are not met, see § 404.215.

(b) *Requirements for use of basic formula.* (1) To compute an individual's average monthly wage for the purpose of determining his primary insurance benefit under paragraph (a) of this section, the formula in paragraph (c) of this section is used if the individual:

(i) Has at least one quarter of coverage (see § 404.103) before 1951; and

(ii)(*a*) Attained age 22 after 1950 and has less than 6 quarters of coverage after that year, or

(*b*) Attained such age before 1951; and

(iii)(*a*) Becomes entitled to old-age or disability insurance benefits after January 2, 1968, or

(*b*) Dies after such date without being so entitled, or

(*c*) Has a primary insurance amount required to be recomputed as an "automatic" recomputation (§ 404.244), a railroad survivor's recomputation (§ 404.274), or a recalculation to include wage credits for certain World War II internees (§ 404.278).

(2) If these requirements are not met, see § 404.215.

(c) *Computing the average monthly wage.* When the requirements in paragraph (b) of this section are met, an individual's average monthly wage for establishing the individual's primary insurance benefit under paragraph (a) of this section is the quotient obtained by dividing the individual's highest total earnings as determined under paragraph (d) of this section by the same number of "computation base years" as the number of "elapsed years" minus five (however, in no case totaling less than two). For purposes of this paragraph (c), "computation base years" are determined in the manner described in § 404.211(b) except that they are years after 1936 (instead of after 1950); and "elapsed years" are determined in the manner described in § 404.211(c) except that they are years after 1936 (instead of after 1950), or after the year in which the individual attains age 21 if later than 1936 but before 1951.

(d) *Earnings used under the basic formula.* An individual's creditable earnings (see § 404.209(b) for years prior to 1951) for purposes of the basic formula described in paragraph (c) of this section for computing the individual's average monthly wage are deemed to have been credited as follows:

(1) If the individual's total creditable earnings prior to 1951 are $27,000 or less, such total is deemed to have been credited in equal parts to 9 of the years after 1936 and prior to 1951.

(2) If the individual's total creditable earnings prior to 1951 are more than $27,000 but less than $42,000, such total is deemed to have been credited for as many of the years after 1936 and prior to 1951 as such total permits at the rate of $3,000 per year. Any remainder which is not a multiple of $3,000 is deemed to have been credited to an additional year in such period.

(3) If the individual's total creditable earnings prior to 1951 are $42,000 or more, such total is deemed to have been credited at the rate of $3,000 for each of the 14 years after 1936, and prior to 1951.

(e) *Procedure for computing an individual's primary insurance benefit.* The following example shows how the rules in paragraph (a)–(d) of this section on computing an individual's primary insurance benefit are applied.

Example. A, an insured worker, files application for old-age insurance benefits in June 1975, when she attains age 62. Her earnings before 1951 total $30,000, but after 1950 total only $22,800 ($3,600 for each year 1951 through 1954 and $4,200 for each year 1955 through 1956). Depending upon which computation would be most favorable, her computation base years and elapsed years may be selected either from the years 1937 through 1974 or from the years 1951 through 1974. *If the computation base years and elapsed years are selected from 1951 through 1974,* her total earnings of $22,800 are divided by the number of months in her elapsed years (there are 24 years from 1951 through 1974; when 5 years of low earnings are subtracted, the result equals 19, and 19 years times 12 months per year equals 228). This result yields an average monthly wage of $100. (This total is low because, although 19 years of high earnings can be considered, she has earnings for only 6 years after 1950.) From the applicable table in section 215(a) of the Act, the $100 average monthly wage results in a primary insurance amount of $130.50. *If the computation base years and elapsed years are selected from 1937 through 1974,* her total earnings are $52,800 ($30,000 before 1951 plus $22,800 for years after 1950). There are only six possible computation base years after 1950 to be considered; to determine how many computation base years there are from 1937 through 1950, the total for this period ($30,000) is divided by $3,000 and yields 10 years. Although earnings for 19 years can be considered, she has earnings for only 16 years (10 years before 1951 and six thereafter). The total of $52,800 for these 16 years is then divided by the number of months in the elapsed years, which total is 396 months (i.e., there are 38 years in the period 1937 through 1974 and when 5 years of low earnings are disregarded, the result is 33 years; and 33 years times 12 months per year equals 396). The resulting total is an average monthly wage of $133. Applying 45.6 percent to the first $50 of this figure yields $22.80 which added to $9.46 (11.4 percent of the remainder of $83 ($133 less $50)) makes the total primary insurance benefit equal $32.26. When the applicable table in § 404.223 (a) is used, the primary insurance amount is found to be $165.50, the amount in column IV of the table which is on the same line as the $32.26 primary insurance benefit in column I.

§ 404.215 Special rules for computing primary insurance benefits under prior law which may still apply.

(a) *General.* When the requirements for computing an individual's primary insurance benefit under the basic formula described in § 404.213 are not met, the individual's primary insurance benefit may be computed under the formula provided by the 1965 amendments if the requirements specified in paragraph (b) of this section are met. Under such formula, the individual's actual earnings credited before 1951 (instead of the deemed earnings described in § 404.213 (d)) are used. The primary insurance benefit for purposes of the tables referred to in § 404.207 is obtained by adding 40 percent of the individual's average monthly wage (according to paragraph (c) of this section) to $20 (10 percent of the next $200) and adding to the resulting total 1 percent of such total for each "increment year." "Increment years" are years after 1936 and prior to 1951 in which the individual had at least $200 in creditable earnings.

(b) *Requirements for use of 1965 formula.* To compute an individual's average monthly wage for the purpose of determining the individual's primary insurance benefit under paragraph (a) of this section, the formula in paragraph (c) of this section is used if the individual:

(1) Does not meet the requirements for use of the basic formula for computing the individual's primary insurance amount described in § 404.213; and

(2) Has at least one quarter of coverage (see § 404.103) before 1951; and

(3) Has less than six quarters of coverage after 1950 if the individual attained age 21 after that year; and

(4) Becomes entitled to old-age or disability insurance benefits after 1965 or dies after 1965 without being so entitled.

(c) *Computing the average monthly wage.* When the requirements in paragraph (b) of this section are met, an individual's average monthly wage is determined in the same way as described in § 404.213 except that actual earnings credited to the individual's computation base years are used instead of the deemed earnings amounts provided for in that section.

§ 404.217 Determining current primary insurance amount from primary insurance amount previously in effect.

As explained in § 404.207, an insured individual's primary insurance amount may be determined by converting the individual's primary insurance amount computed under a table in the Act which was previously in effect. This is done by use of a table which supersedes such table. When an individual was entitled to benefits based upon a primary insurance amount in effect for the month immediately preceding the month for which the new table is effective, the new primary insurance amount is determined directly from the table since it appears on the same line with the prior primary insurance amount shown in column II of the table. In other cases, the prior primary insurance amount is determined from the individual's average monthly wage under the provisions of the Act which were in effect at whichever of the following is later: the time at which the individual died, or the time at which the individual became entitled to old-age or disability insurance benefits, or the time at which the individual's primary insurance amount was last computed or recomputed. The prior primary insurance amount is then converted by use of any tables provided in section 215(a) of the Act which were subsequently in effect, until the converted primary insurance amount is the amount which would have been in effect in the month immediately preceding the month for which the new table is effective (which amount appears in column II of that table).

§ 404.219 Special minimum primary insurance amounts.

(a) *General.* The 1972 amendments provided for a special computation of primary insurance amounts as an alternative to the method described in § 404.209 and § 404.213. Under such provision, for monthly benefits payable after December 1972 and for lump-sum payments for deaths occurring after such month, an insured individual's primary insurance amount is equal to $8.50 multiplied by the number of the individual's "years of coverage" (see paragraph (b) of this section) in excess of 10 but not more than 30. The 1973 amendments modified this provision so that for monthly benefits payable after February 1974 and for lump-sum payments for deaths occurring after that month, an insured individual's primary insurance amount is equal to $9.00 multiplied by the number of the individual's "years of coverage" (see paragraph (b) of this section) in excess of 10 but not more than 30. The maximum primary insurance amount under this special minimum computation is $180 for months after February 1974 ($170 for January 1973 through February 1974). These amendments did not provide any additional increase or change in this provision for months after May 1974. The special minimum PIA provision is applicable only when it produces a PIA which is greater than the PIA determined under §§ 404.209 and 404.213.

(b) *Years of coverage.* In computing an insured individual's primary insurance amount under the special minimum provision described in paragraph (a) of this section, the number of the individual's "years of coverage" is equal in number to the sum of the following, up to a maximum of 30:

(1) The number obtained by dividing the individual's total creditable earnings (see § 404.209(b)) for years after 1936 and before 1951 by $900 and disregarding any remainder which is not a multiple of $900; *plus*

(2) The number of "computation base years" after 1950 (see § 404.211(b)) in which the individual's creditable earnings for the year were not less than 25 percent of the maximum creditable amount for that year (see § 404.1027 and § 404.1068).

(c) *Procedure for computing the special minimum primary insurance amount.* The following example shows how the special minimum primary insurance amount is computed under the

rules provided in paragraphs (a)–(b) of this section:

Example. A. an insured worker, attains age 62 in June, 1975, and files an application for old-age insurance benefits. He has earnings of $12,000 for the period 1937 through 1950. Each year from 1951 through 1962, he had earnings equal to one-fourth the maximum creditable amount for that year (i.e., for the period 1951 through 1954 when the maximum creditable amount was $3,600 per year, he had $900 earnings per year; for the period 1955 through 1958 when the maximum creditable amount was $4,200 per year, he had $1,050 earnings per year; for the period 1959 through 1962 when the maximum creditable amount was $4,800 per year, he had $1,200 earnings per year). He had no earnings after 1962.

Under the regular benefit computation methods described in § 404.209 and § 404.213, A's highest primary insurance amount would be $130.50. Under the special minimum primary insurance amount provision, A would be credited with 13 coverage years for the period 1937 through 1950 ($12,000 divided by $900, with any remainder disregarded) plus 12 coverage years for the period 1951 through 1962. Total coverage years thus equal 25. From the total of 25 coverage years, 10 years are subtracted. The balance of 15 years is then multiplied by $9 to yield a special minimum primary insurance amount of $135, which is higher than the primary insurance amount of $130.50 computed under the regular benefit computation methods.

§ 404.221 Cost-of-living benefit increases.

(a) *General.* (1) Section 215(i) of the Act (added by section 202 of Pub. L. 92–336) permits the Secretary to provide a cost-of-living increase in primary insurance amounts, benefits for the transitionally insured (§ 404.113(a)), and payments for certain uninsured individuals at age 72 (§ 404.374). However, no cost-of-living increase may be made in special minimum primary insurance amounts (see § 404.231). The 1973 amendments (Pub. L. 93–233) provided that the first increase could be effective no earlier than June 1975. Such cost-of-living increase shall be made by the Secretary when he determines that the first calendar quarter of a year is a "cost-of-living computation quarter."

(2) The first calendar quarter of a year is a "cost-of-living computation quarter" if:

(i) Such calendar quarter is in a year after 1974; and

(ii) Such calendar quarter is not in a year immediately following a year in which a general benefit increase was enacted or became effective; and

(iii) The Consumer Price Index prepared by the Department of Labor for such calendar quarter is at least 3 percent higher than the Index was for the later of: (*a*) the last "cost-of-living computation" quarter; or (*b*) the last calendar quarter in which a general benefit increase was effective. (The Index for any calendar quarter is deemed to be the arithmetical mean for the months in that quarter.)

(3) For purposes of paragraph (a)(2)(ii) of this section, the benefit increases provided by the 1973 amendments are not considered "general benefit increases." Accordingly, the first possible "cost-of-living computation quarter" under this provision is the quarter ending March 31, 1975.

(b) *Method of providing cost-of-living benefit increases.* When the Secretary determines that the first calendar quarter of any year is a "cost-of-living computation quarter" under paragraph (a) of this section, he computes the amount of the cost-of-living increase. The amount of increase is determined by applying to the appropriate benefits the same percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for the "cost-of-living computation quarter" increased over the last "cost-of-living computation quarter" or, if later, the last calendar quarter in which a general benefit increase was effective. Such increase will be rounded to the next higher multiple of $0.10 if it is not a multiple of $0.10. The Secretary publishes in the FEDERAL REGISTER within 45 days of the close of the "cost-of-living computation quarter" the fact that such an increase is due, the amount of the increase, the increased benefit amount for the transitionally insured, and the increased payment amount for certain uninsured individuals at age 72 (which amounts shall be deemed to appear in sections 227 and 228 of the Act, respectively), and a revised table showing the increased primary insurance amounts which shall be deemed to appear in section 215(a) of the Act. The increased amounts shall be effective beginning with June of the year in which the "cost-of-living computation quarter" occurs.

Example. Assume that the calendar quarter ending March 31, 1977, was used in determining that a 4-percent cost-of-living benefit increase was due effective June 1977 (i.e., the March 31, 1977, calendar quarter was a "cost-of-living" computation quarter"). As a consequence of that increase, A's primary insurance amount of $200 was raised to $208 ($200 times 1.04 percent) effective June 1977. Following the March 31, 1978, calendar quarter, the Consumer Price Index shows that the average cost-of-living for that quarter was 5 percent higher than the average cost-of-living for the March 31, 1977, calendar quarter. Accordingly, A's primary insurance amount of $208 will be increased by 5 percent to $218.40 ($208 times 1.05 percent) effective June 1978.

§ 404.223 Table for determining primary insurance amounts and maximum family benefits after May 1975

(a) Beginning June 1975,

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective June 1974. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after May 1974 and before June 1975) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
----------	$16.20	$93.80	----------	$76	$101.40	$152.10
$16.21	16.84	95.30	$77	78	103.00	154.50
16.85	17.60	97.50	79	80	105.30	158.10
17.61	18.40	99.30	81	81	107.30	161.00
18.41	19.24	101.10	82	83	109.20	163.90
19.25	20.00	103.20	84	85	111.50	167.30
20.01	20.64	105.10	86	87	113.60	170.40
20.65	21.28	106.80	88	89	115.40	173.10
21.29	21.88	108.90	90	90	117.70	176.60
21.89	22.28	110.80	91	92	119.70	179.60
22.29	22.68	112.60	93	94	121.70	182.60
22.69	23.08	114.40	95	96	123.60	185.40
23.09	23.44	116.50	97	97	125.90	188.90
23.45	23.76	118.50	98	99	128.00	192.10
23.77	24.20	120.80	100	101	130.50	195.80
24.21	24.60	122.50	102	102	132.30	198.60
24.61	25.00	124.50	103	104	134.50	201.80
25.01	25.48	126.80	105	106	137.00	205.50
25.49	25.92	128.80	107	107	139.20	208.80
25.93	26.40	130.90	108	109	141.40	212.20
26.41	26.94	132.90	110	113	143.60	215.40
26.95	27.46	134.80	114	118	145.60	218.40
27.47	28.00	136.90	119	122	147.90	221.90
28.01	28.68	138.90	123	127	150.10	225.20
28.69	29.25	141.10	128	132	152.40	228.70
29.26	29.68	143.00	133	136	154.50	231.80
29.69	30.36	144.90	137	141	156.50	234.80
30.37	30.92	147.10	142	146	158.90	238.40
30.93	31.36	149.10	147	150	161.10	241.70
31.37	32.00	151.00	151	155	163.10	244.70
32.01	32.60	153.20	156	160	165.50	248.30
32.61	33.20	155.10	161	164	167.60	251.40
33.21	33.88	157.20	165	169	169.80	254.70
33.89	34.50	159.20	170	174	172.00	258.10
34.51	35.00	161.20	175	178	174.10	261.20
35.01	35.80	163.40	179	183	176.50	264.80
35.81	36.40	165.20	184	188	178.50	267.80
36.41	37.08	167.50	189	193	180.90	271.60
37.09	37.60	169.50	194	197	183.10	274.80
37.61	38.20	171.40	198	202	185.20	277.80
38.21	39.12	173.70	203	207	187.60	281.50
39.13	39.68	175.70	208	211	189.80	284.70
39.69	40.33	177.40	212	216	191.60	287.40
40.34	41.12	179.60	217	221	194.00	291.00
41.13	41.76	181.60	222	225	196.20	294.30
41.77	42.44	183.80	226	230	198.60	297.90
42.45	43.20	185.80	231	235	200.70	301.10
43.21	43.76	188.10	236	239	203.20	304.80
43.77	44.44	189.90	240	244	205.10	309.10
44.45	44.88	191.70	245	249	207.10	315.50
44.89	45.60	194.10	250	253	209.70	320.60
----------	----------	196.10	254	258	211.80	326.90
----------	----------	197.70	259	263	213.60	333.10
----------	----------	200.10	264	267	216.20	338.20

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective June 1974. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after May 1974 and before June 1975) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		202.10	268	272	218.30	344.60
		204.20	273	277	220.60	350.80
		206.20	278	281	222.70	355.90
		208.20	282	286	224.90	362.30
		210.40	287	291	227.30	368.70
		212.20	292	295	229.20	373.60
		214.40	296	300	231.60	379.90
		216.40	301	305	233.80	386.30
		218.30	306	309	235.80	391.40
		220.50	310	314	238.20	397.70
		222.40	315	319	240.20	404.10
		224.30	320	323	242.30	409.20
		226.50	324	328	244.70	415.50
		228.50	329	333	246.80	421.80
		230.80	334	337	249.30	426.90
		232.50	338	342	251.10	433.10
		234.50	343	347	253.30	439.50
		236.80	348	351	255.80	444.50
		238.70	352	356	257.80	450.80
		240.90	357	361	260.20	457.20
		242.80	362	365	262.30	462.30
		244.70	366	370	264.30	468.60
		246.90	371	375	266.70	474.80
		248.90	376	379	268.90	480.10
		251.10	380	384	271.20	486.40
		252.90	385	389	273.20	492.60
		254.90	390	393	275.30	497.70
		257.10	394	398	277.70	504.10
		259.00	399	403	279.80	510.50
		261.30	404	407	282.30	515.40
		263.00	408	412	284.10	521.80
		264.90	413	417	286.10	528.10
		266.80	418	421	288.20	533.10
		268.90	422	426	290.50	539.40
		270.70	427	431	292.40	545.80
		272.40	432	436	294.20	552.10
		274.70	437	440	296.70	554.60
		276.30	441	445	298.50	557.90
		278.20	446	450	300.50	561.00
		280.30	451	454	302.80	563.50
		282.10	455	459	304.70	566.60
		284.00	460	464	306.80	569.70
		285.80	465	468	308.70	572.40
		288.00	469	473	311.10	575.50
		289.60	474	478	312.80	578.70
		291.50	479	482	314.90	581.30
		293.60	483	487	317.10	584.50
		295.40	488	492	319.10	587.70
		297.30	493	496	321.10	590.20
		299.40	497	501	323.40	593.30
		301.10	502	506	325.20	596.40
		303.00	507	510	327.30	599.00
		304.90	511	515	329.30	602.10
		306.90	516	520	331.50	605.40
		308.70	521	524	333.40	607.80
		310.60	525	529	335.50	611.00
		312.70	530	534	337.80	614.10
		314.40	535	538	339.60	616.70
		316.30	539	543	341.70	619.90
		318.40	544	548	343.90	623.00
		320.20	549	553	345.90	626.20
		322.10	554	556	347.90	628.10
		323.60	557	560	349.50	630.70
		325.40	561	563	351.50	632.60
		327.10	564	567	353.30	635.10
		328.80	568	570	355.20	637.00
		330.40	571	574	356.90	639.40
		332.20	575	577	358.80	641.50
		333.70	578	581	360.40	643.80
		335.50	582	584	362.40	645.80
		337.00	585	588	364.00	648.40
		338.90	589	591	366.10	650.20
		340.60	592	595	367.90	652.80
		342.30	596	598	369.70	654.60
		343.90	599	602	371.50	657.30
		345.60	603	605	373.30	659.20
		347.30	606	609	375.10	661.50
		349.00	610	612	377.00	663.60
		350.70	613	616	378.80	666.10
		352.40	617	620	380.60	668.70
		354.00	621	623	382.40	670.50
		355.70	624	627	384.20	673.10
		357.40	628	630	386.00	675.40
		359.00	631	634	387.80	678.70
		360.80	635	637	389.70	681.90
		362.60	638	641	391.70	685.20
		364.10	642	644	393.30	688.20
		365.90	645	648	395.20	691.60
		367.50	649	652	396.90	694.60
		368.60	653	656	398.10	696.60
		369.60	657	660	399.20	698.50
		370.90	661	665	400.60	701.10
		372.20	666	670	402.00	703.60
		373.60	671	675	403.50	706.00
		374.90	676	680	404.90	708.60
		376.20	681	685	406.30	711.10

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective June 1974. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after May 1974 and before June 1975) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		377.60	686	690	407.90	713.60
		378.90	691	695	409.30	716.20
		380.20	696	700	410.70	718.70
		381.60	701	705	412.20	721.20
		382.90	706	710	413.60	723.60
		384.20	711	715	415.00	726.20
		385.60	716	720	416.50	728.70
		386.90	721	725	417.90	731.20
		388.20	726	730	419.30	733.80
		389.50	731	735	420.70	736.30
		390.90	736	740	422.20	738.80
		392.20	741	745	423.60	741.40
		393.50	746	750	425.00	743.80
		394.70	751	755	426.30	746.00
		395.80	756	760	427.50	748.10
		396.90	761	765	428.70	750.20
		398.00	766	770	429.90	752.30
		399.10	771	775	431.10	754.40
		400.20	776	780	432.30	756.40
		401.30	781	785	433.50	758.50
		402.40	786	790	434.60	760.60
		403.50	791	795	435.80	762.70
		404.60	796	800	437.00	764.80
		405.80	801	805	438.30	767.00
		406.90	806	810	439.50	769.00
		408.00	811	815	440.70	771.20
		409.10	816	820	441.90	773.20
		410.20	821	825	443.10	775.40
		411.30	826	830	444.30	777.40
		412.40	831	835	445.40	779.60
		413.50	836	840	446.60	781.60
		414.60	841	845	447.80	783.80
		415.70	846	850	449.00	785.70
		416.90	851	855	450.30	787.90
		418.00	856	860	451.50	790.00
		419.10	861	865	452.70	792.10
		420.20	866	870	453.90	794.20
		421.30	871	875	455.10	796.30
		422.40	876	880	456.20	798.40
		423.50	881	885	457.40	800.50
		424.60	886	890	458.60	802.60
		425.70	891	895	459.80	804.80
		426.80	896	900	461.00	806.80
		428.00	901	905	462.30	809.00
		429.10	906	910	463.50	811.00
		430.20	911	915	464.70	813.20
		431.30	916	920	465.90	815.10
		432.40	921	925	467.00	817.30
		433.50	926	930	468.20	819.30
		434.60	931	935	469.40	821.50
		435.70	936	940	470.60	823.50
		436.80	941	945	471.80	825.70
		437.90	946	950	473.00	827.80
		439.10	951	955	474.30	829.90
		440.20	956	960	475.50	832.00
		441.30	961	965	476.70	834.10
		442.40	966	970	477.80	836.20
		443.50	971	975	479.00	838.30
		444.60	976	980	480.20	840.30
		445.70	981	985	481.40	842.40
		446.80	986	990	482.60	844.50
		447.90	991	995	483.80	846.70
		449.00	996	1,000	485.00	848.70
		450.00	1,001	1,005	486.00	850.50
		451.00	1,006	1,010	487.10	852.50
		452.00	1,011	1,015	488.20	854.30
		453.00	1,016	1,020	489.30	856.30
		454.00	1,021	1,025	490.40	858.10
		455.00	1,026	1,030	491.40	860.10
		456.00	1,031	1,035	492.50	861.90
		457.00	1,036	1,040	493.60	863.80
		458.00	1,041	1,045	494.70	865.70
		459.00	1,046	1,050	495.80	867.60
		460.00	1,051	1,055	496.80	869.40
		461.00	1,056	1,060	497.90	871.40
		462.00	1,061	1,065	499.00	873.20
		463.00	1,066	1,070	500.10	875.20
		464.00	1,071	1,075	501.20	877.00
		465.00	1,076	1,080	502.20	879.00
		466.00	1,081	1,085	503.30	880.80
		467.00	1,086	1,090	504.40	882.70
		468.00	1,091	1,095	505.50	884.60
		469.00	1,096	1,100	506.60	886.50
		470.00	1,101	1,105	507.60	888.30
		471.00	1,106	1,110	508.70	890.30
		472.00	1,111	1,115	509.80	892.10
		473.00	1,116	1,120	510.90	894.10
		474.00	1,121	1,125	512.00	895.90
		475.00	1,126	1,130	513.00	897.90
		476.00	1,131	1,135	514.10	899.70
		477.00	1,136	1,140	515.20	901.60
		478.00	1,141	1,145	516.30	903.50
		479.00	1,146	1,150	517.40	905.40
		480.00	1,151	1,155	518.40	907.20

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective June 1974. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after May 1974 and before June 1975) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
----------		$481.00	$1,156	$1,160	$519.50	$909.20
----------		482.00	1,161	1,165	520.60	911.00
----------		483.00	1,166	1,170	521.70	913.00
----------		484.00	1,171	1,175	522.80	914.80

(b) *Beginning January 1976.*[1]

[1] This table is an extension of the table in paragraph (a) of this section prepared in accordance with section 215(1) of the Act to reflect the increase in the contribution and benefit base effective January 1976.

----------	$1,176	$1,180	$523.80	$916.70
----------	1,181	1,185	524.80	918.40
----------	1,186	1,190	525.80	920.20
----------	1,191	1,195	526.80	921.90
----------	1,196	1,200	527.80	923.70
----------	1,201	1,205	528.80	925.40
----------	1,206	1,210	529.80	927.20
----------	1,211	1,215	530.80	928.90
----------	1,216	1,220	531.80	930.70
----------	1,221	1,225	532.80	932.40
----------	1,226	1,230	533.80	934.20
----------	1,231	1,235	534.80	935.90
----------	1,236	1,240	535.80	937.70
----------	1,241	1,245	536.80	939.40
----------	1,246	1,250	537.80	941.20
----------	1,251	1,255	538.80	942.90
----------	1,256	1,260	539.80	944.70
----------	1,261	1,265	540.80	946.40
----------	1,266	1,270	541.80	948.20
----------	1,271	1,275	542.80	949.90

§ 404.225 Table for determining primary insurance amounts and maximum family benefits for June 1974 through May 1975.

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective September 1972. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after August 1972 and before March 1974) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
----------	$16.20	$84.50	----------	$76	$93.80	$140.80
$16.21	16.84	85.80	$77	78	95.30	143.00
16.85	17.60	87.80	79	80	97.50	146.30
17.61	18.40	89.40	81	81	99.30	149.00
18.41	19.24	91.00	82	83	101.10	151.70
19.25	20.00	92.90	84	85	103.20	154.80
20.01	20.64	94.60	86	87	105.10	157.70
20.65	21.28	96.20	88	89	106.80	160.20
21.29	21.88	98.10	90	90	108.90	163.40
21.89	22.28	99.80	91	92	110.80	166.20
22.29	22.68	101.40	93	94	112.60	169.00
22.69	23.08	103.00	95	96	114.40	171.60
23.09	23.44	104.90	97	97	116.50	174.80
23.45	23.76	106.70	98	99	118.50	177.80
23.77	24.20	108.80	100	101	120.80	181.20
24.21	24.60	110.30	102	102	122.50	183.80
24.61	25.00	112.10	103	104	124.50	186.80
25.01	25.48	114.20	105	106	126.80	190.20
25.49	25.92	116.00	107	107	128.80	193.20
25.93	26.40	117.90	108	109	130.90	196.40
26.41	26.94	119.70	110	113	132.90	199.40

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective September 1972. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after August 1972 and before March 1974) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
$26.95	$27.46	$121.40	$114	$118	$134.80	$202.20
27.47	28.00	123.30	119	122	136.90	205.40
28.01	28.68	125.10	123	127	138.90	208.40
28.69	29.25	127.10	128	132	141.10	211.70
29.26	29.68	128.80	133	136	143.00	214.50
29.69	30.36	130.50	137	141	144.90	217.40
30.37	30.92	132.50	142	146	147.10	220.70
30.93	31.36	134.30	147	150	149.10	223.70
31.37	32.00	136.00	151	155	151.00	226.50
32.01	32.60	138.00	156	160	153.20	229.80
32.61	33.20	139.70	161	164	155.10	232.70
33.21	33.88	141.60	165	169	157.20	235.80
33.89	34.50	143.40	170	174	159.20	238.90
34.51	35.00	145.20	175	178	161.20	241.80
35.01	35.80	147.20	179	183	163.40	245.10
35.81	36.40	148.80	184	188	165.20	247.80
36.41	37.08	150.90	189	193	167.50	251.40
37.09	37.60	152.70	194	197	169.50	254.40
37.61	38.20	154.40	198	202	171.40	257.10
38.21	39.12	156.40	203	207	173.70	260.60
39.13	39.68	158.20	208	211	175.70	263.60
39.69	40.33	159.80	212	216	177.40	266.10
40.34	41.12	161.80	217	221	179.60	269.40
41.13	41.76	163.60	222	225	181.60	272.40
41.77	42.44	165.50	226	230	183.80	275.70
42.45	43.20	167.30	231	235	185.80	278.70
43.21	43.76	169.40	236	239	188.10	282.20
43.77	44.44	171.00	240	244	189.90	286.20
44.45	44.88	172.70	245	249	191.70	292.10
44.89	45.60	174.80	250	253	194.10	296.80
----------	----------	176.60	254	258	196.10	302.60
----------	----------	178.10	259	263	197.70	308.40
----------	----------	180.20	264	267	200.10	313.10
----------	----------	182.00	268	272	202.10	319.00
----------	----------	183.90	273	277	204.20	324.80
----------	----------	185.70	278	281	206.20	329.50
----------	----------	187.50	282	286	208.20	335.40
----------	----------	189.50	287	291	210.40	341.30
----------	----------	191.10	292	295	212.20	345.90
----------	----------	193.10	296	300	214.40	351.70
----------	----------	194.90	301	305	216.40	357.60
----------	----------	196.60	306	309	218.30	362.40
----------	----------	198.60	310	314	220.50	368.20
----------	----------	200.30	315	319	222.40	374.10
----------	----------	202.00	320	323	224.30	378.80
----------	----------	204.00	324	328	226.50	384.70
----------	----------	205.80	329	333	228.50	390.50
----------	----------	207.90	334	337	230.80	395.20
----------	----------	209.40	338	342	232.50	401.00
----------	----------	211.20	343	347	234.50	406.90
----------	----------	213.30	348	351	236.80	411.50
----------	----------	215.00	352	356	238.70	417.40
----------	----------	217.00	357	361	240.90	423.30
----------	----------	218.70	362	365	242.80	428.00
----------	----------	220.40	366	370	244.70	433.80
----------	----------	222.40	371	375	246.90	439.60
----------	----------	224.20	376	379	248.90	444.50
----------	----------	226.20	380	384	251.10	450.30
----------	----------	227.80	385	389	252.90	456.10
----------	----------	229.60	390	393	254.90	460.80
----------	----------	231.60	394	398	257.10	466.70
----------	----------	233.30	399	403	259.00	472.60
----------	----------	235.40	404	407	261.30	477.20
----------	----------	236.90	408	412	263.00	483.10
----------	----------	238.60	413	417	264.90	488.90
----------	----------	240.30	418	421	266.80	493.60
----------	----------	242.20	422	426	268.90	499.40
----------	----------	243.80	427	431	270.70	505.30
----------	----------	245.40	432	436	272.40	511.20
----------	----------	247.40	437	440	274.70	513.50
----------	----------	248.90	441	445	276.30	516.50
----------	----------	250.60	446	450	278.20	519.40
----------	----------	252.50	451	454	280.30	521.70
----------	----------	254.10	455	459	282.10	524.60
----------	----------	255.80	460	464	284.00	527.50
----------	----------	257.40	465	468	285.80	530.00
----------	----------	259.40	469	473	288.00	532.80
----------	----------	260.90	474	478	289.60	535.80
----------	----------	262.60	479	482	291.50	538.20
----------	----------	264.50	483	487	293.60	541.20
----------	----------	266.10	488	492	295.40	544.10
----------	----------	267.80	493	496	297.30	546.40
----------	----------	269.70	497	501	299.40	549.30
----------	----------	271.20	502	506	301.10	552.20
----------	----------	272.90	507	510	303.00	554.60
----------	----------	274.60	511	515	304.90	557.50
----------	----------	276.40	516	520	306.90	560.50
----------	----------	278.10	521	524	308.70	562.70
----------	----------	279.80	525	529	310.60	565.70
----------	----------	281.70	530	534	312.70	568.60
----------	----------	283.20	535	538	314.40	571.00
----------	----------	284.90	539	543	316.30	573.90
----------	----------	286.80	544	548	318.40	576.80
----------	----------	288.40	549	553	320.20	579.80

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective September 1972. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after August 1972 and before March 1974) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
----------	----------	$290.10	$554	$556	$322.10	$581.50
----------	----------	291.50	557	560	323.60	583.90
----------	----------	293.10	561	563	325.40	585.70
----------	----------	294.60	564	567	327.10	588.00
----------	----------	296.20	568	570	328.80	589.80
----------	----------	297.60	571	574	330.40	592.00
----------	----------	299.20	575	577	332.20	593.90
----------	----------	300.60	578	581	333.70	596.10
----------	----------	302.20	582	584	335.50	597.90
----------	----------	303.60	585	588	337.00	600.30
----------	----------	305.30	589	591	338.90	602.00
----------	----------	306.80	592	595	340.60	604.40
----------	----------	308.30	596	598	342.30	606.10
----------	----------	309.80	599	602	343.90	608.60
----------	----------	311.30	603	605	345.60	610.30
----------	----------	312.80	606	609	347.30	612.50
----------	----------	314.40	610	612	349.00	614.40
----------	----------	315.90	613	616	350.70	616.70
----------	----------	317.40	617	620	352.40	619.10
----------	----------	318.90	621	623	354.00	620.80
----------	----------	320.40	624	627	355.70	623.20
----------	----------	321.90	628	630	357.40	625.30
----------	----------	323.40	631	634	359.00	628.40
----------	----------	325.00	635	637	360.80	631.30
----------	----------	326.60	638	641	362.60	634.40
----------	----------	328.00	642	644	364.10	637.20
----------	----------	329.60	645	648	365.90	640.30
----------	----------	331.00	649	652	367.50	643.10
----------	----------	332.00	653	656	368.60	645.00
----------	----------	332.90	657	660	369.60	646.70
----------	----------	334.10	661	665	370.90	649.10
----------	----------	335.30	666	670	372.20	651.40
----------	----------	336.50	671	675	373.60	653.70
----------	----------	337.70	676	680	374.90	656.10
----------	----------	338.90	681	685	376.20	658.40
----------	----------	340.10	686	690	377.60	660.70
----------	----------	341.30	691	695	378.90	663.10
----------	----------	342.50	696	700	380.20	665.40
----------	----------	343.70	701	705	381.60	667.70
----------	----------	344.90	706	710	382.90	670.00
----------	----------	346.10	711	715	384.20	672.40
----------	----------	347.30	716	720	385.60	674.70
----------	----------	348.50	721	725	386.90	677.00
----------	----------	349.70	726	730	388.20	679.40
----------	----------	350.90	731	735	389.50	681.70
----------	----------	352.10	736	740	390.90	684.00
----------	----------	353.30	741	745	392.20	686.40
----------	----------	354.50	746	750	393.50	688.70
----------	----------	355.50	751	755	394.70	690.70
----------	----------	356.50	756	760	395.80	692.60
----------	----------	357.50	761	765	396.90	694.60
----------	----------	358.50	766	770	398.00	696.50
----------	----------	359.50	771	775	399.10	698.50
----------	----------	360.50	776	780	400.20	700.30
----------	----------	361.50	781	785	401.30	702.30
----------	----------	362.50	786	790	402.40	704.20
----------	----------	363.50	791	795	403.50	706.20
----------	----------	364.50	796	800	404.60	708.10
----------	----------	365.50	801	805	405.80	710.10
----------	----------	366.50	806	810	406.90	712.00
----------	----------	367.50	811	815	408.00	714.00
----------	----------	368.50	816	820	409.10	715.90
----------	----------	369.50	821	825	410.20	717.90
----------	----------	370.50	826	830	411.30	719.80
----------	----------	371.50	831	835	412.40	721.80
----------	----------	372.50	836	840	413.50	723.70
----------	----------	373.50	841	845	414.60	725.70
----------	----------	374.50	846	850	415.70	727.50
----------	----------	375.50	851	855	416.90	729.50
----------	----------	376.50	856	860	418.00	731.40
----------	----------	377.50	861	865	419.10	733.40
----------	----------	378.50	866	870	420.20	735.30
----------	----------	379.50	871	875	421.30	737.30
----------	----------	380.50	876	880	422.40	739.20
----------	----------	381.50	881	885	423.50	741.20
----------	----------	382.50	886	890	424.60	743.10
----------	----------	383.50	891	895	425.70	745.10
----------	----------	384.50	896	900	426.80	747.00
----------	----------	385.50	901	905	428.00	749.00
----------	----------	386.50	906	910	429.10	750.90
----------	----------	387.50	911	915	430.20	752.90
----------	----------	388.50	916	920	431.30	754.70
----------	----------	389.50	921	925	432.40	756.70
----------	----------	390.50	926	930	433.50	758.60
----------	----------	391.50	931	935	434.60	760.60
----------	----------	392.50	936	940	435.70	762.50
----------	----------	393.50	941	945	436.80	764.50
----------	----------	394.50	946	950	437.90	766.40

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective September 1972. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after August 1972 and before March 1974) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
----------	----------	$395.50	$951	$955	$439.10	$768.40
----------	----------	396.50	956	960	440.20	770.30
----------	----------	397.50	961	965	441.30	772.30
----------	----------	398.50	966	970	442.40	774.20
----------	----------	399.50	971	975	443.50	776.20
----------	----------	400.50	976	980	444.60	778.00
----------	----------	401.50	981	985	445.70	780.00
----------	----------	402.50	986	990	446.80	781.90
----------	----------	403.50	991	995	447.90	783.90
----------	----------	404.50	996	1,000	449.00	785.80
----------	----------	----------	1,001	1,005	450.00	787.50
----------	----------	----------	1,006	1,010	451.00	789.30
----------	----------	----------	1,011	1,015	452.00	791.00
----------	----------	----------	1,016	1,020	453.00	792.80
----------	----------	----------	1,021	1,025	454.00	794.50
----------	----------	----------	1,026	1,030	455.00	796.30
----------	----------	----------	1,031	1,035	456.00	798.00
----------	----------	----------	1,036	1,040	457.00	799.80
----------	----------	----------	1,041	1,045	458.00	801.50
----------	----------	----------	1,046	1,050	459.00	803.30
----------	----------	----------	1,051	1,055	460.00	805.00
----------	----------	----------	1,056	1,060	461.00	806.80
----------	----------	----------	1,061	1,065	462.00	808.50
----------	----------	----------	1,066	1,070	463.00	810.30
----------	----------	----------	1,071	1,075	464.00	812.00
----------	----------	----------	1,076	1,080	465.00	813.80
----------	----------	----------	1,081	1,085	466.00	815.50
----------	----------	----------	1,086	1,090	467.00	817.30
----------	----------	----------	1,091	1,095	468.00	819.00
----------	----------	----------	1,096	1,100	469.00	820.80
----------	----------	----------	1,101	1,105	470.00	822.50
----------	----------	----------	1,106	1,110	471.00	824.30
----------	----------	----------	1,111	1,115	472.00	826.00
----------	----------	----------	1,116	1,120	473.00	827.80
----------	----------	----------	1,121	1,125	474.00	829.50
----------	----------	----------	1,126	1,130	475.00	831.30
----------	----------	----------	1,131	1,135	476.00	833.00
----------	----------	----------	1,136	1,140	477.00	834.80
----------	----------	----------	1,141	1,145	478.00	836.50
----------	----------	----------	1,146	1,150	479.00	838.30
----------	----------	----------	1,151	1,155	480.00	840.00
----------	----------	----------	1,156	1,160	481.00	841.80
----------	----------	----------	1,161	1,165	482.00	843.50
----------	----------	----------	1,166	1,170	483.00	845.30
----------	----------	----------	1,171	1,175	484.00	847.00

§ 404.227 Table for determining primary insurance amounts and maximum family benefits for March 1974 through May 1974.

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective September 1972. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after August 1972 and before March 1974) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
----------	$16.20	$84.50	----------	$76	$90.50	$135.80
$16.21	16.84	85.80	$77	78	91.90	137.90
16.85	17.60	87.80	79	80	94.00	141.00
17.61	18.40	89.40	81	81	95.70	143.60
18.41	19.24	91.00	82	83	97.40	146.10
19.25	20.00	92.90	84	85	99.50	149.30
20.01	20.64	94.60	86	87	101.30	152.00
20.65	21.28	96.20	88	89	103.00	154.50
21.29	21.88	98.10	90	90	105.00	157.60
21.89	22.28	99.80	91	92	106.80	160.20
22.29	22.68	101.40	93	94	108.50	162.90
22.69	23.08	103.00	95	96	110.30	165.50
23.09	23.44	104.90	97	97	112.30	168.50
23.45	23.76	106.70	98	99	114.20	171.40
23.77	24.20	108.80	100	101	116.50	174.80
24.21	24.60	110.30	102	102	118.10	177.20
24.61	25.00	112.10	103	104	120.00	180.00
25.01	25.48	114.20	105	106	122.20	183.30
25.49	25.92	116.00	107	107	124.20	186.30
25.93	26.40	117.90	108	109	126.20	189.30
26.41	26.94	119.70	110	113	128.10	192.20
26.95	27.46	121.40	114	118	129.90	194.90
27.47	28.00	123.30	119	122	132.00	198.00
28.01	28.68	125.10	123	127	133.90	200.90

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective September 1972. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after August 1972 and before March 1974) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
$28.69	$29.25	$127.10	$128	$132	$136.00	$204.10
29.26	29.68	128.80	133	136	137.90	206.90
29.69	30.36	130.50	137	141	139.70	209.60
30.37	30.92	132.50	142	146	141.80	212.80
30.93	31.36	134.30	147	150	143.80	215.70
31.37	32.00	136.00	151	155	145.60	218.40
32.01	32.60	138.00	156	160	147.70	221.60
32.61	33.20	139.70	161	164	149.50	224.30
33.21	33.88	141.60	165	169	151.60	227.40
33.89	34.50	143.40	170	174	153.50	230.30
34.51	35.00	145.20	175	178	155.40	233.10
35.01	35.80	147.20	179	183	157.60	236.40
35.81	36.40	148.80	184	188	159.30	239.00
36.41	37.08	150.90	189	193	161.50	242.30
37.09	37.60	152.70	194	197	163.40	245.20
37.61	38.20	154.40	198	202	165.30	248.00
38.21	39.12	156.40	203	207	167.40	251.10
39.13	39.68	158.20	208	211	169.30	254.00
39.69	40.33	159.80	212	216	171.00	256.50
40.34	41.12	161.80	217	221	173.20	259.80
41.13	41.76	163.60	222	225	175.10	262.70
41.77	42.44	165.50	226	230	177.10	265.70
42.45	43.20	167.30	231	235	179.10	268.70
43.21	43.76	169.40	236	239	181.30	272.00
43.77	44.44	171.00	240	244	183.00	275.90
44.45	44.88	172.70	245	249	184.80	281.60
44.89	45.60	174.80	250	253	187.10	286.10
----------	----------	176.60	254	258	189.00	291.70
----------	----------	178.10	259	263	190.60	297.30
----------	----------	180.20	264	267	192.90	301.80
----------	----------	182.00	268	272	194.80	307.50
----------	----------	183.90	273	277	196.80	313.10
----------	----------	185.70	278	281	198.70	317.60
----------	----------	187.50	282	286	200.70	323.30
----------	----------	189.50	287	291	202.80	329.00
----------	----------	191.10	292	295	204.50	333.50
----------	----------	193.10	296	300	206.70	339.00
----------	----------	194.90	301	305	208.60	344.70
----------	----------	196.60	306	309	210.40	349.30
----------	----------	198.60	310	314	212.60	355.00
----------	----------	200.30	315	319	214.40	360.60
----------	----------	202.00	320	323	216.20	365.10
----------	----------	204.00	324	328	218.30	370.80
----------	----------	205.80	329	333	220.30	376.50
----------	----------	207.90	334	337	222.50	381.00
----------	----------	209.40	338	342	224.10	386.50
----------	----------	211.20	343	347	226.00	392.20
----------	----------	213.30	348	351	228.30	396.70
----------	----------	215.00	352	356	230.10	402.40
----------	----------	217.00	357	361	232.20	408.00
----------	----------	218.70	362	365	234.10	412.50
----------	----------	220.40	366	370	235.90	418.20
----------	----------	222.40	371	375	238.00	423.80
----------	----------	224.20	376	379	239.90	428.50
----------	----------	226.20	380	384	242.10	434.00
----------	----------	227.80	385	389	243.80	439.70
----------	----------	229.60	390	393	245.70	444.20
----------	----------	231.60	394	398	247.90	449.90
----------	----------	233.30	399	403	249.70	455.50
----------	----------	235.40	404	407	251.90	460.00
----------	----------	236.90	408	412	253.50	465.70
----------	----------	238.60	413	417	255.40	471.30
----------	----------	240.30	418	421	257.20	475.80
----------	----------	242.20	422	426	259.20	481.40
----------	----------	243.80	427	431	260.90	487.10
----------	----------	245.40	432	436	262.60	492.80
----------	----------	247.40	437	440	264.80	495.00
----------	----------	248.90	441	445	266.40	497.90
----------	----------	250.60	446	450	268.20	500.70
----------	----------	252.50	451	454	270.20	502.90
----------	----------	254.10	455	459	271.90	505.70
----------	----------	255.80	460	464	273.80	508.50
----------	----------	257.40	465	468	275.50	510.90
----------	----------	259.40	469	473	277.60	513.60
----------	----------	260.90	474	478	279.20	516.50
----------	----------	262.80	479	482	281.00	518.80
----------	----------	264.50	483	487	283.10	521.70
----------	----------	266.10	488	492	284.80	524.50
----------	----------	267.80	493	496	286.60	526.70
----------	----------	269.70	497	501	288.60	529.50
----------	----------	271.20	502	506	290.20	532.30
----------	----------	272.90	507	510	292.10	534.60
----------	----------	274.60	511	515	293.90	537.40
----------	----------	276.40	516	520	295.80	540.30
----------	----------	278.10	521	524	297.60	542.40
----------	----------	279.80	525	529	299.40	545.30
----------	----------	281.70	530	534	301.50	548.10
----------	----------	283.20	535	538	303.10	550.50
----------	----------	284.90	539	543	304.90	553.20
----------	----------	286.80	544	548	306.90	556.00
----------	----------	288.40	549	553	308.60	558.90
----------	----------	290.10	554	556	310.50	560.50
----------	----------	291.50	557	560	312.00	562.90
----------	----------	293.10	561	563	313.70	564.60
----------	----------	294.60	564	567	315.30	566.80

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective September 1972. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after August 1972 and before March 1974) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		296.20	568	570	317.00	568.50
		297.60	571	574	318.50	570.70
		299.20	575	577	320.20	572.50
		300.60	578	581	321.70	574.60
		302.20	582	584	323.40	576.40
		303.60	585	588	324.90	578.70
		305.30	589	591	326.70	580.30
		306.80	592	595	328.30	582.70
		308.30	596	598	329.90	584.30
		309.80	599	602	331.50	586.60
		311.30	603	605	333.10	588.30
		312.80	606	609	334.70	590.50
		314.40	610	612	336.50	592.30
		315.90	613	616	338.10	594.40
		317.40	617	620	339.70	596.80
		318.90	621	623	341.30	598.40
		320.40	624	627	342.90	600.70
		321.90	628	630	344.50	602.80
		323.40	631	634	346.10	605.80
		325.00	635	637	347.80	608.60
		326.60	638	641	349.50	611.60
		328.00	642	644	351.00	614.20
		329.60	645	648	352.70	617.20
		331.00	649	652	354.20	619.90
		332.00	653	656	355.30	621.70
		332.90	657	660	356.30	623.40
		334.10	661	665	357.50	625.70
		335.30	666	670	358.80	627.90
		336.50	671	675	360.10	630.20
		337.70	676	680	361.40	632.40
		338.90	681	685	362.70	634.70
		340.10	686	690	364.00	636.90
		341.30	691	695	365.20	639.20
		342.50	696	700	366.50	641.40
		343.70	701	705	367.80	643.70
		344.90	706	710	369.10	645.90
		346.10	711	715	370.40	648.10
		347.30	716	720	371.70	650.40
		348.50	721	725	372.90	652.60
		349.70	726	730	374.20	654.90
		350.90	731	735	375.50	657.10
		352.10	736	740	376.80	659.40
		353.30	741	745	378.10	661.60
		354.50	746	750	379.40	663.90
		355.50	751	755	380.40	665.80
		356.50	756	760	381.50	667.60
		357.50	761	765	382.60	669.50
		358.50	766	770	383.60	671.40
		359.50	771	775	384.70	673.30
		360.50	776	780	385.80	675.10
		361.50	781	785	386.90	677.00
		362.50	786	790	387.90	678.90
		363.50	791	795	389.00	680.80
		364.50	796	800	390.10	682.60
		365.50	801	805	391.10	684.50
		366.50	806	810	392.20	686.30
		367.50	811	815	393.30	688.30
		368.50	816	820	394.30	690.10
		369.50	821	825	395.40	692.00
		370.50	826	830	396.50	693.80
		371.50	831	835	397.60	695.80
		372.50	836	840	398.60	697.60
		373.50	841	845	399.70	699.50
		374.50	846	850	400.80	701.30
		375.50	851	855	401.80	703.30
		376.50	856	860	402.90	705.10
		377.50	861	865	404.00	707.00
		378.50	866	870	405.00	708.80
		379.50	871	875	406.10	710.70
		380.50	876	880	407.20	712.60
		381.50	881	885	408.30	714.50
		382.50	886	890	409.30	716.30
		383.50	891	895	410.40	718.20
		384.50	896	900	411.50	720.10
		385.50	901	905	412.50	722.00
		386.50	906	910	413.60	723.80
		387.50	911	915	414.70	725.70
		388.50	916	920	415.70	727.50
		389.50	921	925	416.80	729.50
		390.50	926	930	417.90	731.30
		391.50	931	935	419.00	733.20
		392.50	936	940	420.00	735.00
		393.50	941	945	421.10	737.00
		394.50	946	950	422.20	738.80
		395.50	951	955	423.20	740.70
		396.50	956	960	424.30	742.50
		397.50	961	965	425.40	744.40
		398.50	966	970	426.40	746.30
		399.50	971	975	427.50	748.20
		400.50	976	980	428.60	750.00
		401.50	981	985	429.70	751.90

I		II	III		IV	V
Primary insurance benefit under 1939 act, as modified. If an individual's primary insurance benefit (as determined under sec. 404.213) is—		Primary insurance amount effective September 1972. Or the individual's primary insurance amount (as determined under sec. 404.207 for months after August 1972 and before March 1974) is—	Average monthly wage. Or the individual's average monthly wage (as determined under sec. 404.211) is—		Primary insurance amount. The amount referred to in sec. 404.207(b) shall be—	Maximum family benefits. And the maximum amount of benefits payable (as provided in sec. 203(a) of the act) on the basis of the individual's wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		$402.50	$986	$990	$430.70	$753.80
		403.50	991	995	431.80	755.70
		404.50	996	1,000	432.90	757.50
			1,001	1,005	433.90	759.40
			1,006	1,010	434.90	761.10
			1,011	1,015	435.90	762.90
			1,016	1,020	436.90	764.60
			1,021	1,025	437.90	766.40
			1,026	1,030	438.90	768.10
			1,031	1,035	439.90	769.90
			1,036	1,040	440.90	771.60
			1,041	1,045	441.90	773.40
			1,046	1,050	442.90	775.10
			1,051	1,055	443.90	776.90
			1,056	1,060	444.90	778.60
			1,061	1,065	445.90	780.40
			1,066	1,070	446.90	782.10
			1,071	1,075	447.90	783.90
			1,076	1,080	448.90	785.60
			1,081	1,085	449.90	787.40
			1,086	1,090	450.90	789.10
			1,091	1,095	451.90	790.90
			1,096	1,100	452.90	792.60

CURRENT METHODS OF RECOMPUTING BENEFITS

§ 404.240 General.

Recomputation of an individual's primary insurance amount is the computing of such amount as if it were being established for the first time, although, in fact, it was determined previously. Recomputation is permitted only if it results in an increase in the primary insurance amount. That is, the recomputation is made as if the individual were first filing for and becoming entitled to monthly benefits in the year in which the recomputation is made. Recomputation of an individual's primary insurance amount was first provided for by the 1946 amendments. However, recomputations of an individual's primary insurance amount were made only upon application by the individual; or, if deceased, by someone entitled to monthly benefits based upon that primary insurance amount. The 1965 amendments eliminated the requirement that an application for recomputation be filed.

§ 404.242 When a recomputation applies.

A recomputation is usually effected to permit consideration of one or more of the following:

(a) Earnings which could not be included in the initial computation of the primary insurance amount because evidence of such earnings was then unavailable; or

(b) Earnings which were earned after the primary insurance amount was first determined; or

(c) A computation method or formula provided by an amendment to the Act which was not in effect when the primary insurance amount was first determined; or

(d) An earlier ending date for the computation period as where the ending date which was used in initially determining the individual's primary insurance amount was based upon attainment of retirement age in a future year and death occurs prior to such year.

§ 404.244 "Automatic" recomputations.

(a) *General.* (1) Since 1966, "automatic" recomputations are made by the Social Security Administration at times designated by the Secretary. An individual is no longer required to file an application requesting recomputation of his primary insurance amount. The Social Security Administration examines for each year the wage and self-employment records which it maintains for those who are entitled to monthly benefits (see Subpart I of this part for discussion of these records). When this examination indicates that recomputation of an individual's primary insurance amount is possible, the recomputation is made and any resulting increase in benefits paid (if otherwise due).

(2) The automatic recomputation provision is effective for recomputations of primary insurance amounts for individuals entitled to old-age insurance benefits for any month after December 31, 1964. However, the 1967 amendments provided that recomputation of the primary insurance amount for individuals entitled to old-age insurance benefits for months after 1965 may be made only if the individual has creditable wages or self-employment income for the year with respect to which such recomputation is made.

(b) *Method of recomputation.* (1) Under the 1965 amendments "automatic" recomputations were made as provided in § 404.211, as though the year for which the wage and self-employment records were examined was, in fact, the last "computation base year" (see § 404.211(b)) for purposes of computing the primary insurance amount. However, if such year was not the first year in which the individual was entitled to old-age insurance benefits or the year immediately preceding that year, only the method described in § 404.211 for establishing the primary insurance amount directly from the average monthly wage could be used (and not the methods described in § 404.213 or in § 404.215 for establishing the primary insurance amount from the primary insurance benefit). Increases in monthly benefits under this provision of the 1965 amendments were effective with January of the year immediately following the year considered to be the last "computation base year" under the preceding sentences of this section but: (i) no earlier than January 1966; or, (ii) if the individual died in the year considered to be the last "computation base year" under the preceding sentences, no earlier than the month in which the individual died.

(2) The 1967 amendments permitted the primary insurance amount to be recomputed under the methods described in § 404.213 or in § 404.215 when the conditions in paragraph (a) of this section were satisfied even though the year considered to be the last "computation base year" was later than the first year in which the individual was entitled to old-age insurance benefits. Such provision was effective for recomputations made after January 2, 1968. The 1972 amendments permit consideration of the special minimum primary insurance amount described in § 404.219 as an alternative computation when an individual's primary insurance amount is recomputed to increase benefits after December 1972.

(c) *Procedure for computing the recomputation.* The following example shows how the "automatic" recomputation is made under the rules in paragraphs (a) and (b) of this section.

Example. *A*, an insured worker, attains age 65 in June 1974, stops working, and files application for old-age insurance benefits in the same month. His primary insurance amount effective June 1974 is determined to be $304.90, based upon total earnings of $110,400 for the 18 "computation base years" (see § 404.211(b)) from 1956 through 1973. A's year with the lowest earnings which is included in this total is 1956 with $4,200. Although A's earnings for the first 5 months of 1974 total $13,200, these earnings may not be used in the initial computation since earnings in the year in which an individual is first entitled to old-age insurance benefits must be excluded from the initial computation. However, in 1975, A's earnings for 1974 may be used in recomputing his primary insurance amount. The number of "computation base years" used in the initial computation (18) remains unchanged for purposes of the recomputation. However, his 1974 earnings may be used in lieu of a "computation base year" which has lower earnings, such as the year 1956 in which he had only $4,200 in earnings. By making such a substitution in "computation base years", A's total earnings are increased to $119,400 ($110,400 minus $4,200 for 1956 plus $13,200 for 1974) and his primary insurance amount is increased to $320.20. This increased amount becomes effective with January 1975 (the first month of the year following the last "computation base year" used in the recomputation).

§ 404.246 Request for immediate recomputation.

As explained in § 404.244, an "automatic" recomputation of an individual's

primary insurance amount is made, if applicable, after the individual's earnings are reviewed each year. However, if the individual requests in writing that a recomputation be made prior to the time when the annual examination of earnings records is made, the individual's request may be honored if acceptable evidence of any creditable earnings not considered in the initial computation of his primary insurance amount is provided and consideration of these earnings would increase this amount. If these conditions are met, the Social Security Administration recomputes the individual's primary insurance amount, based upon the individual's request, prior to the time for the "automatic" examination of its annual earnings records.

§ 404.248 Waiver of recomputation.

(a) If an individual requests that an "automatic" recomputation of the primary insurance amount *not* be made, the individual's request to waive recomputation is honored if:

(1) The request is made in writing; and

(2) One of the following conditions is satisfied:

(i) The recomputation would result in decreasing the total amount of benefits payable on the basis of the primary insurance amount; or

(ii) The recomputation would result in a disadvantage to each individual entitled to benefits payable based upon that primary insurance amount, other than the disadvantage specified in paragraph (a) (2) (i) of this section; or

(iii) All other individuals entitled to benefits payable based upon that primary insurance amount consent to waiver of such recomputation.

(b) Waiver of a recomputation as described in paragraph (a) of this section does not preclude any subsequent recomputation of the individual's primary insurance amount.

§ 404.250 Continued applicability of certain recomputations in effect prior to the 1965 Amendments.

To insure that an individual eligible for retroactive benefit increases under the recomputation methods in effect prior to the Social Security Amendments of 1965 will not be disadvantaged, any individual who would have been entitled to a recomputation if the individual had filed an application on or before January 1, 1966, is deemed to have filed such application on the earliest date that it could have been filed but no earlier, in any case, than July 30, 1965.

SPECIAL COMPUTATIONS AND RECOMPUTATIONS WITH LIMITED CURRENT APPLICABILITY

§ 404.270 General.

Sections 404.272 through 404.282 deal with special provisions of the Act which still apply to cases involving individuals:

(a) Whose primary insurance amount is recalculated to correct previous errors in a prior calculation; or

(b) Whose primary insurance amount is recalculated or recomputed to include special credits for military service, internment during World War II, or compensation for work covered under the Railroad Retirement Act; or

(c) Whose old-age insurance benefits are subject to increase because of delayed retirement credits.

§ 404.272 Recalculation of primary insurance amount.

(a) "Recalculation" with respect to an individual's primary insurance amount means the subsequent computation of such amount under the computation methods or formulas which were in effect at the time that the previous computation was made. "Recalculation" may result in either an increase or decrease in the primary insurance amount and need not be specifically provided for in the Act.

(b) Ordinarily, a "recalculation" is made to:

(1) Correct a previous computation of the primary insurance amount where correction is permitted under § 404.957; or

(2) Permit including in the computation of the primary insurance amount, earnings which could not be included when such amount was previously computed.

§ 404.274 Recalculations and recomputations to include compensation for railroad service.

(a) *Individual has railroad service but is ineligible for railroad annuity*—(1) *General.* The 1951 Amendments to the Railroad Retirement Act provided that an individual's compensation for railroad service could be credited for social security purposes if such service did not total 10 years or more. If an individual had at least 10 years of railroad service and met certain other requirements, the individual could qualify for an annuity under the Railroad Retirement Act as amended in 1951 (see Subpart O of this part). Formerly, all compensation for railroad service was disregarded for social security purposes.

(2) *Conditions for recalculation.* As a consequence of these amendments, the primary insurance amount of an individual entitled to old-age insurance benefits is recalculated if the individual:

(i) Became entitled to old-age insurance benefits before November 1951; and

(ii) Was alive throughout the month of November 1951; and

(iii) Was not a railroad annuitant; and

(iv) Had less than 10 years of railroad service; and

(v) Had a primary insurance amount which had been computed without consideration of the individual's compensation for railroad service.

(3) *Formula.* When the requirements in paragraphs (a) (2) (i)–(v) of this section are met, the individual's primary insurance amount shall be recalculated to include the individual's compensation for railroad service, using the same computation formula or method that was used in the last computation of the individual's primary insurance amount.

(4) *Effective date.* Any increase in old-age insurance benefits based upon such recalculation is effective November 1951.

(b) *Deceased individual had railroad service but survivor is ineligible for railroad survivor's annuity*—(1) *General.* The Social Security Amendments of 1951 provided that a deceased individual's compensation for railroad service could be credited for social security purposes if there was no person who would be entitled to an annuity under section 5, or a lump-sum payment under section 5(f) (1), of the Railroad Retirement Act. These amendments further provided that where an individual's railroad compensation became creditable for social security purposes upon the individual's death and the individual had been entitled to old-age insurance benefits, the individual's primary insurance amount could be recomputed to include the compensation. This permitted the use of an individual's compensation to increase benefits payable to the individual's survivors although such compensation could not be used in computing the individual's old-age insurance benefits because it was paid for 10 years or more of railroad service (see paragraph (a) of this section).

(2) *Conditions for recomputation.* An individual's primary insurance amount is recomputed according to this paragraph (b) if:

(i) The individual died after August 31, 1950; and

(ii) The individual was paid compensation for railroad service which could be credited under section 205(o) of the Act (because no person was entitled to a survivor's annuity or lump-sum payment under the Railroad Retirement Act); and

(iii) Following the individual's death, another individual becomes entitled to monthly benefits or a lump-sum death payment based upon the deceased individual's primary insurance amount.

(3) *Formula.* A recomputation under this paragraph is made by using the same computation formula or method that was used in the last computation of the individual's primary insurance amount except that the individual's compensation for railroad service is included in the computation.

(4) *Effective date.* Any increase in monthly benefits based upon this paragraph (b) is effective beginning with the month in which the individual died.

(5) *Recomputation for individuals who died after December 31, 1958, and before January 2, 1966*—(i) *General.* For individuals who died after December 31, 1958, and before January 2, 1966, the primary insurance amount is recomputed under the computation method which was in effect in the month of death, using railroad compensation and previously creditable earnings for the same years which were included in the last computation. Under the "automatic" recomputation provisions described in § 404.244, recomputations to include railroad compensation paid to the deceased individual are made under the computa-

tion method which is in effect in the month in which the individual dies.

(ii) *Effective date.* Any increase in monthly benefits based upon such recomputation is effective beginning with the month in which the individual died.

(6) *Recomputation for individuals who died after 1967.*—(i) *Requirements.* The primary insurance amount of an individual is recomputed to give credit for the individual's railroad compensation even though the individual had no earnings after 1965, if:

(*a*) Such individual died after 1967;

(*b*) Such individual had been entitled to an old-age or disability insurance benefit;

(*c*) Such individual had railroad compensation; and

(*d*) (*1*) Another individual was entitled to survivors' benefits or a lump-sum death payment for October 1972 or later based on the wage record for the deceased individual; or

(2) A determination is made on or after October 30, 1972, that another individual is entitled to such benefits or a lump-sum death payment for a month prior to October 1972.

(ii) *Effective date.* Any increase in monthly benefits based upon such recomputation is effective beginning with the later of:

(*a*) The month in which the individual died; or

(*b*) The twelfth month prior to the month in which an application for such benefits was filed.

§ 404.276 Recalculations and recomputations to include military service credits.

(a) *"Deemed" military wage credits for years after 1956.* The Social Security Amendments of 1967 provided that wage amounts would be deemed to have been paid to members of the uniformed services (as defined in section 210(m) of the Act) for each calendar quarter after 1967 for which such persons were actually paid for their services. The amount of these "deemed" wage amounts was $100 for each calendar quarter if the wages actually paid such person for the quarter was $100 or less; $200 for each calendar quarter if the wages actually paid for the quarter was over $100 and less than $201; or $300 for each calendar quarter if the wages actually paid for the quarter exceeded $200. The Social Security Amendments of 1972 provided that the "deemed" wage amount is $300 per calendar quarter, regardless of the amount of wages actually paid in such quarter, and that such $300 is deemed to have been paid to members of the uniformed services for each quarter of service after 1956. Recalculation of an individual's primary insurance amount to include "deemed" wage amounts is made only upon the filing of a written request for the recalculation. The recalculation is performed using the computation methods or formulas which are in effect at the time that the request is filed. Increases in benefits based upon such recalculation can be effective no earlier than January 1973 or the twelfth month before the month in which the request is filed, whichever is later.

(b) *Recomputation and recalculation to provide military service credits for years before 1957.*—(1) *General.* The Social Security Amendments of 1946 provided for deeming a World War II veteran to have died fully insured for social security purposes with an average monthly wage of $160 if the individual died within 3 years after separation from the military or naval service after a period of service amounting to at least 90 days during the World War II period (September 16, 1940, through July 24, 1947) under the conditions described in §§ 404.1315—404.1321. Recomputation of an individual's primary insurance amount was permitted under such amendments if an application for recomputation was filed within 6 months of enactment (August 10, 1946) by any person who is or can be entitled to benefits based upon such individual's primary insurance amount. The Social Security Amendments of 1950 provided that, effective September 1, 1950, a World War II veteran was deemed to have been paid $160 in wages for each month the individual served in active military or naval service during World War II (September 16, 1940, through July 24, 1947—see § 404.1308). The period for which $160 per month wage credits could be deemed paid was extended from July 25, 1947, through December 31, 1956, by subsequent amendments to the Act. An individual's primary insurance amount can be recomputed when the individual's widow or child waives entitlement, after December 1956, to a survivor's Federal Civil Service annuity based upon the individual's military or naval service from July 25, 1947, through December 31, 1956. (See § 404.1310(c)(2).) The Social Security Amendments of 1958 broadened the definition of World War II veteran to include any individual who served in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was also at war during World War II (see § 404.1304(a)(4)).

(2) *Formula.* Recalculation or recomputation under the 1950 amendments and subsequent amendments are computed by reopening the last computation of the individual's primary insurance amount and recalculating the amount, including the military wage credits, under the computation method or formula in effect at the time of the last computation or recomputation.

(3) *Application.* An application for such a recomputation is not required unless:

(i) An individual was a commissioned officer of the Coast and Geodetic Survey or the Public Health Service; and became entitled to an old-age insurance benefit or died before January 1, 1957; or

(ii) Such individual's widow or child waived a Federal Civil Service annuity based upon the individual's military or naval service from July 25, 1947, through December 31, 1956 (see § 404.1310(c)(2)); or

(iii) Such individual had active military or naval service during World War II for a country which was on September 16, 1940, at war with a country with which the United States was also at war during World War II; and became entitled to an old-age or disability insurance benefit before September 1, 1958, or died before September 1, 1958; or

(iv) Such individual or other person is entitled to benefits based upon such individual's primary insurance amount for August 1952. (However, the application for recomputation in such case must be filed before January 1, 1961.)

(4) *Effective date.* Benefit increases based upon such recomputation or recalculation are effective with the month of enactment of the pertinent amendments except that an individual is deemed to be insured under the 1946 amendments whether the individual died before, on, or after enactment; and in the case of an individual entitled to recomputation under paragraphs (b)(3)(i) and (ii) of this section, any increase is effective for a maximum of 12 months before an application is filed but not before January 1957; and in the case of an individual entitled to a recomputation under paragraph (b)(3)(iii) of this section, any increase is effective for a maximum of 12 months before an application is filed but not earlier than September 1958; and in the case of an individual who is entitled to a recomputation under paragraph (b)(3)(iv) of this section, an increase is effective no earlier than August 1952.

§ 404.278 Recalculation to include wage credits for individuals interned during World War II.

(a) *General.* The Social Security Amendments of 1972 provide for "deemed" wages for certain individuals who were interned within the United States during World War II.

(b) *Conditions for recalculation.* Recalculation of such an individual's primary insurance amount is made if:

(1) The individual was interned during any portion of the period from December 7, 1941, through December 31, 1946, at any place within the United States which was operated by the Government of the United States as a place of internment of United States citizens of Japanese ancestry; and

(2) (i) The individual files an application for recalculation and is entitled to an old-age or disability insurance benefit; or

(ii) The individual died without becoming entitled to old-age or disability insurance benefits and an application for benefits based upon the individual's primary insurance amount is filed on or after October 30, 1972; and

(3) No individual is entitled to another benefit payable by any agency or wholly-owned instrumentality of the United States which is based (in whole or in part) on the individual's internment as described in paragraph (b)(1) of this section, during any part of the period from December 7, 1941, through December 31, 1946. (However, a lump-sum payment made in commutation of, or a sub-

stitute for, a periodic payment is not considered a "benefit" for this purpose.); and

(4) The inclusion of such "deemed" wages would result in higher monthly benefits or a higher lump-sum death payment becoming payable on the individual's earnings record.

(c) *Amount of deemed wages.* If the requirements in paragraphs (b)(1)—(4) of this section are met, an individual will be "deemed" to have been paid wages (in addition to wages actually paid the individual), for each full week during the period in which the individual was 18 or older and was an internee,

(1) At the weekly rate of 40 times the minimum hourly rate or rates in effect at such time under section 206(a)(1) of Title 29, United States Code; or

(2) If the individual was employed before that period, 40 times the highest hourly rate the individual received while employed before that period, if higher.

(d) *Effective date.* Any increase based upon a recalculation under this section shall be effective no earlier than January 1973.

§ 404.280 Special recomputations when certain old-age insurance beneficiaries die before age 65.

(a) *General.* Under the 1960 amendments, computations of an individual's primary insurance amount were based upon the number of "elapsed years," ending with the year in which the individual attained retirement age or died. At that time, "retirement age" was 62 for women and 65 for men. The 1961 amendments provided that men could become entitled to old-age insurance benefits as early as the month in which they attained age 62; however, primary insurance amounts for men were to be based upon "elapsed years" counted up to the year in which they became age 65 or died (if earlier).

(b) *Conditions for recomputation of a man's primary insurance amount.* The 1961 amendments provided for recomputation of a man's primary insurance amount if:

(1) He attained age 65 and was entitled to old-age insurance benefits before the month in which he attained age 65, or

(2) He died before the month in which he attained age 65 and was entitled to old-age insurance benefits before the month in which he died.

(c) *Effective dates.* See paragraphs (d)(i) and (d)(2) of this section for month in which the recomputations described in paragraphs (a) and (b) are first effective. Effective January 2, 1966, when the "automatic" recomputation provisions became effective, such recomputations were no longer provided for. However, effective on and after January 3, 1968, a recomputation is made when a man who has been entitled to old-age insurance benefits dies before age 65, but has had no earnings after 1965 (see § 404.244(b)), under the conditions described in paragraph (b)(2) of this section.

(d) *Method of recomputation.* (1) When the conditions described in paragraph (b)(1) of this section were met, prior to the 1965 amendments, an individual's primary insurance amount was recomputed as if he had become entitled to old-age insurance benefits in the month in which he attained age 65, except that the year in which he became 65 could be considered as a "computation base year" (see § 404.211(b)). Increases in benefits based upon such a recomputation were effective beginning with the month in which the individual attained age 65.

(2) When the conditions described in paragraph (b)(2) of this section are met on or before January 1, 1966, or on or after January 3, 1968, an individual's primary insurance amount is recomputed as if he became entitled to old-age insurance benefits in the month in which he died, except that the year in which he died and any later year is not considered to be an "elapsed" year (see § 404.211(c)). Increases in benefits based upon such a recomputation are effective beginning with the month in which the individual died.

§ 404.282 Increases in old-age insurance benefits due to delayed retirement credits.

(a) *General.* The 1972 amendments to the Act provided that beginning with months of entitlement after December 1972, an individual's old-age insurance benefit could be increased because of "delayed retirement credits." To qualify for these "credits," an individual must:

(1) Have become first entitled to old-age insurance benefits in the month in which the individual attained age 65 or a later month; *or*

(2) Have an old-age insurance benefit for the month in which the individual attains age 65, which is not reduced for months of entitlement before age 65 under §§ 404.410–404.413.

(b) *Amount of delayed retirement credit.* (1) If the requirements in (a)(1) and (2) of this section are met, an individual's old-age insurance benefit is increased (before any increase under this section) by 1/12 of 1 percent for each month after December 1970 in which the individual:

(i) Is age 65 but not age 72;

(ii) Is fully insured (§ 404.108); *and*

(iii) Is not entitled to old-age insurance benefits; or is so entitled but, pursuant to § 404.415, a full deduction is imposed against the individual's benefit.

(2) Such increases are added to the individual's old-age insurance benefit and rounded upward, if necessary, to the next higher multiple of $0.10 if such total is not a multiple of $0.10.

Example. A is an insured worker when he reaches age 65 in January 1974, but decides not to file application for old-age insurance benefits immediately because he is still working. When he becomes 66 years old in January 1975, he stops working and files application for these benefits beginning with the same month. Based upon his earnings, his primary insurance amount is $224.30 and his full monthly old-age insurance benefit amount would be the same without considering any delayed retirement credits. However, he is not entitled to old-age insurance benefits for 12 months from the month in which he became 65 until the first month in which he became entitled to benefits. Therefore, his monthly old-age insurance benefit is increased by 1 percent (1/12 of 1 percent times 12 months) to yield a total of $226.54, which is rounded upward to the next highest $0.10 to equal $226.60.

(c) *When determinations of delayed retirement credits are made.* The number of delayed retirement credits an individual is due is determined after the end of each calendar year. Any increase due to delayed retirement credits is effective with January of the year in which the determination is made—unless the individual attained age 72 in the year preceding the year the determination is made. In this latter case, the increase due to delayed retirement credits is effective with the month in which the individual attained age 72.

Example. A is entitled to old-age insurance benefits in the month in which she attains age 65, June 1974. However, no benefits are paid to her in 1974, because full deductions are imposed against her benefits due to her continued work and earnings. Effective January 1975, she is entitled to an increase in her benefits because of delayed retirement credits for months in 1974 for which she was entitled to benefits because she was age 65 or over but had full deductions imposed. There were 6 such months in 1974. Therefore, effective January 1975, her monthly old-age insurance benefit is increased one-half of 1 percent (i.e., $\frac{1}{12}$ of 1 percent for 6 months).

[FR Doc.76-29482 Filed 10-7-76;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 76N-0388]

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Combinations of Nutritive and Nonnutritive Sweeteners in Canned Fruits; Revocation

The Food and Drug Administration is revoking the statement of policy that no regulatory action would be recommended against canned fruits sweetened in part with saccharin and in part with nutritive sweeteners; effective October 8, 1976.

Specifically, § 3.78 *Combinations of nutritive and nonnutritive sweeteners in canned fruits* (21 CFR 3.78) is being revoked. This section was published in the FEDERAL REGISTER of July 21, 1970 (35 FR 11620), after the banning of the use of cyclamates in foods and pending the establishment of standards of identity for such canned fruits.

Section 3.78 was established to remain in effect for a period of 1 year after publication in the FEDERAL REGISTER, unless extended for good reason. No requests for an extension of this section have been received, and no good reason is evident for an extension.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 403, 701 (a), 52 Stat. 1047–1048, as amended, 1055 (21 U.S.C. 343, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)): *It is ordered*, That Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 3 by revoking § 3.78 *Combinations of nutritive and nonnutritive sweeteners in canned fruits.*

Effective date: This revocation shall be effective October 8, 1976.

(Secs. 403, 701(a), 52 Stat. 1047–1048, as amended, 1055 (21 U.S.C. 343, 371(a)).)

Dated: September 30, 1976.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.76-29434 Filed 10-7-76;8:45 am]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 76F-0220]

PART 121—FOOD ADDITIVES

Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food; Adhesives

The Food and Drug Administration is amending the food additive regulations to provide for the safe use of pentaerythritol tetrabenzoate as a component of food-packaging adhesives; effective October 8, 1976; objections by November 8, 1976.

Notice was given in the FEDERAL REGISTER of July 8, 1976 (41 FR 27995) that a petition (FAP 6B3211) had been filed by the Velsicol Chemical Corp., 341 E. Ohio St., Chicago, IL 60611, proposing that § 121.2520 (21 CFR 121.2520) be amended to provide for the safe use of pentaerythritol tetrabenzoate as a component of food-packaging adhesives.

The Commissioner of Food and Drugs, having evaluated data in the petition and other relevant material, concludes that § 121.2520 should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1)) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), § 121.2520 is amended in paragraph (c)(5) by alphabetically adding a new item to the list of substances, to read as follows:

§ 121.2520 **Adhesives.**

* * * * * * *

(c) * * *

(5) * * *

Components of adhesives

Substances	*Limitations*
* * *	* * *
Pentaerythritol tetrabenzoate [CAS registry No. 4196-86-5].	

* * * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before November 8, 1976, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date: This amendment shall be effective October 8, 1976.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

Dated: September 30, 1976.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.76-29435 Filed 10-7-76;8:45 am]

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N-0293]

PART 430—ANTIBIOTIC DRUGS: GENERAL

Amphotericin B

The Food and Drug Administration (FDA) is designating a new master standard for amphotericin B; effective October 8, 1976.

A study was conducted by FDA to evaluate the stability of the current master standard for amphotericin B. The data from the study demonstrated that the master standard is subpotent. A portion of the current working standard, which is the same lot as the U.S. Pharmacopeia standard, has been set aside and designated as the master standard for amphotericin B. The use of this different material requires a change in the factor to be used in calculating micrograms.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 40 430 is amended in § 430.6 by revising paragraph (b)(12) to read as follows:

§ 430.6 **Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.**

* * * * * *

(b) * * *

(12) *Amphotericin B.* The term "microgram" applied to amphotericin B means the amphotericin B activity (potency) contained in 1.014 micrograms of the amphotericin B master standard when dried for 3 hours at 60° C and a pressure of 5 millimeters or less.

* * * * * *

Since the amendment is merely technical, presents no significant points of controversy, and is necessary for accuracy in manufacturing and testing the drug, thus enhancing safety, notice and public procedure are unnecessary; interested persons may, on or before November 8, 1976, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written comments regarding this regulation. Comments should be filed in quintuplicate (except that individuals may submit single copies) and be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office during working hours Monday through Friday. Any changes in this order justified by such comments will be the subject of a further order amending the regulation.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357))

Effective date: This amendment is effective October 8, 1976.

Dated: October 4, 1976.

MARY A. MCENIRY,
Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.76-29615 Filed 10-7-76;8:45 am]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Lasalocid Sodium

The Food and Drug Administration approves a new animal drug application (96-298V) filed by Hoffmann-La Roche, Inc., Nutley, NJ 07110, proposing safe and effective use of lasalocid sodium in the manufacture of a complete feed for broiler or fryer chickens for the prevention of coccidiosis and the establishment of an appropriate tolerance for residues of the drug in the edible products of treated animals. The approval is effective October 8, 1976.

The Commissioner is amending Parts 556 and 558 (21 CFR Parts 556 and 558) to reflect this approval.

Upon evaluation of the data before him, the Commissioner of Food and Drugs concludes that a tolerance limitation of 0.05 part per million (ppm) total lasalocid sodium residue is required to assure that edible tissues of chickens treated with the drug are safe for human consumption.

The application includes residue and metabolic data obtained by radiotracer and other studies permitting the deter-

mination of marker substances, target tissue, and residue depletion curves. From these data, the relationship of marker-substance persistence in target tissue to total residue depletion curves in edible tissues was established. Marker substance in the target tissues of skin and fat was measured by a bioautographic assay. Total residue depletion curves in edible tissues were obtained by a radiotracer method. The submitted toxicological data support a tolerance of 0.05 ppm for total residues in edible tissues. A tissue residue assay measuring microbiologically active residues in the target tissues, skin and fat, with a sensitivity of 0.01 ppm serves to monitor the total residue in edible tissues at the 0.05 ppm level.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action would not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. Copies of the Food and Drug Administration environmental impact assessment are on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under 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 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. In Part 556 by adding new § 556.347 to read as follows:

§ 556.347 Lasalocid sodium.

A tolerance of 0.05 part per million is established for total residues of lasalocid sodium in the edible tissues of chickens. A tissue residue assay measuring microbiologically active residues in the target tissues, skin and fat, with a sensitivity of 0.01 ppm, serves to monitor the total residue in edible tissues at the 0.05 ppm level.

2. In Part 558 by adding new § 558.311 to read as follows:

§ 558.311 Lasalocid sodium.

(a) *Specifications.* Lasalocid sodium is the crystalline substance produced by the fermentation of *Streptomyces lasaliensis.* A minimum of 90 percent lasalocid sodium activity is derived from lasalocid A sodium.

(b) *Approvals.* Premix level of 68 grams per pound of lasalocid sodium activity is granted to No. 000004 in § 510.600(c) of this chapter.

(c) *Assay limits.* Finished feed, 75 to 125 percent of labeled amount.

(d) *Related tolerance.* See § 556.347 of this chapter.

(e) *Conditions of use.* It is used in feed for broiler or fryer chickens as follows:

(1) *Amount per ton.* 68 grams (0.0075 percent).

(2) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(3) *Limitations.* For broiler or fryer chickens only; feed continuously as the sole ration; withdraw 5 days before slaughter.

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

Effective date: This regulation shall be effective October 8, 1976.

Dated: October 5, 1976.

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

[FR Doc.76–29763 Filed 10–7–76;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–2363]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

• The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128).•

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at § 1912.5, 24 CFR Part 1912).

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(b) or the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. § 551. The entry reads as follows:

§ 1914.6 List of Eligible Communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
Iowa	Fremont	Thurman, town of	Sept. 27, 1976, emergency	Apr. 16, 1976	190394
Pennsylvania	Clearfield	Ferguson, township of	do	Jan. 3, 1975	422380
Do.	Armstrong	Madison, township of	do	Nov. 22, 1974	421308
Do.	Dauphin	Williams, township of	do	Dec. 13, 1974	421601
•	•	•	•	•	•
Iowa	Story	Zearing, city of	Sept. 28, 1976, emergency	July 19, 1974	190260A
				Apr. 9, 1976	
Kansas	Republic	Belleville, city of	do	Feb. 15, 1974	200287A
				Oct. 31, 1975	
•	•	•	•	•	•
Iowa	Fayette	Maynard, town of	Sept. 29, 1976, emergency	Sept. 19, 1975	190377
Louisiana	Winn	Calvin, village of	do	Aug. 29, 1975	220266
Wisconsin	Brown	Wrightstown, village of	do	Aug. 22, 1975	550025
•	•	•	•	•	•
Illinois	Lee	Nelson, village of	Sept. 30, 1976, emergency	July 23, 1976	170418
Do.	do.	Sublette, village of	do	July 25, 1975	170421
Oklahoma	Okmulgee	Hoffman, town of	do	June 25, 1976	400285
•	•	•	•	•	•
California	Kern	Tehachapi, city of	Oct. 1, 1976, emergency	July 30, 1976	060084
New York	Greene	Hunter, village of	do	Aug. 16, 1974	360293A
				June 11, 1976	
Ohio	Fairfield	Thurston, village of	do	Jan. 31, 1975	390090

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

Issued: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–29356 Filed 10–7–76;8:45 am]

[Docket No. FI–2032]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Calhoun, Ga.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Calhoun, Georgia under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Calhoun, Georgia 30701.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Oostanaula River	Georgia Rt. 143 (upstream side of route)	627	1,150	1,410
Oothcaloga Creek	Oak St. (extended)	627	410	1,620
Tributary No. 2	S. Industrial Blvd	632	240	[1] 400

[1] To corporate limits.

(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: September 28, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76–29340 Filed 10–7–76;8:45 am]

[Docket No. FI–1094]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Ray City, Ga.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Ray City, Georgia under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations.

Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Ray City, Georgia 31615.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Mill Race	Park St	178	310	180
	Georgia 125	183	270	250
	Pauline Ave	188	360	70
Tributary 1	Georgia 37, U.S. 129	191	240	90
	Jones St	196	190	90
Cat Creek	Georgia 37	176	570	[1] 80
Tributary 2	Georgia 125, U.S. 129	179	340	670
	Georgia & Florida RR	182	[1] 280	380

[1] To corporate limits.

(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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-29341 Filed 10-7-76;8:45 am]

[Docket No. FI-1096]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Atlantic Beach, Fla.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Atlantic Beach, Florida under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Atlantic Beach, Florida 32233.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width approximate distance in feet from corporate limit to boundary of 100-yr flood, facing downstream from extended road locations to the west
Intracoastal Waterway	Atlantic Blvd	6	540
	West 1st St	6	240
	West 3d St	6	880
	West Plaza	6	120
	West 14th St	6	380

(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: September 28, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-29342 Filed 10-7-76;8:45 am]

[Docket No. FI-1127]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Jacksonville Beach, Fla.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the city of Jacksonville Beach, Florida under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 11 North 3rd Street, Jacksonville Beach, Florida 32250.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Approximate width in feet of the boundary of the 100-yr flood
Atlantic Ocean	25th Ave. South	9	From State Road 203 to 1st St.
	16th Ave. South	9	From 540 ft west of State Road 203 to 520 ft east of State Road 203.

(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: September 28, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-29343 Filed 10-7-76;8:45 am]

[Docket No. FI-1095]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Neptune Beach, Fla.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the city of Neptune Beach Florida under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Neptune Beach, Florida 32233.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Hopkins Creek	Florida Blvd	5	130	90
	Forest Ave	5	90	170
	Kings Rd	5	190	70

(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: September 28, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-29344 Filed 10-7-76;8:45 am]

[Docket No. FI-1128]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Fort Walton Beach, Fla.

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Fort Walton Beach under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Fort Walton Beach, Florida 32548.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary
Santa Rosa Sound	Robinswood Dr	7	Street section between points 460 ft and 900 ft south of intersection with Hollywood Blvd;
Choctawhatchee Bay	Ferry Rd	8	Street section between points 450 ft west and 280 ft east of the intersection with Hughes St., respectively.
Choctawhatchee Bay	Bay Dr	8	Entire street south of the point 80 ft north of the intersection with Brooks St.

(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: September 20, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-29345 Filed 10-7-76;8:45 am]

[Docket No. FI-2010]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Temple Terrace, Fla.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Temple Terrace, Florida under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 113 North Glenarven, Temple Terrace, Florida.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Hillsborough River	Flower Ave	36	640	
	Whiteway Dr	35	200	
	Temple Terrace Rd. (Bullard Parkway)	31	40	

(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: September 20, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-29346 Filed 10-7-76;8:45 am]

[Docket No. FI-1144]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Valparaiso, Fla.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Valparaiso, Florida under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Valparaiso, Florida 32580.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation (in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Boggy Bayou	Tennessee Ave	7	810	
	Mississippi Ave	7	50	
	Florida Ave	7	160	
Tom's Bayou	John Sims Parkway	6	180	40

(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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–29347 Filed 10–7–76;8:45 am]

[Docket No. FI–2149]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of San Dimas, Calif.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of San Dimas, California under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 245 East Bonita Avenue, San Dimas, California 91773.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
San Dimas Wash	San Dimas Canyon Rd	1,062	(1)	150
	Romola Rd	1,089	(2)	150
	San Dimas Canyon Rd	1,199	100	100

[1] Entire road to 350 ft. north of junction with Romola Road.
[2] Entire road to junction with San Dimas Canyon Road.

(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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–29348 Filed 10–7–76;8:45 am]

[Docket No. FI–1123]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Cumberland, Harlan County, Ky.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of Cumberland, Harlan County, Kentucky under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review on the Bulletin Board at Cumberland City Hall, 414 West Main Street.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Poor Fork	West corporate limits	1,417	(1)	170
	Bush St. (extended)	1,421	(1)	185
	River St. (extended)	1,422	(1)	265
	Beale St. (extended)	1,422	(1)	290
	Billips Ave	1,425	165	400
	Freeman St	1,430	175	610
	Issac St. (extended)	1,430	140	500
	Main St	1,434	150	210
	Louisville-Nashville RR	1,436	225	200
	U.S. 119	1,437	1,770	120
	do	1,441	1,070	190
	Oak St. (extended)	1,447	(1)	350
	O'Rinke St. (extended)	1,448	120	565
	Bride St	1,449	240	175
	East corporate limits	1,450	(1)	(1)
Looney Creek	U.S. 119	1,441	1,260	1,270
	Blair St	1,443	850	200
	Central St. (extended)	1,443	845	220
	Howard St. (extended)	1,443	720	120
	Wright St. (extended)	1,445	810	115
	Sheperd St	1,447	655	125
	1st St. (extended)	1,456	210	230
	2d St. (extended)	1,458	140	380
	3d St. (extended)	1,462	55	435
	4th St. (extended)	1,465	50	490
	5th St. (extended)	1,467	30	505
	6th St. (extended)	1,469	75	485
	7th St. (extended)	1,470	85	485
	East corporate limits	1,473	80	470
Cloverlock Creek	Footbridge	1,427	110	520
	South Ave. (extended)	1,431	(1)	170
	1st St. (extended)	1,437	(1)	150
	South corporate limits	1,447	(1)	200

[1] Outside corporate limits.

(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: September 28, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76–29353 Filed 10–7–76;8:45 am]

[Docket No. FI-1104]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Sheboygan, Sheboygan County, Wis.

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of Sheboygan, Sheboygan County, Wisconsin under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Lobby of City Hall, 828 Center Avenue, Sheboygan.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Sheboygan River	Lake Michigan shoreline	584	0	0
	Virginia Ave. (extended) east of 7th St.	584	0	0
	Pennsylvania Ave. east of 13th St.	584	0	0
	14th St.	585	0	0
	Pennsylvania Ave. (extended) west of 15th St.	587	300	0
	New Jersey Ave.	587	120	30
	South 22d St. (extended)	589	1,710	40
	Western corporate limits	598	0	220
Pigeon River	Northern corporate		0	540
	Calument Dr		670	260
	Western corporate limits		1,730	850

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from shoreline to 100-yr flood boundary
Lake Michigan	Northern corporate limit	584	0
	Columbus Ave. (extended)	584	0
	Clement Ave. (extended)	584	0
	Vollrath Blvd. (extended)	584	0
	Superior Ave. (extended)	584	0
	Ontario Ave. (extended)	584	0
	Pennsylvania Ave. (extended)	584	0
	Alabama Ave. (extended)	584	0
	High Ave. (extended)	584	0
	Ashland Ave. (extended)	584	0
	Wilson Ave. (extended)	584	0
	Southern corporate limits	584	0

(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: September 28, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-29354 Filed 10-7-76;8:45 am]

[Docket No. FI–1079]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood E'evation Determinations for Howard County, Md.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for Howard County, Maryland under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the County must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the County Executive Office, Room 206, 3450 Court House Drive, Ellicott City.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Little Patuxent River	County boundary	131	2,100	850
	Route 1	145	10	720
	Unnamed road	149	20	100
	Vollmerhausen Rd	236	100	130
	Route 95 north	248	20	60
	Route 95 south	251	40	80
	Route 32	274	400	120
	Berger Rd. (extended)	275	300	200
	All View Dr. (extended)	282	500	800
	Ferndale Dr. (extended)	286	500	100
	Owen Brown Rd	296	380	130
	Route 29	300	1,000	420
	Old Columbia Rd	307	----------	800
	Little Patuxent Parkway	312	600	120
	Whetstone Rd. (extended)	316	600	150
	Route 108	327	290	360
	Old Annapolis Rd	329	320	290
	Riverside Circle (extended)	332	200	150
	Old National Pike	346	350	250
	Baltimore National Pike	351	200	460
	Bethany Lane	356	390	250
	Unnamed road	387	80	240
	Turf Valley	410	50	50
Dorsey Run	County boundary	157	1,000	900
	Dorsey Run Rd	168	340	360
	Route 1	195	30	70
	Route 95 north	230	120	120
	Route 95 south	235	10	20
	Little Patuxent Parkway	277	160	50
	Lark Brown Rd	285	140	120
	Montgomery Rd	335	40	130
Red Hill Branch	Private road	330	50	880
	Route 29	330	20	20
Plum Tree Branch	Chatham Rd	336	340	110
	Dunloggin Rd. (extended)	341	20	190
	Old National Pike	355	30	20

(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: September 28, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-29855 Filed 10-7-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7438]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

War Veterans Organizations

This document finalizes amendments to the Income Tax Regulations (26 CFR Part 1) under sections 501(c)(19) and 512(a)(4) of the Internal Revenue Code of 1954, relating to war veterans organizations, which were published in proposed form in the FEDERAL REGISTER on June 16, 1975 (40 FR 25476).

The reason for these amendments is to make changes in the regulations under section 501(c)(19) and section 512(a)(4), so as to reflect the revision of sections 501 and 512 by the Act of August 29, 1972 (Pub. L. 92–418, 86 Stat. 656); exempting certain war veterans organizations from income tax; and exempting from the unrelated business income tax certain insurance set asides of such organizations.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

In view of the foregoing, and after consideration of all such relevant material as was presented by interested persons regarding the proposed rules, the amendments so proposed are adopted subject to the changes set forth as follows:

PARAGRAPH 1. Paragraphs (b)(1) and (e)(1) of § 1.501(c)(19)–1 as set forth in paragraph (1) of the notice of proposed rulemaking are changed to read as set forth below.

PAR. 2. Section 1.1512(a)–4 as set forth in the notice of proposed rule making is changed by revising pargaraphs (a) and (b) (1) and (2) to read as set forth below.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805).)

WILLIAM E. WILLIAMS,
Acting Commissioner of Internal Revenue.

Approved: September 28, 1976.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

Part 1 of 26 CFR Chapter I, is amended as follows:

1. The following new sections are added immediately after § 1.501(c)(18)–1:

§ 1.501(c)(19) Statutory provisions; exemption from tax on corporations, certain trusts, etc.; war veterans organizations.

Sec. 501. *Exemption from tax on corporations, certain trusts, etc.* * * *

(c) *List of exempt organizations.* The following organizations are referred to in subsection (a):

* * * * * *

(19) A post or organization of war veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) Organized in the United States or any of its possessions,

(B) At least 75 percent of the members of which are war veterans and substantially all of the other members of which are individuals who are veterans (but not war veterans) or are cadets, or are spouses, widows, or widowers of war veterans or such individuals and

(C) No part of the net earnings of which inures to the benefit of any private shareholder or individual.

[Sec. 501(c)(19) as added by the Act of August 29, 1972 (Pub. L. 92-418, 86 Stat. 656).]

§ 1.501(c)(19)-1 War veterans organizations.

(a) *In general.* (1) For taxable years beginning after December 31, 1969, a veterans post or organization which is organized in the United States or any of its possessions may be exempt as an organization described in section 501(c)(19) if the requirements of paragraphs (b) and (c) of this section are met and if no part of its net earnings inures to the benefit of any private shareholder or individual. Paragraph (b) of this section contains the membership requirements such a post or organization must meet in order to qualify under section 501(c)(19). Paragraph (c) of this section outlines the purposes, at least one of which such a post or organization must have in order to so qualify.

(2) In addition, an auxiliary unit or society described in paragraph (d) of this section of such a veterans post or organization and a trust or foundation described in paragraph (e) of this section for such post or organization may be exempt as an organization described in section 501(c)(19).

(b) *Membership requirements.* (1) In order to be described in section 501(c)(19) under paragraph (a)(1) of this section, an organization must meet the membership requirements of section 501(c)(19)(B) and this paragraph. There are two requirements that must be met under this paragraph. The first requirement is that at least 75 percent of the members of the organization must be war veterans. For purposes of this section the term "war veterans" means persons, whether or not present members of the United States Armed Forces, who have served in the Armed Forces of the United States during a period of war (including the Korean and Vietnam conflicts).

(2) The second requirement of this paragraph is that at least 97.5 percent of all members of the organization must be described in one or more of the following categories:

(i) War veterans,

(ii) Present or former members of the United States Armed Forces,

(iii) Cadets (including only students in college or university ROTC programs or at Armed Services academies), or

(iv) Spouses, widows, or widowers of individuals referred to in paragraph (b)(2)(i), (ii) or (iii) of this section.

(c) *Exempt purposes.* In addition to the requirements of paragraphs (a)(1) and (b) of this section, in order to be described in section 501(c)(19) under paragraph (a)(1) of this section an organization must be operated exclusively for one or more of the following purposes:

(1) To promote the social welfare of the community as defined in § 1.501(c)(4)-1(a)(2).

(2) To assist disabled and needy war veterans and members of the United States Armed Forces and their dependents, and the widows and orphans of deceased veterans,

(3) To provide entertainment, care, and assistance to hospitalized veterans or members of the Armed Forces of the United States,

(4) To carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces and to comfort their survivors,

(5) To conduct programs for religious, charitable, scientific, literary, or educational purposes,

(6) To sponsor or participate in activities of a patriotic nature.

(7) To provide insurance benefits for their members or dependents of their members or both, or

(8) To provide social and recreational activities for their members.

(d) *Auxiliary units or societies for war veterans organizations.* A unit or society may be exempt as an organization described in section 501(c)(19) and paragraph (a)(2) of this section if it is an auxiliary unit or society of a post or organization of war veterans described in paragraph (a)(1) of this section. A unit or society is an auxiliary unit or society or such a post or organization if it meets the following requirements:

(1) It is affiliated with, and organized in accordance with, the bylaws and regulations formulated by an organization described in paragraph (a)(1) of this section,

(2) At least 75 percent of its members are either war veterans, or spouses of war veterans, or are related to a war veteran within two degrees of consanguinity (i.e., grandparent, brother, sister, grandchild, represent the most distant allowable relationships),

(3) All of its members are either members of an organization described in paragraph (a)(1) of this section, or spouses of a member of such an organization or are related to a member of such an organization, within two degrees of consanguinity, and

(4) No part of its net earnings inures to the benefit of any private shareholder or individual.

(e) *Trusts or foundations.* A trust or foundation may be exempt as an organization described in section 501(c)(19) and paragraph (a)(2) of this section if it is a trust or foundation for a post or organization of war veterans described in paragraph (a)(1) of this section. A trust or foundation is a trust or foundation for such a post or organization if it meets the following requirements:

(1) The trust or foundation is in existence under local law and, if organized for charitable purposes, has a dissolution provision described in § 1.501(c)(3)-1(b)(4).

(2) The corpus or income cannot be diverted or used other than for the funding of a post or organization of war veterans described in paragraph (a)(1) of this section, for section 170(c)(4) purposes, or as an insurance set aside (as defined in § 1.512(a)-4(b)).

(3) The trust income is not unreasonably accumulated and, if the trust or foundation is not an insurance set aside, a substantial portion of the income is in fact distributed to such post or organization or for section 170(c)(4) charitable purposes, and

(4) It is organized exclusively for one or more of those purposes enumerated in paragraph (c) of this section.

2. Section 1.512(a)-1 is amended by revising paragraph (a) to read as follows:

§ 1.512(a)-1 Definition.

(a) *In general.* Except as otherwise provided in § 1.512(a)-3, § 1.512(a)-4, or paragraph (f) of this section, section 512(a)(1) defines "unrelated business taxable income" as the gross income derived from any unrelated trade or business regularly carried on, less those deductions allowed by chapter 1 of the Code which are directly connected with the carrying on of such trade or business, subject to certain modifications referred to in § 1.512(b)-1. To be deductible in computing unrelated business taxable income, therefore, expenses, depreciation, and similar items not only must qualify as deductions allowed by chapter 1 of the Code, but also must be directly connected with the carrying on of unrelated trade or business. Except as provided in paragraph (d)(2) of this section, to be "directly connected with" the conduct of unrelated business for purposes of section 512, an item of deduction must have proximate and primary relationship to the carrying on of that business. In the case of an organization which derives gross income from the regular conduct of two or more unrelated business activities, unrelated business taxable income is the aggregate of gross income from all such unrelated business activities less the aggregate of the deductions allowed with respect to all such unrelated business activities.

* * * * * *

3. Section 1.512(a) is amended by adding a new paragraph (4) to section

512(a) and by revising the historical note. The new provisions read as follows:

§ 1.512(a) Statutory provisions; unrelated business taxable income; special rule applicable to organizations described in section 501(c)(19).

Sec. 512. *Unrelated business taxable income*—(a) For purposes of this title—

* * * * *

(4) *Special rule applicable to organizations described in section 501(c)(19). In the* case of an organization described in section 501(c)(19), the term "unrelated business taxable income" does not include any amount attributable to payments for life, sickness, accident, or health insurance with respect to members of such organization or their dependents which is set aside for the purpose of providing for the payment of insurance benefits or for a purpose specified in section 170(c)(4). If an amount set aside under the preceding sentence is used during the taxable year for a purpose other than a purpose described in the preceding sentence, such amount shall be included, under paragraph (1), in unrelated business taxable income for the taxable year.

(Sec. 512(a)(4) as added by the Act of August 29, 1972 (Pub. L. 92-418, 86 Stat. 656).)

4. A new § 1.512(a)-4 is added immediately before § 1.512(b) to read as follows:

§ 1.512(a)-4 Special rules applicable to war veterans organizations.

(a) *In general.* For taxable years beginning after December 31, 1969, this section provides special rules for the determination of the unrelated business taxable income of an organization described in section 501(c)(19). In general, the rules contained in sections 511 through 514 which are applicable to any organization listed in section 501(c) apply in determining the unrelated business taxable income of an organization described in section 501(c)(19). However, that amount which is paid by members to the organization for the purpose described in paragraph (b)(1) of this section, if set aside from other organizational monies and accounts in an insurance set aside, may be excluded from the unrelated business taxable income of the organization. The insurance set aside shall be used exclusively for providing insurance benefits, for the purposes specified in section 170(c)(4) of the Code, for the reasonable costs of administering the insurance program that are directly related to such set aside, or for the reasonable costs of distributing funds for section 170(c)(4) purposes. If an amount so set aside is used for any purposes other than those described in the preceding sentence, it shall be included in unrelated business taxable income without regard to any modifications provided by section 512(b), in the taxable year in which it is withdrawn from such set aside. Amounts will be considered to have been withdrawn from an insurance set aside if they are used in any manner inconsistent with providing insurance benefits, paying the reasonable costs of administering the insurance program for section 170(c)(4) purposes and for costs of distributing funds for section 170(c)(4) purposes. An example of a use of funds which would be considered a withdrawal would be the use of such funds as security for a loan.

(b) *Insurance set aside*—(1) *Purpose of payments by members.* Payments by members (including commissions on such payments earned by the set aside as agent for an insurance company) into an insurance set aside must be for the sole purpose of obtaining life, sick, accident or health insurance benefits from the organization or for the reasonable costs of administration of the insurance program, except that such purpose is not violated when excess funds from an experience gain are utilized for those purposes specified in section 170(c)(4) or the reasonable costs of distributing funds for such purposes. Funds for any other purpose may not be set aside in the insurance set aside.

(2) *Income from set aside.* In addition to the payments by members described in paragraph (b)(1) of this section, only income from amounts in the insurance set aside (including commissions earned as agent for an insurance company) may be so set aside. Moreover unless such income is used for providing insurance benefits, for those purposes specified in section 170(c)(4), or for reasonable costs of administration, such income must be set aside within the period described in paragraph (b)(3) of this section in order to avoid being included as an item of unrelated business taxable income under section 512(a)(4).

(3) *Time within which income must be set aside.* Income from amounts in the insurance set aside generally must be set aside in the taxable year in which it would be includible in gross income but for this section. However, income set aside on or before the date prescribed for filing the organization's return of unrelated business taxable income (whether or not it had such income) for the taxable year (including any extension of time) may, at the election of the organization, be treated as having been set aside in such taxable year.

(4) *Computation of income from set aside.* Income from amounts in the insurance set aside shall consist solely of items of investment income from, and other gains derived from dealings in, property in the set aside. The deductions allowed against such items of income or other gains are those amounts which are related to the production of such income or other gains. Only the amounts of income or other gain which are in excess of such deductions may be set aside in the insurance set aside.

(5) *Requirements for set aside.* An amount is not properly set aside if the organization commingles it with any amount which is not to be set aside. However, adequate records describing the amount set aside and indicating that it is to be used for the designated purpose are sufficient. Amounts that are set aside need not be permanently committed to such use either under state law or by contract. Thus, for example, it is not necessary that the organization place these funds in an irrevocable trust. Although set aside income may be accumulated, any accumulation which is unreasonable in amount or duration is evidence that the income was not accumulated for the purposes set forth. For purposes of the preceding sentence, accumulations which are reasonably necessary for the purpose of providing life, sick, health, or accident insurance benefits on the basis of recognized mortality or morbidity tables and assumed rates of interest under an actuarially acceptable method would not be unreasonable even though such accumulations are quite large and the time between the receipt by the organization of such amounts and the date of payment of the benefits is quite long. For example, an accumulation of income for 20 years or longer which is determined to be reasonably necessary to pay life insurance benefits to members, their dependents or designated beneficiaries, generally would not be an unreasonable accumulation. Income which has been set aside may be invested, pending the action contemplated by the set aside, without being regarded as having been used for other purposes.

[FR Doc.76-29546 Filed 10-7-76;8:45 am]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY

PART 94—GENERAL PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

PART 98—ADMINISTRATIVE PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Procedures for Purchase of Training and Services From Job Corps Centers

Notice is hereby given that the Department of Labor, Employment and Training Administration, is amending the regulations under the Comprehensive Employment and Training Act of 1973, as amended. The Department is amending the table of contents at 29 CFR 94.3 and is adding a new section at 29 CFR 98.29a in order to provide procedures for the purchase of training and services from Job Corps centers by grantees funded under Titles I, II, III, and VI of the Act.

The Department is providing for this Job Corps "buy-in" program by regulation in order to relieve Title I, II, III, and VI grantees of certain restrictions contained in the regulations at 29 CFR Parts 95, 96, 97 and 99. For example, under this regulation such grantees will be allowed to use grant money to transport program participants to and from Job Corps centers, even when such centers are outside the grantees' jurisdiction.

Since this regulation primarily involves the relaxation of prior restrictions, and since the Department believes that it is the public interest to allow grantees to make use of the buy-in procedures as soon as possible after the beginning of FY 1977, October 1, 1976. The regulation changes set forth in this document shall become effective 30 days after the publication of this document in the FEDERAL REGISTER.

Nevertheless in keeping with the spirit of the Administrative Procedure Act, interested persons are invited to submit comments, arguments and data on the regulation until November 8, 1976, to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 6th and D Streets, NW., Washington, D.C. 20213, Attention: Pierce A. Quinlan, Director, Office of Comprehensive Employment Development.

Any comments received will be reviewed to determine whether the regulation should be amended in any way.

Accordingly, 29 CFR Parts 94 and 98 are amended as follows:

§ 94.3 [Amended]

1. In § 94.3 *Consolidated table of contents for Parts 94–99,* the table of contents for Part 98 is amended to add:

98.29a Job Corps training opportunities for CETA grantees.

Part 98 is amended by adding the following new section:

§ 98.29a Job Corps training opportunities for CETA grantees.

(a) Grantees under Titles I, II, III, and VI of the Act, including contractors under § 303 of the Act, may purchase services and training authorized under their titles of the Act from a Job Corps center; such a transaction shall be called a buy-in.

(b) In participating in the buy-in program, grantees shall make expenditures in accordance with the regulations under their appropriate titles of the Act except as otherwise permitted by paragraph (f) of this section. In participating in the buy-in program, Job Corps shall make expenditures in accordance with the provisions of Part 97a of this subtitle.

(c) A buy-in plan shall be established by a negotiated agreement between a grantee and a center operator. Prior to execution of the agreement by the Job Corps center operator, the center operator must obtain the written approval of the appropriate ETA office.

(d) Two types of buy-in plans may be negotiated:

(1) *Job Corps Enrollee (Residential and Nonresidential).* Participants who meet the eligibility criteria for Job Corps under Title IV of the Act, as well as the eligibility criteria of the grantee's title of the Act, may be fully enrolled in Job Corps as residents or nonresidents. Such enrollees shall be treated as and receive the same services, protections, allowances, etc., as regular corpsmembers except as otherwise provided in paragraph (f) of this section.

(2) *Trainees (Nonresidential).* Participants ("trainees") who are not eligible for, or who do not want or require residential services must meet the eligibility criteria of the grantee's title of the Act only, and may receive training from the Job Corps center operator under the following options:

(i) *Vocational Trainees.* These will be trained in the requisite entry-level skills for the vocation designated in the buy-in agreement.

(ii) *Basic Education and GED Trainees.* These will be individually assessed for reading, arithmetic, job-seeking skills and general education development and trained to meet entry-level requirements for specified job clusters and/or a GED certificate, as appropriate.

(iii) *Combined Basic Education-Vocational Trainees.* These will receive both specified vocational and education training.

(iv) Other options include:

(A) Grantee use of center facilities, including nights or weekends.

(B) Grantee use of centers for training youths during the summer with charges to the grantee based on the pro rata hourly costs.

(e) *Allocation of funds.* Slots available for purchase by grantees shall be over and above the current budgeted center capacity. Funds received by the Job Corps center operator through the buy-in agreement shall be allocated as specified in the Job Corps center contract or program operating plan.

(f) *Prime Sponsor Responsibility.* In addition to paying for training at Job Corps centers, grantees shall be responsible for spending funds received under their own titles of the Act to recruit enrollees and trainees, provide them with support services prior to their arrival at centers and following the completion of training, provide their transportation to and from the center, and provide job placement assistance. Grantees shall also supply associated administrative services in accordance with the regulations under this Part as agreed upon with the center. In addition, grantees are authorized to pay any transportation costs for buy-in enrollees and trainees in excess of that allowed by § 98.12(g)(6).

(g) The terms of a buy-in agreement involving trainees shall state the amount and system of payment, and shall include provisions that:

(1) Pay and allowances for trainees shall be borne by the grantee and paid in accordance with regulations under the grantee's title of the Act;

(2) The center will assure that its liability insurance covers the trainees;

(3) Trainees shall be covered by the workers' compensation required by the regulations under the grantee's title of the Act;

(4) As appropriate, the center shall provide trainees with first aid, emergency health care, and initial outpatient visits. First aid and emergency health care shall mean care provided by professionals or lay persons to prevent death or aggravation of serious illnesses or injury, including ambulance service. Initial outpatient visits shall mean single visits to the dispensary or sick call for the purpose of the initial evaluation of an acute health condition. Treatment will be limited to that which can be given by the center staff at the time of the visit. Any additional evaluation, diagnosis or treatment must be obtained through other arrangements by the prime sponsor or the trainee; and

(5) Every trainee under the age of majority shall furnish a statement from a parent or legal guardian agreeing to permit Job Corps to provide the health care set forth in the agreement. Trainees who are over the age of majority shall themselves sign a similar statement.

(h) *Accounting.* For buy-ins involving trainees, the center shall maintain separate accounts for funds received under each title of the Act. Contract centers shall report all buy-in funds received on the Job Corps Form MA 2–111, Center Financial Status Report, and on Form MA 2–223A, Center Financial Report under "Other Income (identify separately by source)." CCC's shall report funds on Form MA 2–223B, Center Financial Report. Grantees shall account for funds expended in support of a Job Corps buy-in in accordance with current CETA procedures and cost categories.

(i) *Reporting Credits.* Grantees participating in the buy-in plan will receive credit for the recruiting, training, placement, and support services provided trainees and enrollees and will report activity under the buy-in agreement in accordance with current CETA procedures on reporting and accountability provided in this part. The Job Corps centers will provide the data required by the grantee data system to allow the reports for credit to be completed. The Job Corps center will report on total center population as currently required and will, thus, receive credit for serving enrollees and trainees.

Signed at Washington, D.C., this 1st day of October 1976.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

[FR Doc.76-29732 Filed 10-7-76;8:45 am]

Title 35—Panama Canal

CHAPTER I—CANAL ZONE REGULATIONS

PART 133—TOLLS FOR USE OF CANAL

Increase in Panama Canal Tolls

On May 14, 1976, the Panama Canal Company published in the FEDERAL REGISTER (41 FR 19981) a notice of proposed changes in the rates of tolls for use of the Panama Canal prescribed by 35 CFR 133.1. The proposed action was to increase the rates of tolls from $1.08 to $1.29 per Panama Canal net vessel ton for most laden vessels, from 86 cents to $1.03 per Panama Canal net ton on vessels in ballast, and from 60 cents to 72 cents per displacement ton for warships and certain other floating craft.

In the notice of May 14, 1976, interested parties were invited to submit written data, views or arguments regarding the proposal at any time not later than July 16, 1976 and to present supplementary data at a public hearing on the proposal in New York on August 23, 1976. Notices of the exact time and place of the August 23, hearing were published in the FEDERAL REGISTER on July 6, 1976 (41 FR 27978) and August 9, 1976 (41 FR 33307).

Written comments opposing the proposed increases in rates of tolls were received from two U.S. flag line operators (United States Lines and Sea-Land

Services, Inc.), a steamship company based in India (Scindia), two associations representing U.S. flag shipping companies (American Institute of Merchant Shipping) and Japanese shipping companies (Japanese Shipowners' Association) using the canal, an association representing passenger line operators using the canal (International Committee of Passenger Lines), an association representing North Atlantic ports (North Atlantic Ports Association), an association representing employers in North Atlantic ports (Council of North Atlantic Shipping Association) and a labor union representing employees in those ports (International Longshoremen's Association, AFL–CIO).

At the hearing on August 23, supplementary comments and arguments in opposition to the proposed increase in rates of tolls were submitted by United States Lines and Sea-Land Services, Inc., the American Institute of Merchant Shipping, Japanese Shipowners' Association, and International Committee of Passenger Lines. All the parties appearing at the hearing submitted additional written data following the hearing in part in response to questions raised at the hearing.

Opposition to the proposed increase in rates of tolls was based on contentions that certain costs of operation of the Panama Canal should be excluded from costs recovered from tolls, that without an increase in the rates revenues from tolls would exceed the estimates used in calculating the proposed rates, and that the proposed increases would result in diversion of traffic from the Panama Canal, principally to the Far East Minilandbridge, with resulting losses in revenue to the Panama Canal, the ship operators using the canal, the North Atlantic ports and the employers and employees in those ports. It was contended that the proposed increases in rates of tolls would be detrimental to U.S. foreign and domestic commerce, and to the economies of the United States, Japan and the world.

No comment was received expressing disagreement with the conclusion of the Environmental Assessment, made available to interested parties along with the Proposal to Increase Tolls, that the proposed increases would not adversely affect the quality of the human environment.

A four-member panel appointed by the Board of Directors to conduct the hearing submitted a detailed report to the Board of Directors, transmitting all comments of interested parties along with the views and recommendations of the panel and recommending adoption of the proposed increase in rates.

After consideration of the proposal, the environmental assessment, the views and comments of interested parties submitted in the rulemaking proceeding, the report of the panel that conducted the hearing, and other relevant material, the Board of Directors voted to adopt the amendment of 35 CFR 133.1, increasing the rates of tolls for use of the Panama Canal as shown below, subject to approval by the President of the United States.

The basis for the increase in tolls is section 412 of title 2 of the Canal Zone Code (76A Stat. 27). The purpose of the increase is to establish tolls at rates sufficient to cover the costs of operation of the Panama Canal and related facilities and appurtenances as required by the statute.

The amended regulation becomes effective upon approval by the President of the United States but not earlier than November 15, 1976, the end of the statutory notice period prescribed by section 411 of title 2 of the Canal Zone Code.

The full text of 35 CFR 133.1, upon approval by the President, will be amended to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $1.29 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with Part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.03 per net vessel ton.

(c) On other floating craft, including warships, other than transports, colliers, hospital ships, and supply ships, $.72 per ton of displacement.

Dated: October 2, 1976.

THOMAS M. CONSTANT,
Secretary.

[FR Doc.76-29539 Filed 10-7-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 613-2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the Massachusetts Plan

On May 31, 1972 (38 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with exceptions, the Massachusetts Implement Plan for the attainment of national ambient air quality standards. Included in this approval were the Regulations for the Control of Air Pollution in the six Massachusetts Air Pollution Control Districts. Regulation 50—Variances was disapproved by EPA on July 16, 1973 (38 FR 18874) and EPA substituted a new regulation, 40 CFR 52.1131 (38 FR 18880). Since this disapproval, the United States Supreme Court in *"Train v. NRDC"* 421 U.S. 60 (1975) interpreted the Clean Air Act to allow EPA and the State agencies more flexibility in granting variances as revisions to the State Implementation Plan. The States may grant and submit individual source variances to EPA as plan revisions, if it can be demonstrated that the variances will not interfere with the attainment and maintenance of the national ambient air quality standards. Sources requesting variances are subject to existing requirements until such time as the variance is finally approved by both the State and EPA. This publication contains the Administrator's approval of a revision to specified portions of the plan previously disapproved and revocation of substitute regulations promulgated by him.

The proposed revision was submitted by the Governor on November 14, 1974. On February 26, 1975 (40 FR 8228), the revision was published as proposed rulemaking and opportunity was provided for the public to comment on the approvability of the revision. No comments were received.

After evaluation of the State's submittal, the Administrator has determined that the regulation, as modified, meets the substantive and procedural requirements of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation and Submittal of Implementation Plans. This regulation is approved as a revision to the Massachusetts Implementation Plan, and disapproval of Regulation 50 and the substitute regulation previously promulgated by EPA set forth in 40 CFR 52.1131(a), published in the FEDERAL REGISTER on July 16, 1973 are hereby revoked.

The revision becomes effective November 8, 1976.

(Sec. 110, Clean Air Act as amended (42 U.S.C. 1857c-5).)

Dated: October 4, 1976.

RUSSELL E. TRAIN,
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart W—Massachusetts

1. Section 52.1120 is amended by inserting the date "November 14, 1974" in proper chronological order.

[FR Doc.76-29705 Filed 10-7-76;8:45 am]

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 628-5; PP6E1772/R113]

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

Sodium Chlorate

On August 6, 1976, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (41 FR 32899) a notice of proposed rulemaking pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, which proposed that 40 CFR 180.1020 be amended by exempting residues of the pesticide chemical sodium chlorate from the requirement of a tolerance in or on the raw agricultural commodities rice and rice straw, when it is used with urea as a fire retardant in accordance with good agricultural practice as a desiccant in rice production.

This notice of proposed rulemaking was issued in response to a pesticide

petition (PP 6E1772) submitted to the Agency by Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4, New Jersey State Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick NJ 08903, on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Louisiana and Texas. No comments or requests for referral to an advisory committee were received with regard to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.1020 should be adopted as proposed. This amendment to the regulations will protect the public health.

Any person adversely affected by this regulation may, on or before November 8, 1976, file written objections with the Hearing Clerk, Environmental Protection Agency, East Tower, Room 1019, 401 M St. SW, Washington DC 20460. Such objections should be submitted in quintuplicate and should specify both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on October 8, 1976 40 CFR 180.1020 is amended as set forth below.

Dated: October 5, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart D, § 180.1020 is amended by revising paragraph (b) to include the raw agricultural commodities rice and rice straw as follows:

§ 180.1020 Sodium chlorate; exemption from the requirement of a tolerance.

* * * * *

(b) Sodium chlorate is exempted from the requirement of a tolerance for residues in or on grain sorghum, fodder, and forage and rice and rice straw, when used with urea as a fire retardant, in accordance with good agricultural practice as a desiccant in the production of grain sorghum and rice.

* * * * *

[FR Doc.76–29706 Filed 10–7–76;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[AIDPR Notice 77–3]

PART 7–7—CONTRACT CLAUSES

Abortion-Related Activities

This notice contains the following amendments to the AID procurement regulations (41 CFR):

1. The amendment of § 7–7.5003–3, Abortion-related activities, to require that the clause "Abortion-Related Activities" shall be included in all subcontracts, subgrants, purchase orders, or other subordinate agreements.

2. The amendment of § 7–7.5202–2, Abortion-related activities, to effect a correction in the AIDPR reference there to § 7–7.5003–3.

Subpart 7–7.50—Clause for Cost Reimbursement Type Contracts

Section 7–7.5003–3, *Abortion-related activities.* The clause therein which commences after the opening paragraph, is amended to read as follows:

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* * * * *

(5) The Contractor shall insert all of the above provisions of this clause, and shall include this paragraph, in all subcontracts, subgrants, purchase orders, and any other subordinate agreements hereunder.

Subpart 7–7.52—Basic Ordering Agreement for Participant Training

Section 7–7.5202–2, Abortion-Related Activities, is amended by deleting the reference "AIDPR 7–7.5003–2" and substituting the reference "AIDPR 7–7.5003–3".

(41 CFR 7–1.104.4.)

Effective date: This AIDPR Notice is effective November 1, 1976.

Dated: September 28, 1976.

JOHN F. OWENS,
Deputy Assistant Administrator for Program and Management Services.

[FR Doc.76–29684 Filed 10–7–76;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER G—OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND RELATED ACTIVITIES

PART 82—CERTIFICATION OF INDUSTRIAL SOUND LEVEL METER SETS

On April 16, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 17029) to amend Title 42, Code of Federal Regulations, by adding a new Part 82 to establish in the National Institute for Occupational Safety and Health (NIOSH) a program for the evaluation and certification of industrial sound level meter sets—instruments used for measuring noise levels in employee working environments.

Interested parties were invited to submit, within 30 days, written comments, suggestions, or objections regarding the proposed regulations. All public comments have been considered with the result that some changes have been made in the regulations which were proposed. The major comments and changes are discussed below:

1. *Fees.* As indicated by several submitted comments, there was some confusion concerning the fees to be rendered in accordance with §§ 82.20, 82.21, and 82.22 of the proposed rulemaking. Changes have been made in § 82.20 and § 82.21 to clarify this situation. These revisions obviate the need for § 82.22 of the proposed rule which has been deleted and § 82.23 has been redesignated as § 82.22.

It is to be noted that § 82.20 pertains to those industrial sound level meter sets which exhibit only the normal microphone configuration and to alternate acoustical calibrators submitted as part of an industrial sound level meter set. As stipulated in § 82.20(a), the indicated fees will be the maximum charged for the examination, inspection, and testing for certification of these devices. A new § 82.20(b) has been added which is pertinent only to submissions made in accordance with § 82.20(a). Specifically, § 82.20(b) provides that should the time required to complete the examination, inspection, and testing for certification be less than that estimated time upon which the fees of § 82.20(a) are based, a refund would be issued to the applicant based upon the computation rate designated.

Fees for submissions other than those specified in § 82.20(a) are governed by § 82.21. Further pertinent comments dealing with fee assessment, as outlined in § 82.22 of the original notice of proposed rulemaking, expressed concern that the computation rate of $50.00 per manday expended by the Institute staff could be construed as an "open-ended fee" amounting to a "blank check." The purpose of this provision was to permit a refund to the applicant should the time required to complete the evaluation be less than that normally anticipated—where a submission is made to modify a certificate—and also in anticipation of instances where unique problems might demand additional investment of personnel time. The Institute recognizes the concern of the commentators in this regard and a new § 82.21(c) has been added which provides that, for those submissions made in accordance with § 82.21 (a) and (b), only upon mutual consent of the applicant and the Institute will testing proceed beyond that point at which the submitted deposit will have been depleted based upon the indicated computation rate. Section 82.21(d) details the procedure for total cost assessment for submissions covered under § 82.21 (a), (b), and (c).

Finally, some users were under the erroneous impression that each purchased sound level meter must be submitted for certification, accompanied by the indicated fee. The NIOSH certification program is designed to pertain primarily to manufacturers of the instrument. Once a manufacturer has had a particular model certified, production of that model may be marketed with the certification seal attached so long as the devices are manufactured according to the drawings and specifications upon which the certificate is based. Under this procedure, users will be able to purchase a certified device.

2. *Uncertified instrumentation already marketed.* Of major concern to several

persons was the disposition of those industrial sound level meters already marketed or in use at the time the NIOSH certification program is initiated. Since the NIOSH regulation has an integral mechanism for quality control, etc., it would be impossible to apply such controls to equipment already marketed.

3. *Trade secrets.* A number of comments were received in regard to possible dissemination of proprietary information submitted to the Institute upon application for certification. Section 82.14 of the regulations provides that information which is designated as and, on request, demonstrated to the Institute by the applicant to be a trade secret will be held confidential. The Freedom of Information Act exempts trade secrets from mandatory disclosure and HEW Departmental regulations prohibit disclosure of trade secrets.

4. *Quality control.* Comments were received indicating concern for the type of quality control program to be established by the applicant. It is not the intent of the regulations to force a given quality control plan on a manufacturer. Rather, § 82.41(b) as an alternative provides for the submission of a manufacturer's plan for NIOSH evaluation and approval. Concern has been expressed for the Institute's decision to interview the applicant's employees or agents. It is emphasized that such interviews will be with personnel responsible for quality control at the facility, and § 82.43 has been modified to reflect this intent.

5. *Private branded sets.* Another matter that elicited comment is the treatment accorded "private branded" industrial sound level meter sets. It is to be noted that the applicant, whether manufacturer, distributor, or other party, is responsible for fulfilling all requirements for certification including quality control in the manufacturing process. If the applicant is someone other than the manufacturer, the applicant must submit evidence that the manufacturer will conform with the certification requirements. Any modifications which the applicant should make to the manufactured device would necessarily be included in the submitted quality control plan. An alternative would be for the manufacturer to apply for certification of its device and subsequently, to apply for a modification of certificate (should its original device be certified) to embody the changes or modifications being made by the distributor. In either case, it is a cooperative effort of the parties involved, with either one serving as the applicant for certification.

6. *Pretesting by applicant.* In order not to impose any unnecessary restrictions in so far as exact duplication of NIOSH test equipment or facilities, § 82.52(a) has been modified to allow greater latitude for applicants in satisfying pretesting requirements. Also § 82.52(c), which provided for validation of an applicant's test results as a condition to certification, has been deleted as unnecessary; the conditions of satisfying testing requirements prior to issuance of certification are adequately covered in § 82.30 (a).

7. In the first sentence of § 82.64 the phrase, "submitted for certification," has been inserted to clarify that the tests which follow are those to be performed by the Institute on instruments submitted in accordance with the application for certification. This is to clarify the misconception that all of the following tests must be performed on each meter coming off the production line.

8. In § 82.64(b), the following sentence has been inserted: "Testing shall be performed with no observer present in the anechoic chamber."

9. Modification has been made to § 82.64(e) in order to accommodate wide range sound level meters.

Therefore, a new Part 82, as set forth below, is added to Title 42, Code of Federal Regulations, October 8, 1976.

Dated: January 20, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: September 29, 1976.

MARJORIE LYNCH,
Acting Secretary.

Subpart A—General Provisions

Sec.
82.1 Purpose.
82.2 Lists of certified industrial sound level meter sets.
82.3 Definitions.
82.4 Incorporation by reference.

Subpart B—Application for Certification

82.10 Application procedures.
82.11 Contents of application.
82.12 Delivery of test material by applicant.
82.13 Withdrawal of application.
82.14 Public record.
82.15 Material required for record.

Subpart C—Fees and Deposits

82.20 Fees.
82.21 Deposits.
82.22 Settlement of fees upon withdrawal of application.

Subpart D—Certification and Denial of Certification

82.30 Issuance of certificates.
82.31 Certificate contents.
82.32 Notice of denial of certification.
82.33 Certification seals.
82.34 Withdrawal of certification.
82.35 Changes after certification.

Subpart E—Quality Control

82.40 Filing requirements for quality control plans.
82.41 Contents of quality control plans.
82.42 Approval of quality control plans.
82.43 Review of quality control records.

Subpart F—General Construction and Test Requirements

82.50 General construction requirements.
82.51 Minimum construction requirements for component parts.
82.52 Pretesting by applicant.
82.53 Assistance by applicant; observers; public demonstrations.

Subpart G—Detailed Certification Requirements and Tests for Industrial Sound Level Meter Sets

82.60 Compliance with ANSI S1.4–1971.
82.61 Requirements for industrial sound level meter sets.
82.62 Requirements for industrial sound level meter set instruction manuals.
82.63 Requirements and tests for acoustical calibrators.
82.64 Requirements and tests for industrial sound level meters.

AUTHORITY: Sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g).

Subpart A—General Provisions

§ 82.1 Purpose.

The regulations in this part set forth the requirements and fees for the certification of industrial sound level meter sets which are used to measure the noise levels in employee working environments.

§ 82.2 Lists of certified industrial sound level meter sets.

The Institute will publish and otherwise make available lists of industrial sound level meter sets that have been tested and certified as meeting the minimum requirements of this part.

§ 82.3 Definitions.

Any term defined in the Occupational Safety and Health Act of 1970 and not defined below shall have the meaning given it in the Act. As used in this part:

(a) "Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(b) "Institute" means the National Institute for Occupational Safety and Health, established under the Act.

(c) "Testing and Certification Laboratory" means the Testing and Certification Laboratory of the National Institute for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

(d) An "Industrial Sound Level Meter" is a device designed to measure the noise levels to which employees are exposed in the working environment.

(e) An "Acoustical Calibrator" is a device compatible with the microphone of an industrial sound level meter which emits one or more pure tones at one or more sound pressure levels thus providing a check on the general operation and the means for maintaining the calibration of an industrial sound level meter.

(f) An "Industrial Sound Level Meter Set" consists of an industrial sound level meter, compatible acoustical calibrator(s), and instruction manual(s).

(g) "Applicant" means an individual, partnership, company, corporation, association, or other organization that designs, manufactures, assembles, or markets an industrial sound level meter set and which seeks a certificate therefor.

(h) A "Certificate" is a formal document, issued by the Institute, stating that an individual industrial sound level meter set has met the minimum requirements of this part, and that the applicant is authorized to use and attach a seal to any device manufactured or assembled in conformance with the plans and specifications upon which certification was based as evidence of such certification.

(i) "Incoming Inspection" means the manufacturer's activity of receiving, examining, and accepting only those components and materials whose quality conforms to specification requirements.

(j) "In Process Inspection" means the control of products at the source of production and at each step of the manufacturing process, so that departures from specifications can be corrected before defective components or materials are assembled into the finished product.

(k) "Final Inspection" means an inspection of a product after all manufacturing and assembly operations are completed to insure completeness and adherence to performance and other specifications, including satisfactory appearance.

(l) "Fully Graduated Scale" means that portion of the scale of the indicating instrument of an industrial sound level meter which is graduated in steps of one decibel.

(m) "Full Scale Deflection" means a setting of the indicating instrument pointer at the upper limit of the fully graduated scale.

(n) "Microphone Configuration" means the physical attachment and support for the microphone, as well as any environmental shield or screen used to cover the microphone during operation, and also includes the selection of a particular microphone if the sound level meter is designed to be used with an assortment of microphones.

(o) "Normal Microphone Configuration" means that the microphone is physically located on the industrial sound level meter body and is not covered by a windscreen or other environmental shield.

(p) "MIL-STD" means a specific military standards document approved by the U.S. Department of Defense.

§ 82.4 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the following technical publications to which reference is made in this part are hereby incorporated by reference and made a part hereof:

ANSI Y14.5–1973, "Dimensioning and Tolerancing of Engineering Drawings (issued November 2, 1973).

ANSI S1.4–1971, "Specifications for Sound Level Meters (issued April 27, 1971).

ANSI S1.10–1966, "Methods for the Calibration of Microphones (issued March 14, 1966).

Military Standard 105–D, "Sampling Procedures and Tables for Inspection by Attributes (issued April 29, 1963).

Military Standard 414, Sampling Procedures and Tables for Inspection by Variables for Percent Defective (issued June 11, 1957).

The referenced American National Standards Institute (ANSI) documents can be purchased from ANSI, 1430 Broadway, New York, N.Y. 10018, and the referenced military standards are available to the public without charge from the U.S. Naval Publications and Forms Center, 1501 Tabor Avenue, Philadelphia, PA 19120. These documents are also available for examination at the Testing and Certification Laboratory and the Regulations Office, National Institute for Occupational Safety and Health, Rm 3–32 Park Bldg., 5600 Fishers Lane, Rockville, MD 20852. Incorporation by reference provisions approved by the Director of the Federal Register on October 29, 1975.

Subpart B—Application for Certification

§ 82.10 Application procedures.

(a) Inspection, examination, and testing leading to certification of industrial sound level meter sets shall be undertaken by the Institute only pursuant to a written application filed in accordance with the requirements of this subpart. Such application shall be in the English language except as provided in § 82.11(a).

(b) The application and all related materials and correspondence concerning it shall be sent to the Testing and Certification Laboratory and shall be accompanied by a check, bankdraft, or money order in the amount specified in Subpart C of this part, payable to the National Institute for Occupational Safety and Health.

(c) Except as provided in § 82.52, the examination, inspection, and testing of all industrial sound level meter sets shall be under the sole direction and control of the Institute.

(d) Applicants, manufacturers, or their representatives may visit or communicate with the Testing and Certification Laboratory in order to discuss the requirements for certification of any industrial sound level meter set or the proposed designs thereof. No charge shall be made for such consultation and no written report shall be issued to applicants, manufacturers, or their representatives by the Institute as a result of such consultation.

§ 82.11 Contents of application.

Each application for certification shall contain:

(a) A complete written description of the industrial sound level meter set for which certification is requested, together with classification of defects (as prescribed in § 82.41(d)), drawings, schematics (diagrams of electrical circuitry), and specifications (and indices of such drawings, schematics, and specifications) showing full details of construction and of the materials used. Classification of defects, drawings, schematics, and specifications (and indices thereof) shall be submitted in triplicate.

(1) Drawings and schematics shall be titled, numbered, and dated; any revision shall be shown on the drawings and schematics. The purpose of each revision shall be shown on the drawing or schematic or attachments thereto.

(2) Drawings may be dimensioned either in metric or English units. However, where non-English words are used on such drawings, the foreign language call-outs on drawings must be translated either directly on the drawings or on overlays. Drafting symbols not specified by American National Standards Institute standard drafting practices ANSI Y14.5–1973, "Dimensioning and Tolerancing of Engineering Drawings", must be interpreted in the English language.

(b) A plan for quality control which meets the minimum requirements set forth in Subpart E of this part. The quality control plan shall be submitted in triplicate.

(c) A statement that the industrial sound level meter set has been pretested by the applicant as prescribed in § 82.52, a description of the test methods employed, and the results of such tests together with a statement that, based on the test results, the industrial sound level meter set meets the applicable requirements of this part.

(d) A statement that the industrial sound level meter set submitted is either (1) a prototype, or (2) made on regular production tooling, with no operation, test, inspection, or calibration included which will not be incorporated in regular production processing.

(e) A sketch or description of the proposed location of the certification seal required by the Institute.

(f) A plot of the nominal free field relative response level of the industrial sound level meter, at an angle specified by the applicant, versus frequency. The frequency range shall be at least from 31.5 Hz to 8000 Hz and the specified angle shall be no greater than 90° relative to the forward axis of the microphone. This angle shall be chosen so that the response approximates random-incidence response. The applicant shall also indicate on this plot the manufacturer's tolerances which must be satisfied to ensure that the industrial sound level meter set complies with the requirements of paragraphs (a) and (b) of § 82.64. If the industrial sound level meter set for which certification is sought is provided with several optional microphone configurations, then similar plots shall be provided for each optional microphone configuration.

§ 82.12 Delivery of test material by applicant.

(a) Each applicant will, when an application is filed pursuant to § 82.10, be advised in writing by the Institute of the total number of industrial sound level meters, acoustical calibrators, instruction manuals, and accessories required for testing.

(b) The applicant shall deliver, at his own expense, the test material specified in paragraph (a) of this section to the Testing and Certification Laboratory within 90 days after being advised of the required test material.

(c) Industrial sound level meter sets submitted for certification must be made from materials specified in the application.

§ 82.13 Withdrawal of application.

Any applicant may, upon written request submitted to the Institute, withdraw any application for certification or modification of certificate for an industrial sound level meter set. Fees shall be in accordance with § 82.22.

§ 82.14 Public record.

After the testing of an industrial sound level meter set pursuant to application filed under this part, the application and matters relating to the industrial sound

level meter set, including all test results, shall be public records and available for public inspection. However, any such information which is designated by the applicant as a trade secret will be held confidential, provided that the applicant demonstrates to the Institute, upon request, that the information is a trade secret.

§ 82.15 Material required for record.

(a) Only completely assembled industrial sound level meter set certified under the provisions of this part will be retained without cost by the Institute as a record of the performance investigation; material not required for the record will be returned to the applicant at his own expense, upon written request within 30 days after certification. If no such request is made, the test material will be disposed of by the Institute in such manner as it deems appropriate.

(b) When an industrial sound level meter set fails to meet the requirements for certification set forth in this part, or when an application for certification or for modification of certificate is withdrawn, all test material delivered by the applicant in accordance with § 82.12 will be returned to the applicant at his own expense, upon written request to the Institute within 30 days after notice of denial of certification or withdrawal of application. If no such request is made, the test material will be disposed of by the Institute in such manner as it deems appropriate.

Subpart C—Fees and Deposits

§ 82.20 Fees.

(a) The Institute will charge a maximum fee of $600 for the examination, inspection, and testing for certification of an industrial sound level meter set with the normal microphone configuration. An additional maximum fee of $200 will be charged for each alternate acoustical calibrator submitted as part of an industrial sound level meter set. These fees shall be submitted as part of an application for certification as prescribed in § 82.10(b).

(b) The fees stipulated in paragraph (a) of this section are based upon estimated man-hours necessary to complete certification. Upon completion of all examinations, inspections, and testing for certification of instruments submitted under this section, the Institute will compute the total man-hours expended by the Institute staff. If the total expenditure, computed at the rate of $50 per man-day, is less than the amount submitted under § 82.20(a), the balance will be refunded to the applicant.

§ 82.21 Deposits.

(a) An applicant shall submit a deposit of $600 to the Institute under the following circumstances:

(1) Upon applying for the certification of industrial sound level meter sets with microphone configurations other than the normal microphone configuration, or with several optional microphone configurations.

(2) Upon applying for examination, inspection, and testing of a prototype.

(3) Upon submitting an industrial sound level meter set made on regular production tooling subsequent to testing as a prototype.

(4) Upon applying for retesting of an industrial sound level meter set subsequent to denial of certification.

(b) The following deposits shall be submitted to the Institute for examination, inspection, and testing of component parts leading to a modification of certificate:

(1) Industrial sound level meter	$350
(2) Acoustical calibrator (each)	200
(3) Instruction manual	50

(c) Deposits stipulated in paragraphs (a) and (b) of this section shall be submitted as part of the application for certification as prescribed in § 82.10(b) and will be credited by the Institute toward actual certification costs based on a fee computation rate of $50 per man-day expended by the Institute staff. Only upon mutual consent of the applicant and the Institute will testing proceed beyond that point at which the deposit submitted under this section will have been depleted based on the fee computation rate.

(d) Upon completion of all examinations, inspections, and tests of industrial sound level meter sets or component parts, submitted under § 82.21 the Institute will compute the total fee using the computation rate in § 82.21(c). The Institute will then advise the applicant in writing of the total cost assessed and the additional amount, if any, which shall be paid to the Institute prior to the issuance of the certificate or other action by the Institute. If the total cost is less than the deposit, the Institute will refund the overpayment upon issuance of the certificate, modification of certificate, prototype testing results, or notice that the set or component fails to comply with the applicable requirements of this part.

§ 82.22 Settlement of fees upon withdrawal of application.

Upon receipt of a written request for the withdrawal of an application, the Institute will determine the total man-days expended and the amount due for services already performed during the course of any examinations, inspections, or tests conducted pursuant to such application. The total amount due shall be computed at a rate of $50 per man-day expended by the Institute staff and assessed against the deposits or fees submitted by the applicant. The Institute will then refund or request payment as appropriate.

Subpart D—Certification and Denial of Certification

§ 82.30 Issuance of certificates.

(a) The Institute will issue certificates pursuant to the provisions of this subpart only for individual, completely assembled industrial sound level meter sets which have been examined, inspected, and tested and which meet the requirements set forth in this part.

(b) The Institute will not issue certificates for any component part.

(c) The Institute will not issue informal certificates. However, if the application submitted in accordance with § 82.11 states that the submitted industrial sound level meter set is a prototype, the Institute will examine, inspect, and test the prototype in accordance with the provisions of this part. Upon completion of such examinations, inspections, and tests, the Institute will inform the applicant, in writing, of the results of the examinations, inspections, and tests. If it is found that the prototype meets the minimum requirements set forth in this part, the Institute will then require the applicant to submit industrial sound level meter sets made on regular production tooling, with no operations, tests, inspections, or calibrations included which will not be incorporated in regular production processing, for further examination, inspection and testing, prior to issuance of a certificate.

(d) Applicants required to submit industrial sound level meter sets made on regular production tooling, subsequent to testing as a prototype, shall be charged additional fees in accordance with § 82.21.

§ 82.31 Certificate contents.

Every certificate issued under this part will:

(a) Contain a description of the industrial sound level meter set for which it is issued.

(b) Specifically set forth any restrictions or limitations on the industrial sound level meter set's use in work places.

(c) Be accompanied by indices of drawings, schematics, and specifications submitted by the applicant in accordance with § 82.11. These listed drawings, schematics, and specifications shall be incorporated by reference in the certificate and shall be maintained by the applicant. The drawings, schematics, and specifications listed in each certificate shall set forth in detail the design and construction requirements which shall be met by the applicant in producing the industrial sound level meter set commercially.

(d) Be accompanied by a fullscale reproduction of the certification seal design as provided in § 82.33.

(e) Incorporate by reference the approved quality control plan as specified in Subpart E.

§ 82.32 Notice of denial of certification.

(a) If, upon completion of examinations, inspections, and tests required to be conducted in accordance with the provisions of this part, it is found that the industrial sound level meter set does not meet the minimum requirements set forth in this part, the Institute will issue a written notice so advising the applicant.

(b) Each such notice will be accompanied by all pertinent data or findings with respect to the deficiencies in performance of the industrial sound level meter set for which certification was

sought with a view to possible correction of such deficiencies.

(c) If, after receiving a notice of denial of certification, the applicant corrects the deficiencies, the applicant may submit the industrial sound level meter set for retesting. Application may be made for a certificate as specified by Subpart B of this part. Deposits and fee computation shall be in accordance with § 82.21.

§ 82.33 Certification seals.

(a) Each certified industrial sound level meter set shall be marked with a certification seal designed by the Institute. The seal shall appear on the industrial sound level meter, acoustical calibrator(s), and instruction manual(s) which comprise the set and shall bear the applicant's name, the Institute's name, the seal of the Department of Health, Education, and Welfare, and a certification number consisting of the letters TC, followed by the numeral 51, and a certificate number (e.g. TC–51–197).

(b) The seal required in paragraph (a) of this section shall be applied in a permanent manner such that it cannot be readily defaced or removed without leaving evidence of its presence. The seal shall not in any way interfere with the operation of the industrial sound level meter set.

(c) The Institute will where necessary, notify the applicant when modification or addition of seals, labels, markings, or instructions is required.

(d) Certification seals shall only be used by the applicant to whom they were issued.

(e) Use of the Institute's certification seals obligates the applicant to whom they are issued to maintain or cause to be maintained the approved quality control sampling schedule and the acceptable quality level for each characteristic tested, and to assure that the certified industrial sound level meter set is manufactured according to the drawings and specifications upon which the certificate is based.

(f) Each certified industrial sound level meter and acoustical calibrator(s) shall also be labeled to show the lot number, serial number, or approximate date of manufacture.

§ 82.34 Withdrawal of certification.

(a) The Institute may, after affording the certificate holder reasonable notice in writing and an opportunity to present his views or evidence, withdraw, for cause, any certificate which the Institute has issued under the provisions of this part. Such causes for withdrawal include, but are not limited to, misuse of certification markings, misleading advertising, and failure to maintain or cause to be maintained the quality control requirements of the certificate.

(1) The views and evidence of the holder of the certificate shall be presented in writing unless the Institute determines that an oral presentation is desirable.

(2) Such views and evidence shall be confined to matters relevant to whether cause exists for the withdrawal of the certificate.

(b) Effective upon receipt by the applicant of the Institute's written notice of intent to withdraw certification, the applicant shall cease to manufacture, market, or distribute for sale industrial sound level meter sets bearing the certification seal for those industrial sound level meter sets for which notice of intent to withdraw certification has been given.

§ 82.35 Changes after certification.

Prior to changing any feature of a certified industrial sound level meter set or of a component thereof, the applicant shall obtain the certification of the Institute pursuant to the following procedures:

(a) Application may be made at any time as for an original certificate as specified by Subpart B of this part. The application shall request that the existing certificate be extended to encompass the proposed change.

(b) The application and accompanying material will be examined by the Institute to determine whether testing of the modified industrial sound level meter set will be required. The Institute will inform the applicant whether such testing is required and, if so, when the modified device may be submitted for testing.

(c) The fees charged by the Institute for examination, inspection, and testing leading to a modification of the certificate shall be as specified by § 82.21 (b), (c), and (d).

(d) If the proposed modification meets the requirements of this part, a modified certificate will be issued, accompanied, where necessary, by a list of new and revised drawings, schematics, and specifications covering the change(s) and any revised certification markings.

Subpart E—Quality Control

§ 82.40 Filing requirement for quality control plans.

A quality control plan, written in the English language, shall be filed by the applicant as a part of each application submitted pursuant to § 82.10. The plan shall be designed to assure the accuracy of sound level measurement provided by the industrial sound level meter set for which certification is sought.

§ 82.41 Contents of quality control plans.

(a) Each quality control plan shall contain provisions for the management of quality, including: (1) Requirements for the production of quality data and the use of quality control records; (2) control of engineering drawings, documentations, and changes; (3) control and calibration of measuring and test equipment; (4) control of purchased material to include incoming inspection; (5) lot identification, control of processes, manufacturing, fabrication and assembly work conducted in the applicant's plant; (6) audit of final inspection of the completed product; and, (7) the organizational structure necessary to carry out these provisions.

(b) Each provision for incoming and final inspection in the quality control plan shall include a procedure for the selection of a sample of industrial sound level meters, acoustical calibrators, and the components thereof for testing and/or inspection, in accordance with procedures set forth in MIL–STD–105D, "Sampling Procedures and Tables for Inspection by Attributes", or MIL–STD–414, "Sampling Procedures and Tables for Inspection by Variables for Percent Defective", or an approved equivalent sampling procedure, or an approved combination of sampling procedures.

(c) The sampling procedure shall include a list of the characteristics to be tested and/or inspected by the applicant or his agent.

(d) The characteristics listed in accordance with paragraph (c) of this section shall be classified according to the potential effect of such defect and grouped into the following classes:

(1) *Major.* A defect that is likely to result in reduced performance; and

(2) *Minor.* A defect that (i) is not likely to reduce the usability of the industrial sound level meter set for its intended purpose, or (ii) is a departure from established manufacturer's specifications and has little bearing on the effective use of the industrial sound level meter set.

(e) The quality control inspection test method to be used by the applicant or his agent for each characteristic required to be tested and/or inspected shall be described in detail.

(f) Each complete industrial sound level meter set manufactured shall be 100 percent inspected for specific major defects to be selected by the manufacturer and all defective items shall be rejected.

(g) The Acceptable Quality Level (AQL) for each major or minor defect so classified by the applicant shall be:

(1) Major, 0.65 percent; and (2) Minor, 2.5 percent.

(h) Inspection level II as described in MIL–STD–105D, or inspection level IV as described in MIL–STD–414, shall be used for major and minor characteristics except that 100 percent inspection shall be used for specific major characteristics selected by the manufacturer.

§ 82.42 Approval of quality control plans.

(a) Each quality control plan submitted in accordance with this subpart will be reviewed by the Institute to determine its effectiveness in insuring the quality of performance of the industrial sound level meter set for which a certificate is sought.

(b) If the Institute determines that the quality control plan submitted by the applicant will not insure adequate quality control, the Institute will require the applicant to modify the procedures and testing requirements of the plan prior to approval of the plan and issuance of any certificate.

(c) Approved quality control plans shall constitute a part of and be considered incorporated into any certificate

issued by the Institute, and compliance with such plans by the applicant shall be a condition of certification.

§ 82.43 Review of quality control records.

(a) The applicant shall maintain quality control inspection records sufficient to carry out the procedures required in MIL–STD–105D or MIL–STD–414, or an approved equivalent sampling procedure, for each batch or lot, for not less than 4 years following acceptance or rejection of the batch or lot.

(b) The Institute shall have the right, at reasonable times, to have its representatives enter the applicant's facilities to survey the applicant's quality control system, inspection and test methods, equipment, and records. The representatives may interview any of the applicant's employees or agents concerned with the quality control program regarding the quality control system and equipment.

Subpart F—General Construction and Test Requirements

§ 82.50 General construction requirements.

(a) Industrial sound level meter sets will not be accepted by the Institute for examination, inspection, and testing unless they are designed on sound engineering and scientific principles, constructed of suitable materials, and evidence good workmanship.

(b) Any industrial sound level meter set certified by the Institute for use in mines where "permissibility" is required shall meet the requirements for electric permissibility and intrinsic safety set forth in Part 18 of Title 30 CFR (Bureau of Mines Schedule 2G)—as tested and approved by the Mining Enforcement and Safety Administration.

§ 82.51 Minimum construction requirements for component parts.

The component parts of each industrial sound level meter set shall be:

(a) Designed and constructed to insure against creation of any hazard to the user.

(b) Assembled in a manner which permits access for inspection and repair of functional parts.

(c) Assembled in a manner which permits easy access to parts which require periodic maintenance.

§ 82.52 Pretesting by applicant.

(a) Prior to filing any application for certification or modification of a certificate, the applicant shall conduct sufficient tests and evaluations which in the judgment of the applicant would verify that the sound level meter set meets the performance requirements of this part.

(b) The Institute may, upon written request by the applicant, provide drawings and descriptions of its test equipment and otherwise render technical assistance to the applicant in establishing a test laboratory or securing the services of a testing agency.

§ 82.53 Assistance by applicant; observers; public demonstrations.

(a) The Institute may, as a condition of certification, require the assistance of the applicant or agents of the applicant during the assembly, disassembly, preparation or operation of any industrial sound level meter set prior to or during testing.

(b) Only Institute personnel, persons assisting the Institute pursuant to paragraph (a) of this section and such other persons as are requested by the Institute or the applicant to be observers, shall be present during any examination, inspection, or test conducted prior to the issuance of a certificate by the Institute for the equipment under consideration.

(c) Following the issuance of a certificate for an industrial sound level meter set, the Institute shall have the right to conduct such public tests and demonstrations of the certified device as are deemed appropriate.

Subpart G—Detailed Certification Requirements and Tests for Industrial Sound Level Meter Sets

§ 82.60 Compliance with ANSI S1.4–1971.

Except as otherwise required by this subpart, the requirements and tests set forth in § 82.61–§ 82.64 shall be in accordance with the indicated sections of American National Standards Specification for Sound Level Meters, S1.4–1971.

§ 82.61 Requirements for industrial sound level meter sets.

Each industrial sound level meter set shall, at a minimum, have the following features:

(a) An A-weighting network.

(b) A "SLOW" response meter characteristic.

(c) The capability of measuring, on the fully graduated scale, a sound level from at least 80 dBA to 115 dBA.

(d) An indicating instrument graduated in steps of one decibel over a range of at least 15 decibels.

(e) A means of checking battery voltage for both the industrial sound level meter and its associated acoustical calibrator(s).

(f) An instruction manual(s) detailing the operation, intended use, and limitations of the industrial sound level meter set.

(g) A compatible acoustical calibrator of the coupler type.

§ 82.62 Requirements for industrial sound level meter set instruction manuals.

(a) An industrial sound level meter set submitted to the Institute for certification shall contain an instruction manual which meets the requirements of this section. If the instruction manuals for the sound level meter and acoustical calibrator are separate, they will be considered as one for certification inspection.

(b) The instruction manual submitted for certification as part of an industrial sound level meter set shall at a minimum contain the following information:

(1) A general description of the industrial sound level meter, including its construction, principles of operation, and intended use.

(2) An explanation of the calibration procedure necessary to maintain the industrial sound level meter accuracy specified in § 82.64 of this subpart and the information required in section 9.2 (3) and 9.2(7) of ANSI S1.4–1971 to the extent that such information relates to acoustical calibrators of the coupler type. The sound pressure level(s) generated by the acoustical calibrator shall be stated.

(3) The reference sound pressure required by section 9.2(1) of ANSI S1.4–1971.

(4) A description of the A-weighting curve and its effect on sound pressure level measurements.

(5) The information relating to thermal sensitivity required by section 9.2(8) of ANSI S1.4–1971. Also included shall be the effect of temperature on the acoustical calibrator.

(6) The information required in section 9.2(9) of ANSI S1.4–1971 relating to battery life.

(7) The information required in section 9.2(10) of ANSI S1.4–1971. As used in ANSI S1.4–1971, the word "instrument" means both the industrial sound level meter and the acoustical calibrator.

(8) The information required in section 9.2(11) of ANSI S1.4–1971 relating to relative humidity range including the range of relative humidity over which there is less than 0.5 decibel variation in sensitivity.

(9) The information required in section 9.2(12) of ANSI S1.4–1971. As used in ANSI S1.4–1971 the phrase "complete apparatus" shall mean the industrial sound level meter.

(10) The effect of variations in the atmospheric pressure on the acoustical calibrator and the industrial sound level meter and corrections, if any, necessary to compensate for these variations.

(11) The information required in section 9.2(20) and section 3.3.4 of ANSI S1.4–1971 as applies to A-weighting.

(12) The information required in section 9.2(4) of ANSI S1.4–1971 including a discussion of the effects of background noise on measurements.

(13) A listing of the microphone configurations of the industrial sound level meter which have been certified under this part (e.g. (1) industrial sound level meter with normal microphone configuration, (2) industrial sound level meter with microphone extension cable, (3) industrial sound level meter with windscreen, (4) industrial sound level meter with windscreen and extension cable, etc.). The manual shall also state if some alternate microphone configurations have not been certified.

(14) The information relating to the microphone extension cable required in section 9.2(18) of ANSI S1.4–1971, if applicable.

(15) The information relating to directional response required in section 9.2 (19) of ANSI S1.4–1971.

(16) A description of any periodic maintenance that is expected to be performed by the user to maintain the effectiveness of the industrial sound level meter set.

(17) The information relating to stability precautions required in section 6.1 of ANSI S1.4–1971.

(18) The information required in section 9.2(6) of ANSI S1.4–1971 as applies to "SLOW" response, including the nominal undershoot and overshoot in decibels when tested as described in § 82.64 (1) of this part.

(19) The information relating to output connections required in section 8.2 of ANSI S1.4–1971, if applicable.

(20) The information relating to the microphone required in section 9.2(17) of ANSI S1.4–1971.

(21) The information relating to internal noise required in section 3.3.1 of ANSI S1.4–1971.

(22) The date of the most recent revision of the instruction manual.

§ 82.63 Requirements and tests for acoustical calibrators.

(a) Each acoustical calibrator intended for use as part of an industrial sound level meter set shall meet the requirements of section 6.2.5 of ANSI S1.4–1971. The acoustical calibrator shall be of the pure-tone, coupler type and be compatible with the industrial sound level meter with which it is to be certified as a set.

(b) If the acoustical calibrator operates at more than one frequency, means shall be provided to indicate which frequency is in use. The accuracy of the calibration frequency of the acoustical calibrator shall be within ±5 percent of the frequency stated by the applicant.

(c) If the acoustical calibrator operates at more than one sound pressure level, means shall be provided to indicate which sound pressure level is in use. The accuracy of the calibration sound pressure level of the acoustical calibrator shall be accurate to within ±1 dB, utilizing any corrections for atmospheric pressure specified by the instruction manual.

(d) If the acoustical calibrator is battery operated, means shall be provided to indicate whether battery voltage is adequate to maintain the performance specified for the acoustical calibrator. The requirements described in paragraphs (b) and (c) of this section shall be tested under minimally adequate battery voltage (i.e., the minimum battery voltage necessary to ensure adequate operation).

(e) The tests of frequency and sound pressure level shall be made with a compatible microphone whose calibration has been transferred from a laboratory standard microphone calibrated by the reciprocity technique described in ANSI S1.10–1966, "Method for the Calibration of Microphones".

(f) If the acoustical calibrator operates at multiple sound pressure levels or frequencies, then the preferred frequency and sound pressure level, if any, shall be specified by the applicant for use in calibrating the industrial sound level meter for testing for compliance with the requirements of § 82.64.

§ 82.64 Requirements and tests for industrial sound level meters.

Each industrial sound level meter submitted for certification shall meet the following requirements and tests. All tests shall be performed with the industrial sound level meter set to A-weighted, "SLOW" response unless otherwise specified.

(a) The industrial sound level meter shall have an A-weighting-network with the frequency characteristics and design specified for Type 2 sound level meters in sections 3.1, 3.1.1, and 3.1.3. of ANSI S1.4–1971. The A-weighted response of the sound level meter shall be verified by the tests described in paragraph (b) of this section.

(b) The total tolerance limits of the industrial sound level meter for sound at random incidence shall be as specified for Type S2A sound level meters in section 3.2.1 of ANSI S1.4–1971. Testing shall be performed in an anechoic chamber to determine if the industrial sound level meter meets the required frequency response characteristics and total tolerance limits. The method of test shall be as described in sections 4.1 and 4.2.1 of ANSI S1.4–1971. Testing shall be performed with no observer present in the anechoic chamber. Tests to determine that the industrial sound level meter meets acoustic low frequency response tolerances will be performed using a low frequency calibration chamber at the Testing and Certification Laboratory. Supplementary diffuse field or free-field tests will be performed by the Testing and Certification Laboratory as required to verify overall random incidence response tolerance limits.

(c) The maximum deviation of the free-field relative response level as a function of angle of incidence with respect to the random-incidence relative response level shall be as specified for Type S2A sound level meters in section 4.2.2 of ANSI S1.4–1971. Testing shall be performed in an anechoic chamber with no observer present in the chamber.

(d) The sensitivity range attenuator of the industrial sound level meter, if provided, shall meet the requirements specified for Type 2 sound level meters in section 3.2.2 of ANSI S1.4–1971. The accuracy of the settings of the sensitivity range attenuator shall be determined by inserting a sinusoidal voltage of adjustable amplitude in series with the microphone of the industrial sound level meter. The microphone shall be acoustically shielded to make the acoustic pickup negligible. The test shall be performed at least at the frequencies 63 Hz, 1000 Hz, and 8000 Hz.

(e) The internal noise of those industrial sound level meters supplied with amplifier output connections shall meet the Type 2 sound level meter requirements specified in section 3.3.1 of ANSI S1.4–1971. However, in order to properly test sound level meters having very wide scale spans, the last sentence of section 3.3.1 of ANSI S1.4–1971 shall be modified and interpreted as follows: "In addition, the internal noise equivalent sound level, when measured in octave bands for all range attenuator settings that include any portion of the range 80 dBA to 115 dBA, shall not exceed either of the following: (i) 40 decibels below full scale, (ii) 20 decibels below the lower limit of the fully graduated scale. Each octave band level shall be expressed relative to a sinusoidal signal, centered in the octave band, having full scale level."

(f) In an acoustic environment in which the sound level is less than 30 dBA, the industrial sound level meter reading shall not exceed 55 dBA if the industrial sound level meter has a sensitivity range attenuator setting to allow such a measurement within the fully graduated scale. If such a sensitivity range attenuator setting is not provided, the industrial sound level meter, when placed on its most sensitive range attenuator setting, shall indicate a reading less than 1 dBA above the lower limit of the fully graduated scale.

(g) The amplified distortion of the industrial sound level meter shall meet the requirements for Type 2 sound level meters specified in section 3.3.3 of ANSI S1.4–1971. The response to electrical sine waves shall be determined by inserting a sinusoidal voltage in series with the microphone of the industrial sound level meter to produce a full scale deflection reading. The microphone shall be acoustically shielded to make the acoustic pickup negligible. The signal shall then be increased until the electrical signal is 10 dBA above the voltage equivalent of full scale deflection. Any deviation from linearity in the response of the industrial sound level meter shall be noted. The test shall be performed at least at the frequencies 63 Hz, 1000 Hz, and 8000 Hz.

(h) The amplifier overload distortion of the industrial sound level meter shall meet the requirements of section 3.3.4 of ANSI S1.4–1971 except that the specified data shall be required only for the A-weighting mode.

(i) The industrial sound level meter scale marking and accuracy shall meet the requirements specified for Type 2 sound level meters in Section 5.1 of ANSI S1.4–1971. In section 5.1.3 of ANSI S1.4–1971 the phrase "full scale" shall mean the upper limit of the fully graduated scale. Table I below provides the permitted error for scales graduated from −5 decibels to +10 decibels as required by section 5.1.3 of ANSI S1.4–1971. If the scale is graduated otherwise, the formula specified for Type 2 sound level meters in section 5.1.3 of ANSI S1.4–1971 is to be applied to obtain a similar table. The accuracy of the indicating instrument scale shall be determined by inserting a sinusoidal voltage in series with the microphone of the industrial sound level meter. The microphone shall be acoustically shielded to make the acoustic pickup negligible. The amplitude of the inserted signal shall be adjusted so that the

indicating instrument reads full scale deflection. Then the signal shall be attenuated so as to reduce the indicated sound level in one decibel steps. The required attenuation shall be precisely measured and used to determine the accuracy of the indicating instrument. The test shall be performed at least at the frequency of 1000 Hz.

TABLE I.—*Permitted scale error*

Scale marking:	*Permitted error (dBA)*
+10	Reference
+9	±0.23
+8	±0.26
+7	±0.29
+6	±0.32
+5	±0.35
+4	±0.38
+3	±0.41
+2	±0.44
+1	±0.47
0	±0.50
−1	±0.53
−2	±0.56
−3	±0.59
−4	±0.62
−5	±0.65

(j) The indicating instrument of the industrial sound level meter shall meet the requirements for Type 2 sound level meters specified in Section 5.2 of ANSI S1.4–1971. The requirement of section 5.2 shall be verified by the Rule of Combination Measurement Procedure described in Appendix B of ANSI S1.4–1971 but with the following modifications:

(1) One-third octave bands of noise shall be used. Octave bands of noise shall not be used.

(2) The voltage developed across the resistor shall be applied as an electrical input to the industrial sound level meter in series with the microphone, with the acoustic pickup made negligible.

(3) Only A-weighting shall be used in the measurement procedure.

(4) Only the "SLOW" meter characteristic of the industrial sound level meter shall be used in the measurement procedure.

(k) The industrial sound level meter shall employ an indicating system equally responsive to instantaneous sound pressures both above and below ambient static pressure (i.e., full-wave or true square law rectification shall be employed).

(l) The industrial sound level meter shall have the slow dynamic characteristic specified for Type 2 sound level meters in Section 5.4 of ANSI S1.4–1971, with the exception of section 5.4.4 which need not apply. The phrase "full-scale reading" in section 5.4.3 of ANSI S1.4–1971 means the upper limit of the fully graduated scale. If the scale of the meter is not graduated from −5 decibels to +10 decibels, suitable testing levels other than that specified in section 5.4.3 of ANSI S1.4–1971 may be chosen by the Institute. The test described in section 5.4.2 of ANSI S1.4–1971 shall be performed at least at the frequencies 63 Hz, 1000 Hz, and 8000 Hz.

(m) The industrial sound level meter shall have a battery indicator, if battery operated, as specified in section 5.5 of ANSI S1.4–1971. The accuracy of the industrial sound level meter with minimally adequate battery voltage shall be checked by first inserting a sinusoidal signal in series with the microphone with normal battery voltage and then with the minimally adequate voltage. The microphone shall be acoustically shielded to make the acoustic pickup negligible. The variation in the meter reading shall not exceed ±.5 dBA. If the industrial sound level meter has more than one battery, the various combinations of minimally adequate battery voltages will be used to perform the above test.

(n) Each industrial sound level meter shall meet the requirements specified in section 6.2.2 of ANSI S1.4–1971 except that the industrial sound level meter, as part of a set, shall be designed so that its sensitivity can be checked with an acoustical calibrator of the coupler type.

(o) The industrial sound level meter shall meet the temperature requirements specified in section 7.1 of ANSI S1.4–1971. The effect of temperature on the electronic circuitry of the industrial sound level meter shall be determined by placing the industrial sound level meter in a temperature controlled chamber and then inserting a sinusoidal voltage in series with the microphone to produce a steady meter reading 6 decibels down from full scale deflection. If the scale of the indicating instrument is not graduated from −5 decibels to +10 decibels, other suitable testing levels may be chosen by the Institute. The microphone shall be acoustically shielded to make the acoustic pickup negligible. The temperature shall then be varied and the deviation in reading noted. The test shall be performed at least at the temperatures −10° C, 10° C, 30° C, and 50° C. The effect of temperature upon the entire instrument including the microphone shall also be determined. The test just described shall be repeated, utilizing an acoustical tone in place of electrical insertion. If the industrial sound level meter is battery operated, the tests shall be performed under battery power.

(p) The industrial sound level meter shall meet the humidity requirements for Type 1 sound level meters specified in section 7.2 of ANSI S1.4–1971 except that the range of relative humidity over which there is less than 0.5 decibel variation in sensitivity shall be that stated by the applicant. The effect of humidity on the industrial sound level meter operation shall be determined by using an acoustical tone to produce an indicated sound level 6 decibels down from full scale deflection. If the scale of the indicating instrument is not graduated from −5 decibels to +10 decibels, other suitable testing levels may be chosen by the Institute. The relative humidity shall then be varied and the deviation in reading noted.

(q) The industrial sound level meter shall meet the vibration requirements for Type 1 sound level meters specified in section 7.3 of ANSI S1.4–1971 except that the tests shall be performed and the manufacturer shall be required to state readings for the A-weighting network only. The symbol "0.1g," in ANSI S1.4–1971 means that the root-mean-square acceleration shall be 0.1g where g=9.80 m/sec^2. The tests shall be performed by placing the industrial sound level meter in contact with a vibrating surface. The surface shall be vibrated at least at the frequencies 63 Hz, 250 Hz, and 1000 Hz.

(r) The industrial sound level meter shall meet the requirements for magnetic fields specified in section 7.5 of ANSI S1.4–1971 except that:

(1) Tests shall be performed and the manufacturer shall be required to state the magnetic field sensitivity for the A-weighting network only.

(2) Testing shall be performed using 60 Hz and 400 Hz magnetic fields.

(3) The A-weighted levels (in decibels) for 1 oersted, 60 Hz and 400 Hz magnetic fields shall be stated for each sensitivity range attenuator setting, if provided. If no sensitivity range attenuator is provided, the indicated reading under these test conditions shall be stated.

(s) The industrial sound level meter shall, if provided with output connections, meet the requirements for output connections specified in Section 8.2 of ANSI S1.4–1971. The test shall be performed at least at the frequencies 63 Hz, 1000 Hz, and 8000 Hz.

[FR Doc.76–29444 Filed 10–7–76;8:45 am]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER D—VESSEL FINANCING ASSISTANCE

PART 297—TRANSACTIONS AND OPERATIONS IN FEDERAL SHIP MORTGAGE INSURANCE FUND DEBENTURES

Revocation of Part

The heading of Subchapter D of Title 46, Code of Federal Regulations, is hereby amended to read as shown above, and Part 297 thereunder is hereby revoked.

Dated: September 30, 1976.

By order of the Assistant Secretary for Maritime Affairs, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary,
Maritime Subsidy Board.

[FR Doc.76–29687 Filed 10–7–76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Oologah, Oklahoma

Report and order—Proceeding Terminated. In the matter of amendment of § 73.202(b), *Table of assignments,* FM Broadcast Stations (Oologah, Oklahoma), Docket No. 20830, RM–2630.

Adopted: October 1, 1976.

Released: October 5, 1976.

1. The Commission has under consideration its notice of proposed rulemaking, adopted May 27, 1976, 41 FR 23209, inviting comments on a proposal to assign FM Channel 291 (Class C) to

Oologah, Oklahoma. This proceeding was instituted on the basis of a petition filed by William L. Wright (petitioner). Supporting comments were filed by petitioner. No oppositions were filed.

2. Oologah, a community of 458 [1] population, in Rodgers County (pop. 28,425), is located approximately 48 kilometers (30 miles) northeast of Tulsa, Oklahoma. Oologah has no local broadcast transmission service.

3. Petitioner asserts that Oologah's population has almost doubled in the last five years. In supporting comments, he states that the President of the Lakeside Bank of Oologah informed him that the bank which opened recently was projected to reach $2 million in assets by the end of the first year, and that the Public Service Company power station, located one mile south of Oologah is presently undergoing a $300 million expansion which will result in the employment of additional workers. Petitioner states that he fully intends to apply for the channel, if assigned, and to build a station if authorized.

4. The Notice requested the petitioner to submit showings as to whether or not alternate channels were available for assignment to the communities in the precluded areas which had a population of 1,000 or greater. Responding to the Notice, petitioner noted numerous alternate Class A channels that were available for assignment to the communities in question, with populations varying from 1,414 to 6,811 persons. The petitioner claimed that an FM station operating as proposed would provide a first FM service to 4,271 persons in an area of approximately 453 square kilometers (175 square miles) and a second FM service to 31,204 persons in an area of approximately 2,629 square kilometers (1,015 square miles). It would also provide a second aural service to 6,570 persons in an area of approximately 531 square kilometers (205 square miles).

5. Ordinarily a Class A channel would be assigned to a community the size of Oologah. However, since Channel 291 is the only FM channel that can be assigned to that community without making other changes in the FM Table, thereby providing Oologah with its first local FM service, and since alternate Class A channels are available for assignment to communities located in the precluded area, and an FM station would provide significant first and second FM services, the public interest would be served by assigning Channel 291 to Oologah, Oklahoma.

6. Authority for the action taken herein is contained in sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules and regulations.

7. *Accordingly, it is ordered,* That effective November 15, 1976, the Table of Assignments (§ 73.202(b) of the rules) is amended with respect to the city listed below:

City:	*Channel No.*
Oologah, Okla	[2] 291

[2] Any application for this channel must specify at least an effective radiated power of 100 kW and antenna height of 122 meters (400 ft) above average terrain or equivalent.

8. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended 1066, 1082, 1083; (47 U.S.C. 154, 303, 307).)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-29656 Filed 10-7-76;8:45 am]

[1] All population figures are taken from the 1970 U.S. Census.

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Certain Cities in Pennsylvania, California and Minnesota

Report and order—Proceeding Terminated. In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Saegertown, Pennsylvania; Carpinteria, California; Two Harbors, Minnesota; Grass Valley, California), Docket No. 20812, RM-2647, RM-2660, RM-2671, RM-2672.

Adopted: September 28, 1976.

Released: September 30, 1976.

1. The Commission has before it the notice of proposed rulemaking, adopted May 13, 1976 (41 FR 21365), inviting comments on a number of changes in the FM Table of Assignments § 73.202(b) of the rules). The communities, channel assignments proposed, and petitioning parties are as follows:

RM-2647—Channel 232A to Saegertown, Pennsylvania (Corry Broadcasting, Inc.).
RM-2660—Channel 269A to Carpinteria, California (Israel Sinofsky).
RM-2671—Channel 269A to Two Harbors, Minnesota (FM Station Atlas).
RM-2672—Channel 221A to Grass Valley, California (Mother Lode Broadcasting Co.).

2. In each of the above cases, the petitioner seeks the assignment of a first Class A FM channel without requiring any additional changes in the FM Table of Assignments. The petitioning parties for the proposed assignments to Seagertown, Pennsylvania, and Grass Valley, California, filed supporting statements reiterating their intention to apply for the channels, if assigned, and to build stations if authorized. All population data are taken from the 1970 U.S. Census. Petitioners for the proposed assignments to Two Harbors, Minnesota, and Carpinteria, California, filed no supporting comments or statements. All proposals were unopposed except that concerning Seagertown, Pennsylvania, which was opposed by Regional Broadcasters, Inc., licensee of AM Station WMGW and FM Station WZPR (Channel 262), Meadville, Pennsylvania. The merits of the Grass Valley, California, and Seagertown, Pennsylvania, proposals will be discussed below. In the absence of any interest in a channel for the other two communities, no further discussion of these proposals is required. Both will be denied.

3. Saegertown, Pennsylvania (RM-2647). Corry Broadcasting, Inc. (petitioner) filed a petition proposing the assignment of Channel 232A to Saegertown, Pennsylvania. Saegertown (pop. 1,348) is located in Crawford County (pop. 81,342) and is situated in the northwestern part of Pennsylvania.

4. Petitioner states that Saegertown's principal industries are component parts for radio and television, electrical components, soft drinks, bolt and screw parts, molding and equipment, manufacturing of bonded adhesives, and tool and die operations. It points out that the community has no broadcast station or newspaper so the residents of Saegertown have to rely on the Meadville Tribune, published in Meadville, eight miles away. In supporting comments, petitioner reaffirmed his intention to make application for the channel if it is assigned and to construct a station expeditiously following a grant of a construction permit.

5. In response to the Notice, Regional Broadcasters, Inc. (Regional), licensee of AM Station WMGW (Class IV), and WZPR(FM) (Channel 262), filed an opposition contending that both Stations WMGW and WZPR(FM) provide Saegertown and its environs with a strong signal. Regional submitted an engineering statement to show that both of its stations render primary service to not only Meadville, but also to the adjacent areas including Saegertown. It asserts that Saegertown has no unsatisfied needs or problems which justify the assignment of an FM channel to it. It contends that various programs on its stations provide coverage of Saegertown's needs and problems. It states that the facilities of both stations are readily made available to Saegertown organizations of every character and are utilized by these organizations. Regional further contends that the public interest would not be served by the assignment of an FM channel to Saegertown which, in its view, is neither of sufficient size or importance nor has sufficient advertisers to support an FM station and whose transmission and reception needs are being satisfied by the Meadville stations.

6. In reply comments, petitioner states that Regional submitted engineering support to show that the signal of Station WMGW reaches Saegertown during daytime hours of operation, but that no showing was made of the nighttime service that might be provided to Saegertown by Station WMGW. Petitioner contends that the obvious answer is that WMGW does not provide nighttime service to Saegertown.

7. Regional reiterates in its reply comments that its stations in Meadville serve the transmission and reception needs of Saegertown. As further evidence of the absence of any need or demand for an FM station in Saegertown, Regional attached to its reply comments a letter

from the Administrator of the Crawford County Home and Hospital certifying complete satisfaction with the signal and service provided by the Meadville stations and affirming the belief that no need exists for the establishment of a radio station in Saegertown.

8. Even if nearby stations do provide coverage of Saegertown and even if they offer some programming directed to Saegertown, this is not a basis for refusing to provide a community with an opportunity to acquire a first broadcast outlet for local expression. An FM channel assignment here would provide for a local station which could broadcast programs directed to meeting the special needs, interests and problems of Saegertown and the surrounding area. No station, owing its primary obligation to another locality, could be expected to provide the equivalent of such local service.

9. Grass Valley, California (RM-2647). Mother Lode Broadcasting Co. filed a petition on March 16, 1976, proposing the assignment of Channel 221A to Grass Valley, California. Grass Valley (pop. 5,149) is located in Nevada County (pop. 26,346) and situated about 80 kilometers (50 miles) northeast of Sacramento. There is no local broadcast transmission service in Grass Valley or Nevada County.

10. In the Notice, we set out economic and other information pertaining to the need for a first assignment in Grass Valley. Based on that information, we believe the public interest would be served by assigning Channel 221A to Grass Valley, California, to provide a first local broadcast service in this community. It would also represent the first service in Nevada County in which it is located.

11. Based on the foregoing considerations, we are of the view that the public interest would be served by assigning FM channels to the communities listed below.

12. *Accordingly, it is ordered*, That effective November 11, 1976, the FM Table of Assignments (§ 73.202(b) of the rules) is amended with respect to the cities listed below as follows:

City:	*Channel No.*
California, Grass Valley	221A
Pennsylvania, Saegertown	232A

13. Authority for the amendments adopted herein is found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules and regulations.

14. *It is further ordered*, That the petition (RM-2660) filed by Israel Sinofsky, for assignment of Channel 269A to Carpinteria, California, is denied.

15. *It is further ordered*, That the petition (RM-2671) filed by FM Station Atlas for assignment of Channel 269A to Two Harbors, Minnesota, is denied.

16. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307).)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-29657 Filed 10-7-76;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. MC-7 (Sub-No. 1)]

PART 1048—COMMERCIAL ZONES

Washington, D.C.; Order on Reconsideration

At a session of the Interstate Commerce Commission, Division 1, Acting as an Appellate Division, held at its office in Washington, D.C., on the 28th day of September 1976.

It appearing, that on August 2, 1976, the Commission, Review Board Number 2, made and filed its report and order on petition in 125 M.C.C. 276, in this proceeding, denying in whole the relief sought (inclusion of an area .49 square miles into the Washington, D.C., commercial zone) as contemplated by section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8) and 49 CFR 1048.4);

It further appearing, that by petition for reconsideration, filed September 13, 1976, Montgomery County, Md., seeks reconsideration of the prior report and order at 125 M.C.C. 276, so as to have included within the present commercial zone boundaries of Washington, D.C., and, in addition, an area encompassing the new Montgomery County Service Park (comprising a total of .49 square miles);

It further appearing, that the facts as enumerated by the review board in its report and order at 125 M.C.C. 276 are correct in all material respects and are affirmed and adopted as our own;

It further appearing, that the area sought to be included within the present zone boundaries comprises a new facility (the Montgomery County Service Park) intended to house a number of area facilities (the Montgomery County Department of Liquor Control Warehouse, the Montgomery County Department of Transportation Maintenance Yard, the Maryland-National Capital Park and Planning Commission Maintenance Yard, the Montgomery County Board of Education Maintenance Yard, and the Shady Grove METRO facility, among others) which had previously been located within the present commercial zone boundaries; that the area sought to be included is immediately adjacent to the present zone boundaries, comprises but .49 square miles, and is presently connected to the present zone boundaries by a private access road; that there presently exists a substantial daily traffic flow between the new liquor warehouse, presently in operation, and points within the District of Columbia; that electric power and telephone service are supplied to both the new facility and the Washington, D.C., metropolitan area by the same companies; that the area sought to be included herein is part of the Washington Metropolitan Area Transit Authority which provides public transportation between Washington, D.C., and the new county facility (and to points beyond); that the special circumstances presented by the petition and evidence in support thereof (the fact that: The area sought to be included is small, the relocated county facilities were previously within the zone, the area sought to be included is presently connected to the existing zone by a private road, and the redefinition will clarify and correct certain presently existing ambiguities in the presently defined zone), in their totality, demonstrates a nexus between the area sought to be included and Washington, D.C., itself; and that the area described in the notice accompanying this order is, in fact, economically and commercially a part of Washington, D.C.;

Wherefore, and good cause appearing therefor:

It is ordered, That this proceeding be, and it is hereby, reopened for reconsideration.

It is further ordered, That the report and order entered in Ex Parte No. MC-7 (Sub-No. 1) on August 2, 1976, be, and it is hereby, vacated and set aside to the extent it is inconsistent herewith, and the revision in the notice accompanying this order, which revision is subject to prior publication in the FEDERAL REGISTER of the accompanying notice of the limits of the commercial zone, shall be substituted in lieu of the present commercial zone limits as defined in 49 CFR 1048.4.

It is further ordered, That this order shall become effective on November 1, 1976, and shall continue in effect until further order of the Commission.

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 filing a copy with the Director, Office of the Federal Register.

ROBERT L. OSWALD,[1]
Secretary.

The Interstate Commerce Commission has modified § 1048.4 of the Code of Federal Regulations by the redefinition of the commercial zone limits of Washington, D.C. This action stems from a petition filed by Montgomery County, Md., on June 1, 1976, requesting that the commercial zone limits of Washington, D.C., be redefined to include the Montgomery County Service Park, an area of .49 square miles, which area would be exempt from the Commission's economic regulation under section 203(b)(8) of the Interstate Commerce Act.

This rule is issued under authority of 49 Stat. 543, as amended 544, as amended 546, as amended 49 U.S.C. 302, 303, and 304.

Issued in Washington, D.C., this 28th day of September 1976.

Accordingly, this action revises 49 CFR 1048.4 as follows:

§ 1048.4 Washington, D.C.

The zone adjacent to and commercially a part of Washington, D.C., within which

[1] By the Commission, Division 1, Acting as an Appellate Division, Commissioners Murphy, Gresham, and Christian. Commissioner Murphy dissenting. Dissenting statement filed as part of the original document.

transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8) includes and it is comprised of all as follows:

Beginning at the intersection of MacArthur Boulevard and Falls Road (Maryland Highway 189) and extending northeasterly along Falls Road to its junction with Scott Drive, thence west on Scott Drive to its junction with Viers Drive, thence west on Viers Drive to its junction with Glen Mill Road, thence northeast on Glen Mill Road to its junction with Maryland Highway 28, thence west on Maryland Highway 28 to its junction with Shady Grove Road, thence northeasterly on Shady Grove Road to its junction with Briardale Road, thence southeasterly on Briardale Road to its junction with Redland Road, thence southwesterly on Redland Road to Crabbs Branch, thence southeasterly along the course of Crabbs Branch to Rock Creek, thence southerly along the course of Rock Creek to Viers Mill Road (Maryland Highway 586), thence southeasterly along Viers Mill Road approximately 0.3 mile to its junction with Aspen Hill Road, thence northeasterly along Aspen Hill Road to its junction with Brookeville Road (Maryland Highway 97), thence southeasterly along Brookeville Road to its junction with Maryland Highway 183, thence northeasterly along Maryland Highway 183 to Colesville, Md., thence southeasterly along Beltsville Road to its junction with Powder Mill Road (Maryland Highway 212), thence easterly over Powder Mill Road to its junction with Montgomery Road, thence northeasterly along Montgomery Road, approximately 0.2 mile, to its junction with an unnumbered highway extending northeasterly to the north of Ammendale Normal Institute, thence along such unnumbered highway for a distance of about 2.2 miles to its junction somewhat north of Virginia Manor, Md., with an unnumbered highway extending easterly through Muirkirk, Md., thence along such unnumbered highway through Muirkirk to its junction, approximately 1.8 miles east of the Baltimore and Ohio Railroad, with an unnumbered highway, thence southwesterly along such unnumbered highway for a distance of about 0.5 mile to its junction with an unnumbered highway, thence southeasterly along such unnumbered highway through Springfield and Hillmeade, Md., to its junction with Defense Highway (U.S. Highway 50), thence southwesterly along Defense Highway approximately 0.8 mile to its junction with Enterprise Road (Maryland Highway 556), thence southerly over Enterprise Road to its junction with Central Avenue (Maryland Highway 214), thence westerly over Central Avenue about 0.5 mile to its crossing of Western Branch, thence southerly down the course of Western Branch to Maryland Highway 202, thence westerly approximately 0.3 mile along Maryland Highway 202 to its junction with White House Road, thence southwesterly along White House Road to its junction with Maryland Highway 221, thence southeasterly along Maryland Highway 221 to its junction with Maryland Highway 4, thence westerly along Maryland Highway 4 to the boundary of Andrews Air Force Base, thence south and west along said boundary to Brandywine Road (Maryland Highway 5), thence northwesterly along Maryland Highway 5 to its junction with Maryland Highway 337, thence southwesterly along Maryland Highway 337 to its junction with Maryland Highway 224, thence southerly along Maryland Highway 224 to a point opposite the mouth of Broad Creek, thence due west across the Potomac River to the west bank thereof, thence southerly along the west bank of the Potomac River to Gunston Cove, thence up the course of Gunston Cove to Pohick Creek, thence up the course of Pohick Creek to Virginia Highway 611, thence southwesterly along Virginia Highway 611 to the Fairfax-Prince William County line, thence along said county line to Virginia Highway 123, thence northerly along Virginia Highway 123 to its junction with Virginia Highway 636, thence northeasterly along Virginia Highway 636 to its junction with Virginia Highway 638, thence northwesterly along Virginia Highway 638 to its junction with Virginia Highway 620, thence westerly along Virginia Highway 620 to its junction with Virginia Highway 655, thence northeasterly along Virginia Highway 655 to its junction with U.S. Highway 211, thence westerly along U.S. Highway 211 to its junction with Virginia Highway 608, thence northerly along Virginia Highway 608 to its junction with U.S. Highway 50, thence westerly along U.S. Highway 50 to the Fairfax-Loudoun County line, thence northeasterly along said county line to its intersection with Dulles International Airport, thence along the southern, western, and northern boundaries of said airport to the Fairfax-Loudoun County line (at or near Dulles Airport Access Road) thence northeasterly along said county line to its junction with Virginia Highway 7, thence southeasterly along Virginia Highway 7 to its junction with Virginia Highway 193, thence along Virginia Highway 193 to its junction with Scott Run Creek, thence northerly down the course of Scott Run Creek to the Potomac River, thence due north across the river to MacArthur Boulevard to its junction with Maryland Highway 189, the point of beginning.

[FR Doc.76-29701 Filed 10-7-76;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 32—HUNTING

Horicon National Wildlife Refuge; Wis.

The following special regulation is issued and is effective October 8, 1976.

§ 32.32 Special regulations; big game, for individual wildlife refuge areas.

WISCONSIN

HORICON NATIONAL WILDLIFE REFUGE

The public hunting of deer on the Horicon National Wildlife Refuge, Wisconsin, is permitted only on the area designated by signs as open to hunting, during the period November 20 through November 28, 1976, with designated firearms, and during the period December 4 through December 31, 1976 with bow and arrow. The open area, comprising 20,700 acres, is delineated on maps available at refuge headquarters, Mayville, Wisconsin, and from the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Hunting shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1976.

JACK TOLL,
Refuge Manager,
Horicon National Wildlife Refuge.

OCTOBER 1, 1976.

[FR Doc.76-29674 Filed 10-7-76;8:45 am]

PART 32—HUNTING

Horicon National Wildlife Refuge; Wis.

The following special regulation is issued and is effective October 8, 1976.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

WISCONSIN

HORICON NATIONAL WILDLIFE REFUGE

The public hunting of pheasants and rabbits on the Horicon National Wildlife Refuge, Wisconsin, is permitted only on the area designated by signs as open to hunting, during the period October 30 through December 12, 1976. The open area, comprising 20,700 acres, is delineated on maps available at refuge headquarters, Mayville, Wisconsin, and from the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

Hunting shall be in accordance with all applicable State regulations governing the hunting of pheasants and rabbits.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 12, 1976.

JACK TOLL,
Refuge Manager,
Horicon National Wildlife Refuge.

OCTOBER 1, 1976.

[FR Doc.76-29675 Filed 10-7-76;8:45 am]

proposed rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 982]

FILBERTS GROWN IN OREGON AND WASHINGTON

Proposed Expenses of the Filbert Control Board and Rate of Assessment for the 1976–77 Fiscal Year

Notice is given of a proposal regarding expenses of the Filbert Control Board, and rate of assessment, for the 1976–77 fiscal year, under §§ 982.60 and 982.61 of the marketing agreement, as amended, and Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Board has recommended for the 1976–77 fiscal year beginning August 1, 1976, a budget of expenses in the total amount of $41,014. Based on the volume of filberts estimated to be subject to this regulatory program during the 1976–77 fiscal year, an assessment rate of 0.226 cent per pound of assessable filberts is expected to provide sufficient funds to meet the estimated expenses of the Board.

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than October 26, 1976. All written submissions made regarding this notice should be in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

§ 982.321 Expenses of the Filbert Control Board and rate of assessment for the 1976–77 fiscal year.

(a) *Expenses.* Expenses in the amount of $41,014 are reasonable and likely to be incurred by the Filbert Control Board during the fiscal year beginning August 1, 1976, for its maintenance and functioning and for such purposes as the Secretary may, under this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for this fiscal year, payable by each handler under § 982.61, is fixed at 0.226 cent per pound of filberts.

Dated: October 5, 1976.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc.76-29672 Filed 10-7-76;8:45 am]

Animal and Plant Health Inspection Service

[9 CFR Parts 160, 161]

VETERINARY TECHNICIANS BY ACCREDITED VETERINARIANS

Proposed Requirements and Standards for Use

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to sections 3, 4, 5, 11, and 13 of the Act of May 29, 1884, as amended, section 10 of the Act of August 30, 1890, sections 1 and 2 of the Act of February 2, 1903, as amended, section 3 of the Act of March 3, 1905, as amended, the Act of May 31, 1920, sections 3 and 11 of the Act of July 2, 1962, sections 12–19 and 21 of the Federal Meat Inspection Act (21 U.S.C. 105, 111–113, 114, 114a, 114a–1, 116, 120, 121, 125, 134b, 134f, 612–619 and 621), and section 9 of the Horse Protection Act of 1970 (15 U.S.C. 1828), the Animal and Plant Health Inspection Service, is considering amending Parts 160 and 161, Title 9, Code of Federal Regulations, to provide for accredited veterinarians, in States which authorize such procedures, to employ and utilize the services of veterinary technicians in carrying out certain functions required by regulations and cooperative State-Federal program standards.

Statement of considerations. Current regulations which set forth the standards for accredited veterinarians require that all official functions be performed by an accredited veterinarian personally. With the increased traffic in livestock, and the decline in the number of veterinarians available for service relating to cooperative disease eradication programs in recent years, it has become virtually impossible for an accredited veterinarian to personally perform all of the tasks required.

Recently, the utilization of veterinary technicians to perform certain tasks under the supervision of veterinarians has gained wide acceptance, by State and Federal animal health regulatory agencies and within the veterinary profession. Several States have adjusted, or are considering adjusting, their veterinary practice acts or similar authorities to provide for the employment and use of technicians by veterinarians in private practice.

Specific tasks such as drawing blood samples for brucellosis testing, vaccinating for brucellosis, preparation of test charts and vaccination reports, and identifying animals as required by regulations and cooperative program standards can be performed properly by technicians under the supervision and guidance of an accredited veterinarian. Such utilization of technicians in States where it is authorized would greatly benefit cooperative program needs, and free accredited veterinarians to perform those tasks which require the personal attention of an accredited veterinarian.

This proposal is not intended to lessen the responsibilities of an accredited veterinarian in regard to compliance with the standards for either the accredited veterinarian or for the technicians employed and supervised by him. Further, this proposal would not relieve the accredited veterinarian of his responsibility for any of the functions performed by the veterinary technician under his supervision.

Therefore, Parts 160 and 161 would be amended in the following respects:

1. In § 160.1, a new paragraph (h) would be added to read:

§ 160.1 Definitions.

* * * * *

(h) *"Veterinary technician."* A person licensed or otherwise authorized by the State in which the functions set forth in § 161.2(l) are to be performed, and who is employed and supervised by an accredited veterinarian who takes full responsibility for the performance of such functions.

2. § 161.2, a new paragraph (l) would be added to read:

§ 161.2 Standards for accredited veterinarians.

* * * * *

(l) Notwithstanding the provisions of this section, an accredited veterinarian may, when such procedure is authorized by the State in which the veterinarian is accredited, employ veterinary technicians for the purposes of drawing blood samples for brucellosis testing, administering brucella vaccine (Strain 19), branding of reactors and exposed animals, and preparing related records and reports. The accredited veterinarian shall personally sign all such records and reports and he shall assume full responsibility, and his accreditation shall be subject to suspension or revocation under § 161.3, for any failure of a veterinary technician in his employ to comply with any provisions of the standards for veterinary accreditation as set forth in this section.

Any person who wishes to submit written data, views or arguments concerning the proposed amendments may do so by filing them with the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Maryland 20782 before November 10, 1976.

All written submissions made pursuant to this notice will be made available for

public inspection at the Federal Building, 6505 Belcrest Road, Room 870, Hyattsville, Maryland, during regular hours of business (8:00 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

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

Done at Washington, D.C., this 29th day of September 1976.

R. P. JONES,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.76-29526 Filed 10-7-76;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Part 298]

VESSEL FINANCING ASSISTANCE

Proposed Rulemaking Regarding Obligation Guarantees

Notice is hereby given that the Maritime Administration, Department of Commerce proposes to revise Part 298, Title 46, Code of Federal Regulations.

The revision proposed herein provides comprehensive regulations relating to the operation of the program of Obligation Guarantees (Title XI program) authorized by Title XI of the Merchant Marine Act, 1936, as amended (the Act), 46 U.S.C. 1271–1279. The proposed revision implements the extensive technical changes in the form of vessel financing assistance effected by the Federal Ship Financing Act of 1972, Pub. L. 92–507 (86 Stat. 909). These regulations are not applicable to the Title XI program for commercial fishing vessels, which is administered by the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. Regulations relating to the Fishing Vessel Obligation Guarantee Program Procedures promulgated by NOAA, appear at 50 CFR Part 255.

Under the Title XI program as it existed prior to the 1972 amendment, the Government insured a loan or mortgage agreement. This procedure required each purchased of ship financing bonds (or a trustee), the borrower, and the Government to be party to numerous security agreements, including the mortgage. The 1972 amendment to Title XI was enacted to simplify the form of Government assistance in the financing of vessel construction, reconstruction and reconditioning. After approval of an application for assistance, the United States, represented by the Secretary of Commerce (Secretary), guarantees the payment of the principal of, and interest on one or multiple debt instruments (obligations) issued by the legal owner of the vessel (obligor), who is or will become the mortgagor of one or more vessels, which are to be the principal security to the Secretary for issuing and continuing the guarantees. The guarantee of the United States is endorsed on the face of each obligation by an authorized agent of the Secretary (authenticating agent). All security for the guarantees runs directly to the Secretary, and is provided for in the mortgage, security agreement and other agreements. Holders of the obligations (obligees) rely only on the guarantees as security for their loans to the obligor.

Some of the most significant provisions of these regulations are the following:

(1) Unique terms relating to the identity, duties, rights and responsibilities of the various participants in a vessel financing under the Title XI program are defined (§ 298.2). There are also financial definitions (§ 298.13(b)). Other terms of importance appear in parentheses, with headings in capital letters, after being described in the text. "Depreciated actual cost" is explained in the context of the limitation on the amount of guarantees (§ 298.21(g)).

(2) A procedure is set forth for an applicant to claim, at the time of application, that certain information contained in the application is exempt from production pursuant to a request based on provision of the Freedom of Information Act (5 U.S.C. 552). Unless the applicant makes such a timely claim and receives a favorable determination, the Maritime Administration will not oppose a subsequent request for production of any information contained in the application. This procedure allows the Maritime Administration to carry out the mandate of the Freedom of Information Act by giving consideration to the applicant's assertion of exemption at the time of application, prior to an actual request for public disclosure. The proposed provisions afford guidance to applicants who might be concerned about the possible public disclosure of sensitive information required to be included in the application (§ 298.3).

(3) An applicant for guarantees must pay a non-refundable filing fee of $1,000 at the time of application for a commitment by the Secretary to execute guarantees (§ 298.3).

Within 30 days after a conditional commitment is issued by the Secretary (letter commitment), the applicant must pay an additional fee for the investigation of the project described in the application (§ 298.15). The base fee is $1,000 for the first $300,000 of obligations, plus one-eighth of one percent of the balance of obligations, if guarantees are to be issued after completion of the project. An additional 10 percent of this sum is charged if the guarantees are to be issued prior to completion of the project. If, for any reason the Secretary disapproves the application, one half of the investigation fee is due and payable. An additional investigation fee is imposed for any amendment to an application representing a "substantial change", examples of which are given. The additional investigation fee is $3,000, if the application amendment occurs prior to review of the documentation, and one-half of the base investigation fee, with a maximum of $50,000, if the amendment is made after review of the documentation. The filing fee of $1,000 is credited against the investigation fee.

(4) The applicant and any other person who is or will be the legal or beneficial owner of a vessel financed under the Title XI program, or who will have any interest in the vessel, must be United States citizens, within the meaning of section 2 of the Shipping Act, 1916, as amended, (46 U.S.C. 801–842), unless the Secretary approves a non-citizen participation under authority of section 9, 37 and 41 of that Act. Persons required to be United States citizens must submit proof of citizenship to the Secretary, in the form and manner prescribed in 46 CFR Part 355 (§ 298.10).

(5) Each vessel which is to be security for guarantees must satisfy numerous specified criteria, including domestic origin of materials and components, where practicable. Guarantees will not be executed for the purpose of financing the reconstruction or reconditioning of a vessel unless, in the opinion of the Secretary, the reconstruction or reconditioning will increase the useful life of the vessel by at least five years (§ 298.11).

(6) The applicant for a commitment to execute guarantees must demonstrate to the satisfaction of the Secretary that the owner of a vessel to be security for guarantees will meet either primary or alternative working capital and equity requirements at the date of the initial closing (defined). If the vessel owner is not to be the operator, at the initial closing the vessel operator must satisfy the working capital requirements, while the owner and the operator must satisfy different equity requirements. The vessel owner or operator is also the party (company) required to enter into a Title XI Reserve Fund and Financial Agreement to provide further security to the Secretary for the guarantees. It establishes continuous and additional restrictions (covenants) placed on the company's activities and its responsibility to make reserve fund deposits under the agreement, which vary, depending on whether the company is subject to and is in compliance with the primary or alternative financial requirements at closing (§ 298.35).

(7) The Secretary may approve guarantees for obligations issued to refinance existing debt (whether or not receiving assistance under Title XI), so long as the existing debt was issued for one of the purposes specified in section 1104(a)(1)–(3) of the Act, within the time limitation prescribed in section 1104(a)(1). The Secretary will allow refinancing of such debt which is not receiving Title XI assistance only if satisfied, by information furnished by the applicant, that the average annual payment of interest on the obligations to be issued for purposes of refinancing will be at least 20 percent less than the average annual payment of interest on the debt to be refinanced (§ 298.21).

(8) The Secretary may approve guarantees for obligations secured by a delivered or redelivered vessel and issued to finance the construction, reconstruction

or reconditioning of a vessel or to finance facilities or equipment pertaining to marine operations. Such facilities or equipment must be of a specialized nature, used principally for servicing vessels and in handling waterborne cargo in the close proximity of the vessel berthing area, excluding over the road equipment (other than chassis and containers), permanent or semi permanent structures and real estate (§ 298.22).

(9) The interest rate of each obligation of a stated maturity must be determined by the Secretary to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary.

(10) The Secretary will not issue guarantees unless satisfied that the documentation provides adequate security for the guarantees. Most important is the execution and delivery to the Secretary of a performed mortgage on one or more vessels (§ 298.31). Required assignments of rights and covenants from the obligor to the Secretary are specified (§ 298.32).

(11) With respect to the escrow fund, authorized and described in section 1108 of the Act, specific requirements are given concerning deposits to, disbursements from and investment of the fund (§ 298.33). By application of a formula, there may be a requirement of a deposit of proceeds from the sale of obligations in a construction fund (§ 298.34). The escrow and construction funds are security for the Secretary.

(12) As further security to the Secretary, provision is made for the creation of a fund (reserve fund) to which deposits may be required by a company from income attributable (by use of a formula) to the operation of one or more vessels financed with the assistance of the guarantees (§ 298.35). So long as the guarantees are in effect, a company must make annual deposits to a special joint depository account unless, as of the close of its accounting year, it is subject to and is in compliance with the primary financial requirements at closing, or the amount in the reserve fund is at least 50 percent of the principal amount of outstanding obligations. Detailed rules are provided concerning the computation of the annual deposit, withdrawals from and investment of the fund.

(13) An annual fee (guarantee fee) is charged by the Secretary to the obligor at a rate applied to the average principal amount of obligations outstanding during the annual period. The range of rates is ¼ to ½ of 1 percent before delivery or redelivery and ½ to 1 percent thereafter. Generally, within those ranges, the actual rate charged varies inversely with the ratio of the equity to long term debt of the participant in the financing considered by the Secretary to be the primary source of credit in the transaction (credit source).

Although the promulgation of regulations regarding the Title XI program is exempt from the notice requirements of 5 U.S.C. 553, the Maritime Administration is publishing the regulations in proposed form. Comments from interested persons are invited with respect to the proposed revision of Part 298, and may be submitted to the Secretary, Maritime Administration, Washington, D.C. 20230. All material received on or before November 30, 1976, will be considered. All comments in response to the proposed revision will be available for public inspection during normal business hours in Room 3900–B, Department of Commerce.

The proposed revision of Part 298 has been reviewed pursuant to E.O. 11821 and OMB Circular A–107, and it has been determined to have no major inflationary impact.

Part 298 of Title 46, Code of Federal Regulations, is proposed to read as follows:

PART 298—OBLIGATION GUARANTEES

Subpart A—Introduction

Sec.
298.1 Purpose.
298.2 Definitions.
293.3 Applications.

Subpart B—Eligibility

298.10 Citizenship.
298.11 Vessel requirements.
298.12 Operating qualifications.
298.13 Financial requirements.
298.14 Economic soundness.
298.15 Investigation fee.
298.16 Substitution of participants.

Subpart C—Guarantees

Sec.
298.20 Term of guarantees.
298.21 Limits.
298.22 Amortization of obligations.
298.23 Refinancing.
298.24 Facilities and equipment related to marine operations.
298.25 Financing repayment of construction-differential subsidy.
298.26 Excess interest or other consideration.
298.27 Lease rates.

Subpart D—Documentation

298.30 Nature and content of obligations.
298.31 Mortgage.
298.32 Required provisions.
298.33 Escrow fund.
298.34 Construction Fund.
298.35 Reserve fund and financial agreement.
298.36 Annual guarantee fee.
298.37 Examination and audit.

Subpart E—Defaults, Reporting Requirements, Applicability of Regulations

298.40 Defaults.
298.41 Remedies after default.
298.42 Reporting requirements-financial statement.
298.43 Applicability of regulations.

AUTHORITY: Sec. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b), Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91–469 (84 Stat. 1036), and Department of Commerce Organization 10–8 (38 FR 19707, July 23, 1973).

Subpart A—Introduction

§ 298.1 Purpose.

This part prescribes regulations implementing the provisions of Title XI of the Merchant Marine Act, 1936, as amended by Public Law 92–507 (46 U.S.C. 1271–1279), governing Federal ship financing assistance.

§ 298.2 Definitions.

For the purpose of this part—

(a) "Act" means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101–1294).

(b) "Actual Cost" of a Vessel means, as of any specified date, the aggregate, as determined by the Secretary, of all amounts paid by or for the account of the Obligor on or before that date and all amounts which the Obligor is then obligated to pay thereafter, for the construction, reconstruction or reconditioning of such vessel.

(c) "Affiliate" or "Affiliated" means any Person directly or indirectly controlling, controlled by or under common control with another Person.

(d) "Authenticating Agent" means a bank or other financial institution which, pursuant to an agreement with the Secretary, is authorized to endorse the Guarantee of the United States on each Obligation (authentication), and where there is a divisible single Obligation, is responsible for making proper demand, on behalf of the Obligees, for payment under the Guarantees if a default occurs.

(e) "Closing" means a meeting of various participants or their representatives in a Title XI financing, at which a commitment to issue Guarantees is executed, all or part of the Obligations are authenticated and issued and the proceeds are made available for a purpose set forth in section 1104(a) of the Act, or which occurs when a Vessel is delivered and a Preferred Mortgage is executed as security to the Secretary.

(f) "Depository" means a bank or other financial institution organized and doing business under the laws of the United States, any State or territory thereof or the District of Columbia, which is authorized under such laws to exercise corporate trust powers, is a member of the Federal Deposit Insurance Corporation and accepts deposits for purposes of implementing the program authorized by Title XI of the Act.

(g) "Documentation" means all or any part of the agreements relating to an entire Title XI financing, subject to the approval of the Secretary, irrespective of whether the Secretary is a party to each agreement.

(h) "Guarantee" means the contractual commitment of the United States of America, represented by the Secretary, endorsed on the face of each Obligation, to make payment to the Obligee or an agent, upon demand, of the unpaid interest on, and the unpaid balance of the principal of such Obligation, including interest accruing between the date of default (described in § 298.40 of this part) and the date of payment.

(i) "Guarantee Fee" means the annual fee payable to the Secretary in consideration for the continuing Guarantees.

(j) "Indenture Trustee" means a bank with corporate trust powers or a trust company, approved by the Secretary,

with a combined capital and surplus of at least $3,000,000, which has duties under the terms of a Trust Indenture, entered into with the Obligor that include issuing and registering the ownership and transfer of Obligations, holding funds in trust and disbursing such funds to redeem and make payments of interest and principal with respect to Obligations, making demand for payment under the Guarantees in the event of default and remitting payments received to Obligees, and which shall also endorse the Guarantees, pursuant to a specific authorization of the Secretary.

(k) "Letter Commitment" means a letter from the Secretary to an applicant for Guarantees, setting forth specific determinations made by the Secretary with respect to the applicant's proposed project, as required by the Act and regulations of this part, and stating the Secretary's commitment to execute Guarantees, subject to compliance by the applicant with any conditions specified therein.

(l) "Maritime Administration" means that agency created within the Department of Commerce by Reorganization Plan No. 21 of 1950 (64 Stat. 1273), amended by Reorganization Plan No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036).

(m) "Mortgage" includes a Preferred Mortgage as defined in the Ship Mortgage Act, 1920, as amended, on any Vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank Vessel of less than twenty-five gross tons), and a mortgage on such a Vessel which will become a Preferred Mortgage when recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended.

(n) "Obligation" means any note, bond, debenture, or other evidence of indebtedness, as defined in section 1101 (c) of the Act, issued for one of the purposes specified in section 1104(a) of the Act.

(o) "Obligee" means the holder of an Obligation.

(p) "Obligor" means any party primarily liable for payment of principal of or interest on any Obligation.

(q) "Paying Agent" means any Person appointed by the Obligor to pay the principal of or interest on the Obligations on behalf of the Obligor.

(r) "Person" means any individual, estate, foundation, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof.

(s) "Preferred Mortgage" means a Mortgage which is recorded, endorsed and otherwise in compliance with the requirements of the Ship Mortgage Act, 1920, as amended (46 U.S.C. 911-984).

(t) "Secretary" means the Secretary of Commerce, acting by and through the Assistant Secretary of Commerce for Maritime Affairs, the Maritime Administrator or any official of the Maritime Administration to whom is duly delegated the authority, from time to time, to perform the functions of the Secretary or the Maritime Administrator.

(u) "Secretary's Note" means a promissory note from the Obligor to the Secretary in an amount equal to the aggregate amount of the Obligations, which is issued simultaneously with the Guarantees.

(v) "Security Agreement" means the primary contract between the Obligor and the Secretary, providing for the transfer to the Secretary by the Obligor of all right, title and interest of the Obligor in property (including rights under contracts in existence or to be entered into), and containing other provisions relating to representations and responsibilities of the Obligor to the Secretary as security for the issuance of Guarantees.

(w) "Vessel" means all types of vessels, whether in existence or under construction, including passenger, cargo and combination passenger-cargo carrying Vessels, tankers, tugs, towboats, barges and dredges which are or will be documented under the laws of the United States, floating drydocks which have a capacity of at least thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls, and oceanographic research or instruction or pollution treatment, abatement or control Vessels which are owned by citizens of the United States.

§ 298.3 Applications.

(a) *Form and time of filing.* Each application for a commitment to execute Guarantees shall be made on Form MA 163 to the Secretary, Maritime Administration, United States Department of Commerce, Washington, D.C. 20230, and be certified in the manner prescribed on said form. All required information shall be included on the form or in exhibits and schedules submitted with the application. Each exhibit and schedule shall contain a statement, on the first page thereof, clearly identifying the document as an attachment to an application for Obligation Guarantees, stating the name of the applicant and the date of the application. The applicant shall not satisfy requirements to furnish specific information by making reference on the application, or on any attachment, to any document that the applicant has previously submitted to the Maritime Administration with respect to any other matter. The Secretary will not process the application until the applicant has submitted all required information. Each completed application shall be filed with the Maritime Administration at least 120 days prior to the anticipated date by which the applicant requires a Letter Commitment. An applicant to whom a Letter Commitment has been issued shall comply with the guidelines for Documentation, a copy of which is attached to Form MA 163.

(b) *Filing Fee.* Each application must be accompanied by a filing fee in the amount of $1,000, which will be nonrefundable, irrespective of whether the Secretary subsequently issues a Letter Commitment.

(c) *Confidential information.* If the application, including attachments thereto, contains information which the applicant considers to be trade secrets and commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the applicant shall assert a claim of exemption at the time of application. If no claim of exemption is made when the application is filed, the Maritime Administration shall not oppose any request subsequently made for disclosure, pursuant to the Freedom of Information Act, of any information contained in the application. Any claim of exemption shall be made in a memorandum or letter contained in a sealed envelope marked "Confidential Information", addressed to the Secretary, Maritime Administration, and shall be subscribed by the applicant, or with respect to a corporate applicant, a responsible corporate officer of the applicant. The applicant shall specifically and separately designate each part of the application, including attachments thereto, to which exemption from disclosure is claimed by noting "Confidential Information" thereon, and shall place each page in the sealed envelope. The applicant shall state in the memorandum or letter the bases, in detail, for each assertion of exemption, including but not limited to statutory and decisional authority. The Secretary, Maritime Administration, shall make a determination as to each assertion made by the applicant, and shall advise the applicant in writing of these determinations. If the Secretary, Maritime Administration, makes a determination favorable to the applicant as to any item of information in the application, the applicant will be advised that the Maritime Administration will honor that determination in the event of any request for production of such information made pursuant to the Freedom of Information Act. If a determination unfavorable to the applicant is made as to any item of information in the application, the applicant will be advised that unless a request for return of such information is made by registered mail to the Secretary, Maritime Administration, postmarked within 30 days of the date of the letter advising the applicant of the unfavorable determination, the information shall be associated with the balance of the application for processing, and shall be subject to disclosure by the Maritime Administration upon receipt of any request for disclosure under the Freedom of Information Act. If a request for return of information is made, the Maritime Administration will retain no copies of such information, and will process the application based only on the information that has not been returned.

Subpart B—Eligibility

§ 298.10 Citizenship.

(a) *Initial qualification.* The applicant and any other Person who is or will be

the legal or beneficial owner of a vessel being financed under Title XI of the Act, or who will have any interest in the Vessel, including, but not limited to, settlors, owner trustees, bareboat charterers, time or other charterers (including, without limitation, those under drilling contracts and contracts of affreightment), or Persons having any fiduciary relationship therein, and shipbuilders who retain title to a Vessel during the period of construction, shall be citizens of the United States, within the meaning of section 2 of the Shipping Act, 1916 (1916 Act), as amended (46 U.S.C. 801–842), sections 37 and 38 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 861–889), and, as applicable, section 905(c) of the Act, unless the Secretary approves a noncitizen participation under the authority of sections 9, 37 and 41 of the 1916 Act.

(b) *Proof.* The applicant and any Person identified in the application who has or will have an interest in the Vessel shall, prior to the issuance of the Letter Commitment, establish United States citizenship in the form and manner prescribed in 46 CFR Part 355.

(c) *After letter commitment.* Any Person who has become identified with the project after the issuance of the Letter Commitment promptly shall establish in accordance with the guidelines for Documentation, United States citizenship in the form and manner prescribed in 46 CFR Part 355.

(d) *Supplemental proof.* At least 10 days prior to the Closing, all persons identified with the project who have established United States citizenship shall submit pro forma supplemental affidavits of citizenship or any other form of proof of citizenship acceptable to the Secretary, and on the date of such closing shall submit to the Secretary on forms approved by the Secretary, executed proof of continuing citizenship, bearing the date of Closing.

§ 298.11 Vessel requirements.

Each Vessel that is to be security for Guarantees shall meet the following criteria:

(a) *United States construction.* Be constructed, reconstructed or reconditioned entirely in a shipyard or shipyards of the United States, within the meaning of section 505 of the Act, and where practicable, only from articles, materials and supplies of the growth, production or manufacture of the United States, as defined in section 1401(h) of the Tariff Act of 1930 (19 U.S.C. 1401(h)). If an applicant for Guarantees elects to use foreign-source materials or components in the Vessel, the cost thereof shall not be included in the Actual Cost of the Vessel used as the basis for determining the amount of Guarantees, as set forth in § 298.21, except if the Secretary shall approve an application for waiver upon determining that:

(1) The article, material or supply is not customarily grown, produced or manufactured in the United States; or

(2) With respect to other than major components of the hull or superstructure, and any material used in the construction thereof, compliance with the United States origin requirement of this section would unreasonably delay completion of a Vessel beyond its contract delivery date, provided that the applicant submits evidence satisfactory to the Secretary that due diligence was employed to obtain materials of United States origin.

(b) *Competitive bids.* Be constructed, reconstructed, or reconditioned after solicitation of competitive bids for the work shown in the contract specifications, except if:

(1) It can be shown to the satisfaction of the Secretary that there are compelling reasons for not soliciting competitive bids, including, but not limited to, time factors, cost considerations and prior experience of the shipbuilder with respect to performance of similar projects; or

(2) Negotiation is permitted under Title V of the Act. Regardless of the basis for the contract award, the applicant's estimated construction contract price must be determined to be fair and reasonable by the Secretary. The Secretary will make this determination by means of an independent estimate of the cost of the Vessel, as described in the contract specifications, based upon existing average cost levels of material, labor and overhead expense for that type of Vessel. The estimate may include escalation (excluding material costs and other costs not expected to escalate) for the anticipated construction period of the Vessel, based upon considerations more fully described in § 298.21(e).

(c) *Class, condition and operation.* Be constructed, maintained and operated so as to meet the highest classification, certification, rating and inspection standards for vessels of the same age and type imposed by the American Bureau of Shipping (ABS), or such other standards as may be approved by the Secretary, and comply with all applicable laws, rules and regulations as to condition and operation, including, but not limited to, those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communication Commission, Public Health Service, or their respective successors, and all applicable treaties and conventions to which the United States is signatory, including, but not limited to the International Convention for Safety of Life at Sea. All Vessels (including tugs, tug/supply Vessels, supply Vessels and crew boats) whether for hire or not, shall be inspected by the United States Coast Guard.

(d) *Reconstruction or reconditioning.* Be reconstructed or reconditioned in the opinion of the Secretary, to increase the useful life of the Vessel by at least five years. Repairs necessary for the Vessel to meet the classification standards approved by the Secretary, or any regulatory body, or because of previous inadequate maintenance and repair, shall not constitute reconstruction or reconditioning within the meaning of this paragraph. An applicant for Guarantees secured by a Vessel to be reconstructed or reconditioned shall make the Vessel available at a time and place acceptable to the Secretary for a condition survey to be conducted by representatives of the Secretary. The applicant shall pay the cost of the condition survey. The scope and extent of the condition survey shall not be less effective than that required by the last ABS special Survey completed (if the Vessel is classified), next due or overdue, whichever date is nearest in accordance with the Vessel's age. The Vessel shall meet the standard of the survey necessary for retention of Class (if the Vessel is classified) and the operating records of the Vessel shall reflect normal operation of the Vessel's main propulsion and other machinery and equipment consistent with accepted commercial experience and practice.

§ 298.12 Operator's qualifications.

No Letter Commitment shall be issued by the Secretary without a prior determination that the applicant, the bareboat charterer, or other Person identified in the application as the operator of the Vessel, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel or Vessels which serve as security for the Guarantees, and otherwise to comply with all requirements of this part.

§ 298.13 Financial requirements.

(a) *In general.* To be eligible for Guarantees, the applicant and other participants in the project must submit at the time of application, and as subsequently required by the Secretary, financial information satisfactory to the Secretary that financial resources are or will be available to support the project which is the subject of the Title XI application.

(b) *Financial definitions.* For the purpose of this part—

(1) "Company" means any Person subject to financial requirements imposed under paragraphs (d) and (e) of this section and paragraphs (b) and (c) of § 298.35.

(2) "Working Capital" means the difference between current assets and current liabilities, both determined in accordance with generally accepted accounting principles, adjusted as follows:

(i) Current assets shall be reduced with respect to:

(A) Amounts in or required to be set aside in any reserve fund that is being maintained pursuant to an agreement covering a Vessel owned or leased by the Company and financed with the assistance of insurance or Guarantees by the Secretary, or in another similar fund required under any other mortgage, indenture or other agreement to which the Company is a party;

(B) Any securities, or other instruments of indebtedness of an Affiliate of the Company or of any stockholder, director, officer or employee (or any member of the family) of the Company or of such Affiliate, except reasonable advances to Agents required for the normal current operation of the Company's Vessels and receivables outstanding for

not more than 60 days, arising out of the ordinary course of business; and

(C) An amount equal to any excess of unterminated voyage revenue over unterminated voyage expense.

(ii) Current liabilities shall be increased by the amounts of Rentals payable within the next twelve months.

(3) "Equity" (net worth) means, as of any date, the total of paid-in-capital stock, paid-in-capital, retained earnings and all other amounts that would be included in Equity in accordance with generally accepted accounting principles, but exclusive of (i) any receivables from an Affiliate of the Company or any stockholder, director, officer, or employee (or any member of the employee's family) of the Company, or of an Affiliate of the Company (other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days) and (ii) any increment resulting from the reappraisal of assets.

(4) "Rentals" means, as of any date, that portion of non-capitalized and noncancellable leases, charters and other similar commitments relating to Vessels, equipment or facilities leased, chartered or otherwise to be used by the Company for a term of more than one year, and shall be determined as the greater of the following:

(i) The amount included in Long Term Debt as determined under generally accepted accounting principles; or

(ii) The aggregate present values of the minimum Rentals, relating to major categories of properties, e.g., real estate, Vessels and equipment. Present values shall be computed by discounting net Rentals (after subtracting, if practicable, estimated or actual amounts, if any, applicable to taxes, insurance, maintenance and other operating expenses) at an interest rate implicit in the term of each Rental at the time of entering into the Rental. If the interest rate is unknown, either the weighted average interest rate (based on present value), range of rates or specific interest rates shall be utilized.

(5) "Long Term Debt" means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in Long Term Debt in accordance with generally accepted accounting principles, less the balance of Escrow Fund deposits attributable to the principal of Obligations sold, where deposits are required in accordance with § 298.33. There shall also be included any Rentals and any guarantee or other liability for the debt of any other Person (except fees and expenses of an Indenture Trustee or Authenticating Agent and endorsements for deposits of checks and other negotiable instruments acquired in the ordinary course of business). Deferred income taxes shall not be included in Long Term Debt.

(6) "Capitalizable Cost" means the aggregate of the Actual Cost of the Vessel and those other items which customarily would be capitalized as Vessel costs under generally accepted accounting principles.

(7) "Depreciated Capitalizable Cost" means the Capitalizable Cost of a Vessel, depreciated on a straight line basis over the same useful life of the Vessel as determined by the Secretary for Actual Cost, and depreciated as required by § 298.21(g).

(c) *Applicability.* The financial resources shall be adequate to meet the Equity requirements in the project and existing Working Capital requirements, as set forth in paragraphs (d) and (e) of this section.

(1) The various financial requirements shall be met by the owner of the Vessel or Vessels to be security to the Secretary for the Guarantees, except that if the owner is not the operator, the overall financial requirements shall be allocated among the owner, the operator and other parties as determined by the Secretary.

(2) The Company shall satisfy the applicable financial requirements, in addition to any other financial requirements already imposed or which may be imposed upon it in connection with other Vessels financed under the Title XI program.

(3) A determination as to whether the Company has satisfied all financial requirements shall be based on the assumption that the projected financing has been completed. Accordingly, a pro forma balance sheet shall be submitted at the time of the application, reflecting any adjustment made pursuant to paragraph (d)(1)(i) of this section, and a revised pro forma balance sheet, reflecting the completion of the projected financing, shall be submitted at least five business days before the initial Closing.

(d) *Primary financial requirements at Closing.* Where the primary minimum financial requirements at Closing are satisfied and the Company is required to enter into a Title XI Reserve Fund and Financial Agreement, the financial covenants in § 298.35(b) are applicable. Primary financial requirements can apply to one or more Companies, and are determined as follows:

(1) *Owner as operator.* Where the owner is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The Company's Working Capital shall not be less than one dollar. This Working Capital requirement is based on the premise that the Company engages in a service-type activity with only normal Vessel inventory. If Working Capital includes other inventory, in addition to such normal Vessel inventory, the Secretary may adjust the requirement as considered appropriate. Also, if the Secretary determines that the Company's Working Capital includes accounts receivable that it reasonably could not expect to collect within one year, the Secretary may make adjustments to the Working Capital requirements.

(ii) *Long Term Debt.* The Company's Long Term Debt, which must include the Obligations (less the current portion thereof), shall not be greater than twice its Equity.

(iii) *Equity (net worth).* The Company's Equity shall be the greater of (A) 50 percent of its Long Term Debt or (B) 90 percent of its Equity as shown on the last audited balance sheet, dated not earlier than six months before the date of issuance of the Letter Commitment.

(2) *Lessee of charterer as operator.* Where a lessee or charterer is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The operator's Working Capital requirement shall be the same as that imposed on the owner as operator under paragraph (d)(1)(i) of this section and based on the same premise stated therein.

(ii) *Long Term Debt.* The operator's Long Term Debt shall not be greater than twice its Equity.

(iii) *Equity (net worth).* Different Equity requirements shall be imposed on the owner and operator of the Vessel, respectively, as follows:

(A) The owner's Equity shall at least be equal to the difference between the Capitalizable Cost or Depreciated Capitalizable Cost of the Vessel (whichever is applicable) and the total amount of the Guarantees.

(B) The operator's Equity shall be the same as that which is required of the owner as operator under paragraph (d)(1)(iii) of this section.

(e) *Alternative financial requirements at Closing.* If the applicant is unable to demonstrate to the satisfaction of the Secretary that there is or will be compliance with the primary financial requirements at Closing set forth in paragraph (d) of this section, eligibility for Guarantees shall be based upon satisfaction of alternatives minimum financial requirements, in which the financial covenants imposed and the requirements for maintenance of a Title XI Reserve Fund shall be as provided for in § 298.35(c). Alternative financial requirements are as follows:

(1) *Owner as operator.* Where the owner is to be the Vessel operator, the alternative requirements at Closing usually are as follows:

(i) *Working Capital.* The Company's Working Capital, which may be adjusted by the Secretary in accordance with the provisions set forth in paragraph (d)(1)(i) of this section, shall be an amount at least equal to the sum of the following (less the current portion of the Obligations):

(A) Eight percent of the estimated Capitalizable Cost of a Vessel to be financed upon delivery (redelivery in the case of a reconstructed or reconditioned Vessel), or eight percent of the estimated Depreciated Capitalizable Cost of a Vessel to be financed or refinanced after delivery. With respect to a reconstructed or reconditioned Vessel, the estimated Capitalizable Cost or Depreciated Capitalizable Cost, whichever is applicable (depending upon when financing occurs), shall be that related only to the

cost of work performed in the reconstruction or reconditioning;

(B) One year's premium for Vessel insurance including Hull, Machinery, Protection and Idemnity, and War Risk coverage; and

(C) One year's Guarantee Fee.

(ii) *Equity (net worth).* The Company's Equity shall be at least equal to 90 percent of the Equity as shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but not less than the sum of the following:

(A) The difference between (*1*) the estimated Capitalizable Cost of a new Vessel to be financed upon delivery, the estimated Capitalizable Cost of the work to be performed in reconstructing or reconditioning a Vessel, the Depreciated Capitalizable Cost of an existing Vessel to be refinanced or the Depreciated Capitalizable Cost of a new Vessel to be financed after delivery, and (*2*) the amount of the Guarantees; and

(B) The amount of Working Capital as determined in accordance with the provisions of paragraph (e) (1) (i) of this section.

(2) *Lessee or charterer as operator.* Where the lessee or charterer is the Vessel operator, the alternative financial requirements at Closing usually are as follows:

(i) *Working Capital.* The Company shall have Working Capital in an amount determined in accordance with the provisions of paragraph (e) (1) (i) of this section, applicable where the owner is the operator.

(ii) *Equity (net worth).* Different Equity requirements shall be imposed on the operator and the owner, respectively as follows:

(A) The operator shall have Equity at least equal to 90 percent of the Equity shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but no less than its Working Capital requirement.

(B) The owner shall have Equity in an amount determined in accordance with the provisions of paragraph (e) (1) (ii) (A) of this section.

(f) *Adjustments to financial requirements at Closing.* If the owner, although not operatiing a Vessel, assumes any of the operating responsibilities, the Secretary may adjust the respective Working Capital and Equity requirements of the owner and operator, otherwise applicable under paragraphs (d) and (e) of this section, by increasing the requirements of the owner and decreasing those of the operator by the same amount.

(g) *Subordinated debt considered to be equity.* With the consent of the Secretary, all or part of the Equity requirements applicable under paragraphs (d) and (e) of this section, except any part representing the difference between the Capitalizable Cost of the Vessel and the amount of the Obligations, may be satisfied by debt, fully subordinated as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Reserve Fund and Financial Agreement (described in § 298.35). Such subordinated debt shall not be secured by any interest in property that is security for Guarantees or Mortgage insurance under Title XI, unless the Obligor and the lender enter into a written agreement, satisfactory to the Secretary, providing, among other things, that if any Title XI financing or advance by the Secretary to the Obligor shall occur in the future, such security interest of the lender shall become subordinated to any indebtedness incurred by the Obligor and any security interest obtained by the Secretary in that property, or other property, with respect to the subsequent indebtedness.

(h) *Modified requirements.* The Secretary may waive or modify the financial requirements otherwise applicable under the provisions of paragraph (d) and (e) of this section, upon determining that there is substantial security for the Guarantees in addition to that usually required in the Security Agreement, e.g., guarantees of payment on the Secretary's Note by another Person or a long term charter by the Company to a Person considered by the Secretary to be in excellent financial condition, or may impose similar financial requirements on the Person providing the additional security for the Guarantees.

§ 298.14 Economic soundness.

No Letter Commitment for Guarantees shall be given by the Secretary without finding that the proposed project, with respect to which the Vessel or Vessels are to be financed under Title XI, will be economically sound. In making the economic soundness finding, the Secretary shall consider, together with other factors, the market potential for the employment of the Vessel or Vessels over the life of the Guarantees, projected revenues and expenses of the operation, the length of the Guarantee period and any charters, contracts of affreightment, transportation agreements or similar agreements which will assure the employment of the Vessel or Vessels.

§ 298.15 Investigation fee.

(a) *In general.* Within 30 days after the date of the Letter Commitment the applicant shall pay an Investigation Fee, computed as hereinafter provided, to the Secretary in the amount stated in the Letter Commitment. The Secretary may cancel the Letter Commitment if timely payment of the fee is not received. This fee is imposed to pay for the investigation of the project described in the application and the participants in the project, the appraisal of properties offered as security, Vessel inspection during construction, reconstruction or reconditioning (where applicable), and other administrative expenses. If, for any reason, the Secretary shall subsequently disapprove the application, one-half of the Investigation Fee shall be due and payable.

(b) *Maximum.* The Investigation Fee, including any amount imposed pursuant to paragraph (d) of this section, shall not exceed one-half of one percent of the aggregate amount of Obligations to be issued. The $1,000 filing fee previously paid upon filing the original application (described in § 298.3) shall be credited against the Investigation Fee.

(c) *Base fee.* The base fee shall be as follows:

(1) *After Vessel completion.*—If Guarantees are issued after construction, reconstruction or reconditioning of the Vessel or Vessels that serve as security for the Guarantees, the fee shall be $1,000 for the first $300,000 of Obligations plus one-eighth of one percent of the balance of the Obligations.

(2) *Before Vessel completion.*—If Guarantees are issued before completion of the project, the base fee shall be 110 percent of that charged with respect to a completed project.

(d) *Amendment of application.*—An amendment may be made to an application for a commitment to execute Guarantees by written notice to the Secretary, Maritime Administration, United States Department of Commerce, Washington, D.C. 20230. To be effective, an amendment must contain a statement on the first page thereof clearly identifying the document as an amendment to an application for Obligation Guarantees, stating the name of the applicant and the date of the original application. The applicant shall sign, date and certify the amendment at the end thereof. Additions to the base fee shall be imposed under the following circumstances:

(1) *Before Documentation reviewed.* There shall be an additional charge of $3,000 to pay the cost of processing an amendment made after the Letter Commitment has been issued, but before review of the Documentation by the Maritime Administration, if the Secretary determines that the amendment represents a substantial change in the application. A substantial change would include, but not be limited to, a change from an ownership to a sale and leaseback arrangement, drastic alteration of Vessel design, large cost increases or other changes that affect the basic economics of the project.

(2) *After Documentation reviewed.* If an amendment is made after review of the Documentation and prior to the sale of any Obligation, and the Secretary determines that the amendment represents a substantial change in the Documentation, there shall be an additional charge of one-half of the Investigation Fee charged pursuant ot paragraph (c) of this section, but not more than $50,000. A substantial change would include, but not necessarily be limited to, a basic change in the structure of the financing, such as a change from an ownership to a sale and leaseback arrangement, or

a substitution of parties resulting in a basic change affecting the credit risk of the financing. Ordinary changes in the Documentation such as cost changes, assignments, simple substitutions of parties, not affecting the basic credit or structure of the transaction, and other similar changes shall not be construed to be a substantial change.

§ 298.16 Substitution of participants.

Application may be made to the Maritime Administration for permission to substitute participants to a Mortgage and/or Security Agreement in a financing that is receiving assistance authorized by Title XI of the Act, both prior and subsequent to amendment by Pub. L. 92-507. A non-refundable fee shall be imposed, payable at the time of application. This fee shall be in addition to the Annual Guarantee Fee or annual premium charge for Mortgage insurance, whichever is applicable, as follows:

(a) *Mortgage assignment.* A mortgagee applying for permission to assign an insured Mortgage to another Person shall pay a fee of $1,500 to defray the costs of processing and reviewing the application.

(b) *Mortgage assumption.* Payment of a $3,000 fee shall be required to defray all costs of processing and reviewing a joint application by a mortgagor and/or Obligor and a proposed transferee of a Vessel, which is security for Title XI debt, if the proposed transferee is to assume the Mortgage and/or the Security Agreement.

Subpart C—Guarantees

§ 298.20 Term of Guarantees.

(a) *In general.* To be eligible for Guarantees, Obligations shall have a maturity date satisfactory to the Secretary, but in no event to occur later than:

(1) Twenty-five years from the date of delivery from the shipbuilder of a new Vessel which is to be security for Guarantees;

(2) Twenty-five years from the date of delivery from the shipyard of the last of multiple Vessels which are to be security for the Guarantees, if the applicant agrees to reduce the amount of Obligations to be issued to an amount less than the maximum Guarantees allowable under section 1103(c) of the Act. If such agreement does not exist, a maturity date for all the Obligations will be determined by the Secretary by taking a weighted average of the remaining useful lives of all the vessels which are to be security for the Guarantees; or

(3) Twenty-five years from the date of delivery of a reconstructed or reconditioned Vessel which is to be security for the Guarantees, or at the expiration of the remaining useful life of the Vessel, as determined by the Secretary.

(b) *Required redemptions.* Where multiple Vessels are to be used as security for the Guarantees, as set forth in paragraph (a) of this section, the Secretary may require payments of principal prior to maturity (redemptions) with respect to all related Obligations, as may be deemed necesary to maintain adequate security for the Guarantees.

(c) *Interest rate.* The interest rate of each Obligation of a stated maturity must be determied by the Secretary to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary.

§ 298.21 Limits.

(a) *Actual cost basis.* Obligations may not be in an amount greater than 75 percent or 87½ percent, whichever is applicable under the provisions of section 1104(b)(2) of the Act, of the Actual Cost of the Vessel or Vessels. Where existing debt is being refinanced, as provided for in section 1104(a)(4) of the Act, the amount of new Obligations may not exceed the lesser of:

(1) The amount of outstanding debt being refinanced (whether or not receiving assistance under Title XI); or

(2) 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel concerned (described in paragraph (g) of this section).

(b) *Actual Cost items.* Actual Cost is comprised of those items which would customarily be capitalized as Vessel construction costs under generally accepted accounting principles, such as designing, engineering, constructing (including performance bond premiums approved by the Secretary), inspecting, outfitting and equipping. There shall be included those cost items usually specified in Vessel construction contracts, e.g., changes and extras, cost of owner furnished equipment, and commitment fees and interest on the Obligations or other borrowings during the construction period (excluding interest paid or subordinated debt considered to be Equity, and incurred during the construction period), and less income realized from investment of Escrow Fund deposits during the construction period. Actual Cost items must also be determined by the Secretary to be fair and reasonable. In determining a fair and reasonable Actual Cost, the Secretary will consider all pertinent factors, weighing each factor according to importance under the particular circumstances, including, but not limited to the following:

(1) Contractor's cost of material;

(2) Contractor's cost of labor;

(3) Contractor's cost of overhead, including allocation of facilities used or acquired;

(4) Geographical location of construction and projected area of planned operations;

(5) Risk to the contractor;

(6) Competition and availability of alternate contractors;

(7) Anticipated profit; and

(8) Delivery date.

(c) *Items excludible from Actual Cost.* Actual Cost shall not include any other costs such as the following:

(1) Legal fees or expenses;

(2) Accounting fees or expenses;

(3) Commitment fees or interest other than those specifically allowed;

(4) Fees, commissions or charges for granting or arranging for financing;

(5) Fees or charges for preparing, printing and filing an application for Title XI Guarantees and supporting documents, for services rendered to obtain approval of the application and for preparing, printing and processing documents relating to the application for Guarantees;

(6) Underwriting or trustee's fees;

(7) Federal documenary tax stamps;

(8) Investigation Fee determined in accordance with section 1104(f) of the Act and § 298.15 of this part;

(9) Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act and § 298.36;

(10) Predelivery Vessel operating expenses, Vessel insurance premiums and other items which may not be properly capitalized by the owner as costs of the Vessel under generally accepted accounting principles;

(11) The cost of the condition survey required by § 298.11(e) of this part and all work necessary to meet the standards set forth therein;

(12) The cost of all items of material installed in the Vessel which are of foreign origin unless the Secretary has granted a waiver, as provided for in § 298.11(a);

(13) Any amount payable to the shipyard for early delivery of the Vessel; and

(14) The cost to the shipowner of a Vessel which is to be reconstructed or reconditioned, e.g. cost of acquisition or repair work.

(d) *Substantiation of Actual Cost.* Prior to payment from the Escrow Fund or Construction Fund (described in § 298.33 and 298.34, and prior to the final Actual Cost determination for each Vessel, the applicant shall submit to the Secretary documents substantiating all claimed costs. These documents may include, but need not be limited to copies of invoices, change orders, subcontracts and, where required by the Secretary, statements from independent certified or independent licensed public accountants that the costs for which payment or reimbursement is sought were actually paid or are payable with respect to the construction of a Vessel. These documents must be summarized, indexed and arranged according to cost categories, pursuant to directions cohtained in forms prescribed by the Secretary.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to approval by the Secretary. After a review of the base contract price and the escalation clauses, the Secretary shall, in order to estimate the Actual Cost amount to be stated in the Letter Commitment, add to the base contract price the amount of escalation estimated by the applicant. The Secretary will determine if the amount of escalation claimed by the applicant as Actual Cost is fair and reasonable, by the application of selected Bureau of Labor Statistics indices, or other indices considered to be appropriate, and a method of calculation as follows:

(1) *Information required.* (i) Contract or base date from which escalation is to be calculated; and

(ii) Base dollar amounts for material and fully allocated labor costs to which escalation will be applied.

(2) *Examples of indices to be used.* (i) *Steel.*—Bureau of Labor Statistics Wholesale Indices for Carbon Steel, Type A-36, 1013-0246.01;

(ii) *Outfit and machinery.*—Bureau of Labor Statistics Index of Wholesale Prices—Industrial Commodities; and

(iii) *Labor.*—Bureau of Labor Statistics Index for Labor for Steel Vessels (Base: 1962-100).

(3) *Method of calculation.* The monthly figures based on use of the above indices will be averaged by calendar quarters. The increase will be computed for each calendar quarter in which material or equipment shipments are made or in which labor hours are expended on the contract Vessel, based on construction schedules approved by the Secretary, by dividing the calendar index average by the contract base date index figure and subtracting 1.0. The resultant decimal factor will be multiplied by the amount of material shipped or the amount of labor expended in each calendar quarter to determine the allowable escalation for that quarter. The total of such quarterly figures for all quarters during the construction period will determine the total allowable escalation.

(4) *Disagreement with Secretary's determination.* Should an applicant disagree with the above indices or method of calculation and present a claim for escalation cost based upon other indices and methods of calculation which are considered to be more appropriate by the applicant, the Secretary shall review such claim, and may modify the amount of allowable escalation, if considered appropriate.

(f) *Moneys received in respect of construction of the Vessels.* If the Obligor or any Person acting in behalf of the Obligor shall from time to time receive moneys due in respect of construction of the Vessel (described in the Security Agreement) from the shipbuilder, guarantors, surety or other Person, the Obligor shall give written notice of such fact to the Secretary. The Obligor or other recipient shall promptly make deposit of these moneys in a Depository with a written notice that the Depository shall hold such moneys on deposit until it receives written instructions from the Secretary as to their disposition. The Secretary shall determine the extent to which Actual Cost is to be reduced with respect to these moneys. In no event shall Actual Cost be reduced with respect to payments by the shipyard to the Vessel owner of liquidated damages for late delivery of the Vessel.

(g) *Depreciated Actual Cost.* After a Vessel has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees shall be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel. This means the Actual Cost of the Vessel, as defined in § 298.2(b) (less a residual value of 2½ percent of United States shipyard construction cost), depreciated on a straight line basis over the useful life of the Vessel as determined by the Secretary, not to exceed twenty-five years from the date the Vessel was delivered by the shipbuilder or, if the Vessel has been reconstructed or reconditioned, the Actual Cost of the Vessel depreciated on a straightline basis from the date the Vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning, on the basis of the original useful life of the Vessel, and from the date of said reconstruction on a straightline basis and on the basis of a useful life of the Vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straightline basis and on the basis of a useful life of the Vessel determined by the Secretary.

§ 298.22 Amortization of obligations.

Generally, after Vessel delivery, and until maturity of the Obligations, the Obligor shall be required by provision of the Trust Indenture or other part of the Documentation to make periodic payment of interest on and principal of the Obligations. Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case shall be in equal parts (straightline basis), unless the Secretary consents to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in amount (level debt basis). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the straightline or level debt basis at any time prior to maturity of the Obligations, except where:

(a) The Obligor can demonstrate to the satisfaction of the Secretary that there will be adequate funds to discharge the Obligations at maturity; or

(b) The Obligor establishes a fund acceptable to the Secretary in which the Obligor deposits an equal annual amount necessary to redeem the outstanding Obligations at maturity.

§ 298.23 Refinancing.

(a) *In General.* The Secretary may approve Guarantees with respect to Obligations to be secured by one or more Vessels and issued to refinance existing debt, whether or not covered by Mortgage insurance or Guarantees, as long as the existing debt had been issued for one of the purposes set forth in section 1104(a)(1)-(3) of the Act. In accordance with the provision in section 1104(a)(1), the refinancing of debt that was incurred more than one year after delivery of the Vessel will be permitted only if:

(1) Any security lien on the Vessel is discharged immediately prior to the placing of a Mortgage on the Vessel by the Secretary; and

(2) The debt being refinanced was incurred in financing the cost of construction, reconstruction or reconditioning of other vessels or of facilities or equipment pertaining to marine operations (described in § 298.24).

The applicant must satisfy all the eligibility requirements set forth in Subpart B of this part. The limitation on the amount of Guarantees is governed by § 298.21. The maturity date of the Obligations shall not be later than the expiration of the remaining useful life of the Vessel, as determined by the Secretary.

(b) *Reduced interest payment.* The Secretary shall approve an application for refinancing only if the applicant demonstrates to the satisfaction of the Secretary that the average annual payment of interest to maturity on the Obligations to be issued will be at least 20 percent less than the average annual payment of interest to maturity on the debt that the applicant proposes to refinance.

§ 298.24 Financing facilities and equipment related to marine operations.

The Secretary may approve Guarantees secured by one or more Vessels and issued to finance the construction, reconstruction or reconditioning of facilities or equipment pertaining to marine operations. Such facilities or equipment shall be of a specialized nature, used principally for servicing Vessels and in handling waterborne cargo in the close proximity of the Vessel berthing area, excluding over the road equipment (other than chassis and containers), permanent or semipermanent structures and real estate.

§ 298.25 Financing repayment of construction-differential subsidy.

The Secretary may approve Guarantees with respect to Obligations secured by one or more Vessels and issued to finance the repayment to the United States of the whole or any part of construction-differential subsidy (CDS) which has been paid under the provisions of Title V of the Act. The repayment of CDS may be related to Vessel operation in the domestic trade, within the meaning of section 506 of the Act, or any other purpose authorized by the Secretary.

§ 298.26 Excess interest or other consideration.

The Secretary shall not execute Guarantees if any agreement in the Documentation directly or indirectly provides for the payment to an Obligee of any consideration other than interest at the rate approved, or grants security, in addition to the Guarantees, to any Person.

§ 298.27 Lease payments.

If the project receiving Title XI assistance involves the use of a lease, any lease payments shall be subject to the approval of the Secretary.

Subpart D—Documentation

§ 298.30 Nature and content of Obligations.

An Obligation, whether issued in the form of a note, bond of any type or other debt instrument, shall include on its face, if the Obligation is engraved, printed or lithographed, the name of the Obligor, the principal sum, the rate of interest, the date of maturity, and the Gurantee of the United States, authenticated by the Indenture Trustee or other Authenticating Agent. If the Obligation is typewritten, the Guarantee of the United States and the authentication certificate of the Indenture Trustee or other Authenticating Agent may appear at the end of the typewritten Obligation. The instrument which is evidence of indebtedness shall also contain all information necessary to apprise the Obligees of their rights and responsibilities with respect thereto, including, but not limited to time and manner for payment of principal and interest, redemptions, default procedure and notification (in case of registered Obligations) of sale or other transfer of the instruments.

§ 298.31 Mortgage.

(a) *In general.* Under normal circumstances, a Guarantee shall not be endorsed on any Obligation until the Secretary receives satisfactory evidence of a security interest in one or more Vessels, in favor of the Secretary. During construction of a new Vessel, the security interest may be perfected by a filing under the Uniform Commercial Code or by the recording of any form of mortgage in a jurisdiction where the Uniform Commercial Code has not been enacted. The Security Agreement shall provide that upon delivery of the new Vessel, or at the time Guarantees are issued with respect to an existing Vessel, a Preferred Mortgage shall be executed in favor of the Secretary. The Preferred Mortgage shall be recorded with the United States Coast Guard at the Vessel's home port, endorsed upon the Vessel's document (or provision made for said endorsement) and delivered to the Secretary.

(b) *Mortgage secured by multiple Vessels.* When two or more Vessels are to be security for Guarantees, the Security Agreement may provide that one Mortgage relating to all the Vessels (Fleet Mortgage) shall be executed, perfected and delivered to the Secretary by the Obligor. If the Fleet Mortgage relates to undelivered Vessels, the Fleet Mortgage shall be executed upon delivery of the first Vessel. At the time of each subsequent Vessel delivery, the Obligor shall execute a supplement to the Fleet Mortgage which makes that Vessel subject to the Secretary's Mortgage lien. The Fleet Mortgage shall provide that payment by the Obligor of the entire amount of Obligations covered or to be covered by Guarantees shall be required to discharge the Fleet Mortgage, regardless of the amount of the Secretary's Note or Notes issued and outstanding at the time of execution and delivery of the Fleet Mortgage or the number of Vessels covered by the Fleet Mortgage. The discharge date of the Fleet Mortgage shall be the maturity date of the Secretary's Note. The Secretary may require, as authorized by section 1104(c)(2) of the Act, such payments of principal prior to maturity (redemptions), with respect to all related Obligations, as deemed necessary to maintain adequate security for the Guarantees. Each Fleet Mortgage shall provide that in the event of constructive total loss, requisition of title or sale of any Vessel covered by the Fleet Mortgage, indebtedness represented by the Obligations shall be paid and the Vessel shall be discharged from the Mortgage lien. The Fleet Mortgage shall also contain a provision, satisfactory to the Secretary, for discharge of any property, other than a Vessel, which may be subject to the Fleet Mortgage.

§ 298.32 Required provisions, in documentation.

(a) *Performance under shipyard and related contracts.* Generally, shipyard and related contracts shall contain provisions for:

(1) Furnishing by the shipyard of satisfactory insurance and a satisfactory performance bond where Obligations are issued during the construction period, except that if the shipyard demonstrates to the satisfaction of the Secretary that it has sufficient financial resources and operational capacity to complete the project, posting of a bond will not be required;

(2) Allowing access to the Vessel and to all related work projects being performed by the contractor and subcontractors, to a representative of the Secretary, at all reasonable times, to inspect performance of the work and to observe trials and other tests for the purpose of determining that the Vessel is being constructed, reconstructed or reconditioned in accordance with contract plans and specifications approved by the Secretary;

(3) Submitting to the Secretary, upon request, one set of selected microfilm of shipyard plans for the Vessel as built;

(4) Making periodic payments for the work in accordance with an agreed schedule, submitted by the shipyard in a form acceptable to the Secretary, based on percentage of completion, after such percentage and satisfactory performance are certified by the Obligor, shipyard and a representative of the Secretary as to each payment. For Vessels of 2500 gross tons or less, the shipyard may substitute a schedule of events, satisfactory to the Secretary, in lieu of the schedule of percentage of completion;

(5) Prohibiting the use of proceeds from the sale of Obligations for the payment of work performed outside the shipyard, unless the Secretary consents in writing to such use; and

(6) Requiring the use in Vessel construction of only articles, materials and supplies of the growth, production of manufacture of the United States, as defined in section 1401(h) of the Tariff Act of 1930 (19 U.S.C. 1401(h)).

(b) *Assignments and general covenants from Obligor to Secretary.* The Obligor shall assign rights and covenant with the Secretary, as required by the Secretary, including, but not limited to the following:

(1) Assignment of all right, title and interest under the construction contract and related contracts, except those rights expressly reserved therein by the Obligor relating to such things as patent infringement and liquidated damages;

(2) Assignment of rights to receive all moneys which from time to time become due with respect to Vessel construction;

(3) Assignment, where applicable, of the bareboat charter, time charter, contracts of affreightment or other agreements relating to the use of the Vessel and all hire payable to the Obligor, and delivery to the Secretary of required consents by appropriate parties to any such assignments;

(4) Covenants relating to satisfactory evidence of continuing United States citizenship, in accordance with 46 CFR Part 335; warranty of Vessel title free from all liens other than those specifically excepted; maintaining United States registry of the Vessel; compliance with the provisions of the Ship Mortgage Act of 1920; Notice of Mortgage; payment of all taxes (except if being contested in good faith); annual financial statements audited by independent certified or independent licensed public accountants; prohibition of sale, mortgage, demise charter or transfer of the Vessel without the Secretary's prior written consent; Vessel condition and maintenance; material changes in the Vessel; access to Vessel cargo and papers; annual No Default Certificate; and further security filings; and

(5) Covenants to keep records of construction costs paid by or for the Obligor's account and to furnish to the Secretary a detailed statement of those costs, distinguishing between:

(i) Items paid or obligated to be paid, attested to by independent certified or independent licensed public accountants; and

(ii) Costs of American and foreign materials (including services).

(6) Covenants to maintain Marine and War Risk Hull and Machinery insurance on the vessel in an amount equal to 110% of the outstanding Obligations or up to the full commercial value of the Vessel, whichever is greater; Marine and War Risk Protection and Indemnity insurance; Interim War Risk Binders for Hull and Machinery and Protection and Indemnity coverages underwritten by the Maritime Administration as authorized by Title XII of the Act; and such additional insurance as may be required by the Secretary. All insurance required to be maintained shall be placed with the United States Government and American and/or British (and/or other foreign, if permitted by the Secretary by prior written notice) insurance companies, underwriters' associations or underwriting funds approved by the Secretary through maritime insurance brokers and/or underwriting agents approved by

the Secretary. All insurance required to be maintained shall be placed under the latest (at the time of issue) forms of American Institute of Marine Underwriters policies approved by the Secretary and/or under such other forms of policies which the Secretary may approve in writing and/or policies issued by or for the Maritime Administration insuring the Vessel against the usual risks provided for under such forms, including such amounts of increased value and other forms of "total loss only" insurance permitted by the Hull and Machinery insurance policies.

§ 298.33 Escrow fund.

(a) *Circumstances requiring deposits.* The Obligor may be required to establish a fund with the Secretary (Escrow Fund) in accordance with section 1108 (a) of the Act and the Security Agreement.

(b) *First sale of obligations.* The deposit with the Secretary of cash or Federal Reserve Bank funds shall consist of the sum of:

(1) The aggregate principal amount of the Obligations sold less 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of the deposit, by or for the account of the Obligor for construction, reconstruction or reconditioning of the Vessel; and

(2) Interest on this aggregate principal amount, computed at the same rate borne by the Obligations, for one interest payment period, unless the Secretary shall accept other consideration from the Obligor as security in lieu of the interest deposit. If the Obligations issued and sold bear more than one rate of interest, the amount of interest required to be deposited shall be based upon the weighted average of such interest rates.

(c) *Subsequent sales of obligations.* A deposit shall be made in the same manner as for the first sale of Obligations in the sum of:

(1) The aggregate principal amount of the Obligations sold less 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of the deposit, by or for the account of the Obligor for construction, reconstruction or reconditioning of the Vessel; and

(2) Interest on this aggregate principal amount, computed at the same rate borne by the Obligations, for one interest payment period, unless the Secretary shall accept other consideration from the Obligor as security in lieu of the interest deposit. If the Obligations issued and sold bear more than one rate of interest, the amount of interest required to be deposited shall be based upon the weighed average of such interest rates.

(d) *Principal deposit—Multiple vessels.* If multiple Vessels are security for the Guarantees at the time of a sale of Obligations, the aggregate deposit of principal amount in the Escrow Fund will be computed on an individual Vessel basis by prorating the proceeds of the sale of Obligations, within the meaning of the proviso in section 1108(a) of the Act, based on the ratio of the Vessel's Actual Cost or Depreciated Actual Cost, to the total Actual Cost and Depreciated Actual Cost of all Vessels which are security for the Guarantees.

(e) *Disbursements prior to termination date.* Unless the Guarantees shall become payable prior to the Termination Date (described in paragraph (h) of this section) of the Escrow Fund, the Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, and within a reasonable time after written request from the Obligor, make disbursements from the fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel delivery or redelivery and to the shipbuilder, the Obligor or to any other Person entitled thereto, with respect to costs included in Actual Cost. Also, the Secretary may disburse to the Obligor, upon request made at least 10 business days prior to, and no earlier than 30 days after the date on which the payment of interest on the Obligations is due, any excess, as determined by the Secretary, of required interest on deposit in the Escrow Fund on the date of disbursement. However, no payment or reimbursement shall be made from the Escrow Fund to any Person until:

(1) The Construction Fund (described in § 298.34) where provided for in the Security Agreement, has been exhausted;

(2) At least 12½ or 25 percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost has been paid by or for the account of the Obligor from sources other than the proceeds of the Obligations, provided, however, that where the Obligor is required to pay in 25 percent of the Actual Cost or Depreciated Actual Cost, and demonstrates to the Secretary's satisfaction the ability to pay in such 25 percent, after the Obligor has paid 12½ percent of the Actual Cost or Depreciated Actual Cost, the Obligor may be permitted to withdraw moneys from the Escrow Fund, up to 50 percent of such Actual Cost or Depreciated Actual Cost, and withdraw the remainder of the Escrow Fund moneys after paying in the next 12½ percent of Actual Cost or Depreciated Actual Cost; and

(3) The Secretary has determined that the Actual Cost items are fair and reasonable and that amounts for which reimbursement is requested have been paid, except where the Secretary has specifically consented to an alternative procedure.

(f) *Where guarantees become payable.* If, prior to the Termination Date of the Escrow Fund, the Guarantees shall become payable by the Secretary, all amounts in the Escrow Fund at such time (including interest and realized income which have not yet been paid to the Obligor) shall be paid into the Federal Ship Financing Fund, created by section 1102 of the Act, and be credited against any amounts due or to become due to the Secretary from the Obligor with respect to all Guarantees.

(g) *Requisition of title, termination of construction contract or total loss of vessel.* In the event of requisition of title to or seizure of forfeiture of the Vesesl, termination of the construction contract (unless the Obligor and the Secretary elect to have the Vessel completed) or the construction-differential subsidy contract (where applicable), or the actual or constructive total loss of the Vessel, all moneys remaining on deposit in the Escrow Fund may be disbursed by the Secretary for any of the following purposes:

(1) Redemption or payment of Obligations and accrued interest thereon to the date of redemption or payment, in accordance with the applicable provisions of the Documentation relating to such redemption or payment, where there is no existing default;

(2) Payment to the Obligor, if all outstanding Obligations are retired and paid other than by payment of the Guarantees, and all amounts payable to the Secretary and secured by the Mortgage have been paid; and

(3) Payment in accordance with the priorities set forth in § 298.41; if a default has occurred and if the Secretary shall have paid the Guarantees.

(h) *Disbursement upon termination date.* The Escrow Fund shall terminate on a date agreed upon by the Obligor and the Secretary as set forth in the Security Agreement (Termination Date). If on such Termination Date the full amount of Actual Cost of the Vessel has not been paid by or for the account of the Obligor, or is not then due and payable, the Obligor and the Secretary may extend the Termination Date by agreement. When the Secretary makes a final determination of Actual Cost at the written request of the Obligor, or at the instance of the Secretary if the Termination Date has occurred without such a request, the Termination Date shall be deemed to be the date of such final determination of Actual Cost. If payments under the Guarantees have not become due prior to the Termination Date, then on or immediately after said Termination Date, any balance in the Escrow Fund shall be disbursed by the Secretary in the following manner:

(1) Where the principal amount of the Obligations issued less the principal amount of Obligations which have been retired or paid on or before such Termination Date, and not availed of as a credit against any mandatory redemptions otherwise required to be made on or before such Termination Date, shall be in excess of 75 or 87½ percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel as finally determined by the Secretary as of the Termination Date, the Secretary shall pay such excess to the Indenture Trustee or any Paying Agent in accordance with the provisions of the Documentation relating to such payment. A written notice from the Secretary and

the Obligor shall accompany such payment, stating the Termination Date and directing the Indenture Trustee or Paying Agent to redeem an equal amount of Obligations.

(2) An amount equal to interest accrued to the date to be fixed for redemption of the principal amount of Obligations to be redeemed, in accordance with the written notice of redemption to be issued, shall be remitted to the Indenture Trustee or any Paying Agent by the Obligor to be applied to the payment of interest to the date to be fixed for redemption.

(3) Any balance of the Escrow Fund shall be paid to the Obligor.

(i) *Investment and liquidation of the escrow fund.* The Secretary may invest and reinvest deposits to the Escrow Fund in securities which are obligations of the United States and with maturities such that sufficient cash will be reasonably available to the Escrow Fund as required to make periodic authorized disbursements. The Secretary shall deposit the Escrow Fund into a special Treasury Department account with instructions, pursuant to an agreement with the Obligor, for the investment, reinvestment and liquidation of the Escrow Fund.

(j) *Income on the escrow fund.* If the Guarantees shall not have become due, after receiving notice that the Treasury Department has deposited income earned on the Escrow Fund into the special account, the Secretary shall authorize the payment of such income to the Obligor. Income shall include the excess of the cash received from the sale of securities or the payment of securities at maturity (less any losses from the sale of securities not made up by payments by the Obligor pursuant to provisions of the Security Agreement) over the cost thereof, and interest received with respect to the securities.

(k) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Escrow Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Escrow Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Escrow Fund.

§ 298.34 Construction fund.

(a) *Deposit.* Where the Security Agreement provides for an Escrow Fund deposit, usually a provision shall also be included therein for establishing Construction Fund deposits. Under the terms of this provision, at the time of each sale of Obligations the Obligor shall deposit with a Depository, in a special account subject to the joint control of the Obligor and the Secretary, cash equal to the principal amount of the Obligations issued at such time less the sum of (1) the aggregate principal amount then required to be in the Escrow Fund and (2) the amount in excess of 12½ or 25 percent of Actual Cost (whichever is payable under § 298.33(e)) which the Secretary determines has been paid by or for the account of the Obligor.

(b) *Withdrawals.* The Secretary shall, subject to the satisfaction of any applicable Conditions contained in the Security Agreement, periodically approve disbursements from the Construction Fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations for periods prior to Vessel delivery and to the shipbuilder, the Obligor, or to any other Person entitled thereto with respect to costs included in Actual Cost. The Secretary shall not authorize any disbursement from the Construction Fund unless payments have been made by or for the account of the Obligor from sources other than the Obligations, in accordance with the requirements of subdivisions (2) and (3) of § 298.33(e).

(c) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Construction Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Construction Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Construction Fund.

§ 298.35 Reserve fund and financial agreement.

(a) *Purpose.* In order to provide further security to the Secretary and to insure payment of the interest and principal due on the Obligations, the Company shall be required to enter into a Title XI Reserve Fund and Financial Agreement (Agreement). The Secretary may waive or modify provisions of the Agreement based on an evaluation of the aggregate security for the Guarantees.

(b) *Financial covenants for companies meeting primary financial requirements.* Covenants shall be imposed on the Company which is subject to compliance with the primary financial requirements at Closing, set forth in § 298.13(d), as follows:

(1) *Continuous covenants.* So long as Guarantees are in effect the Company, pursuant to agreements with the Secretary in the Documentation, shall not, without the prior written consent of the Secretary, take any actions, including, but not limited to those of the following nature:

(i) Pay dividends or make distributions in excess of 40 percent of its net income after tax for the latest prior fiscal year (noncumulative), unless, after giving effect to each payment or distribution, the Company's Long Term Debt does not exceed its Equity;

(ii) Enter into a service, management or operating agreement with respect to a Vessel financed with the assistance of Title XI Guarantees;

(iii) Sell, transfer or demise charter the Vessel; or

(iv) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in new business activities not directly connected with marine operations or guarantee (or otherwise be liable for) debts of other Persons.

(2) *Additional covenants which may become applicable.* If the Company shall at any time no longer satisfy the primary financial requirements, or such condition would occur after giving effect to any of the proposed transactions set forth below, the Company, pursuant to agreements with the Secretary in the Documentation, shall not, without the prior written consent of the Secretary, take any actions, including, but not limited to those of the following nature:

(i) Withdraw or redeem capital, convert capital into debt, pay dividends or make distributions (unless the Company is a party to an operating-differential subsidy agreement which provides for paying dividends or making distributions);

(ii) Make loans, advances, investments in or repayments of existing debts to Affiliates, stockholders, officers or directors;

(iii) Acquire fixed assets, become liable for Rentals, incur indebtedness or become subject to any liens, except if necessary in the ordinary course of existing business;

(iv) Pay salaries in excess of amounts specified in the Agreement, pay subordinated indebtedness or make loans; or

(v) Invest in securities other than those that qualify as Eligible Investments (described in paragraph (h) of this section) for the Title XI Reserve Fund.

(c) *Financial covenants for companies meeting the alternative financial requirements.* Covenants shall be imposed on the Company which is subject to the alternative financial requirements at Closing, set forth in § 298.13(e), as follows:

(1) *Continuous covenants.* So long as the Guarantees are in effect the Company, pursuant to agreements with the Secretary in the Documentation, shall not, without the prior written consent of the Secretary, take any action, including, but not limited to those of the following nature:

(i) Enter into a service, management or operating agreement for a Vessel financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel;

(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in any new business activities not directly connected with marine operations or guarantee (or otherwise become liable for) debts of other Persons;

(iv) Acquire fixed assets, become liable for any Rentals, incur indebtedness or become subject to any liens, except if necessary in the ordinary course of existing business;

(v) Make any loans or invest in any securities other than Eligible Investments for the Title XI Reserve Fund; or

(vi) Pay any subordinated indebtedness other than in accordance with a

subordination agreement approved by the Secretary.

(2) *Additional covenants which may become applicable.* If the Company shall at any time no longer satisfy the alternative financial requirements (after including the current portion of the Obligations or Rentals related to the Obligations, whichever may be applicable, as a current liability in computing Working Capital), or such condition would occur after giving effect to any proposed transaction set forth below, the Company, pursuant to agreements with the Secretary in the Documentation, shall not, without the prior written consent of the Secretary, take any action, including, but not limited to those of the following nature:

(i) Withdraw or redeem capital, convert capital into debt, pay dividends or make distributions (unless the Company is a party to an operating-differential subsidy agreement which provides for paying dividends or making distributions);

(ii) Make loans, advances, investments or prepayments of existing debts to Affiliates, stockholders, officers or directors, or invest in the securities of any Affiliates; or

(iii) Pay salaries in excess of amounts specified in the Agreement.

(3) *Covenants where Company's financial condition improves to meet primary financial requirements.* Whenever the Company, based on a review of its financial position, determines that it meets the primary financial requirements set forth in § 298.13(d), the Company shall promptly inform the Secretary of this fact, and shall submit such financial statements and all additional information which the Secretary shall consider necessary to verify compliance with such financial requirements. With the consent of the Secretary, the Company shall thereafter be subject to covenants applicable to a Company which had satisfied the primary financial requirements at Closing.

(d) *Title XI Reserve Fund Net Income.* The agreement shall provide that within 90 days after the end of its accounting year, the Company shall compute its net income attributable to the operation of one or more Vessels that were constructed, reconstructed reconditioned or refinanced with Title XI financing assistance (Title XI Reserve Fund Net Income). The computation involves using a ratio, expressed as a percentage, and applying this percentage to the Company's net income after taxes. The numerator of the ratio shall be the total original capitalized cost of all Company Vessels which were constructed, reconstructed, reconditioned or refinanced with the assistance of Guarantees. The denominator shall be the total original capitalized cost of all the Company's fixed assets. Such original capitalized costs shall include, where applicable, present values of Rentals, described in § 298.13(b)(4). The net income after taxes, computed in accordance with generally accepted accounting principles, shall be adjusted as follows:

(1) The depreciation expense applicable to the accounting year shall be added back.

(2) There shall be subtracted:

(i) An amount equal to the principal amount of debt required to be paid or redeemed, and actually paid or redeemed by the Company (other than from the Title XI Reserve Fund) during the year; and

(ii) The principal amount of Obligations retired or paid (as defined in the Security Agreement), prepaid or redeemed, in excess of the required redemptions or payments which may be used by the Company as a credit against future required redemptions or other required payments with respect to the Obligations.

(e) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the primary financial requirements set forth in § 298.13(d), the Company shall make one or more deposits to a special joint Depository account with the Secretary (the Title XI Reserve Fund) to be established pursuant to an agreement in writing (Depository Agreement) at the time the first deposit is required to be made. The amount of deposit as to any year, or period less than a full year, where applicable, shall be determined as follows:

(1) If the Company is the owner of the Vessel, an amount (pro rated for a period of less than a full year) that is equal to 10 percent of the Company's aggregate original Equity investment in the Vessel or Vessels shall be deducted from Title XI Reserve Fund Net Income.

(2) 50 percent of the Title XI Reserve Fund Net Income, adjusted where applicable, in accordance with paragraph (e)(1) of this section, shall be deposited into the Title XI Reserve Fund.

(3) There shall also be deposited any additional amounts that may be required, pursuant to provisions of the Security Agreement or any other agreement in the Documentation to which the Company is a party.

(4) Irrespective of the Company's deposit requirement as stated in preceding paragraph (e)(1)–(3) of this section, the Company shall not be required to make any deposits into the Title XI Reserve Fund if any of the following events shall have occurred:

(i) The Company shall have discharged the Obligations and related Secretary's Note and shall have paid other sums secured under the Security Agreement and Preferred Mortgage;

(ii) All Guarantees with respect to outstanding Obligations shall have terminated pursuant to the provisions of the Security Agreement; or

(iii) The amount in the Title XI Reserve Fund, (including any securities at market value), is equal to, or in excess of 50 percent of the principal amount of outstanding Obligations.

(f) *Fund in lieu of Title XI Reserve Fund.* If the Company has established a Capital Construction Fund (CCF), pursuant to section 607 of the Act, whether interim or permanent, at any time when a deposit would otherwise be required to be made into the Title XI Reserve Fund and the Company elects to make such deposits to the CCF, the Company shall enter into an agreement, satisfactory to the Secretary, providing that all such deposits of assets therein shall be segregated in the CCF and shall be security (CCF Security Amount) to the United States in lieu of the Title XI Reserve Fund. The deposit requirements of the Title XI Reserve Fund and Financial Agreement shall be deemed satisfied by deposits of equal amounts in the CCF, and withdrawals of the CCF Security Amount shall be subject to the same conditions as withdrawals from the Title XI Reserve Fund. If for any reason the CCF terminates prior to the payment of the Obligations, the Secretary's Note and all other amounts due under or secured by the Security Agreement or Mortgage, the CCF Security Amount shall be deposited or redeposited in the Title XI Reserve Fund.

§ 298.36 Annual guarantee fee.

(a) *Rates in general.* For annual periods, beginning with the date of the Security Agreement and prior to the delivery date of a Vessel, the Secretary shall charge the Obligor an annual fee (Guarantee Fee) at a rate of not less than ¼ of 1 percent and not more than ½ of 1 percent of the excess of the average principal amount of the Obligations to be outstanding during the annual period covered by said Guarantee Fee over the average principal amount, if any, on deposit in the Escrow Fund during said annual period (Average Principal Amount of Obligations Outstanding). For annual periods beginning with the delivery date of the Vessel, the Guarantee Fee shall be imposed at an annual rate of not less than ½ of 1 percent and not more than 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee. The Obligor shall be responsible for payment of the Guarantee Fee.

(b) *Rate calculation.* The Guarantee Fee rate generally shall vary inversely with the ratio of Equity to Long Term Debt to the Person considered by the Secretary to be the primary source of credit in the transaction (Credit Source), e.g., the long term time charterer (where the charter hire represents the source of payment of interest and principal with respect to the Obligations), the guarantor of the Obligations, Obligor or the bareboat charterer. Where the ratio of Equity to Long Term Debt (Variable Rate) is used, the Secretary may make such adjustments to the computation of Equity and Long Term Debt considered necessary to reflect more accurately the financial condition of the Credit Source. The Guarantee Fee rate shall be subject to annual redetermination by the Secretary in accordance with the tests set forth in paragraphs (c) and (d)

of this section, and the Secretary shall promptly give notice to the Obligor of a rate change for such annual period. The determination of Equity and Long Term Debt shall be based on information contained in forms or statements on file with the Secretary prior to the date on which the Guarantee Fee is to be paid. With the consent of the Secretary, there shall be included in Equity, but excluded from Long Term Debt, any subordinated indebtedness representing loans to the Credit Source, evidence of which has been delivered to the Secretary. The Secretary may establish a fixed rate or other method of calculation of the Guarantee Fee, upon an evaluation of the aggregate security for the Guarantees.

(c) *Variable Rate prior to vessel delivery.* For annual periods beginning prior to the delivery date of a Vessel being constructed, reconstructed or reconditioned, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by said Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ⅜ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by said Guarantee Fee.

(3) If the Equity is equal to or exceeds the Long Term Debt, the annual Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by said Guarantee Fee.

(d) *Variable Rate after Vessel delivery.* For annual periods beginning on or after the Vessel delivery date, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by said Guarantee Fee.

(2) If the Equity is less than 60 percent of the Long Term Debt but equal to or greater than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ¾ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by said Guarantee Fee.

(3) If the Equity is less than the Long Term Debt but equal to or greater than 60 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ⅝ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by said Guarantee Fee.

(4) If the Equity shall equal or exceed the Long Term Debt, the Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by said Guarantee Fee.

(e) *Payment of guarantee fee.* The initial Guarantee Fee covering the 12-month period commencing with the date of the Security Agreement shall be paid to the Secretary concurrently with the execution and delivery of said Agreement. The Guarantee Fee for each subsequent annual period must be paid to the Secretary at least 65 days prior to each anniversary of said payment. The Secretary shall refund the prepaid Guarantee Fee if the Guarantees shall have terminated, other than by reason of default, prior to the anniversary date.

(f) *Adjustment of guarantee fee.* If the Secretary at any time determines that the amount of any Guarantee Fee should be adjusted for any reason, the Secretary shall promptly give written notice thereof, specifying the correct amount, the basis for computation thereof and the amount of the deficiency or excess. With respect to any deficiency, payment shall be made to the Secretary within 30 days after receipt of such notice. Any excess payment shall, except if a default has occurred and has not been cured, be refunded by the Secretary.

(g) *Increase in guarantee fee due to security default.* If a Security Default, as described in § 298.40(c), shall have occurred and be continuing, the Secretary, after giving written notice to the Obligor of such Security Default, may increase the existing Guarantee Fee rate, if less than the maximum allowed under paragraph (a) of this section, to the maximum rate at the expiration of 60 days after receipt of notice by the Obligor, except if the Obligor shall have cured such Security Default or the Secretary shall have waived the Security Default during the 60-day period.

(h) *Proration of guarantee fee.* The Guarantee Fee shall be prorated where Vessel delivery is scheduled to occur during the annual period with respect to which payment of said Guarantee Fee is being made, as follows:

(1) *Undelivered vessel.* If the Guarantee Fee relates to an undelivered Vessel, the predelivery rate is applicable to the Average Principal Amount of Obligations Outstanding for the period from the date of the Security Agreement to the delivery date, and the delivered Vessel rate is applicable for the balance of the annual period.

(2) *Multiple vessels.* If the Guarantee Fee relates to more than one Vessel, the amount of outstanding Obligations shall be allocated to each Vessel in the manner prescribed in § 298.33(d), and an amount shall be determined for each Vessel by using the rate that is applicable under paragraph (c) or (d) of this section and the proration as set forth above. The Guarantee Fee shall be the aggregate of the amounts calculated for each Vessel.

§ 298.37 Examination and Audit.

The Secretary shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and accounts of the Obligor, bareboat charterer, time charterer or any other Person participating in the project receiving financing assistance under Title XI of the Act, as well as records of Affiliates and domestic agents connected with such Person, and shall have full, free and complete access thereto at all reasonable times. Also, the Secretary shall have full, free and complete access at all reasonable times to each Vessel with respect to which Guarantees or an insurance contract is in force. When the Vessel is in port or undergoing repairs, the Secretary may make photostatic or other copies of any books, records and other relevant documents or papers being examined or audited. Adequate office space and other facilities reasonably required by any representatives of the Secretary engaged in an examination, audit or inspection shall be furnished without charge by the Person in control of the premises where the examination or audit is being conducted.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

§ 298.40 Defaults.

(a) *In general.* Provisions concerning the existence and declaration of a default and demand for payment of the Obligations (described in paragraphs (b) and (c) of this section) shall be included in the Security Agreement and in other parts of the Documentation.

(b) *Payment default.* In the case of any default in the payment of principal or interest with respect to the Obligations, the following procedures shall be applicable:

(1) No demand shall be made for payment under the Guarantees unless the default shall have continued for 30 days (Payment Default).

(2) After the expiration of said 30-day period, demand for payment of all amounts due under the Guarantees must be made no later than 60 days thereafter (or such lesser time as provided for in the Guarantees or related agreements).

(3) After demand for payment is made by or on behalf of the Obligees, the Secretary shall make payment under the Guarantees, except if the Secretary determines, before payment of the Guarantees, that a Payment Default has not occurred or that such Payment Default has been remedied prior to demand being made.

(c) *Security Default.* If a default occurs under the Security Agreement which is other than a Payment Default, (Security Default), the Secretary, as provided in section 1105(b) of the Act, shall have the sole discretion to declare such default a Security Default and may notify the Obligee or agent of the Obligee of such Security Default, stating that demand for payment under the Guarantees must be made no later than 60 days (or lesser time as provided for in the Documentation) after the date of such notification.

(d) *Payment of Guarantees.* If demand for payment of the Guarantees is made, the Secretary shall, no later than 30 days after the date of such demand (or such lesser time as may be provided for in the Documentation), make payment to the Obligees, Indenture Trustee or any other

agent of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment.

§ 298.41 Remedies after default.

(a) *In general.* Provisions governing remedies after a default, which relate to rights and duties of the Obligor, the Secretary and other Persons (where appropriate), shall be included in the Security Agreement or in other parts of the Documentation.

(b) *Action by Secretary.* Before making payment required under the Guarantees, the Secretary make take the Vessel and hold, lease, charter, operate or use the Vessel, accounting only for the net profits to the Obligor. After making payment required under the Guarantees, the Secretary may initiate or otherwise participate in legal proceedings of every type, or take any other action considered appropriate, to protect rights and interests granted to the Secretary by sections 1105(c), 1105(e) and 1108(b) of the Act, the Security Agreement or other applicable provisions of law and of the Documentation.

(c) *Security Proceeds to Secretary.* The Secretary's interest in proceeds realized from the disposition of or collection with respect to security granted to the Secretary in consideration for the Guarantees (except proceeds from the sale, requisition, charter or other disposition of property purchased by the Secretary at a foreclosure or other public sale, which proceeds shall belong to and vest exclusively in the Secretary), shall be an amount equal to, but not in excess of, the sum of (in order of priority of application of the proceeds):

(1) Guarantee Fees, if any, due the Secretary under the Security Agreement;

(2) All moneys due and unpaid and secured by a Mortgage or Security Agreement;

(3) All advances by the Secretary, pursuant to the Security Agreement and all reasonable charges and expenses of the Secretary;

(4) The accrued and unpaid interest on the Secretary's Note;

(5) The accrued and unpaid balance of the principal of the Secretary's Note.

(d) *Security proceeds to obligor.* The Obligor shall be entitled to share in the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of:

(1) The aggregate of payments made pursuant to the Guarantees; and

(2) The actual expenses of collection of security proceeds, or a specific amount provided for in the Documentation.

§ 298.42 Reporting requirements-financial statement.

The accounts of the Company shall be audited at least annually, in accordance with generally accepted auditing standards, by independent certified public accountants or independent licensed public accountants. The accountants shall be certified or licensed by a regulatory authority of a State or other political subdivision of the United States, and may be the regular auditors of the Company.

(a) *Reports of company and other persons.* Except as otherwise required by the Secretary, the Company shall file a semiannual financial report and an annual financial report, prepared in accordance with generally accepted accounting principles, with Maritime Administration representatives, as specified in the Documentation. Included shall be the balance sheet and a statement of paid-in-capital and retained earnings at the close of the required reporting period, a statement of income for the period and any other statement that the Secretary shall consider necessary to accurately reflect the Company's financial condition and the results of its operations. By letter to the Company, the Secretary shall specify the form required for reporting and the number of copies to be submitted. The Secretary may, by notice to the Company, also require the Company to submit financial statements of any other Person, directly or indirectly participating in the project, if the financial condition of that Person affects the Secretary's security for the Guarantees. The required financial report for the annual period shall be due within 90 days after the close of each fiscal year of the Company, commencing with the first fiscal year ending after the date of the Security Agreement. The required semiannual report shall be due within 90 days after each semiannual period, commencing with the first semiannual period ending after the date of the Security Agreement. The annual and semiannual reports, respectively, shall be in the form prescribed or approved by the Secretary. The annual report shall be certified by the public accountants after audit. Certification of the semiannual report by the accountants may be required by the Secretary. Where independent certification is not required, a responsible corporate officer shall attach a certification that such report is based on the accounting records and, to the best of that officer's knowledge and belief, is accurate and complete.

(b) *Leveraged lease financing.* If the method of financing involved is a leveraged lease financing, or a trust is the owner of the vessels, the requirements for annual and semi-annual accounting reports of the Obligor may be modified accordingly by the Secretary.

§ 298.43 Applicability of the regulations.

(a) *Applicable generally; exceptions.* The regulations in this part shall be in effect as to all applications for commitments for Guarantees issued pursuant to section 1104(a) of the Act. These regulations supersede those issued under Part 298 of this title (23 FR 384) as of the effective date hereof, but shall not affect any commitment for Guarantees, Guarantees or contracts of insurance in existence on the effective date of these regulations. The regulations in this part may be amended, but said amendments shall have no effect upon any existing Guarantees, insurance contracts, commitment for Guarantees or documents.

(b) *Applicability to United States.* Nothing in the regulations in this part shall be deemed to impose any requirement on the United States or the Secretary in addition to those contained in Title XI of the Act or other provisions of law or the Guarantees, insurance contracts and commitments for Guarantees entered into under the Authority of Title XI.

AUTHORITY: Sections 204(b), 1109, Merchant Marine Act 1936, as amended (46 U.S.C. 1114(b), 1279b), Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036), and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

Dated: September 30, 1976.

By order of the Assistant Secretary for Maritime Affairs, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary,
Maritime Subsidy Board.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1000]

[Docket No. 76N-0383]

RADIATION SAFETY CRITERIA FOR MERCURY VAPOR LAMPS

Proposed Recommendations and Notice of Intent To Develop Performance Standards

The Food and Drug Administration (FDA) is proposing recommendations for mercury vapor discharge lamp radiation safety criteria and is announcing its intent to develop a radiation safety performance standard for these lamps. Interested persons may submit comments until December 7, 1976.

Under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, secs. 356, 358 (42 U.S.C. 263d, 263f)), the Secretary of the Department of Health, Education, and Welfare is charged with the responsibility of establishing and implementing an electronic product radiation control program designed to protect the public health and safety from electronic product radiation. In carrying out this responsibility, the Secretary is authorized to make recommendations relating to such radiation hazards and control as he considers appropriate, and to develop and administer performance standards to control the emission of electronic product radiation. This authority has been delegated to the Commissioner of Food and Drugs pursuant to § 5.1 of Chapter I of Title 21 of the Code of Federal Regulations (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)). Notice is hereby given that the Commissioner is proposing to amend the regulations by adding new § 1000.60

(21 CFR 1000.60), which would prescribe the radiation safety performance criteria recommended for mercury vapor lamps used for illumination.

The Commissioner also announces that he may issue a proposal to add a performance standard for mercury vapor lamps to Part 1040, Performance Standards for Light-Emitting Products (21 CFR Part 1040), if the submitted data and information on proposed § 1000.60 warrant such action.

Because of high efficiency and long life as compared with other types of light sources, (e.g., incandescent and fluorescent lights), mercury vapor lamps are becoming important energy-saving sources of illumination. They are widely used for lighting, including street lighting and lighting school gymnasiums, sports arenas, commercial stores, and industrial facilities. Estimates are that more than 25,000,000 such lamps are currently installed in this country. These lamps basically consist of an inner gas discharge tube surrounded by an outer hard borosilicate glass envelope. Considerable shortwave ultraviolet (UV) radiation is transmitted through the inner quartz tube, but it is usually blocked by the outer glass envelope during the normal operation of the lamps. The Bureau of Radiological Health of the Food and Drug Administration (hereinafter, the Bureau) has found that the outer envelope of a 400-watt mercury vapor lamp reduces the irradiance of the UV radiation in the wavelength range of 250 to 320 nanometers by about a factor of 4,000. Therefore, with the outer envelope intact, the UV radiation from such lamps does not normally pose a radiation safety problem. If the outer glass envelope is removed, however, some lamps continue to operate for a period of time before burning out. Injury reports and laboratory testing confirm the risk of injury from human exposure to the shortwave UV radiation if the lamps continue to operate after breakage or removal of the outer envelope.

It is well known, yet not generally recognized by the public, that human exposure to UV radiation can have damaging biological effects. The possible effects on human skin include erythema (reddening), sunburn, changes that are interpreted as signs of "aging," and premalignant and maligant skin tumors. For the eye, the most marked reaction to UV radiation occurs in the cornea, conjunctiva, and lens. Photokeratitis (inflammation of the eye) appears to be the most frequent damage to the eye; erythema seems to be the most conspicuous short-term change in the skin. Response to UV radiation also varies with each person. More sensitive persons may respond to extremely low energy levels over a broad portion of the UV spectrum. Because a mercury vapor lamp with a broken outer envelope may emit intense shortwave UV radiation, exposure to such radiation is likely to be particularly hazardous to sensitive persons.

The Bureau first received reports of injuries in November 1974, to some persons in the gymnasium of a Montgomery County, Maryland, public school. A subsequent review of the report verified that the outer envelope of a mercury vapor discharge lamp had been broken, thus eliminating the outer envelope as a filter for the lamp emissions. Several exposed persons suffered reversible, but painful, photokeratitis and/or erythema, which lasted for several days. Having determined the likely source of the UV light and verified the nature of the injuries that could result from such exposure, the Bureau wrote the Montgomery County Superintendent of Schools and explained the problem and how it could be avoided. A copy of that letter was sent, with a cover communication, to all State health officers, to State radiation control agencies, and to FDA regional and district offices. The Bureau recommended that the State agencies disseminate the information and recommendations for avoiding the problem to concerned State officials, which would include the school officials. Since then, more than 60 persons have been reported as injured in this country as a result of accidents similar to the one reported in Maryland. Recognizing the need for information to prevent further incidents, the Bureau asked manufacturers of mercury vapor discharge lamps to attend an open meeting for an exchange of information; the meeting was held on February 13, 1975. Although many aspects of the problem were discussed by participants from industry, government, and the general public, the meeting did not provide a definitive means by which continued safe use of such lamps could be assured.

Therefore, in March 1975, the Bureau requested additional information from lamp manufacturers and discussed possible alternatives to improve the radiation safety performance of lamps to be manufactured in the future. It was suggested that a regulatory standard might not be necessary if industry meets a voluntary standard developed according to certain specified conditions, including the provision "that continued operation of the lamps after the outer bulb was broken could not occur or would not result in hazardous exposure." The voluntary approach is presently acceptable only if the voluntary standard is provided in a timely fashion, is effective in protecting the public health, and is endorsed and adhered to by all manufacturers of such lamps. The Food and Drug Administration must, in fulfillment of the requirement of its statutory mandate, consult the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) before establishing any electronic product performance standard under the Radiation Control for Health and Safety Act of 1968. At the 13th meeting on September 18, 1975, the Committee expressed support of the efforts toward a voluntary standard, but asked FDA to continue parallel efforts toward a formal regulatory standard in the event the voluntary consensus standard is not achieved in a timely manner.

The Food and Drug Administration has since consulted closely with the American National Standards Institute (ANSI) in developing a voluntary standard. Following a November 25, 1975 open meeting of the ANSI task group and the Bureau's technical staff, a draft standard was prepared by the ANSI task group. The latest revised version of the draft standard was presented at the 14th TEP RSSC meeting on April 1, 1976. The radiation safety criteria in this proposed recommendation are based in part upon the ANSI draft standard, recommendations received from the TEPRSSC members, comments of other persons during and after the TEPRSSC meeting, and other public health considerations. Although there has been substantial progress toward developing appropriate performance criteria for new lamps, FDA is investigating other steps that could be taken to prevent injuries from lamps currently in use. The Bureau recently reissued its earlier warning and preventive recommendations in May 1976, upon learning of another UV radiation exposure incident involving mercury vapor lamps in a public school in the State of New York. The Commissioner would welcome further information and comments on steps that could be taken to prevent injuries from existing lamps.

Proposed § 1000.60(a) defines the scope of the applicability of the recommended criteria to include all high-intensity mercury vapor discharge lamps for general illumination, such as roadway, dusk-to-dawn, area, industrial, and commercial lighting. Suggestions have been made that the safety criteria be applied only to the use situations where abnormal failure of the lamp can occur and exposure of personnel to UV radiation from the inner arc tube can become hazardous. Because the use of mercury vapor lamps is essentially unrestricted, control measures for every different use condition would be extremely difficult to define and implement. The Commissioner believes that, until the interchangeability of the use of one type of lamp for another can be precluded, it is in the best interest of the public to apply the radiation safety criteria to the manufacture of all types of mercury vapor lamps that may be used for general illumination regardless of their particular applications.

The two steps for implementation of the performance criteria are also described in proposed § 1000.60(a): (1) Lamps manufactured 90 days after the final publication of the criteria should meet the criteria for a minimum of 1,000 hours of operation, and (2) lamps manufactured 2 years after final publication of the criteria should meet the criteria for the useful life of the product. The two-phase implementation plan is designed to encourage mercury vapor lamp manufacturers to introduce into commerce new lamps with the safety devices before they can complete the necessary life testing of such lamps, which should occur within a period of approximately 2 years. However, lamps manufactured thereafter that are designed to meet the criteria during the 2-year life-testing period should be expected to improve their performance according to the progress hav-

ing been made to date in the life-testing program.

Proposed § 1000.60(b) recommends that the electric arc discharge of a mercury vapor lamp be permanently extinguished within not more than 2 minutes of operation when the outer envelope is broken or removed, whether such breakage or removal occurs before lamp starting or during lamp operation. The recommended maximum extinguishing time is based upon biological data and consideration of the normal use conditions of mercury vapor lamps. Although FDA knows of no research that would enable an exact quantification of the potential hazard associated with the use of such lamps, biological data do support a very low permissible dose of UV radiation. For example, extrapolation of the tumor-inducing dose of 313-nanometer radiation in mice indicates that the actual radiation level at 254 nanometers implicated to be tumorigenic is only 16 J/m^2 (joule per square meter). Tests at the Bureau also show that, at the distance of 1 meter, some typical mercury vapor lamps exceed, within a period of about 20 seconds to 6 minutes, the criteria for occupational exposure recommended by the National Institute for Occupational Safety and Health and the American Conference of Governmental Industrial Hygienists. However, persons injured in the incidents described previously were exposed for more than 2 hours (2 to 5 hours), and the light sources involved were usually located at a distance of about 4 to 8 meters from the injured persons. The Commissioner believes that, under most conditions of use, the risk of human injury from incidental exposure of less than 2 minutes is very unlikely. The 2-minute termination time was suggested by the agency to the ANSI task group at the public meeting of November 25, 1975. The presentations of several representatives of the manufacturers of such lamps indicated during the 14th TEPRSSC meeting on April 1, 1976, that such a termination time is technically feasible.

Proposed § 1000.60 sets forth in paragraph (c) the test conditions for determining compliance with paragraph (b) for all products under paragraph (a) of the same section. Paragraph (c)(1) recommends that in testing for compliance with the 2-minute extinguishing time, the lamp be started and operated on a reference ballast at the starting current specified in the appropriate ANSI standard for the power and operating potential ratings of the lamp under test that results in the maximum extinguishing time for the discharge arc. This recommendation is associated with the possibility of using different ballasts to control the current at the start and during the operation of such lamps, that might result in a different termination time for the same lamp. In order that a lamp in actual use would not exceed the 2-minute limit, the Commissioner believes it is reasonable and necessary to start and operate the lamp under test on a reference ballast that would yield the longest extinguishing time. To avoid the disturbing effect of air movement and to further ensure that the performance criteria are applied under the same test procedures, it is proposed in paragraph (c)(2) that the test be performed with the lamp initially at 25° C in still air at the time of lamp start-up. If the tests are performed in an enclosure, the lamp should be placed at a distance not less than 50 centimeters from any enclosure surface.

These proposed recommendations are intended to improve the radiation safety performance of lamps manufactured to meet the criteria under current use conditions and thereby achieve the protection of the public from exposure to unnecessary UV radiation from broken mercury vapor lamps. Alternative actions to the proposed performance criteria also have been carefully considered. Some lamp manufacturers suggested incorporation of shielding into the fixture so as to prevent the breakage of the outer envelope of the lamp. This approach was not supported by the available information from fixture manufacturers. One fixture manufacturer estimated that installation of a shield such as a glass plate over the fixture would reduce the light output efficiency of the lamp by about 10 percent. As a result, to maintain the illumination at the same level could mean a proportional increase of the number of both lamps and fixtures at a given installation. It could also lead to an increase of energy consumption and maintenance costs. Further, if the protective shielding breaks, as it sometimes does, protection is no longer provided. The Commissioner therefore concludes that it would be inappropriate in this case to issue recommendations applicable to a fixture, unless the fixture and lamp are manufactured and distributed by the same manufacturer.

The Commissioner is required under the act to prescribe performance standards for electronic products to control the emission of electronic product radiation from such products if he determines that such standards are necessary for the protection of the public health and safety. The proposed criteria embody the basic concepts that would likely be contained in a formal regulatory performance standard. The promulgation of a regulatory standard will require additional time for the agency to collect further documentation and to meet the requirements of the Administrative Procedure Act (5 U.S.C. 553), the National Environmental Policy Act (42 U.S.C. 4332), and Executive Order No. 11821 of 1974 on inflation impact of proposed actions. This regulatory action may not be taken if there is convincing information to demonstrate that the final recommended criteria are endorsed and vigorously adhered to by manufacturers, and the criteria are adequate to protect the public health and safety. The Commissioner welcomes the submission of written data, views, or arguments concerning the need, the subject matter, and impacts of a possible regulatory standard.

Information and comments are specially invited relative to the following topics:

1. Reports of injuries or alleged injuries from mercury vapor lamps, and comments or recommendations on steps, including those discussed herein, that should be taken to prevent injuries from such lamps currently in use.

2. Comments and information about the need for a regulatory standard for mercury lamps.

3. The appropriate class(es) of products to which a mercury vapor lamb performance standard should be applicable.

4. The types of radiation safety performance requirements that would be appropriate for this type of lamp.

5. Appropriate quality control programs, including methods and conditions of measurement.

6. Appropriate radiation safety warning labels, and user and service instructions.

7. The possible environmental impact of such a regulatory standard, including factors such as reduction in radiation exposure injuries, injury costs, and economic consequences in relation to the availability of such products or major business losses through a prohibitive price increase.

8. The possible inflation impact of such action, including factors such as cost increases to industry, government and consumers; substantial changes in the competitive structure of the lamp industry; increases in the number of employees to sustain current levels of production; shortage in supply of important service and/or materials; and increase of usage or decrease of energy availability.

Persons or organizations who want to receive further information or publications on this topic may have their names placed on the mailing list by writing to:

Division of Compliance (HFX-440) Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

Pertinent background data on these proposed radiation safety criteria are on file in the office of the Hearing Clerk, Food and Drug Administration (adress below). Therefore, under the public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, sec. 356, 82 Stat. 1174-1176 (42 U.S.C. 263d)) and under authority delegated to him (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), the Commissioner proposes to amend Subchapter J of Chapter I of Title 21 of the Code of Federal Regulations in Part 1000 by adding new § 1000.60 to Subpart C, to read as follows:

§ 1000.60 Radiation safety criteria for high-intensity mercury vapor lamps.

(a) *Applicability.* The criteria specified in paragraph (b) of this section should apply to all high-intensity mercury vapor discharge lamps that are designed, intended, or promoted for general

illumination, including roadway, dusk-to-dawn, area, industrial, and commercial lighting through the following two steps:

(1) Lamps manufactured after (date 90 days after date of publication of the final recommendation in the FEDERAL REGISTER) should meet the criteria at least for the first 1,000 hours of operation; and

(2) Lamps manufactured after (date 2 years after date of publication of the final recommendation in the FEDERAL REGISTER) should meet the criteria for the useful life of the product.

(b) *Maximum extinguishing time.* When the outer glass envelope of the lamp is broken or removed before lamp start-up or during lamp operation resulting in the emission of radiation having the potential of creating a significant risk of injury, the electric arc discharge between the main electrodes of the lamp should be permanently extinguished within not more than 2 minutes of operation.

(c) *Test conditions.* Lamps under test for compliance with paragraph (b) of this section should be:

(1) Started and operated on a reference ballast at the starting current specified in the appropriate standard of the American National Standards Institute for the power and operating potential ratings of the lamp under test, that results in the maximum extinguishing time for the electric arc.

(2) Started in still air that has a temperature of 25°±5°C. If the glass envelope is broken or removed following lamp start-up, the removal or breakage should occur at any time after start-up that results in the maximum extinguishing time for the electric arc. The heating and generation of thermal convection of the air by the lamp during the test is permitted. Other means for changing the temperature and circulation of air during the test are not permitted. If the tests are performed in an enclosure, the lamp should be placed at a distance no less than 50 centimeters from any enclosure surface.

Interested persons may, on or before December 7, 1976, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: September 30, 1976.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.76-29436 Filed 10-7-76;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 221, 250]

[EDR-303A/296C; Dockets 29776; 29139; dated October 5, 1976]

OVERBOOKINGS AND OVERSALES BY AIR CARRIERS

Extension of Time for Comments

In the matter of construction, publication, filing and posting of tariffs of air carriers and foreign air carriers and priority rules, denied boarding compensation tariffs and reports of unaccommodated passengers.

On September 14, 1976, the Board, by notices EDR-296B and EDR-303, set the date of October 11, 1976, for the receipt of public comments in response to its advance notice of proposed rulemaking EDR-296 (41 FR 16478, April 18, 1976) in Docket 29139 and its notice of proposed rulemaking EDR-303 (41 FR 40500, September 20, 1976) in Docket 29776. EDR-296 asked for comments on the wide range of issues relating to the Board's policies with respect to deliberate overbooking and oversales by air carriers. EDR-303 proposed that air carriers having on file tariffs describing their deliberate overbooking practices also be required to give certain actual notice, and requested comments on the specific interim proposed rules accompanying that notice.

October 11, 1976 is a Federal holiday and the Board's usual practice is to allow the filing of documents due on weekends or holidays on the next business day. In order to avoid confusion on the part of those members of the public who may not be aware of this practice, however, this notice is being issued to specifically extend the due dates for these public comments to October 12, 1976.

Since EDR-296 was issued, the Board has changed its practice in rulemaking cases to require the submission of 20 copies of such comments rather than 12. Interested persons, other than individual consumers, are therefore requested to file 20 copies of such comments. Individual members of the general public who wish to express their interest as consumers are required to file only one copy of their comments.

Accordingly, the date of October 12, 1976, is hereby set for the receipt of comments in response to notices EDR-296 and EDR-303.

This action is taken pursuant to delegated authority (14 CFR 385.20(d)). Petitions seeking review may be filed in accordance with the provisions of the Board's Organizational Regulations (14 CFR 385.50 et seq.).

(Section 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324(a).)

SIMON J. EILENBERG,
Associate General Counsel, Rules.

[FR Doc.76-29679 Filed 10-7-76;8:45 am]

[14 CFR Part 252]

[EDR-306, Docket No. 29044, Dated October 5, 1976]

PROVISION OF DESIGNATED "NO-SMOKING" AREAS ABOARD AIRCRAFT OPERATED BY CERTIFICATED AIR CARRIERS

Proposed Rulemaking

Notice is hereby given that the Civil Aeronautics Board is proposing to amend Part 252 of the Economic Regulations (14 CFR Part 252) to prohibit the smoking of cigars and/or pipes aboard aircraft operated by certificated air carriers (both route and supplemental), to effect improved segregation of cigarette smokers on such aircraft, and to require pertinent changes in the employee manuals of certificated air carriers. The proposals are described in the Explanatory Statement and the proposed amendments are set forth in the Proposed Rules. The Board is also specifically inviting comments to focus on the possible adoption of rules completely prohibiting smoking aboard aircraft operated by certificated air carriers.

The rules are proposed under the authority of sections 204(a), 404(a), and 407 of the Federal Aviation Act of 1958, as amended, (72 Stat. 743, 760, 766 (as amended); 49 U.S.C. 1324, 1374, 1377).

Interested persons may participate in the proposed rulemaking through submission of twenty (20) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material received on or before November 8, 1976, and reply comments received on or before November 23, 1976, will be considered by the Board before taking final action on the proposed rule.

Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 711 Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C. upon receipt thereof.

Those persons planning to file comments and/or responsive comments who wish to be served with the comments filed by others, and are willing to undertake service of their own comments on others, shall file with the Docket Section at the above address by October 18, 1976, a request to be placed on the service list in Docket 29044. The service list will be prepared by the Docket Section and sent to the persons named thereon. The persons on the service list are to serve each other with their comments and/or responsive comments at the time of filing, and are to include appropriate proof of service (Rule 8(e), 14 CFR 302.8(e)) with each filing.

Individual members of the general public who wish to express their interest as consumers by participating informally in this proceeding, may do so through submission of comments in letter form

to the Docket Section at the above indicated address, without the necessity of filing additional copies thereof.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

Part 252 of the Board's Economic Regulations, adopted in 1973, requires certificated direct air carriers to provide a "no-smoking" area or areas for each class of service, and for charter service, and to insure that there are a sufficient number of seats in "no-smoking" areas to accommodate persons wishing to sit there. It further enjoins each such carrier to insure that there is in fact no smoking in "no-smoking" areas, to enforce the rules required by Part 252 with respect to segregation of passengers in "smoking" and "no-smoking" areas, and to maintain and file with the Board an employees manual containing its rules for smoking by passengers aboard aircraft.

The Action on Smoking and Health (ASH) and Paul R. Kaiser have filed a petition for rulemaking to amend Part 252. The petition seeks no change with respect to smoking of cigarettes but requests a total prohibition of cigar and pipe smoking. No answers to the petition have been filed.[1]

Although petitioners refer to the "safety" of passengers, they appear to use this term in the sense of physical well-being rather than, more conventionally, with reference to hazards such as fire, which might be caused by the smoking of cigars or pipes. In any event, this type of conventional safety consideration is within the jurisdiction of, and has been considered by, the Federal Aviation Administration.[2]

The health aspects of smoking have also been examined by the Federal Aviation Administration and that agency, finding no persuasive evidence that smoke in concentrations likely to occur in transport aircraft is injurious to the health of non-smokers, withdrew its Advance Notice of Proposed Rulemaking in July, 1973.[3] Inasmuch as the Federal Aviation Administration has already asserted jurisdiction of the health question under its authority to promote safety of flight, we think it appropriate to continue to defer to that agency on this issue. In any event, on the basis of the material cited and submitted by petitioners, we are not persuaded that the smoking of cigars and/or pipes should be banned on the ground of injury to the health of passive smokers.[4] Our consideration of the instant petition will accordingly be limited to the question of passenger comfort and whether the smoking of cigars and/or pipes by passengers on certificated air carriers so discomforts non-smokers that carriers which permit it are failing to provide "adequate service" or observe "reasonable practices" within the meaning of section 404(a) of the Act.

Petitioners contend that cigar and pipe smoke differs from cigarette smoke in quality and quantity and causes more discomfort. Their contention is that the smoking of cigars and pipes results in more pollution than the smoking of cigarettes because the smoker, inhaling less, produces relatively unfiltered mainstream smoke, as well as a relatively larger quantity of sidestream smoke, which contains a higher concentration of noxious elements.[5] Petitioners further urge that cigar and pipe smoke causes more discomfort because it is more alkaline, thicker, more voluminous, and difficult to dissipate. And they suggest that cigars and pipes are not habit forming as are cigarettes and, accordingly, that abstention would not impose hardship or discomfort on smokers in the course of "what is generally a relatively short airline flight."[6]

The question of cigar and pipe (as distiguished from cigarette) smoking was not explored at the time Part 252 was adopted, and the Board has no expertise on the technical questions involved. Petitioners seek to support a distinction between cigar and pipe versus cigarette smoke by citation of medical literature and submission of individual letters and of responses to a very informal ASH survey of flight attendants. They also point to the opinion of an ICC Administrative Law Judge which would ban pipe and cigar smoking on trains except in cars which have been allocated as smoking areas in their entirety.[7]

The recommended decision of the ICC Administrative Law Judge has now been adopted by the Commission.[8] But while the railroad rule on pipes and cigars is of interest, its relevance to the question before us here is limited since the situation with respect to aircraft is different from that on trains where entire cars can be designated for smoking.

Literature cited by petitioners indicates that in certain test situations, the smoking of one cigar produced considerably more pollutants than the smoking of a number of cigarettes.[9] Several of the cited authorities appear to place pipes in the same category as cigars with respect to production of pollutants.[10] The cited medical authorities do not establish that pipe and cigar smoke in fact produces more irritation or discomfort in passive smokers.[11] And none of these cited tests

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[1] Although no formal answers have been filed, a letter in opposition to the petition has been received from William L. Sullivan, Jr., who complains that the proposed rule discriminates against cigar and pipe smokers. A letter of August 31, 1976, from the Airline Passengers Ass'n, Inc., appears to indicate association support for Mr. Sullivan's position. These letters will be placed in the correspondence file of the docket. The issue of discrimination is among those which will be considered in this proceeding.

[2] Dockets 10012, 10033, Notice 70-14, 35 FR 5045, March 25, 1970.

[3] 38 FR 19048, July 17, 1973.

[4] Passive smoking is the term used in the literature to refer to the inhalation of smoke by nonsmokers in the vicinity of persons who are smoking.

[5] Mainstream smoke emerges from the tobacco product after being drawn through the tobacco during puffing. Sidestream smoke rises from the burning cone of tobacco. Mainstream and sidestream smoke contribute different concentrations of many substances to the atmosphere for several reasons: Different amounts of tobacco are consumed in the production of mainstream and sidestream smoke; the temperature of combustion differs for tobacco during puffing or while smoldering; and certain substances are partially absorbed from the mainstream smoke by the smoker. Department of Health, Education, and Welfare, "Health Consequences of Smoking" 1975, p. 92.

[6] While petitioners thus refer to the length of flights, their proposal would ban all cigar and pipe smoking without regard to this factor.

[7] The ICC Administrative Law Judge found "adequate data to demonstrate that pipe and cigar smoke is a substantially more lasting and obnoxious imposition on 'passive smokers' than cigarette smoke." He noted a higher content of carbon monoxide in cigar and pipe smoke and stated that since these materials tend to be burned for longer periods of time per usage in the case of pipes and cigars, they also tend to generate more total pollutants per smoking incident.

[8] The newly adopted ICC rule reads: 1124.21 (Regulation 21) Allocation of space for nonsmokers and smokers.

a. Smoking shall not be permitted on trains except in appointed areas with fire-resistant materials and equipped with ventilation systems adequate to exchange air completely in reasonably short periods of time.

b. In train cars meeting the above requirement, smoking may be permitted as follows:

(1) Smoking may be permitted in private sleeping cars.

(2) Smoking is not permitted in any dining car, snack car, or other car where food is served, unless the train consist has alternative smoking and nonsmoking cars offering such food services.

(3) Smoking may be permitted in up to one-half of the space in any other car which is the sole one of its type in the consist, or if there is more than one car of this type in the consist, unreserved coach, reserved coach, parlor car, dome car, and lounge car shall each be considered a separate "type" of car.

(4) Pipe and cigar smoking is not permitted on board trains, except in cars which have been allocated as smoking areas in their entirety.

[9] One study is said to have indicated that the carbon monoxide generated by one cigar was double that generated by three cigarettes smoked simultaneously. Epstein, "Effects of Tobacco Smoke Pollution on the Eyes of the Non-Smoker," Paper presented to Third World Conference on Smoking and Health, June 4, 1975, New York, p. 2. And a 1970 (Hartke) study showed that the smoking in an unventilated room of 9 cigars in 30 minutes polluted the air as much as the smoking of 42 cigarettes in 16-18 minutes. 118 Cong. Rec. No. 72, Attachment 5 to petition.

[10] The 1970 Hartke study concluded that pipe smoking in the same unventilated room produced less carbon monoxide and nictotine than either cigarette or cigar smoking. More recent general statements, however, appear to classify pipe and cigar smoke together with respect to producing pollutants. Epstein, note 9 supra; Steinfeld, "Health Consequences of Smoking," Talk presented June 2, 1975, 3rd World Conference on Smoking and Health, New York, and Doyle, "Pipe and Cigar Smoking—Is It Safe?" American Lung Ass'n. Bulletin, March 1974.

[11] Compare Doyle, note 10 supra, at p. 13 with "Report of an Expert Group," Practitioner, 210 (1259): 645, 651, May, 1973.

and experiments took place in aircraft conditions.[12]

Individual letters of complaint submitted by petitioners describe severe nausea and respiratory discomfort said to have been caused by pipe and cigar smoke on particular flights but would not in themselves form sufficient basis for adoption of a blanket prohibition on cigars and pipes. No survey of passengers is offered, petitioners submitting instead a miscellaneous collection of responses to a questionnaire distributed to flight attendants. The different forms of this questionnaire and the replies make tabulation difficult and petitioners have made no effort at systematic compilation. It does, however, appear that a majority of the responding flight attendants are more affected by cigar and/or pipe smoke[13] than by cigarette smoke. Study of the responses nevertheless shows that, in terms of their effect on the comfort of flight attendants, the distinction between cigars and pipes, on the one hand, and cigarettes on the other, may not be as clear cut as the instant petition would suggest.

Thus, a substantial number of attendants would distinguish pipes from cigars; some found cigars and cigarettes more of a problem than pipes; a few noted that cigarettes are the real problem because they are used more frequently. On the longer questionnaire form where room was available, a substantial proportion of attendants, in response to the question concerning cigars or pipes, took pains to point out that all smoking affected them. Furthermore, of those attendants advocating a ban on smoking, more favored a total ban than a ban limited to cigars and pipes. Factors mentioned as relevant to annoyance caused by smoking are type of aircraft and length of flight. Letters received from individual members of the public show a pattern somewhat similar to that of the attendants' responses. While most of the letters emphasize cigar and pipe smoking—many complaining of nausea and allergic reactions a substantial number urge a full ban on all smoking now, or as the next regulatory step.

While the material presented by petitioners is not conclusive, it does indicate that the smoking of cigars and pipes by airline passengers may cause particular discomfort per smoking incident.[14] At the time Part 252 was originally considered, the carriers themselves appeared to believe that a distinction between cigars, pipes, and cigarettes might exist. And employee manuals on file with the Board indicate that some carriers do in fact ban the use of cigars and/or pipes. We are interested in the reasons why these rules have been adopted, and in carrier experience with the rules.

Whatever our ultimate conclusion as to the adoption of a ban on cigar and/or pipe smoking, the responses of flight attendants and of members of the public already received, as well as the Board's experience with Part 252 over the last three years, lead us tentatively to find that some amendment of the present provisions of Part 252 is in any event desirable. While some of the surveyed attendants complain of difficulties in requiring passengers to comply with existing regulations, passengers comment on the need for better enforcement. Entirely apart from this rulemaking, the Board has received a large number of complaints with respect to effectuation of Part 252, and a number of enforcement proceedings have resulted.[15]

Complaints filed with the Board generally have raised such problems as insuffciency of seats in no-smoking areas, lack of clear boundaries between smoking and no-smoking areas, and lack of enforcement by airline personnel. It appears that some carriers have failed to provide their employees with sufficient guidance in respect to the regulation or to employ adequate measures to insure compliance by company employees. In the circumstances and on the basis of this experience, we tentatively find a need for the proposed amendments of Part 252 so as to provide more detailed guidance to carriers, and to insure that specific instructions are given to carrier employees.

Amendment of the rule also appears needed to improve segregation of smokers from non-smokers when some configurations are used. Section 252.2 presently requires that carriers subject to the Part provide a "no-smoking" area for each class of service. It does not explicitly prohibit the provision of more than one smoking area per class of service. As a general rule, carriers which provide only first-class and coach service (normally in separate parts of the aircraft) have provided one "smoking" area and one "no-smoking" area per class, and thus per compartment. However, certain carriers which have offered more than one class of service per aircraft compartment have had difficulty in segregating smokers from non-smokers. They have usually been faced with the choice of allotting the forward and rear quarter of the aircraft compartment to one group, i.e., either smokers or non-smokers, and the center half to the other. In those instances in which the center half of the compartment has been allotted to smokers, the Board has received few if any complaints. However, when the converse configuration has been employed so that non-smokers are seated in the center half between two "smoking" sections, the Board has received both formal and informal complaints alleging that such configurations provide ineffective segregation.[16] Based on this experience, we tentatively find that § 252.2 should be amended explicitly to prohibit more than one smoking area per aircraft compartment.

In addition to comments on a ban of cigar and/or pipe smoking and on the specific proposed amandments to Part 252, we are interested in comments on whether or not and under what circumstances there should be a total ban on all smoking by passengers on commercial aircraft. We rejected such a solution at the time Part 252 was adopted since we, at that time, did not believe that an absolute ban was the only reasonable solution to the discomfort problem. However, the material submitted by petitioners and other individual members of the public as well as the volume of complaints with respect to Part 252 suggest that public tolerance of smoking has further decreased since the adoption of the Part. That tolerance has markedly declined in the past five years is confirmed by a recent official publication of the Department of Health, Education, and Welfare.[17] In the present circumstances, it might be best to consider the entire question of smoking on aircraft and the conditions under which it should be banned or permitted, rather than to explore the question on a piecemeal basis, one step at a time.

In addition to the specific proposed amendments, we would be interested in

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[12] Aircraft conditions have generally been found to be very favorable due to the rapid changes of air.

It has, however, been suggested that low atmospheric pressures in aircraft puts air crew at a disadvantage when exposed to carbon monoxide. Howlett and Shephard, "Carbon Monoxide as a Hazard in Aviation," 15 Journal of Occupational Medicine 874, November, 1973.

[13] All forms of questionnaire employed in ASH's survey of flight attendants inquired whether the attendants are bothered by cigar and/or pipe smoke on passenger flights, how it affects their health, comfort and job performance, and whether it affects them more than cigarette smoke. One form of questionnaire referred to "cigars and pipes" while another referred to "cigars or pipes."

[14] We have no information as to the relative frequency of pipe and cigar smoking on commercial aircraft generally. The study sample employed at the time Part 252 was adopted involved 20 MAC flights to Europe and Asia carrying 3,073 passengers and eight "domestic flights" with a total of 265 passengers. Of the 3,073 passengers on MAC flights, 1,604 smoked, of whom 28 smoked cigars and 37 pipes. Of 265 passengers on domestic flights, 83 smoked, of whom one smoked cigars and 5 pipes.

[15] One cease and desist order has been issued. Order 76-4-160, April 28, 1976.

[16] The Board has also received complaints against carriers which offer only one class of service but provide two "smoking" areas and one "no-smoking" area. This has been found to be ineffective segregation. See Order 76-4-160, note 15, supra. A third party complaint has been filed against Piedmont Aviation for employing the same type of configuration. *Libow* v. *Piedmont Aviation*, Third-Party Complaint, Docket 28288.

[17] Of 12,010 people interviewed in 1975, 70 percent (including more than half of those who themselves smoke) agreed that the smoking of cigarettes should be allowed in fewer places than it now is. The comparable figure for 1970 was 57 percent. "Adult Use of Tobacco—1975," pp. 7-8, Department of Health, Education, and Welfare, June 1976.

comments directed to the following issues:

1. Should all passenger smoking on commercial aircraft be prohibited?

2. Should any prohibition with respect to passenger smoking on commercial aircraft (whether limited or all-inclusive, as to type of smoke) be applicable on all passenger flights on all aircraft operated by certificated air carriers?

3. Should any prohibition with respect to passenger smoking on commercial aircraft be conditioned on: (a) Type of aircraft, (b) Length of flight, or (c) Other (*e.g.*, number of stops)?

4. Should there be "no-smoking" flights and, if so, in what markets and under what circumstances should they be provided? and

5. Should the "no-smoking" area be prescribed as a minimum percentage of sets on the aircraft, e.g., 40 percent?

PROPOSED RULES

It is proposed to amend Part 252 of the Board's Economic Regulations, Provision of Designated "No-Smoking" Areas Abroad Aircraft Operated by Certificated Air Carriers (14 CFR Part 252), as follows:

PART 252—PROVISION OF DESIGNATED "NO-SMOKING" AREAS ABOARD AIRCRAFT OPERATED BY CERTIFICATED AIR CARRIERS; PROHIBITION OF CIGAR AND PIPE SMOKING

1. Amend the part heading to read as set forth above.

2. Amend the Table of Contents by adding new §§ 252.1a and 252.1b to the table, so that the table as amended reads in pertinent part as follows:

Sec.
252.1 Applicability.
252.1a Definitions.
252.1b Carriers to prohibit smoking of cigars and pipes aboard aircraft.
252.2 Carrier to provide specially designated "no-smoking" areas in which smoking is prohibited.

* * * * *

3. Revise § 252.1 to read as follows:

§ 252.1 Applicability.

This part provides for the prohibition of cigar and pipe smoking abroad aircraft and for the provision of specially designated areas in which smoking of cigarettes is prohibited (hereinafter "no-smoking" areas). This part shall apply to each direct air carrier which holds a certificate of public convenience and necessity issued pursuant to section 401 of the act authorizing the transportation of persons. Nothing in the regulation shall be deemed to require such carrier to permit the smoking of cigarettes aboard aircraft.

4. Add a new § 252.1a to read as follows:

§ 252.1a Definitions.

For purposes of this part:

(a) "Compartment" means any portion of a passenger cabin separated by a bulkhead or other partition.

(b) "Row" means an entire horizontal line of seats including both sides of any intervening aisles.

5. Add a new § 252.1b to read as follows:

§ 252.1b Carriers to prohibit smoking of cigars and pipes aboard aircraft.

Each carrier subject to this part shall prohibit the smoking of cigars and pipes by passengers aboard aircraft, whether in scheduled or charter service.

6. Revise § 252.2 to read as follows:

§ 252.2 Carriers to provide specially designated "no-smoking" areas in which smoking is prohibited.

Carriers subject to this part shall provide a "non-smoking" area or areas for each class of service and for charter service: *Provided, however,* That there shall be no more than one "smoking" area per aircraft compartment. Each carrier shall adopt procedures, pursuant to this section, which shall insure that a sufficient number of seats in the "no-smoking" areas of the aircraft are available to accommodate all persons who wish to be seated in such areas. Such procedures shall include specific provision for expansion of the "no-smoking" area to meet passenger demand and in no case shall any "no-smoking" area consist of less than two rows of seats.

7. Revise § 252.3 to read as follows:

§ 252.3 Carrier to insure smoking of cigars and pipes not permitted aboard aircraft, to insure smoking of cigarettes not permitted in "no-smoking" areas, and to enforce its rules for the segregation of smokers and nonsmokers.

Each carrier shall take such action as is necessary to insure that smoking of cigars and pipes is not permitted aboard aircraft, to insure that smoking of cigarettes is not permitted in "no-smoking" areas, and to enforce its rules with respect to the segregation of passengers in "smoking" and "no-smoking" areas. Such action shall include requiring that the following procedures be carried out by carrier employees:

(a) For flights on which seat selection is available, each passenger shall be offered, upon check-in, a choice of "no-smoking" or "smoking" accommodation;

(b) For all flights, whether or not seat selection is available, all passengers shall be informed of the boundaries of the "no-smoking" and "smoking" areas and pre-boarding and pre-departure announcements shall explain that, in accordance with Civil Aeronautics Board regulations, all passengers are entitled to seating in the appropriate "no-smoking" areas on request;

(c) (1) In cases of cigarette smoking in a "no-smoking" area:

(i) An attempt to reseat the passenger in the appropriate "smoking" area;

(ii) In the absence of seats in the appropriate "smoking" area, a request that the passenger refrain from smoking while in the "no-smoking" area;

(iii) If this request is ineffective, notice to the passenger that he is subject to disembarkation at the next scheduled point;

(iv) If this notice is ineffective, disembarkation of the passenger at the next scheduled point.

(2) In cases of cigar or pipe smoking aboard aircraft:

(i) A request that the passenger refrain from smoking;

(ii) If this request is ineffective, notice to the passenger that he is subject to disembarkation at the next scheduled point;

(iii) If this notice is ineffective, disembarkation of the passenger at the next scheduled point.

[FR Doc.76-29680 Filed 10-7-76;8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

FM BROADCAST STATIONS IN NAPLES AND NORTH NAPLES, FLA.

Proposed Table of Assignments and Memorandum Opinion and Order

Adopted: September 28, 1976.

Released: October 1, 1976.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Naples and North Naples, Florida), Docket No. 20935, RM-2653, RM-2690. FM Broadcast Stations in Naples and North, Naples, Fla.

1. *Petitioner, proposal and comments.* (a) The Commission has before it, and will consider jointly, the petitions of Sunshine Broadcasters, Ltd. (RM-2690) and Donald W. Miles, Harold M. Kneller, Jr. and David P. West (hereinafter "Miles") (RM-2653), regarding Naples and North Naples, Florida, respectively.

(b) The petition of Sunshine Broadcasters, filed April 21, 1976, requests the assignment of FM Channel 276A to Naples. Oppositions have been received from Sterling Communications Corporation, the Deltona Corporation, and Collier Broadcasting Company. A reply comment was filed by the petitioner.

(c) The petition of Miles, filed February 4, 1976, requests the assignment of FM Channel 288A to North Naples, Florida. An opposition was submitted by Sterling Communications Corporation and a reply has been received from the petitioner.

2. *Demographic Data.* (a) *Location.*—Naples, the county seat of Collier County, is located in southwest Florida, 160 kilometers (100 miles) west of Miami. North Naples is an unincorporated area of Collier County stretching from Naples, north approximately 16 kilometers (10 miles) to the county line.

(b) *Population.* — Naples — 12,042;[1] North Naples—3,201; Collier County—38,040.

(c) *Present aural services.*—Naples is served by three FM stations: WRGI-FM (Channel 288A), licensed to Collier Broadcasting Co.; WNTU(FM) (Channel 249A), permit issued to Sterling Communications Corp.; and WCVU(FM) (Channel 233), licensed to Palmer

[1] Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

Broadcasting Co.; and one AM station, WNOG (unlimited-time), also licensed to Palmer Broadcasting Co. In addition one UHF-TV Station WEVU-TV (Channel 26) serves Naples. North Naples is unserved by local stations. Collier County has, in addition to the Naples' stations, Station WRGI(AM) and unoccupied FM Channel 266, Marco, and Station WKEM (AM), Immokalee.

3. *Preclusion considerations.* The assignment of Channel 276A to Naples would result in preclusion on that channel in an area which is largely swampland and lacks significant population. The assignment of Channel 288A to North Naples would result in preclusion on the co-channel affecting an area which includes the following communities—Immokalee (pop. 3,764); East Naples (pop. 6,152); Mt. Myers Beach (pop. 4,305), and Bonita Springs (pop. 1,932). However local aural service is already provided to Bonita Springs by Station WLEQ(FM) (Channel 240A), to Immokalee by Station WKEM(AM) and a petition to assign Channel 257A to Ft. Myers Beach (RM-2736) was received on July 23, 1976. Only East Naples is without such service.

4. *Community Data—Naples (RM-2690).* According to petitioner, Sunshine Broadcasters, Naples has been listed by a "National Advertising" magazine as the top growth area in the state of Florida. Detailed information is provided by petitioner to demonstrate that Naples is a sizable community that provides all the important services and facilities normally desired in a city. It also alleges that the 1970 population figure for the Naples area is 27,000, with "Florida state figures" for 1972, totalling over 30,000 persons, and at the present growth rate it is projected that the 1980 population will be from 65,000 to 75,000 persons. In a supplemental filing, petitioner provided more recent population data for the city and county. According to estimates furnished through local county and city agencies and the University of Florida, the 1975 population of Naples is 17,224 persons and of Collier County is 59,700 persons. The 1980 projections for Naples is 23,861 persons and for Collier County is 80,000 persons.

5. *Responsive Comments.* Sterling Communications Corp., permittee of Station WNTU(FM) (Channel 249A), Naples, Florida, states that the petitioner has not shown any special circumstances to justify another departure from the Commission's population guidelines.[2] Sterling argues that Naples is well served by existing stations and any proposal to add another station would represent an inefficient use of the radio spectrum contrary to section 307(b) of the Communications Act of 1934, as amended. Collier Broadcasting Co., licensee of Station WRGI-FM, Naples, and AM Station WRGI, Marco, makes substantially the same argument. In reply comments, petitioner argues that the primary consideration regarding its proposal is a technical one rather than an economic one and since there is no FCC policy or rule which would preclude adoption of its proposal, it urges that we view the opponents pleadings as an attempt to keep competition out. Therefore it requests that we take cognizance of the rapid growth in the Naples area by assigning Channel 276A to Naples.

DISCUSSION

6. We do not doubt the substantial growth that has taken place in Naples. However, even assuming large gains in population and a corresponding increase in need for aural service, the assignment of a fourth channel is not necessarily justified. Our population criteria are premised upon the mandate of section 307(b) of the Communications Act of 1934, as amended, "* * * the Commission shall make such distribution of * * * frequencies * * * among the several States and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." The formulation of criteria based upon population reflects our belief that there is indeed a limit beyond which it is neither fair, efficient nor equitable to allocate additional channels to a particular community of a particular size. Our guidelines which impose a limit of 2 channels for communities under 50,000 population, of course, are not immutable[3] but have yielded to special circumstances such as provision for anticipated future growth,[4] or where channel availability is such that due to the absence of adverse effects elsewhere a fair distribution would result.[5] We have assigned a third channel to communities which have populations between 40,000 and 50,000 where there appears to be a substantial increase from the last census.[6] But we can find no case in which our population guidelines have been stretched as far as petitioner requests. To the contrary, we have denied the assignment of even a third channel to large communities in other situations.[7] Contrary to petitioner's assertion that our only consideration is a technical one, i.e., whether the requested channel can be assigned in accordance with our engineering rules, we believe that section 307(b) of the Act dictates that our determination consider the fairness of the distribution. This evaluation is not based primarily on economics nor the lack of significant preclusion but, due to the scarcity of frequencies that might be allocated to this area of Florida, the retention of flexibility is an important factor. In a recent case, Bend, Oregon, 40 F.R. 53597 (1975), recons. den. FCC 76-436, Mimeo No. 40524, released May 20, 1976, a request for a third FM channel to a community of 13,710 (1970 U.S. Census) was denied. Population projections for the city included a 1974 estimate—17,215 and for the urban area—25,690 and a 1985 city prediction of 45,000. The Commission stated that these projections were far short of the guidelines, that no nighttime first or second aural service would be provided and that the community was adequately served by four existing stations. Thus no special circumstances could be found to warrant a departure from the guidelines and it was emphasized that a lack of preclusion in itself was not such a significant consideration. In the present situation, we also fail to find sufficient special circumstances to justify pursuing the request for a fourth FM channel to a community this size (pop. 12,042) even with the predicted growth to a population 23,861 for 1980. We believe that our previous grant of a third FM channel to the community which exceed our criteria was designed to accommodate the future increase in needs for aural service. Thus we believe that this petition must be denied.

7. *Community Data—North Naples (RM-2653).* According to petitioner Miles, the term, North Naples, is "used to describe almost all of the unincorporated part of Collier County, Florida, which lies directly north of the City of Naples." It is purported to include Naples, Park, an unincorporated community of 1,522 persons, Palm River Estates, Palm River Shores, Vanderbilt Beach, Vanderbilt Beach Estates, Poinciana Village, Forest Lakes and other residential developments. Petitioner alleges that Collier County is, according to the 1970 U.S. Census, one of the five fastest growing areas in the United States and that substantial growth is indicated for the county. Petitioner avers that this substantial growth taking place in Collier County is to be found in the unincorporated areas surrounding Naples. It is conceded by petitioner, that the county still considers North Naples as an "unincorporated area" and that it lacks a "city hall," and its own post office. Nevertheless, they argue that based on growth indicators provided plus the existence of various facilities such as an industrial park, shopping center, and numerous residential developments, that a community of interest exists. Among the existing indicators of community status for North Naples that petitioner points to are the "North Naples Fire District" designation given to it by the county; the

[2] The guidelines limit communities under 50,000 population to one to two stations. In 1974, a third FM channel was assigned to Naples "even though it exceeds the quota set forth in the FM assignment policy guidelines." Naples, Florida, 49 F.C.C. 2d 1266, 1269 (1974).

[3] Melbourne and Satellite Beach, Florida, 47 F.C.C. 2d 717 (1974); Colorado Springs, Colorado, 44 F.C.C. 2d 1047, 1053 (1974); Yakima, Washington, 42 F.C.C. 2d 548 (1973); Fresno, California, 38 F.C.C. 2d 525 (1972); San Antonio, Texas, 7 F.C.C. 2d 836 (1967).

[4] Alexandria, Louisiana, 51 F.C.C. 2d 498 (1975); Albuquerque, New Mexico, 35 F.C.C. 2d 230 (1972).

[5] Key West, Florida, 45 F.C.C. 2d 142 (1974). Cf. Atlanta, Georgia, 49 F.C.C. 2d 1270, 1274 (1974); recons. den. 55 F.C.C. 2d 62 (1975).

[6] See Danville, Indiana, 40 Fed. Reg. 52029 (Docket No. 19928) (1975); Valdosta, Georgia, and Perry, Florida, 52 F.C.C. 2d 234 (1975); Alexandria, Louisiana, supra.; Melbourne and Satellite Beach, Florida, supra.; see also Yakima, Washington, supra.

[7] See Bend, Oregon, 40 FR 53597 (Docket No. 20481) (1975); recons. den. (1975); Bangor, Maine, 55 F.C.C. 2d 282, recons. den. Mimeo No. 65775, released June 3, 1976; Santa Maria, California, 8 F.C.C. 2d 402 (1967); Kingston, New York, 5 R.R. 2d 1548 (1965).

"Water Management District Number Seven"; and "Water Sewer District A" which comprise the area regarded as North Naples. The County Sheriff Department's dispatches refer to North Naples, according to petitioner and at least five county voting precincts are situated within the area, while numerous other services lie, at least in part, within the designated boundaries of North Naples. In an attached letter written by the president of the Naples Park Area Association, we are told that the area consists of many named communities which have new homes, schools, banks, golf clubs and a drive-in theatre under construction. The president further states that the area should be considered as a single unit because—it is served by one fire district; most of the area is located in the sewer district and a new state park offers a central place for recreation. In addition he refers to the rapid increase in service facilities and a new shopping center to show that residents of this area have become independent of the facilities offered by Naples.

8. *Responsive Comments.* Sterling Communications Corp., permittee of Channel 249A at Naples, contends that petitioner has failed to make a threshold showing that North Naples is a distinct community in need of a separate aural service and that therefore petitioner is realistically seeking another Naples facility. It points to a statement from the Chairman of the County Commissioner which states that North Naples has no autonomous governing body nor definite boundaries, that the area relies on the city of Naples for its water supply and on the county for sewers and police protection. He further notes that no major shopping centers or civic associations identify themselves with the North Naples area at large. In addition Sterling argues that North Naples is well served by 5 existing stations and another potential station in the area. Moreover, preclusion would be significant, according to Sterling in that 3 communities with larger populations and without any assignments would be affected. In reply petitioner argues that it is committed to serving North Naples rather than Naples and that its proposed community of assignment has grown considerably since the U.S. Census was taken in 1970. In response to Sterling's allegation that North Naples does not have an organization which speaks for the community at large, petitioner comments that its proposal seeks to provide that specific function by operating a local station. It concedes that there are no definite boundaries nor local government, but asserts that no such requirement exists for assignment purposes.

9. *Discussion.* Based on the information thus far provided, we have some serious reservations about the petition to assign a first FM channel to North Naples but for reasons to be discussed we believe that the request should be pursued in a rule making proceeding. First, the status of North Naples as a community is unclear. In Seven Locks Broadcasting Co., 37 F.C.C. 2d 82, 83 (1964), we described the term "community" as "an identifiable population grouping separate and distinct from all others." The test that has been formulated in this regard is whether the residents function as and conceive of themselves as residents of a community, around which their interests coalesce.[8] Included in the evidence offered to support community status in North Naples is the designation of the "North Naples Fire District" and the "Water Management District No. Seven" and "Water Sewer District A". These designations are demographic in nature indicating only that the county, not the residents, recognizes a geographic area known as North Naples. However, the type of information that we require for the purposes of community status, as used by the Act, include civic organizations, clubs, local newspapers, shopping centers, etc., such that it appears the interest of the residents coalesce into community facilities or services to satisfy some common needs of these residents. We have been told that there are some facilities such as a new shopping center and more residential construction in existence. However we need to know in what way each existing facility or organization is designated and what needs of the community's residents as opposed to the county's residents, they seek to fulfill. In order to allow petitioner or some other party to provide information on this issue, we will pursue the request to assign Channel 288A to North Naples. Regarding the delineation of boundaries for North Naples, petitioner is wrong in asserting that no such requirement exists.[9] Therefore we expect petitioner, in its comments, to show the boundaries of the community to be served. As to Sterling's contention that a North Naples station would in reality seek to serve the larger community of Naples, we believe that the commitment given by petitioner is sufficient provided an adequate showing can be made that North Naples is a distinct and viable community including information regarding the availabilty of business activity such a station would look to for its source of advertising.

10. Accordingly, the Commission proposes, pursuant to sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, to amend the FM Table of Assignments (§ 73.202(b) of the Commission's rules) as follows:

City	Channel No.	
	Present	Proposed
North Naples, Fla		288A

11. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures and filing requirements are contained below and are incorporated herein.

12. Interested parties may file comments on or before November 12, 1976, and reply comments on or before December 2, 1976.

13. *Further, it is ordered,* That the petition of Sunshine Broadcasters to assign Chanel 276A to Naples, Florida, (RM-2690), is denied.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in this *notice of proposed rulemaking.*

2. *Showings required.* Comments are invited on the proposal(s) discussed in this notice of proposed rulemaking. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in this notice of proposed rule making. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be

[8] Yorktown, Virginia, 38 F.R. 6695 (Notice) (1973); Sierra-Pacific Radio Corp. (KOSO), 7 F.C.C. 2d 61 (1967). In Jensen Beach, Florida, 47 F.C.C. 2d 54 (1974) it was shown that a community existed since there was an independent fire department, ambulance service, Chamber of Commerce, commercial bank, a variety of services for residents and tourists, a local newspaper, several organizations and the residents had started a drive to seek incorporation. See also Holiday, Florida, 41 F.R. 20663 (1976).

[9] See Yorktown, Va., supra; Seven Locks Broadcasting Co., 37 F.C.C. 82 (1964). Such information is needed, among other reasons, so as to determine commnuity coverage from a proposed transmitter site under the Commission's rules. See § 73.315(a).

served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commissions' Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc.76-29655 Filed 10-7-76;8:45 am]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 720]

PRIVACY ACT OF 1974

Specific Exemptions of Systems of Records

Under authority of sections 120(a) and 209(a)(11) of the Federal Credit Union Act (12 U.S.C.A. 1766(a), 1789 (a)(11)), and pursuant to section (k) of the Privacy Act of 1974 (5 U.S.C. 552a (k)), the Administrator of the National Credit Union Administration (NCUA) hereby proposes to revise 12 CFR 720.35, as set forth below.

Section 720.35 is NCUA's regulatory provision by which certain of its systems of records are exempted from provisions of the Privacy Act in accordance with section (k) thereof. Section 720.35 does not presently identify those systems of records for which exemptions are claimed. Rather, it describes the effects of the exemptions claimed and refers the reader to NCUA's public notices of systems of records to determine the specific systems exempted. Based upon a reconsideration of section (k) of the Act, it is now considered more appropriate that § 720.35 identify both those systems of records for which exemptions are claimed and the provisions of the Act from which they are exempted. This proposed revision will accomplish that purpose.

Interested persons are hereby invited to submit written data, views or arguments on this proposal, to the Administrator, National Credit Union Administration, 2025 M Street NW., Washington, D.C. 20456. Comments received on or before November 12, 1976, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for public inspection during normal business hours at the foregoing address.

C. AUSTIN MONTGOMERY,
Administrator.

SEPTEMBER 30, 1976.

Authority: Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and sec. 209, 84 Stat. 1014 (12 U.S.C 1789)

§ 720.35 Exemptions.

(a) The Administration maintains three systems of records which are exempted from some of the provisions of the Privacy Act of 1974. In paragraphs (b) and (c) of this section, those systems of records are identified (by System Name and System Number as stated in the Administration's "Notice of Systems of Records," published in the FEDERAL REGISTER) and the provisions from which each system is exempted and the reasons therefor are set forth.

(b) System NCUA-2, entitled "Federal Employee Security Investigations Containing Adverse Information," consists of adverse information about Administration employees which has been obtained as a result of routine Civil Service Commission security investigations. System NCUA-17, entitled "Security Clearance Records Concerning NCUA Personnel Who Occupy Critical Sensitive Positions," consists of records obtained as a result of investigations conducted by the Civil Service Commission and/or the Bureau of Federal Investigation to determine qualifications of NCUA officials for security clearances. To the extent that the Administration maintains records in either of these systems pursuant to Civil Service Commission guidelines which require or may require retrieval of information by use of individual identifiers, those records are encompassed by and included in the Civil Service Commission's Government Wide System of Records Number 4, entitled "Personnel Investigations Records," and thus are subject to the applicable specific exemptions promulgated by the Commission at 5 CFR § 297.117. Additionally, in order to ensure the protection of properly confidential sources, particularly as to those records which are not maintained pursuant to such Civil Service Commission requirements, the records in these systems of records are exempted, pursuant to section k(5) of the Act (5 U.S.C. 552a(k)(5)), from section (d) of the Act (5 U.S.C. 552a(d)). As a result, to the extent that disclosure of a record would reveal the identity of a confidential source, the Administration need not grant access to that record by its subject. Information which would reveal a confidential source shall, however, whenever possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(c) System NCUA-4, entitled "Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act," consists of a limited number of records about individuals suspected of involvement in felonies or infractions under the Federal Credit Union Act (12 U.S.C. 1751, et seq.). These records are maintained in an overall context of general investigative information concerning crimes against credit unions, the bulk of which does not pertain to and is not identifiable to individual persons. To the extent that individually identifiable information is maintained, however, for purposes of protecting the security of any investigations by appropriate law enforcement authorities and promoting the successful prosecution of all actual criminal activity, the records in this system are exempted, pursuant to section k(2) of the Act (5 U.S.C. 552a(k)(2)), from sections (c)(3) and (d) of the Act (5 U.S.C. 552a (c)(3), (d)). As a result, the Administration need not make an accounting of previous disclosures of a record in this system of records available to its subject, and the Administration need not grant access to any records in this system of records by their subject. Further, whenever an individual requests records about himself and maintained in this system of records, the Administration shall, to the extent necessary to realize the above stated purposes, neither confirm nor deny the existence of that record but shall advise the individual only that no record available to him pursuant to the Privacy Act of 1974 has been identified. However, should a review of the information reveal that it has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law, the individual shall be advised of the existence of the information and shall be provided the information except to the extent it would identify a confidential source. Information which would identify a confidential source shall, if possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(d) For the purposes of this section, a "confidential source" means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

[FR Doc.76-29548 Filed 10-7-76;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 118]

HANDICAPPED ASSISTANCE LOANS

Proposed Rulemaking

Notice is hereby given that pursuant to the authority contained in Section 5 of the Small Business Act, 15 U.S.C. 631, et seq., it is proposed to amend, as set forth below, § 118.71 of Part 118 of Chapter I, Title 13 of the Code of Federal Regulations.

Prior to the final adoption of such amendment, consideration will be given to any comments. Such comments should be submitted in writing, in triplicate, to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, on or before October 28, 1976.

Information. The proposed amendment creating a new paragraph (b) to § 118.71 liberalizes a part of the definition of "associate" set forth in § 120.1(d)(3) of Part 120. It would make SBA financial assistance available to HAL–1 organizations whose officers, directors, trustees or members may also be officers, directors, or shareholders of the prospective lender, provided such person does not participate in the lender's decision on a loan to the HAL–1 organization. This liberalization is being proposed because applicable provisions of Parts 120 and 122 of this chapter apply to both HAL–1 and HAL–2 loans.

It is proposed to amend § 118.71 by adding new paragraph (b) thereto which will read as follows:

§ 118.71 Applicability of other SBA regulations.

* * * * *

(b) For the purpose of determining the eligibility of a nonprofit organization, as defined in § 118.2(e) to receive financial assistance from SBA under 7(h) of the Small Business Act, as amended, such organization shall not be deemed an associate of the lender solely because one or more of its officers, directors, or members may also be officers, directors, or holders of ten percent or more of the lender's stock, unless such person has participated in the lender's decision to make a loan in participation with SBA to the said nonprofit organization.

(Catalog of Federal Domestic Assistance Program No. 59,021, Small Business loans.)

Dated: OCTOBER 1, 1976.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.76–29683 Filed 10–7–76;8:45 am]

notices

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

DEPARTMENT OF DEFENSE

Department of the Army

SPECIAL COMMISSION ON THE U.S. MILITARY ACADEMY

Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of committee: The Special Commission on the United States Military Academy.

Date of meeting: 27–29 October 1976.

Place: United States Military Academy, West Point, New York.

Time: 1300—1700, 27 October 1976. Open Session; 1700–2100, 27 October 1976, Closed Session (unless deferred to permit greater public participation); 28 October–29 October, Closed Session.

Proposed agenda: The Commission will meet from 1300–1700 hours to receive public evidence concerning the eight questions posed by the Secretary of the Army (FR Sept. 3, 1976). This portion of the meeting will be open to the public; however, in order to assure adequate space accommodations, it is necessary for all persons wishing to attend, appear before or file statements with the Commission during the session to advise the Executive Director of the Commission in writing not later than 22 October 1976 at the following address: Executive Director, Special Commission, United States Military Academy, West Point, New York. This portion of the meeting will remain open to the public as long as is required on 27 October to permit all persons having expressed an interest in appearing before or in filing statements with the Commission to do so. Persons appearing before the commission are asked to limit their presentations to a reasonable period of time, the length of which will be determined by the Executive Director of the Commisison, based upon the number of persons wishing to appear.

2. The Commission will recess its session at 1700 hours 27 October, 1976 unless public participation determines that the closed session will be deferred as stated above. The Commission will immediately reconvene in closed sessions from 1700 to 2100 hours 27 October 1976, or as soon thereafter as public participation in open session has been concluded, but not later than 2000 hours, 27 October 1976. The Commission will remain in closed session until such time as may be determined by the Secretary of the Army or his designee, but not later than 29 October, 1976. These sessions will be closed to the public since the Commission will be addressing matters directly involved with the Electrical Engineering 304 cheating incident and the alleged Honor Code Violations resulting therefrom. An integral and inseparable portion of the subject matter of the closed sessions will involve discussions and review of personnel and similar files as well as personal interviews of individuals, many of whom have cases still pending. The public disclosure of this information would constitute a clearly unwarranted invasion of personal privacy of the individuals concerned. Further, investigatory records compiled in connection with investigation of the cheating incident will also be reviewed during these sessions. The disclosure of this information will constitute a clearly unwarranted invasion of personal privacy. These matters are exempt from public disclosure under Title 5, U.S.C. 552(b)(6). Accordingly, it has been determined necessary to close these portions of the 27–29 October 1976 meeting to the public pursuant to Section 10(d) of Pub. L. 92–463, the Federal Advisory Committee Act.

3. Persons wishing additional information on the above scheduled meeting may write the Executive Director at the address given above or may telephone the Executive Director at 914–938–3005.

Dated: October 6, 1976.

By authority of the Secretary of the Army.

R. S. SEEBERG,
LTC, U.S. Army, Acting Director, Administrative Management, TAGGEN.

[FR Doc.76–29758 Filed 10–7–76;8:45 am]

Department of the Navy

ACADEMIC ADVISORY BOARD TO THE SUPERINTENDENT, UNITED STATES NAVAL ACADEMY

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy will meet on November 15, 1976, at the conference room 301 (Rickover Hall Conference Room), Rickover Hall, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 8:00 a.m. and terminate at 3:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of the midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and submit their proposals to the Superintendent to aid him in improving educational standards and in solving academy problems.

Dated: OCTOBER 1, 1976.

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General, (Civil Law).

[FR Doc.76–29670 Filed 10–7–76;8:45 am]

BOARD OF VISITORS TO THE UNITED STATES NAVAL ACADEMY

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on November 29 and 30, 1976, at the conference room 301 (Rickover Hall Conference Room), Rickover Hall, United States Naval Academy, Annapolis, Maryland. The session to be held on November 29 will commence at 8:30 a.m. and terminate at 6:30 p.m., and the session to be held on November 30 will commence at 9:00 a.m. and terminate at 1:30 p.m.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

Dated: October 1, 1976.

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76–29669 Filed 10–7–76;8:45 am]

CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations Executive Advisory Committee will meet on October 27 and 28, 1976, at the Pentagon, Washington, D.C. The meeting will be closed to the public. The sessions will commence at 8:30 a.m. and terminate at 5:30 p.m. each day of the meeting.

The agenda will consist of matters required by Executive Order to be kept secret in the interest of national defense, including intelligence briefings of Soviet strategic and general purpose forces, naval operations, and research and development. Presentations will also cover

United States naval command, control and communications, and strategic planning. The Secretary of the Navy has therefore determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

OCTOBER 1, 1976.

[FR Doc.76-29671 Filed 10-7-76;8:45 am]

Office of the Secretary of Defense

DEFENSE SCIENCE BOARD TASK FORCE ON PATRIOT VULNERABILITY

Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Patriot Vulnerability will meet in closed session on 26, 27, and 28 October 1976 at Fort Bliss, Texas.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering and to provide long-range guidance in these areas to the Department of Defense.

The task force will provide an analysis of the Patriot vulnerability to current and projected threats and provide related guidance and advice regarding R. & D. action considered appropriate within the Department of Defense.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this task force meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

OCTOBER 4, 1976.

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

[FR Doc.76-27007 Filed 10-7-76;8:45 am]

DEFENSE SCIENCE BOARD

Notice of Advisory Committee Meeting

The Defense Science Board will meet in closed session on 4-5 November 1976 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Board has been scheduled for 4-5 November 1976 to discuss interim findings and tentative recommendations resulting from ongoing Task Force activities associated with Strategic, Tactical, Intelligence/Com-Technology issues. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

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

OCTOBER 4, 1976.

[FR Doc.76-29604 Filed 10-7-76;8:45 am]

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Notice of Closed Meetings

Pursuant to the provisions of Section 10 of Public Law 92-463, effective January 5, 1973, notice is hereby given that closed meetings of the DIA Scientific Advisory Committee will be held at Headquarters, Strategic Air Command, Offutt Air Force Base, Nebraska on:

Thursday and Friday, 2-3 December 1976

The entire meetings commencing at 0830 hours are devoted to the discussion of classified information as defined in Section 552(b)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

-MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

OCTOBER 4, 1976.

[FR Doc.76-29605 Filed 10-7-76;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

'The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes.

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on August 3, 1976, Applied Science Laboratories, Inc., 139 North Gill Street (Box 440), State College Park 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	Schedule
Mescaline	I
Lysergic Acid Diethylamide	I

Pursuant to Section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a), notice is hereby given that the above firm has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances indicated, and any other such person, and any existing registered bulk manufacturer of the above substances may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than November 12, 1976.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, NW., Washington, D.C. 20537.

Dated: October 4, 1976.

FREDERICK RODY,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.76-29612 Filed 10-7-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

OUTER CONTINENTAL SHELF ADVISORY BOARD

Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-643, 5 U.S.C. App. I and the Office of Management and Budget's Circular No. A-63, Revised.

The Outer Continental Shelf Advisory Board will meet during the period 9:00 a.m. to 5:00 p.m., November 8, 1976, at Dunfey's, West End Circle, Hyannis, Massachusetts.

The meeting will cover the following principal subjects:

1. OCS Schedule
2. OCS Legislation, including Coastal Energy Impact Program
3. OCS Order 15
4. Information Clearinghouse
5. Pipelines
   a. State of the art
   b. Proposed actions, corridor studies
   c. Experience in Gulf of Mexico and Alaska

6. Report by the OCS Environmental Studies Advisory Committee
   a. Role of and problems with the studies program
   b. Resolution concerning baseline data collection relative to lease schedule
7. Nearshore-onshore Studies
8. Coast Guard Briefings
   a. Oil spill clean up procedures
   b. Conflicts between marine traffic and fixed OCS structures
   c. Enforcement of 200-mile fishing limit
9. Archeological Surveys
   a. Terms under which industry conducts
   b. Release of data to the States
10. Contract Study with the State University System of Florida Institute of Oceanography (SUSIO)
11. Procedural Matters
   a. Role of vice-chairman
   b. Role of agenda steering committee
12. Resolution on Commercial Fisheries and OCS Development
13. Lease Termination Provision
14. Other Items

The meeting is open to the public. Interested persons may make oral or written presentations to the committee. Such requests sohuld be made no later than November 3 to: Alan Powers, Office of OCS Program Coordination, Department of the Interior, Washington, D.C. 20240, 202/343-9311.

Minutes of the meeting will be available for public inspection and copying three weeks after the meeting at the Office of OCS Program Coordination, Room 4126, Department of the Interior, 18th and C Streets, NW., Washington, D.C.

ALAN D. POWERS,
Director, Office of OCS Program Coordination.

OCTOBER 5, 1976.

[FR Doc.76-29314 Filed 10-7-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Order No. 905-7 CFR Part 905]

SHIPPERS ADVISORY COMMITTEE MEETING

Public Meeting

Pursuant to the provisions of § 10(a)(2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of a meeting of the Shippers Advisory Committee established under Marketing Order No. 905 (7 CFR Part 905). This order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The committee will meet in the A.B. Michael Auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland, Florida, at 10:30 a.m. on October 26, 1976.

The meeting will be open to the public and a brief period will be set aside for public comments and questions. The agenda of the committee includes analysis of current information concerning market supply and demand factors, and consideration of recommendations for regulation of shipments of the named fruits.

The names of committee members, agenda, summary of the meeting and other information pertaining to the meeting may be obtained from Frank D. Trovillion, Manager, Growers Administrative Committee, P.O. Box R, Lakeland, Florida 33802; telephone 813-682-3103.

Dated: October 6, 1976.

IRVING W. THOMAS,
Acting Administrator.

[FR Doc.76-29835 Filed 10-7-76;8:45 am]

Office of the Secretary

ADVISORY COMMITTEE ON FOREIGN ANIMAL DISEASES

Meeting

A meeting of the Advisory Committee on Foreign Animal Diseases with Consultants to the Plum Island Animal Disease Center will be held at 8:30 a.m. on October 27, 1976, in the Emergency Programs Information Center, Federal Building, 7th Floor, United States Department of Agriculture, Hyattsville, Maryland 20782.

The purpose of the committee is to advise the Secretary of Agriculture regarding program operations or measures to prevent, suppress, control, or eradicate an outbreak of food-and-mouth disease (FMD) or other destructive foreign animal disease in the event such diseases should enter this country.

The purpose of this meeting is to review policies of the Department regarding the stockpiling of FMD vaccine and to discuss guidelines for utilization of such vaccines during an outbreak of FMD in the United States.

The meeting is open to the public. Written statements may be filed with the committee before or after the meeting. Any member of the public who wishes to file a statement or who has further questions may contact Dr. F. J. Mulhern, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 316-E, Washington, D.C. 20250, Area Code (202) 447-3668.

Dated: October 1, 1976.

F. J. MULHERN,
Vice Chairman.

[FR Doc.76-29527 Filed 10-7-76;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

DEPARTMENT OF AGRICULTURE—PASADENA

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 76-00374. Applicant: U.S. Department of Agriculture, Fruit and Vegetable Chemistry Laboratory, 263 South Chester Avenue, Pasadena, California 91106. Article: Nuclear Magnetic Resonance Spectrometer System, Model No. JNM-EX-60. Manufacturer: JEOL, Japan. Intended use of article: The article is intended to be used for studies of natural products isolated from plant or microbial sources, or derivatives prepared from these products. They include bitter constituents of citrus, sweeteners derived from these bitter constituents, carotenoid pigments, and bioregulators. Research will be carried out to determine the chemical structures of these materials or to determine how they bind to proteins and enzymes.

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

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (June 30, 1975). Reasons: The foreign article provides the capability for proton homonuclear and heteronuclear decoupling. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 15, 1976 that the capability of the article described above is pertinent to the applicant's intended purposes. HEW also advises that (1) the most closely comparable domestic instrument is the Model CFT-20 manufactured by Varian Instrument Division (Varian) and (2) the CFT-20 did not provide the pertinent capability satisfied by the article at the time the foreign article was ordered.

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

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29581 Filed 10-7-76;8:45 am]

FREDERICK CANCER RESEARCH CENTER

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scien-

tific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

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

Docket Number: 76-00431. Applicant: Frederick Cancer Research Center, Post Office Box 'B', Frederick, Maryland 21701. Article: Cryokit, Model LKB 14801-1, Set of tools and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to study the localization of subviral proteins in normal and infected tissue culture cells. These proteins are immunochemically tagged and frozen thin sections offer retention of antigen sites. Frozen thin sections will be prepared of cells and virus pellets and specifically prepared tags will be reacted to these sections.

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

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated September 16, 1976 that it knows of no domestic instrument of equivalent scientific value to the article for its intended uses.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29583 Filed 10-7-76;8:45 am]

HARTFORD HOSPITAL

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 76-00418. Applicant: Hartford Hospital, 80 Seymour Street, Hartford, Connecticut 06115. Article: EMI Scanner with Magnetic Tape System and Diagnostic Display Console. Manufacturer: EMI Ltd., United Kingdom. Intended use of article: The article is intended to be used for clinical studies, the results of which will be the subject or papers to be presented at hospital, state, and national medical societies and publications pertinent to the field of medicine. The article will also be used in an educational activity formulated at the following levels of organization:

1. Brain Scanner Operation—Teaching the theory of scanner and actual operation to technicians, radiologist, and repair personnel.

2. Brain Scanning—Teaching and training radiology residents, radiologists, neurologists, and neurosurgeons to interpret brain scanner images for medical diagnosis.

3. Brain Scanning—Teaching practical application so that staff completing the program will be capable of operation of a scanning unit.

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

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (June 17, 1975).

Reasons: This application is a resubmission of Docket Number 76-00214-33-90000 which was denied without prejudice to resubmission on March 8, 1976 for informational deficiencies. At the time of order the foreign article was a newly developed system designed to provide precise transverse axial X-ray tomography. The Department of Health, Education and Welfare (HEW) advises in its memorandum dated September 15, 1976 that the sensitivity and non-invasive methodology of the article are pertinent to applicant's intended purposes. Although comparable domestic instruments are now available, HEW advises that it knows of no domestic instruments of equivalent scientific value to the foreign article for such purposes as the article is intended to be used which was commercially available at the time the article was ordered.

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

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29580 Filed 10-7-76;8:45 am]

NORTH CAROLINA STATE UNIVERSITY

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific Articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

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

Docket Number: 76-00398. Applicant: North Carolina State University, Geosciences Department, Withers Hall, Raleigh, NC 27607. Article: Deep Sea Reversing Thermometers & Case. Manufacturer: Watanabe Keiki Manufacturing Co. Ltd., Japan. Intended use of article: The article is intended to be used to measure and record deep ocean water temperatures and, in addition, provide the means by which the depth of measurement can be determined. Application received by Commissioner of Customs: May 6, 1976. Advice submitted by National Oceanic and Atmospheric Administration on: June 22, 1976. Article ordered: January 2, 1976.

Docket Number: 76-00399. Applicant: North Carolina State University, Geosciences Department, Withers Hall, Raleigh, North Carolina 27607. Article: Deep Sea Reversing Thermometers & Case. Manufacturer: Watanabe Keiki Manufacturing Co. Ltd. Intended use of article: The article is intended to be used to measure and record deep ocean water temperatures and, in addition, provide the means by which the depth of measurement can be determined. Application received by Commissioner of Customs: May 6, 1976. Advice submitted by National Oceanic and Atmospheric Administration on: June 22, 1976. Article ordered: January 2, 1976.

Docket Number: 76-00400. Applicant: North Carolina State University, Geosciences Department, Withers Hall, Raleigh, North Carolina 27607. Article: Deep Sea Reversing Thermometers & Case. Manufacturer: Watanabe Keiki Manufacturing Co., Ltd. Intended use of article: The article is intended to be used to measure and record deep ocean water temperatures and, in addition, provide the means by which the depth of measurement can be determined. Application received by Commissioner of Customs: May 6, 1976. Advice submitted by National Oceanic and Atmospheric Administration on: June 22, 1976. Article ordered: January 2, 1976.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications denied. An instrument or apparatus of equivalent scientific value to each foreign article, for such purposes as these articles are intended to be used, was being manufac-

tured in the United States at the time the articles were ordered.

Reasons: In response to Question 9, in each of the foregoing applications, the applicant states that to its knowledge no deep sea reversing thermometers are being manufactured in the United States. At the time each foreign article was ordered, however, there were two known U.S. manufacturers of such instruments providing specifications comparable to each foreign article, i.e., Kahl Scientific Instruments Corporation and Walter H. Kessler Company Incorporated. In response to Question 8, the applicant alleges in each application that the unique structure of the reversing thermometers (articles) is designed to accomplish each of the stated purposes for which each article is intended to be used. The National Oceanic and Atmospheric Administration advised in its respectively cited memoranda that domestic instruments manufactured by these two firms are scientifically equivalent to each foreign article cited above for each applicant's intended purposes.

For these reasons, we find that at the time the articles were ordered, the domestic deep sea reversing thermometers were of equivalent scientific value to each of the foreign articles cited above for such purposes as these articles are intended to be used.

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29584 Filed 10-7-76;8:45 am]

NORTHWESTERN UNIVERSITY MEDICAL SCHOOL

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 76-00423. Applicant: Northwestern University Medical School, Dept. of Anesthesia, 303 East Chicago Avenue, Chicago, Illinois 60611. Article: Four Choice Reaction Tester and accessory unit. Manufacturer: Kneesworth Electronics, United Kingdom. Intended use of article: The article is intended to be used for studies of the reaction times of subjects following a number of experimental conditions of anesthetic exposure. The objectives pursued in the course of investigation will be confined to establishing the normal reaction time, using this test system, of normal subjects to the flashing light display. The subject will then be studied following a variety of anesthetic exposure conditions, in order to determine how long it takes to return to the normal, baseline, reaction time level.

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

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is specifically designed for the applicant's research studies and is portable enough to be carried from room-to-room. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated September 15, 1976 that the capability described above is pertinent to the applicant's intended purposes. HEW also advises that it knows of no domestic instrument of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

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

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29579 Filed 10-7-76;8:45 am]

SANDIA LABORATORIES

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 76-00354. Applicant: Sandia Laboratories, Kirtland AFB, East Albuquerque, New Mexico 87115. Article: Picosecond and manosecond pulse YAG generator. Manufacturer: Quantel, France. Intended use of article: The article is intended to be used in three different areas of research:

Fusion Research. Studies of the compressibility and conductivity of deuterium and gold at high temperatures.

X-ray Laser Studies. Laser pulses produced by the article will be amplified and focused on metallic targets in order to generate ultrasoft high power X-ray pulses.

Laser Damage Studies. Laser pulses produced by the article will be used to test the optical strength of a number of optical materials.

In addition, the article will be used to educate researchers of the Physics Department in some recently developed laser techniques incorporated in the article.

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

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a high power level of 10 megajoules and selectable pulse widths of 25, 50, 100 and 200 picoseconds as well as adjustable pulse widths over a 2-10-nanosecond range. The National Bureau of Standards advises in its memorandum dated September 14, 1976 that the specifications described above are pertinent to the applicant's intended purposes. NBS also advises it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29577 Filed 10-7-76;8:45 am]

UNIVERSITY OF GEORGIA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Education, Scientific, and Cultural materials importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

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

Docket number: 76-00168-85-40600. Applicant: University of Georgia, Department of Geology, Athens, Georgia 30602. Article: Isotope Radio Mass Spectrometer, Model 602C and accessories. Manufacturer: V. G. Micromass, United Kingdom. Intended use of article: The article is intended to be used for the following projects:

(1) Examination of the influence of surface meteoric waters upon subsurface volcanic processes. This feature will be studied through analyses of the $^{18}O/^{16}O$ in rocks and minerals from samples obtained from various localities in Antarctica.

(2) Measurement of $^{18}O/^{16}O$ variations of rocks and minerals for the purpose of ascertaining temperatures attained within major thrust sheets of the northern and central Rocky Mountains.

(3) Examination of $^{18}O/^{16}O$ variations of foraminifera from deep sea cores obtained from the Caribbean Sea. These analyses will be utilized for the purposes of obtaining stratigraphic correlation with already analyzed cores at different localities, and

(4) Examinations of $^{18}O/^{16}O$ and $13_C/12_C$ variations from rocks and minerals related to the iron ore deposits of S.E. Missouri. This study will be conducted for the purpose of obtaining information about the source of waters and the temperatures involved in deposit of these ore bodies.

The article will also be used as an educational tool for students in geology and in other scientific fields such as archeology, chemistry and biology.

Comments: No comments have been received with respect to this application. A letter received from Nuclide Corporation (Nuclide) on December 9, 1975 is being treated as an offer to provide additional information.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 75-00401-85-40600 which was denied without prejudice to resubmission on July 10, 1975 for informational deficiencies. In response to Question 8 the applicant lists the following allegedly pertinent specifications:

(a) Precision of ±0.0025 percent.

(b) All metal bakeable sample inlet system.

(c) Vacuum pressure of 10^{-9} torr and

(d) Sample size of 0.01 atm cm^3.

The National Bureau of Standards (NBS) advises in its memorandum dated April 30, 1976 that the Model 6-60-RMS ratio mass spectrometer manufactured by Nuclide is the most closely comparable domestic instrument. NBS states that the Nuclide letter received by the Department on December 9, 1976, had been considered "for the factual information provided."

In connection with the alleged pertinent features listed by the applicant, in the order listed above, NBS provided the following advice:

(a) The 6-60-RMS has an internal precision of up to +0.0002% for specified ratio differences and Nuclide was able to provide the required precision at the time this article was ordered (December 30, 1974).

(b) The specific choice of materials of which the inlet system is made is a design feature and is not pertinent. A bakeable inlet system is pertinent to the applicant's intended purposes. Nuclide's Model 6-60-RMS was available at the time of order with an optional inlet system bakeout oven with a temperature capability of 450 degrees centigrade. (The Department also notes that NBS advised in its memorandum relating to Docket Number 76-00076-88-40600 which is analogous to this application in this and in other respects that Nuclide could provide an all metal bakeable inlet system at the time the article to which that application related was ordered (September 6, 1974).)

(c) Nuclide's 6-60-RMS was available at the time of order with ion pumps capable of producing a vacuum of 10^{-9} torr.

(d) Nuclide was able to provide the desired sample size at the time this article was ordered.

NBS further advises that the Model 6-60-RMS provides all the features found pertinent within the meaning of § 301.2(n) of the regulations. In this connection, NBS notes that it is normal practice for manufacturers of complex instrument systems, e.g., ratio mass spectrometers, to quote on specifications not listed in their general catalogue literature. We note that Nuclide was not afforded a formal opportunity to bid on the applicant's technical requirements.

NBS concludes with the finding that the Nuclide 6-60-RMS ratio mass spectrometer is scientifically equivalent to the foreign article for the applicant's intended uses. For these reasons, we find that the Model 6-60-RMS is of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29585 Filed 10-7-76;8:45 am]

UNIVERSITY OF MIAMI

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 76-00076-88-40600. Applicant: University of Miami, Coral Gables, Florida 33124. Article: Mass Spectrometer, Model 602C. Manufacturer: VG-Micromass, United Kingdom. Intended use of article: The article will be used to study the high frequency variation of climate by applying the oxygen isotope method of paleotemperature analysis to sections of deep sea sediments.

Comments: No comments have been received with respect to this application. A letter received from the Nuclide Corporation (Nuclide) on October 20, 1975 is being treated as an offer to provide additional information. Nuclide alleges inter alia that it could have quoted the applicant without any hesitation the 3-60-RMS with a bakeable metal inlet system. A letter was also received from the applicant on October 20, 1975. The applicant's letter is also being treated as an offer to provide additional information. The applicant alleges inter alia that Nuclide could not provide an all metal inlet system.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 75-00252-88-40600 which was denied without prejudice to resubmission on May 13, 1975 for informational deficiencies.

The applicant claims that the following features of the article are pertinent to his purposes and are not available in a domestic instrument:

(a) All metal bakeable inlet system;

(b) Capability of handling small samples with the greatest possible accuracy;

(c) Background pressure in the 10^{-9} torr range;

(d) Permanent magnet;

(e) Maximum reproducibility, and

(f) high precision (±0.002%).

The National Bureau of Standards (NBS) advises in its memorandum dated March 15, 1976 that the Model 6-60-RMS ratio mass spectrometer manufactured by Nuclide is the most closely comparable domestic instrument.

In connection with the alleged pertinent features listed by the applicant in this and the initial submission, NBS provided the following advice, keyed to the features set forth above:

(a) Bakeable inlet systems were available for Nuclide in both glass and metal and all-metal designs at the time the article was ordered.

(b) Nuclide was able to provide this feature (which the applicant termed "most crucial") at the time the article was ordered.

(c) Nuclide could provide ion pumps capable of producing better than 10^{-9} torr at the time the article was ordered.

(d) Nuclide could provide an optional permanent magnet at the time the article was ordered.

(e) Nuclide was, at the time of order, able to provide instruments capable of satisfying this feature.

(f) The Model 6-60-RMS could be provided with an internal precision of up to ±0.002%.

NBS further advises that the Model 6-60-RMS provides all the features found pertinent within the meaning of § 301.2(n) of the regulations. In this connection, NBS notes that it is normal practice for manufacturers of complex instrument systems such as ratio mass spectrometers to quote on specifications not listed in their general catalogue literature. We note that Nuclide was not afforded a formal opportunity to bid on the applicant's technical requirements.

NBS concludes with the finding that the Nuclide 6–60–RMS ratio mass spectrometer is scientifically equivalent to the foreign article for the applicant's intended use.

For these reasons, we find that the Model 6–60–RMS is of equivalent scientific value to the foreign article for the applicant's intended purposes.

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29582 Filed 10-7-76;8:45 am]

UNIVERSITY OF TEXAS MEDICAL BRANCH

Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

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

Docket Number: 76–00426. Applicant: University of Texas Medical Branch, Marine Biomedical Institute, 200 University Blvd., Galveston, Texas 77550. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of embryonic marine fish larvae, particularly the leptocephalous larvae of eels and related fishes. Experimental investigation will center on tracing the development of embryonic cells as they transform to adult organs with specific function. The development throughout will be studied both at the cellular level in the electron microscope and at the tissue and organ level in the light microscope. The objectives pursued in the course of the investigation will be to identify the phylogenetic position of the Anguilliform leptocephali. Special emphasis will be placed on the ultrastructure and function of their osmoregulatory system. Another group of fishes under study are the ceratioid or deep-sea angler fishes. Special attention will be given to the ultrastructure of this light organ and to the intracellular bacteria contained therein.

Application received by Commissioner of Customs: May 28, 1976. Advice submitted by the Department of Health, Education, and Welfare on: September 16, 1976. Article ordered: May 15, 1974.

Docket Number: 76–00430. Applicant: Northwestern University Medical School, 303 East Chicago Avenue, Chicago, Illinois 60611. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for investigation of the factors modifying the development of cancer and elucidating the biological and functional role of peroxisomes, which are cytoplasmic organelles. The materials used for this research include liver, kidney, pancreas, parotid, testicular interstitial tissue, and isolated cultured liver cells. The article will also be used in the courses designed to teach principles of cell biology, patholobiology and ultrastructural pathology for undergraduates, and graduate students. Also interns and residents in pathology, who participate in research training will be using the article.

Application received by Commissioner of Customs: May 28, 1976. Advice submitted by the Department of Health, Education, and Welfare on: September 16, 1976. Article ordered: May 13, 1976.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States. Reasons: Each of the foreign articles provides a range of cutting speeds from 0.1 to 20 millimeters per second. The most closely comparable domestic instrument is the Model MT–2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT–2B has a range of cutting speeds from 0.09 to 3.2 millimeters per second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials, and geometry of the block. In connection with a prior application (Docket Number 69–00665–33–46500), which relates to the duty-free entry of an article that is identical to those to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket Number 70–00077–33–46500) which also relates to an article that is identical to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that the "production of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments. For these reasons, we find that the Sorvall Model MT–2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29578 Filed 10-7-76;8:45 am]

UNIVERSITY OF VERMONT

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 76–00408. Applicant: University of Vermont, Waterman Building, Burlington, Vermont 05401. Article: High Pressure Calorimeter. Manufacturer: Lunds Universitetet, Sweden. Intended use of article: The article is intended to be used in determining thermodynamic parameters for the absorption (desorption) of hydrogen by a series of representative intermetallic compounds that have potential usefulness for energy (hydrogen) storage. Among the systems that will be investigated are $LaCo_5/H_2$, $LaNi_5/H_2$, $LaCo_5/H_2$, and $FeTi/H_2$. It is proposed to determine thermodynamic absorption parameters by direct calorimetry and from pressure-composition-temperature (p-c-t) relationships. The two types of measurements will be performed concomitantly in a single apparatus that mates a precision calorimeter to a gas-handling system.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent sci-

entific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides operation at pressures of 0–60 atmospheres and temperatures between 20 and 100° Centigrade. The National Bureau of Standards (NBS) advises in its memorandum dated September 21, 1976 that specifications described above are pertinent to the applicant's intended purposes. NBS also advises that it knows of no domestic high pressure calorimeter of equivalent scientific value to the foreign article for the applicant's intended use.

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

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

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-29576 Filed 10-7-76;8:45 am]

Maritime Administration

[Docket No. S-515]

FREDERICKSBURG SHIPPING CO.

Application

Notice is hereby given that Fredericksburg Shipping Company, 611 Wilmington Trust Building, 100 West 10th Street, Wilmington, Delaware 19801, has filed an application dated September 15, 1976, with the Maritime Subsidy Board (the Board) pursuant to Title VI of the Merchant Marine Act, 1936, as amended (the Act), for an operating-differential subsidy contract, to expire December 31, 1976, to operate the *SS Fredericksburg*, 28,050 deadweight tons, in the carriage of export bulk raw and processed agricultural commodities in the foreign commerce of the United States (U.S.) from ports in the U.S. to ports in the Union of Soviet Socialist Republics (U.S.S.R.). Dry and liquid bulk cargoes may be carried from the U.S.S.R. and other foreign ports inbound to U.S. ports during voyages subsidized for carriage of export bulk raw and processed agricultural commodities to the U.S.S.R.

Full details concerning the U.S.-U.S.S.R. export bulk raw and processed agricultural commodities subsidy program, including terms, conditions and restrictions upon both the subsidized operators and vessels, appear in Title 46 of the Code of Federal Regulations, Part 294.

For purposes of section 605(c) of the Act, it should be assumed that should the Board grant the requested approval, the vessel named above will engage in the described trade, on a full-time basis, during the indicated time period. Under such approval, each voyage must be approved for subsidy assistance prior to its commencement, and the Board will act on such request(s) as an administrative matter for which there is no requirement for further section 605(c) notice(s).

Any person having an interest in the granting of the application and who would contest a finding by the Board that the service now provided by vessels of U.S. registry for the carriage of cargoes previously specified is inadequate, must on or before October 18, 1976, notify the Board's Secretary, in writing, of his interest and of his position, and file a petition for leave to intervene in accordance with Board's rules of practice and procedure (46 CFR Part 201). Each such statement of interest and petition to intervene shall state whether a hearing is requested under section 605 (c) of the Act and, with as much specificity as possible, the facts that the intervenor would undertake to prove at such hearing.

In the event a hearing under section 605(c) of the Act is ordered to be held with respect to the subject application, the purpose of such hearing will be to receive evidence relevant to (1) whether the application herein described, with respect to the vessel to be operated in an essential service and served by citizens of the U.S., would be in addition to the existing service or services, and if so, whether the service already provided by vessels of U.S. registry is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon. If no request for hearing and petition for leave to intervene is received within the specified time, or if the Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such actions as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

Dated October 4, 1976.

By order of the Maritime Subsidy Board/Maritime Administration.

JAMES S. DAWSON, JR.,
Secretary.

[FR Doc.76-29538 Filed 10-7-76;8:45 am]

National Bureau of Standards

COMPUTER NETWORKING STANDARDS FOR LIBRARY AND INFORMATION SCIENCE COMMUNITY TASK FORCE

Meeting

A task force has been established to address the problem of developing high-level computer-to-computer protocols for the nationwide interchange of information among existing and planned library and information science networks.

Members of the task force were designated by the National Commission on Libraries and Information Science on the basis of their recognized experience and knowledge in the area of computer-to-computer data interchange for this class of application, and their competence in developing related computer networking standard protocols. The task force receives technical support from the NBS Institute for Computer Sciences and Technology.

The results of the task force effort, expected to be completed in about one year, will be provided directly to the American National Standards Institute, the American Library Association, and the American Society for Information Science for their respective consideration in development and adoption of standards directed specifically to the library and information science community.

All meetings of this task force will be open to the public; the purpose of this public notice is to announce the second task force meeting which will be held on November 10, 11, and 12, 1976, in Room 2010, New Executive Office Building, 17th and H Street, NW., Washington, D.C. The session on November 10 will convene at 10 a.m., and on the following days the session will convene at 9 a.m. Future meetings of this task force will be announced in the Federal Register.

For further information, interested members of the public may contact John L. Little, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, telephone: 301/921-3723.

Dated: October 4, 1976.

ERNEST AMBLER,
Acting Director.

[FR Doc.76-29626 Filed 10-7-76;8:45 am]

National Oceanic and Atmospheric Administration

SEA GRANT ADVISORY PANEL

Partially Closed Meeting

The Sea Grant Advisory Panel will meet from 9:00 a.m. to 4:00 p.m. on October 28, 1976, and from 8:15 a.m. to 4:00 p.m. on October 29, 1976, in the Penthouse, Page Building #1, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

The Panel was established in 1967, and advises the Secretary of Commerce on (a) policy with respect to the establishment and operation of a national network of Sea Grant Colleges and programs; major individual program and project proposals requesting financial support, and plans and policies governing execution of the National Sea Grant Program, under the National Sea Grant College and Program Act of 1966, as amended (33 U.S.C. 1121–1124).

The Panel's meeting agenda is as follows:

OCTOBER 28, 1976 (CLOSED SESSION: 9:00 A.M.–3:00 P.M.)

9 a.m.	Preliminary Remarks and
9:15 a.m.	A. Institutional and Coherent Area Program Discussions: University of Southern California, University of Alaska, Mississippi/Alabama Sea Grant Consortium, Virginia Institute of Marine Science, New York Sea Grant Institute, University of Florida, University of North Carolina, University of Maine/University of New Hampshire, University of Washington, University of Maryland, University of Michigan.
	B. Sea Grant College Candidate Discussion.

OCTOBER 28, 1976 (OPEN SESSION: 3:00–4:00 P.M.)

3 p.m.	C. Sea Grant Participation in the Extended Jurisdiction Program.

OCTOBER 29, 1976 (OPEN SESSION: 8:15 A.M.–4:00 P.M.)

8:15 p.m.	D. Action on Panel Recommendation.
	E. New Authorization Legislation, National Projects, International Programs, Fellowships, Panel Organization and Membership.
	F. Appropriation, Legislation, Budget Increase Language.
	G. Discussion of NACOA Report.
12 noon	Lunch.
1 p.m.	H. Discussion with Sea Grant Directors.
3 p.m.	I. USC Journal of Marine Education.
	J. State and Federal Interaction Between CZM Programs and Sea Grant.
4 p.m.	Adjourn.

Agenda items A and B will deal with matters listed in 5 U.S.C. 552(b)(5).

Agenda items C on October 28 and D through J on October 29 will be open to public attendance. Approximately thirty seats will be available to the public on a first-come, first-served basis. If time permits before the scheduled adjournment the chairman will solicit oral comments by the attendees. Written statements may be submitted at any time before or after the meeting.

With respect to agenda items A and B, the Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Administration formally determined on September 28, 1976 pursuant to section 10 (d) of the Federal Advisory Committee Act, that these items should be exempt from the provisions of the Act relating to open meetings and public participation therein, because these items will be concerned with matters listed in 5 U.S.C. 552(b)(5), i.e., interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. (A copy of the determination is available for public inspection and copying).

Minutes of the open portion of the meeting will be available 30 days thereafter on written request addressed to the National Sea Grant Program, 3300 Whitehaven Street, Washington, D.C. 20235.

For further information, contract Mr. Arthur G. Alexiou, Associate Director of Programs, at above address. Telephone: (202) 634–4019.

Dated: October 1, 1976.

T. P. GLEITER,
Assistant Administrator for Administration, National Oceanic and Atmospheric Administration.

NOTICE OF DETERMINATION FOR PARTIAL CLOSURE OF AN ADVISORY COMMITTEE MEETING

The Sea Grant Advisory Panel, established in 1967, advises the Secretary of Commerce on (a) policy with respect to the establishment and operation of a national network of Sea Grant colleges and programs; (b) major individual program and project proposals requesting financial support; and (c) plans and policies governing execution of the National Sea Grant Program, under the National Sea Grant College and Program Act of 1966, as amended (33 U.S.C. 1121–1124).

The Panel currently has 18 members appointed by the Secretary of Commerce, with a balanced representation of interests, including those from industry and the academic community.

The Panel's activities are conducted in accordance with the provisions of the aforesaid Act and the Federal Advisory Committee Act (5 U.S.C. App. I).

The Sea Grant Advisory Panel is scheduled to hold its next meeting on October 28 and 29, 1976, in the Penthouse, Page Building #1, 2001 Wisconsin Avenue, NW., Washington, D.C. As its first agenda item on October 28, the Panel will review, evaluate, and make recommendations with respect to specific grant proposals and applications submitted to the Office of Sea Grant for financial assistance, for institutional and coherent area programs. As the second agenda item on October 28, the Panel will review, evaluate, and make recommendations concerning grant proposals and applications of candidates for designation as Sea Grant Colleges. The Panel will consider during these two agenda items such matters as: evaluation of details relating to the type or design of work performed or to be performed, adequacy of the applicant's facilties, competence of the applicant's staff, budget data, and other information on the applicant's financial situation.

For such consideration in its deliberative process, the Panel will also be presented with and discuss evaluative information and data contained in written reports submitted to the Office of Sea Grant by individual consultants (special employees of the Department), devoted to evaluations and ranking of applicants involved in the two agenda items. These reports contain detailed and candid analyses and expressions of opinion essential for complete and effective evaluation and ranking, and were prepared for review by the Panel and ultimate decision by the Office of Sea Grant.

In the interest of maintaining the utility of consultants' evaluations, and encouraging the candid expression of opinion at the Panel meeting concerning the relatives merits of the various proposals, the Administrator, National Oceanic and Atmospheric Administration, has recommended that these agenda items be closed to the public because the items discussed and the documents referred to will be concerned with matters listed in section 552(b)(5) of title 5, United States Code.

In view of the considerations enumerated above, I hereby determine, pursuant to section 10(d) of Public Law 92-463, that the above two agenda items of the forthcoming Sea Grant Advisory Panel meeting on October 28 shall be exempt from the open meeting provisions of the Federal Advisory Committee Act, because the Panel discussions will be concerned with documents exempt from disclosure under matters listed in 5 U.S.C. 552(b)(5), and it is essential to close these portions of the meeting to avoid undue interference with agency and committee operations. The remaining portions of the meeting (the third agenda item on October 28 and all those on October 29) will be open to the public.

Dated: September 28, 1976.

JOSEPH E. KASPUTYS,
Assistant Secretary of Administration.

Dated: September 24, 1976.

ALFRED MEISSNER,
Assistant General Counsel for Administration.

[FR Doc.76-29545 Filed 10-7-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

ADVISORY COMMITTEES

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory bodies scheduled to assemble during the month of November 1976:

DRUG ABUSE PREVENTION REVIEW COMMITTEE

Date and time: November 3–5; 9:30 a.m.
Place: Conference Room 873, Rockwall Building, Rockville, Maryland.
Open—November 3, 9:30–11:00 a.m.
Closed—Otherwise.
Contact Mr. John R. Olsen, Rockwall Building, Room 752, 11400 Rockville Pike, Rockville, Md. 20852, 301–443–2450.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Drug Abuse relating to drug abuse prevention activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:30 to 11:00 a.m., November 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

SOCIAL SCIENCES RESEARCH REVIEW COMMITTEE

Date and time: November 3-5; 9:00 a.m.
Place: Thomas Paine Room, Sheraton Park Hotel, 2660 Woodley Road, NW., Washington, D.C.
Open—November 3, 9:00-9:30 a.m.
Closed—Otherwise.
Contact Mr. Joel Goldstein, Parklawn Building, Room 10-95, 5600 Fishers Lane, Rockville, Maryland 20852, 301-443-3936.
Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to social sciences research and makes recommendations to the National Advisory Mental Health Council for final review.
Agenda: From 9:00 to 9:30 a.m., November 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and Section 10(d) of Pub. Law. 92-463 (5 U.S.C. Appendix I).

MINORITY GROUP MENTAL HEALTH PROGRAMS REVIEW COMMITTEE

Date and time: November 4-6; 9:00 a.m.
Place: North Scott Room, Gramercy Inn, 1616 Rhode Island Avenue, N.W., Washington, D.C.
Open—November 4, 9:00-10:00 a.m.
Closed—Otherwise.
Contact Mrs. Edna M. Hardy Hill, Parklawn Building, Room 7-102, 5600 Fishers Lane, Rockville, Maryland 20852, 301-443-3724.
Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to minority mental health research and training and makes recommendations to the National Advisory Mental Health Council for final review.
Agenda: From 9:00 to 10:00 a.m., November 4, the meeting will open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

PERSONALITY AND COGNITION RESEARCH REVIEW COMMITTEE

Date and time: November 5-7; 9:00 a.m.
Place: New York Room, Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, D.C.
Open—November 5, 9:00-10:00 a.m.
Closed—Otherwise.
Contact Shirley Maltz, Parklawn Building, Room 10C-06, 5600 Fishers Lane, Rockville, Maryland 20852, 301-443-3942.
Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to research activities and makes recommendations to the National Advisory Mental Health Council for final review.
Agenda: From 9:00 to 10:00 a.m., November 5, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

CLINICAL PSYCHOPHARMACOLOGY RESEARCH REVIEW COMMITTEE

Date and time: November 8-9; 9:00 a.m.
Place: Shoreham-American Hotel, Board Room, 2500 Calvert Street, NW., Washington, D.C.
Open—November 8, 9:00-10:00 a.m.
Closed—Otherwise.
Contact Antionette C. Simms, Parklawn Building, Room 9-105, 5600 Fishers Lane, Rockville, Maryland 20852, 301-443-3568.
Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to research activities and makes recommendations to the National Advisory Mental Health Council for final review.
Agenda: From 9:00 to 10:00 a.m., November 8, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

SOCIAL PROBLEMS RESEARCH REVIEW COMMITTEE

Date and time: November 11-13; 9:00 a.m.
Place: Kalorama Room, Washington Hilton Hotel, Connecticut Avenue at Columbia Road, NW., Washington, D.C.
Open—November 11, 9:00-9:30 a.m.
Closed—Otherwise.
Contact Mrs. Vi Kemp, Parklawn Building, Room 10-104, 5600 Fishers Lane, Rockville, Maryland 20852, 301-443-4843.
Purpose. The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to the field of social problems and makes recommendations to the National Advisory Mental Health Council for final review.
Agenda. From 9:00 to 9:30 a.m., November 11, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

ALCOHOL TRAINING REVIEW COMMITTEE

Date and time: November 15-16; 9:00 a.m.
Place: Conference Room B, Parklawn Building, Rockville, Mrayland.
Open—November 15, 9:00-11:00 a.m.
Closed—Otherwise.
Contact Dr. Melvin Davidoff, Parklawn Building, Room 16C-26, 5600 Fishers Lane, Rockville, Maryland 20852, 301-443-1056.
Purpose. The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Alcohol Abuse and Alcoholism relating to training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.
Agenda. From 9:00 to 11:00 a.m., November 15, the Committee will be open for reports and announcements of administrative and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

CLINICAL PROJECTS RESEARCH REVIEW COMMITTEE

Date and time: November 18-20; 9:00 a.m.
Place: Mary Custis Lee Room, Arlington Hyatt House, 1325 Wilson Boulevard, Arlington, Virginia
Open—November 18, 9:00-10:00 a.m.
Closed—Otherwise
Contact Mrs. Harriet German, Parklawn Building, Room 10C-25, 5600 Fishers Lane, Rockville, Maryland 20852, 301-443-4707
Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to clinical research and makes recommendations to the National Advisory Mental Health Council for final review.
Agenda: From 9:00 to 10:00 a.m., November 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

MENTAL HEALTH SMALL GRANT COMMITTEE

Date and time: November 18-20; 1:00 p.m.
Place: Parlor A and the Oak Room, Burlington Hotel, 1120 Vermont Avenue, NW., Washington, D.C.

Open—November 18, 4:00–5:00 p.m.
Closed—Otherwise
Contact Ms. Mary E. Enyart, Parklawn Building, Room 10C–14, 5600 Fishers Lane, Rockville, Maryland 20852, 301–443–4437
Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to mental health research and makes recommendations to the National Advisory Mental Health Council for final review.
Agenda: From 4:00 to 5:00 p.m., November 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above.

The NIAAA Information Officer who will furnish summaries of the meeting and rosters of the Committee members is Mr. Harry C. Bell, Associate Director for Public Affairs, NIAAA, Room 6C–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, 301–443–3306. The NIDA Information Officer who will furnish summaries of the meeting and rosters of the Committee members is Mr. Joshua Hammond, Program Information Officer for Drug Abuse, NIDA, Room 814, Rockwall Building, 11400 Rockville Pike, Rockville, Maryland 20852, 301–443–6548. The NIMH Information Officer who will furnish summaries of the meetings and rosters of the Committee members is Mr. Edwin Long, Deputy Director, Division of Scientific and Public Information, NIMH, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, 301–443–3600.

Dated: October 4, 1976.

CAROLYN T. EVANS,
Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 76–29613 Filed 10–7–76;8:45 am]

Food and Drug Administration

[Docket No. 76N–0289]

METHADONE

Proposed Withdrawal of New Drug Applications; Opportunity for Hearing

The Food and Drug Administration is amending the notice of opportunity for hearing on the proposed withdrawal of approval of certain new drug applications (NDA's) for methadone.

The Commissioner of Food and Drugs issued the notice in the FEDERAL REGISTER of July 9, 1976 (41 FR 28342) in response to the decision of the United States District Court for the District of Columbia in *American Pharmaceutical Association* v. *Weinberger*, 377 F. Supp. 824 (1974). The notice stated that approval of NDA's for methadone would be withdrawn unless the holders of currently approved NDA's for methadone submitted supplemental NDA's requesting approval for the manufacture and distribution of methadone under §§ 310.304 (b) and 310.505 (21 CFR 310.304(b) and 310.505) to conform with the District Court's decision. The notice stated that the principal change required by the amended regulations related to labeling, and that the Commissioner "will permit existing stocks of methadone to bear the labeling specified in currently approved new drug applications, and will permit future shipments to be made using such labeling until October 7, 1976."

A manufacturer of methadone has recently advised the Commissioner that prohibiting shipments of methadone bearing previously approved NDA labeling after October 7, 1976, might require the retrieval and repackaging of existing stocks of methadone in the possession of intermediaries. It was suggested that this would be wasteful and unnecessary, and that the purpose of the notice would be served adequately if the prohibition on shipments of methadone with previously approved labeling were made to apply only to methadone packaged after October 7, 1976.

The Commissioner agrees. The July 9 notice emphasized that references in previously approved methadone labeling to "[a]ny limitation on the shipment to, or the receipt of dispensing by, any duly licensed pharmacy of methadone for analgesic use shall be disregarded." There is no reason why such references cannot be disregarded in the labeling of methadone packaged before, but shipped after, October 7, 1976, and little purpose is served by requiring manufacturers to retrieve and repackage drugs solely to eliminate from labeling a reference that the agency has made clear is to have no effect.

Accordingly, the Commissioner is permitting the use of previously approved labeling on any methadone packaged on or before October 7, 1976, even though it may be shipped after that date. References in such labeling to limitations on the shipment to, or the receipt or dispensing by, duly licensed pharmacies of methadone for analgesic use shall be disregarded. Methadone packaged after October 7, 1976, must, when shipped, bear labeling in conformity with supplemental new drug applications approved pursuant to the July 9 notice.

Dated: October 5, 1976.

JOSEPH P. HILE,
Acting Associate Commissioner for Compliance.

[FR Doc.76–29764 Filed 10–7–76;8:45 am]

[Docket No. 76F–0280]

RUMINANT NITROGEN PRODUCTS CO.

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 (MF–3555) has been filed by Ruminant Nitrogen Products Co., 2347 Science Parkway, Okemos, MI 48864, proposing that § 121.209 *Anhydrous ammonia* (21 CFR 121.209) be amended to provide for the addition of anhydrous ammonia to water to be mixed with corn silage prior to ensiling as a source of nonprotein nitrogen for cattle.

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 Assistance 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: September 30, 1976.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.76–29437 Filed 10–7–76;8:45 am]

Health Resources Administration

HEALTH CARE TECHNOLOGY STUDY SECTION

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to assemble during the month of October 1976:

HEALTH CARE TECHNOLOGY STUDY SECTION

Date and time: October 27–29, 1976, 9:00 a.m.
Place: Conference Room M, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.
Open—October 27, 9:00 a.m.–10:30 a.m.
Closed for remainder of meeting.
Purpose: The Study Section is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research.
Agenda: Agenda items for the open portion of the meeting will cover administrative matters and reports; minutes of previous meeting; and establish future meeting dates. The remainder of meeting will be closed to the public to hear a preliminary report on the study of medical information systems being conducted by the Offices, in accordance with the provisions set gress, and for the review of research grant applications relating to the delivery, organization, and financing of health services, in accordance with the provisions set forth in section 552(b)(5) and (6), Title 5, U.S Code and the Determination by the Administrator, Health Resources Administration, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Dr. Alan E. Mayers, Room 15-29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, Telephone (301) 443-2950.

Agenda items are subject to change as priorities dictate.

Dated: October 1, 1976.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 76-29614 Filed 10-7-76;8:45 am]

BIOMEDICAL AND BEHAVIORAL RESEARCH PERSONNEL

Notice of a Study of National Needs

Section 473 of the Public Health Service Act, 42 U.S.C. 2891-2, as added by Section 103 of Pub. L. 93-348, Title I, the National Research Service Award Act of 1974 (and amended by Section 205 of Title II, Pub. L. 94-278, Health Research and Health Services Amendments of 1976), requires the Secretary of Health, Education, and Welfare to undertake studies respecting the Nation's needs for biomedical and behavioral research personnel and provides that the Secretary shall request the National Academy of Sciences to conduct such studies. Studies are now in progress for use in developing the Academy's report which will be submitted to Congress not later than September 30, 1977. Information concerning either the conduct of these studies or the procedure for submission of views for consideration by the Academy may be obtained from Dr. Herbert B. Pahl, Staff Director, Commission on Human Resources, National Research Council, National Academy of Sciences, 2101 Constitution Avenue, Washington, D.C. 20418.

Dated: September 20, 1976.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc.76-29589 Filed 10-7-76;8:45 am]

CLEARINGHOUSE ON ENVIRONMENTAL CARCINOGENS

Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be entirely open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014, unless otherwise stated.

Mrs. Marjorie F. Early, Committee Management Office, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5708) will furnish summaries of the meetings and rosters of committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

Name of committee: Clearinghouse on Environmental Carcinogens.
Dates: November 8, 1976; 8:30 a.m.-5:00 p.m.
Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland.
Times: Open for the entire meeting.
Agenda: To review the function of the Clearinghouse and NCI Bioassay Program.
Executive secretary: Dr. James M. Sontag.
Address: Landow Building, Room A306, National Institutes of Health.
Phone: 301-496-5471.

Name of committee: Clearinghouse on Environmental Carcinogens Subgroup on Chemical Selection.
Dates: November 9, 1976; 9:00 a.m.-3:00 p.m.
Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland.
Times: Open for the entire meeting.
Agenda: To consider criteria and procedures to be used in selecting chemicals to be tested for carcinogenicity.
Executive secretary: Dr. James M. Sontag.
Address: Landow Building, Room A306, National Institutes of Health.
Phone: 301-496-5471.

Name of committee: Virus Cancer Program Advisory Committee.
Dates: November 11, 1976; 1:30 p.m.-adjournment.
Place: Hershey Motor Lodge, Hershey, Pennsylvania.
Times: Open for the entire meeting.
Agenda: To review and discuss the overall direction of the Virus Cancer Program.
Executive secretary: Dr. L. R. Sibal (Acting).
Address: Building 37, Room 1A15, National Institutes of Health.
Phone: 301-496-2796.

Dated: September 24, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-29592 Filed 10-7-76; 8:45 am]

CLINICAL APPLICATIONS AND PREVENTION ADVISORY COMMITTEE

Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, National Heart, Lung, and Blood Institute, November 8, 1976, Landow Building, Conference Room A809, Bethesda, Maryland.

This meeting will be open to the public on November 8, 1976, from 8:30 a.m. to 5:00 p.m. when plans for new initiatives in cardiovascular disease prevention and demonstration will be discussed. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Maryland, 20014, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. William J. Zukel, Executive Secretary of the Committee, Landow Building, Room C809, Bethesda, Maryland, 20014, phone (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, National Institutes of Health.)

Date: September 27, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-29598 Filed 10-7-76;8:45 am]

CLINICAL TRIALS REVIEW COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, November 22-23, 1976; at the Holiday Inn, Bethesda, Maryland, on November 22, and at the National Institutes of Health, Building 31, Conference Room 9 on November 23. This meeting will be open to the public from 8:00 p.m. to 8:30 p.m. on November 22, 1976, to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute.

In accordance with the provisions set forth in Sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and Section 10(d) of P.L. 92-463, the meeting will be closed to the public on November 22, 1976 from 8:30 p.m. to adjournment and from 8:30 a.m. to adjournment on November 23, for the review, discussion and evaluation of individual initial pending, supplemental, and renewal grant applications and individual contract proposals. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications and individual contract proposals containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications and proposals.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, National Institutes of Health, Building 31, Room 5A03, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members. Dr. Earl W. Gardner, Review Branch, Division of Extramural Affairs, NHLBI, Westwood Building, Room 653, phone (301) 496-7351, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13,837, National Institutes of Health.)

Dated: September 30, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-29595 Filed 10-7-76;8:45 am]

COMMITTEE ON CANCER IMMUNOLOGY, ET AL.

Meetings for the Review of Research Contract Proposals

Pursuant to Public Law 92–463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552(b)(4) and 552(b)(6) of Title 5, U.S. Code and Section 10(d) of P.L. 92–463 for the review, discussion and evaluation of individual research contract proposals as indicated. The proposals contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301/496–5708) will furnish summaries of the meetings and rosters of committee members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings are at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014, unless otherwise stated.

Name of committee: Committee on Cancer Immunotherapy.
Dates: November 4, 1976; 1:00 p.m.
Place: Building 10, Room 4B14, National Institutes of Health.
Times:
Open: November 4, 1:00 p.m.–1:30 p.m.
Closed: November 4, 1:30 p.m.–adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. George M. Steinberg.
Address: Building 10, Room 4B09, National Institutes of Health.
Phone: 301–496–1791.
(Catalog of Federal Domestic Assistance Number 13.395, National Institutes of Health.)

Name of committee: Virus Cancer Program Scientific Review Committee *B*.
Dates: November 8, 1976; 9:00 a.m.
Place: Hershey Motor Lodge, Hershey, Pennsylvania.
Times:
Open: November 8, 9:00 a.m.–9:30 a.m.
Closed: November 8, 9:30 a.m.–adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Wilna A. Woods.
Address: Landow Building, Room C306, National Institutes of Health.
Phone: 301–496–4533.
(Catalog of Federal Domestic Assistance Number 13.393, National Institutes of Health.)

Name of committee: Joint Meeting of the Cancer Control Supportive Services Review Committee and the Cancer Control Intervention Programs Review Committee.
Dates: November 12–13, 1976; 8:30 a.m.
Place: Building 31B, Conference Room 5, National Institutes of Health.
Times:
Open: November 12, 8:30 a.m.–3:00 p.m.
Agenda/Open Portion: A general discussion of progress on ongoing contracts.
Closed: November 12, 3:00 p.m.–5:00 p.m.
Closed: November 13, 8:30 a.m.–adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Carlos E. Caban.
Address: Blair Building, Room 7A07, National Institutes of Health.
Phone: 301–427–7943.
(Catalog of Federal Domestic Assistance Number 13.399, National Institutes of Health.)

Name of committee: Breast Cancer Diagnosis Committee.
Dates: November 21, 1976; 10:00 a.m.
Place: Landow Building, Room C–418, 7910 Woodmont Avenue, Bethesda, Maryland 20014.
Times:
Open: November 21, 10:00 a.m.–10:30 a.m.
Closed: November 21, 10:30 a.m.—adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Bernice T. Radovich.
Address: Landow Building, Room B404, National Institutes of Health.
Phone: 301–496–6774.
(Catalog of Federal Domestic Assistance Number 13.394 National Institutes of Health.)

Name of committee: Breast Cancer Treatment Committee.
Dates: November 23, 1976; 6:30 p.m.
Place: Washington Hilton Hotel, Chevy Chase Suite, Washington, D.C.
Times:
Open: November 23, 1976; 6:30 p.m. 7:00 p.m.
Closed: November 23, 1976; 7:00 p.m.—adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Mary E. Sears, M.D.
Address: Landow Building, Room A404, National Institutes of Health.
Phone: 301–496–6773.
(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health.)

Name of committee: Developmental Therapeutics committee.
Dates: November 30, 1976; 8:30 a.m.
Place: Blair Building, Room 110, 8300 Colesville Rd., Silver Spring, Md. 20910.
Times:
Open: November 30, 8:30 a.m.–9:00 a.m.
Closed: November 30, 9:00 a.m.–adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. J. A. R. Mead.
Address: Blair Building, Room 5A03, National Institutes of Health.
Phone: 301–427–7263.
(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health)

Dated: September 30, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76–29590 Filed 10–7–76;8:45 am]

National Institutes of Health

EXPERIMENTAL THERAPEUTICS STUDY SECTION

Amended Meeting

Notice is hereby given of a change in the meeting date of the following National Institutes of Health Study Section which was published in the FEDERAL REGISTER on August 23, 1976 (41 FR 35552). The Experimental Therapeutics Study Section will meet as scheduled, October 21–23, 1976, at the Kenwood Club, Maryland Room, Bethesda, Maryland. However, they will hold an additional session on October 20, 1976 at 1:00 p.m. until adjournment at the Kenwood Club, Bethesda, Maryland. This session will be closed to the public. Then open portion of this meeting will be held on October 21, 1976 at 8:30 a.m. for approximately one hour.

Dated: October 4, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76–29800 Filed 10–7–76;8:45 am]

HEART AND LUNG RESEARCH REVIEW COMMITTEE A

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart and Lung Research Review Committee A, National Heart, Lung and Blood Institute, November 12–13, 1976, National Institutes of Health, Building 31, Conference Room 9. This meeting will be open to the public on November 12, 1976, from 8:30 AM to approximately 9:30 AM to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and Section 10(d) of P.L. 92–463, the meeting of the Heart and Lung Research Review Committee A will be closed to the public on November 12, 1976, from 9:30 AM until the adjournment on November 13, 1976, for the review, discussion and evaluation of individual initial pending, supplemental, and renewal grant applications. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications. Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Building 31, Room 5A21, Bethesda, Maryland 20014, phone (301) 496–4236, will provide summaries of the meeting and rosters of the committee members. Dr. Arthur W. Merrick, Executive Secretary, NHLBI, NIH, Westwood Building, Room 552, phone (301) 496–7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.837, 13.838, and 13.839 National Institutes of Health.)

Dated: September 30, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-29597 Filed 10-7-76;8:45 am]

HEART AND LUNG RESEARCH REVIEW COMMITTEE B

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Heart and Lung Research Review Committee B, National Heart, Lung, and Blood Institute, November 12, 1976, National Institutes of Health, Building 31, Conference Room 8. This meeting will be open to the public on November 12, 1976, from 8:30 AM to approximately 9:30 AM to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting of the Heart and Lung Research Review Committee B will be closed to the public on November 12, 1976, from 9:30 AM until the adjournment on November 12, 1976, for the review, discussion and evaluation of individual initial pending, supplemental, and renewal grant applications. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications. Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Building 31, Room 5A21, Bethesda, Maryland 20014, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members. Dr. Henry G. Roscoe, Executive Secretary, NHLBI, NIH, Westwood Building, Room 550, phone (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.837, 13.838, and 13.839 National Institutes of Health.)

Dated: September 27, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-29596 Filed 10-7-76;8:45 am]

SINGLE DONOR PLATELET TRANSFUSIONS: SCIENTIFIC, LEGAL, AND ETHICAL CONSIDERATIONS

Availability of DHEW Publication No. (NIH) 76-1059

The Division of Blood Diseases and Resources of the National Heart, Lung, and Blood Institute wishes to announce the availability of Single Donor Platelet Transfusions: Scientific, Legal, and Ethical Considerations, DHEW Publications No. (NIH) 76-1059. This publication covers the proceedings of a conference held June 16 and 17, 1975, jointly sponsored by the Division and the Puget Sound Blood Center in Seattle.

The purpose of the conference was to review the scientific basis of platelet transfusion therapy and to identify the complex issues involved in the development of programs for long-term platelet support of patients with damaged bone marrows. Specific topics included: HL-A typing and platelet crossmatching for compatible donor selection; the current status of plateletpheresis; existing platelet donor programs; and ethical and legal aspects of platelet donor motivation, education, and consent. Single copies of the publication may be obtained, free of charge, by writing to:

The Puget Sound Blood Center, Terry at Madison, Seattle, Washington 98104.

Dated: September 22, 1976.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 76-29588 Filed 10-7-76; 8:45 am]

INFLUENZA VACCINE WORKSHOP

Meeting

Notice is hereby given of the Influenza Vaccine Workshop sponsored by the National Institute of Allergy and Infectious Diseases, on October 22, 1976, in Building 31, Conference Room 4, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

The entire meeting will be open to the public from 9:00 a.m. to adjournment to present the results of the NIAID sponsored clinical trials of inactivated influenza A/New Jersey vaccines in young adults and children. Attendance by the public will be limited to space available.

Dr. George J. Galasso, Chief, Infectious Disease Branch, NIAID, Building 31, Room 7A-10, Bethesda, Maryland 20014, (301) 496-5105 will provide additional information.

(Catalog of Federal Domestic Assistance Program No. 13.857, National Institutes of Health)

Dated: October 6, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-29799 Filed 10-7-76;8:45 am]

NATIONAL CANCER ADVISORY BOARD

Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, November 15-16, 1976, National Institutes of Health, Building 31, Conference Room 6.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include presentations and discussions in the areas of the NCI carcinogenesis programs, clinical activities, including laminar air flow and transfusion methodologies, the NCI diet and nutrition program, and cancer control activities. Attendance by the public will be limited to space available.

Dr. Richard A. Tjalma, Assistant Director, NCI, Building 31, Room 11A46, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5854) will provide summaries of the meeting, substantive program information, and rosters of Board members.

Dated: September 28, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.76-29593 Filed 10-7-76;8:45 am]

NATIONAL CANCER INSTITUTE COMMITTEES

Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Public Law 92-463, 86 Stat. 770-776), The Director, National Institutes of Health, announces the renewal by the Director, NCI, of the following committees:

Committee	*Termination date*
Cancer Control and Rehabilitation Advisory Committee	Sept. 23, 1978.
Cancer Control Community Activities Review Committee	Do.
Cancer Control Intervention Programs Review Committee (renamed Cancer Control Intervention Programs *A* Review Committee)	Do.
Cancer Control Supportive Services Review Committee (renamed Cancer Control Intervention Programs *B* Review Committee)	Do.
Clinical Cancer Education Committee	Do.

Authority for these committees will expire on the dates indicated, unless renewed by appropriate action as authorized by law.

Dated: September 28, 1976.

THOMAS E. MALONE,
Acting Director, National Institutes of Health.

[FR Doc.76-29594 Filed 10-7-76;8:45 am]

NATIONAL PANCREATIC CANCER PROJECT WORKING CADRE ET AL.

Meetings for the Review of Research Grant Applications

Pursuant to Public Law 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552(b)(4), 552(b)(5) and 552(b)(6) of title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual initial pending, supplemental, and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5708) will furnish summaries of the meetings and rosters of committee members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings are held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014, unless otherwise stated.

Name of Commitee: National Pancreatic Cancer Project Working Cadre.
Dates: November 6, 1976; 8:30 a.m.
Place: Continental Plaza Hotel, Regent I Room, Chicago, Illinois 60611.
Times: Open—November 6, 8:30 a.m.–9:30 a.m. Closed—November 6, 9:30 a.m.—adjournment.
Closure reason: To review research grant applications.
Executive Secretary: Dr. William Stralle (Acting), address: Westwood Building, Room 853, National Institutes of Health, phone: 301-496-7194.
(Catalog of Federal Domestic Assistance Number 13.393; 13.394; 13.395, National Institutes of Health.)
Name of Committee: Cancer Control Grant Review Committee.
Dates: November 8-9, 1976; 8:30 a.m.
Place: Building 31A, Conference Room 4, National Institutes of Health.
Times: Open—November 8, 8:30 a.m.–9:00 a.m. Closed—November 8, 9:00 a.m.–5:00 p.m. Closed—November 9, 8:30 a.m.–adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. John E. Lane, Address: Blair Building, Room 7A07, National Institutes of Health, phone: 301-427-7941.
(Catalog of Federal Domestic Assistance Number 13,399, National Institutes of Health.)
Name of Committee: Cancer Clinical Investigation Review Committee.
Dates: November 8-10, 1976; 8:30 a.m.
Place: Building 31C, Conference Room 8, National Institutes of Health.
Times: Open—November 8, 8:30 a.m.–10:00 a.m. Open—November 9, 9:00 a.m.–12:00 noon.
Agenda/Open Portion: A Mini-Symposium on Prevention and Treatment of Infection in the Cancer Patient will be held on November 9.
Closed—November 8, 10:30 a.m.–5:00 p.m. Closed—November 9, 1:00 p.m.–5:00 p.m. Closed—November 10, 8:30 a.m.–adjournment.
Closure Reason: To review research grant application.
Executive Secretary: Mr. Clare W. White, address: Blair Building, Room 123, National Institutes of Health, phone: 301-427-8086.
(Catalog of Federal Domestic Assistance Number 13.395, National Institutes of Health.)
Name of Committee: Cancer Special Program Advisory Committee.
Dates: November 8-10, 1976; 9:00 a.m.
Place: Building 31C, Conference Room 9, National Institutes of Health.
Times: Open—November 8, 9:00 a.m.–10:00 a.m. Closed—November 8, 10:00 a.m.–5:00 p.m. Closed—November 9, 8:30 a.m.–5:00 p.m. Closed—November 10, 8:30 a.m.–adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. William R. Sanslone, address: Westwood Building, Room 805, National Institutes of Health, Phone:
(Catalog of Federal Domestic Assistance Number 13,392, National Institutes of Health.)
Name of Committee: National Prostatic Cancer Project Working Cadre.
Dates: November 11-12, 1976; 8:30 a.m.
Place: Research Study Center, Room 402, Roswell Park Memorial Institute, Buffalo, New York 14263.
Times: Open—November 11, 1:00 p.m.–5:00 p.m. Open—November 12, 8:30 a.m.–adjournment. Closed—November 11, 8:30 a.m.–12:00 noon.
Agenda/Open Portion: Program Review.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. Andrew Chiarodo, address: Westwood Building, Room 855, National Institutes of Health, phone: 301-496-7194.
(Catalog of Federal Domestic Assistance Number 13.393; 13.394; 13.395; National Institutes of Health.)
Name of Committee: National Cancer Advisory Board's Subcommittee on Centers and Construction.
Date: November 14, 1976; 7:00 p.m.
Place: Building 31C, Conference Room 10, National Institutes of Health.
Times: Open—November 14, 7:00 p.m.–9:00 p.m. Closed—November 14, 9:30 p.m.–adjournment.
Agenda/Open Portion: To review the Intrainstitute Committee for Cancer Centers; Cancer Centers Profile, and existing Comprehensive Cancer Centers.
Closure Reason: To review grant applications.
Executive Secretary: Dr. William A. Walter, address: Westwood Building, Room 826, National Institutes of Health, phone: 301-496-7427.
(Catalog of Federal Domestic Assistance Number 13.312, National Institutes of Health.)
Name of Committee: Cancer Center Support Grant Review Committee.
Dates: November 19-20, 1976; 8:30 a.m.
Place: Building 31C, Conference Room 6, National Institutes of Health.
Times: Open—November 19, 8:30 a.m.—10:00 a.m. Closed—November 19, 10:00 a.m.–6:00 p.m.
Closed—November 20, 8:30 a.m.—adjournment.
Closure reason: To review research grant applications.
Executive Secretary: Dr. Robert L. Manning, address: Room 803, Westwood Building, National Institutes of Health, phone: 301-496-7721.
(Catalog of Federal Domestic Assistance Number 13.397 National Institutes of Health.)
Name of Committee: Joint Meeting of the Cancer Control Community Activities Review Committee and the Cancer Control Grant Review Committee.
Dates: November 28-29, 1976, 8:30 a.m.
Place: Building 31C, Conference Room 7, National Institutes of Health.
Times: Open—November 28, 8:30 a.m.–9:00 a.m. Closed—November 28, 9:00 a.m.–5:00 p.m. Closed—November 29, 8:30 a.m.–adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. Vernoica L. Conley, address: Blair Building, Room 7A07, National Institutes of Health, phone: 301-427-7941.
(Catalog of Federal Domestic Assistance Number 13.399, National Institutes of Health.)

Dated: September 30, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-29591 Filed 10-7-76;8:45 am]

Office of the Assistant Secretary for Health, Public Health Service

NATIONAL IMMUNIZATION; POLICIES ETC.

Meeting

Notice is hereby given of the intention to hold a public meeting on November 12, 13, and 14, 1976, to discuss our national immunization effort, including policies, priorities, implementation, liability and indemnification, informed consent, and potentials for new vaccines.

Sponsor: Office of the Assistant Secretary for Health, Public Health Service, Department of Health, Education, and Welfare.
Time: 9 a.m. to 5 p.m., November 12, 13, and 14, 1976.
Place: Main (Masur) Auditorium, Clinical Center, Building 10, National Institutes of Health, Bethesda, Maryland 20014.

This meeting will be open to the public and public participation is expected and encouraged. There will be solicited formal presentations with panel discussion and audience participation.

In addition, those wishing to address the conference may do so by submitting a text of comments to the address given below. Such written submissions may be of any length. Oral presentations will be limited to five (5) minutes. Those who wish may submit only written comment.

The sponsor reserves the right to limit the number of oral presentations in consideration of time available. In general, every attempt will be made to accept participants in the order that submissions are received. To be considered, copy of a text must be received before November 5, 1976. All submissions will be acknowledged.

Address inquiries and submit text to:

Mr. John Blamphin, Director of Public Affairs, Room 731G-2, South Portal Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-6867.

CHARLES U. LOWE,
Special Assistant for Child Health Affairs.

OCTOBER 5, 1976.

[FR Doc.76-29667 Filed 10-7-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-76-461]

CERTAIN HUD EMPLOYEES IN OEO ATLANTA REGIONAL OFFICE, REG. IV

Redelegation of Authority To Administer Oaths and Verify Complaints

SECTION A. *Authority to Administer Oaths and Verify Complaints.* The incumbents of the following positions in the Department of Housing and Urban Development, Atlanta Regional Office, Office of Equal Opportunity, are hereby authorized to administer oaths under section 811 (a) of Title VIII (Fair Housing) of the Civil Rights Act of 1968, Pub. Law 90-284 (42 U.S.C. 3611 (a)) and to verify complaints filed under the Civil Rights Act of 1968:

1. Director, Equal Opportunity Compliance Division.
2. Director, Field Evaluation and Support Division.
3. Equal Opportunity Specialists.
4. Equal Opportunity Compliance Specialists.

SECTION B. *Supersedure.* This redelegation of authority supersedes the redelegation effective September 1, 1971 (38 FR 2344, January 24, 1973).

(Redelegation of Authority by the Regional Administrator effective May 1, 1976 (41 FR 41137, Sept. 21, 1976).)

Effective date. This redelegation of Authority shall be effective May 1, 1976.

CHARLES E. CLARK,
Assistant Regional Administrator for Equal Opportunity, Atlanta Regional Office.

[FR Doc.76-29653 Filed 10-7-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 28992; Order 76-10-16]

AIR TRANSPORT ASSOCIATION OF AMERICA

Order Regarding Application For Authority To Discuss Administration of the Dimensional Weight Rule Filed by Carrier

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 4th day of October, 1976.

By Order 76-5-100, May 21, 1976, the Board denied an application by members of the Air Transport Association of America (the carriers) for permission to hold discussions on carrier administration of the dimensional weight rule (cube rule).[1]

On June 14, 1976, the carriers submitted a petition for reconsideration of that order. The petitioners assert, inter alia, that the Board has inappropriately applied the standards enunciated in the Local Cartage Agreement Case (Cartage case), 15 C.A.B. 850 (1952), since the matters to be discussed would not be "plainly repugnant" to established antitrust principles because the discussions would pertain only to enforcing currently effective rules and regulations, and would not impose new ones; and that, even under the Cartage case criteria, the discussions should be permitted, inasmuch as there is no "more serious transportation need * * * than that shippers pay the rates and charges specified in carrier tariffs."

The carriers also assert that Order 76-5-100 precluded their participation in meetings held by the Board's Bureau of Enforcement (BOE) on May 26, 1976, for the purpose of initiating "affirmative action" programs to eliminate alleged deviations from air freight tariff requirements, including the cube rule (Dockets 27933 and 29223). Accordingly, they request that, if the Board does not reconsider its denial of the discussion authority requested, it should at a minimum permit the carriers to meet with BOE for the foregoing purpose.

An answer in opposition to the petition has been filed by the Air Freight Forwarders Association (AFFA), which claims, inter alia, that the carriers have given no reasons why each one cannot separately enforce its own tariffs, and that the sole reason for the carriers' request for discussions is to shift the burden of complying with carrier tariffs from the carriers to the forwarders. AFFA also maintains that the Board should not allow the airlines "to hide behind the cloak" of BOE to obtain their objectives; that there is no reason why BOE cannot discuss affirmative action plans with each of the carriers separately; and that the Board should not permit an industrywide action plan without the consent and participation of shippers and forwarders.

In their original application, the carriers indicated they wished to discuss more than mere compliance with tariffs. The carriers' original application stated that they wished to discuss "possible alternatives" to dimensional weight rule application and added that there might be possible solutions that could require "industry-wide procedures directed to institute expanded cooperation of the shipper." In their petition for reconsideration, however, the carriers limit their request to discussions of effective compliance with the tariff rules and, if that is refused, permission to meet with BOE on affirmative action programs.

In view of the foregoing and all other relevant factors, the Board has decided to reconsider its denial of the carriers' prior application and to permit the discussions, subject to conditions. Clearly, the matter is now presented on a narrower basis and is limited to tariff enforcement. Accordingly, the request will be granted. Discussion of the dimensional weight rule shall be restricted to an interchange of ideas on administrative techniques and devices for implementing existing tariffs in such a way as not to add new or different conditions of any kind upon the tariffs' application. The discussions will be authorized for a period of 90 days from the date of this order.

We will also condition our approval to permit interested shippers, including indirect carriers, to express their views during the course of the discussions and prior to the conclusion of any final agreement. Our approval will also require that the attendance of Board observers be permitted.

The Board also wishes to make it clear that, while the approval granted herein is limited to the carriers' request to discuss compliance with the existing cube rule tariff provisions, the carriers are also free to engage in discussions initiated by the Board's Bureau of Enforcement for the purpose of establishing "affirmative action" programs designated to bring the carriers into conformity with their existing air freight tariffs.[2]

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 412, and 414 thereof,

It is ordered, That:

1. The petition for reconsideration of Order 76-5-100 filed by the members of the Air Transport Association of America in Docket 28992 is granted;

2. The carrier members of the Air Transport Association are authorized for a period of 90 days from the date of this order to engage in discussions on administration of the dimensional weight rule that will be strictly limited to the interchange of ideas on administrative techniques and devices for implementing existing tariffs in such a way as not to add new or different conditions of any kind upon the tariffs' application;

3. An agenda of matters to be discussed shall be filed with the Board's Docket Section in this docket at least 10 calendar days in advance with respect to any meeting called pursuant to this order;

4. Any shipper (including indirect air carrier) or shipper organization may advise the Air Transport Association that it is interested in the discussions and thereafter all meeting notices and agendas shall be mailed to any such shipper or shipper organization, with such notice to include an invitation to submit comments upon the agenda matters and to arrange for personal appearances at the carriers' meeting;[3]

[1] The participating carriers include all members of the Air Transport Association except Aloha Airlines, Inc.

[2] AFFA requests that joint discussions with BOE not be permitted without forwarder participation. However, any enforcement settlement agreed to by BOE is ultimately reviewable by the Board. The agreement of BOE to an affirmative action plan incorporated in such a settlement is done under a delegation of authority from the Board. Interested third persons such as AFFA may petition the Board for review of such matters. The Board, therefore, will not at this time circumscribe or expand the proposed enforcement discussions. In addition, BOE is not precluded from holding joint discussions with carriers, be it with air freight forwarders or direct air carriers, with or without an enforcement proceeding.

[3] If the direct carriers so desire, they may appoint a secretary to represent them for the purposes of preparing meeting notices, agendas, minutes of meetings, and the filing of agreements.

5. The Director of the Bureau of Economics shall be given at least five business days' notice of the time and place of any meetings called pursuant to the authority granted herein;

6. The Board reserves the right to have one or more observers in attendance at all meetings of the carriers;

7. Complete and accurate minutes shall be kept of all meetings and a true copy thereof filed with the Board's Docket Section not later than two weeks after the conclusion of each meeting;

8. Any agreement or agreements reached as a result of such discussions shall be filed with the Board for advance approval in accordance with section 412 of the Federal Aviation Act of 1958; and

9. This order will be served upon the Air Transport Association of America, the Air Freight Forwarders Association, and the Hawaii Air Cargo Shippers Association, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-29677 Filed 10-7-76;8:45 am]

ALASKA FARES INVESTIGATION

[Docket 29198]

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on November 17, 1976, at 9:30 a.m. (local time), in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue, NW., Washington, D.C., before Administrative Law Judge Henry M. Switkay.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to tach party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Economics will circulate its material on or before October 22, 1976, and the other parties on or before November 5, 1976. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., October 1, 1976.

ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.76-29678 Filed 10-7-76;8:45 am]

[Docket 29879, 22859, 26838; Order 76-10-74]

CONTINENTAL AIR LINES, INC.

Order of Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 4th day of October, 1976.

By tariff revisions[1] posted September 2 and marked to become effective October 17, 1976, Continental Air Lines, Inc. (Continental) proposes to increase all mainland bulk and container general and specific commodity rates and charges, small package rates and charges, and priority reserved air freight rates and charges by approximately 8 percent. In addition, bulk general commodity minimum charges per shipment are to be increased by $1.00 to a level of $13.00 per shipment.

In support of its proposal, Continental asserts, inter alia, that the proposed rate increases are more than justified on a cost basis; that for the year ended June 30, 1976, the carrier incurred an operating loss of $4.6 million from its mainland freight operations; that the proposal is expected to generate an estimated $3 million in additional revenue in 1977, or 5.8 percent of carrier's forecasted freight revenue for its entire system; that the proposed increase would about eliminate the deficit return on investment of its mainland freight operations; and that the proposal will help maintain rate and service parity with surface carriers in the small shipment market.

The proposed rates and charges come within the scope of either the Domestic Air Freight Rate Investigation (DAFRI), Docket 22859, or the Priority Reserved Air Freight Rates Investigation (PRAFRI), Docket 26838, and their lawfulness will be determined in these proceedings. The issue now before the Board is whether to suspend the proposal or to permit it to become effective pending investigation.

The Board concludes that a number of the priority reserved freight rates may be excessive inasmuch as they are above 130 percent of the otherwise applicable regular service general or specific commodity rates or charges and should not be permitted to become effective pending investigation. Although at one time the Board permitted Continental (as well as certain other carriers) to establish such priority general commodity rates at levels exceeding 130 percent of the otherwise applicable rates, the Board subsequently found that a 30-percent premium over the applicable rates (whether general or specific commodity) was the highest that should be permitted pending final decision in PRAFRI (e.g., see Orders 75-11-8, 75-3-116, and 75-1-80). Our action herein is consistent with that taken with respect to priority rates proposed by other carriers as well as in Order 75-12-28, December 5, 1975, by which the Board suspended priority reserved rate increases proposed by Continental in the same markets. Other increases in priority rates do not exceed appropriate levels and will be allowed.

Upon consideration of all relevant factors, the Board finds that the rate increases, to the extent that they apply to priority reserved rates and charges set forth in detail in Appendix A,[1a] should be suspended. The remaining portions of the proposal do not appear excessive in relation to costs,[2] and the Board will permit them to become effective.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

1. Pending hearing and decision by the Board, the increased rates, charges and provisions described in Appendix A hereto are suspended and their use deferred to and including January 14, 1977, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension, except by order or special provision of the Board; and

2. Copies of this order shall be filed with the tariffs and served upon Continental Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-29676 Filed 10-7-76;8:45 am]

[Docket 27918; Order 76-10-12]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding North Atlantic Fares Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 1st day of October, 1976.

By Order 75-6-42, the Board instituted an all-encompassing investigation of the North Atlantic fare structure for scheduled serivce. The purpose is to ascertain the cost of offering the many types of service now available and to develop standards upon which to base evaluation of future fare agreements reached by the member carriers of the International Air Transport Association (IATA). In that order, the Board also set in motion the recurrent filing by U.S. carriers of basic cost and statistical data to facilitate the building of a meaningful historical record.

The purpose of this order is to set forth the procedures for undertaking the investigation instituted in Order 75-6-42, and to dispose of various petitions for reconsideration.

Order 75-6-42, which articulated the general scope of this investigation, contemplated that the Board would conduct its evaluation of North Atlantic fares on the basis of a full-scale evidentiary proceeding with hearings before an

[1] Revisions to Airline Tariff Publishing Company, Agent, Tariffs C.A.B. Nos. 169, 227 and 235.

[1a] Appendix A filed as part of the original document.

[2] Industry-average costs as adopted by the administrative law judge in DAFRI, and revised to reflect cost increases through the 12-month period ended June 1976.

administrative law judge. Upon further reflection, however, the Board has determined that an adjudicatory investigation of North Atlantic fares is unnecessary and inefficient in light of the policy objectives that the proceeding is intended to achieve. Accordingly, the Board has determined to forego, at this time, the formal hearings contemplated in Order 75–6–42 and to follow rulemaking procedures.

The objective of this investigation, as set forth in Order 75–6–42, is the "establishment of reasonable guidelines and standards for evaluating passenger fares for scheduled services provided between U.S. points, except points in the Pacific Ocean and Puerto Rico, on the one hand, and points in Europe and the Middle East (as defined by IATA Resolutions 012 and 021b), on the other hand." At the outset, it is abundantly clear that there is no statutory requirement that the Board conduct a hearing in order to formulate such policies and that the question of how best to proceed lies solely within the Board's discretion. For the following reasons, we prefer rulemaking. To begin with, since North Atlantic fare levels are reviewed periodically in connection with the Board's evaluation of IATA fare agreements, it is not our intention that this proceeding should embark on a massive overall inquiry into fare levels, per se. To the contrary, the Board's limited powers to prescribe rates and fares in foreign air transportation persuade us that the real value of this investigation lies not in determining the economic corrections of a set of fares and costs at any one particular point in time, but rather in establishing reasonable fare policies which will endure over the longer term and which will move the IATA carriers toward a more rational fare structure than that which is currently in effect and which, it is hoped, will be useful to foreign governments in their own inquiries into these matters. Thus, the principal objection of this investigation is to establish reasonable standards and guidelines evaluating both fare level and fare structure, on a recurrent basis, in the context of North Atlantic fare agreements that are reached in IATA Traffic Conferences and are filed with the Board for its approval. In our judgment, rulemaking, which affords the additional benefit of facilitating broader public participation, is at least as effective for this purpose as a formal hearing and may result in considerable savings of time and resources, not only for the Board but for the public and the industry as well. In this connection, the conventional trial process has much to commend it, and there is no question that the expertise of an experienced administrative law judge in the refinement of issues, synthesization of data, and other functions is of invaluable assistance to the Board in the conduct of its formal proceedings. However, this process would appear to be of less importance in a case in which the principal issues are not so much questions of fact, as they are judgments as to policy.

Moreover, even were the Board to hold hearings in this investigation, there is no reason at this time to believe that the record developed on that basis would be of significantly higher quality than that which will be developed on the basis of the rulemaking instituted herein. The Board, by virtue of the recurrent reports filed pursuant to Order 75–6–42, and supplemented by data in the carriers' accounting reports, already has at its disposal most of the information necessary to conduct a reasonably thorough analysis of the North Atlantic cost structure and no logical need is perceived at this time to go beyond these data to develop the evidentiary basis for the proposed rule.

By employing these data (as supplemented by the data requested herein) it will be possible to develop reasoned policies on the basic cost-structure issues, including the identification of any distinguishable cost differences between fares for the various categories of service. Although this analysis will, out of necessity, proceed on the basis of U.S. carrier data only, it is believed that the structure of costs, particularly the cost taper, for these carriers should not be sufficiently dissimilar to that of the foreign carriers so as to provide distorted results. In any event, the proposed policy statement, as well as its underlying analytical base, will be subject to challenge in the responsive comments of interested persons. With full opportunity to comment by all interested persons, we believe that the rulemaking is sufficiently flexible to establish a North Atlantic fare policy in which all relevant points of view have been considered.

It is the Board's intention to issue a notice of rulemaking setting forth its analysis of the structure of costs, including the cost of through point-to-point service and cost taper. This notice will also articulate the Board's tentative views on what constitutes a reasonable North Atlantic fare structure, including, but not necessarily limited to: (a) the relationship between normal economy fares and costs, including seating and load-factor considerations; (b) the proper relationships between normal economy fares and fares for other basic classes of service; (c) the relationship between peak, off-peak, and/or shoulder fares for the normal-fare classes of service; (d) the relevant definition of "trip" for the purpose of determining normal fares (i.e., including the extent to which stopovers are to be permitted without extra charge); and (e) the relationships which should obtain between normal and promotional fares.

It should be pointed out that the Notice of Proposed Rulemaking will not address two matters placed in issue by Order 75–6–42, namely, the proportional fares used to construct fares to/from nongateway U.S. points and the division of joint fares. Both issues would require voluminous data from foreign carriers and U.S. domestic carriers and their consideration along with the more basic policy issues could only serve to delay the adoption of reasoned policies for North Atlantic fares. In any event, since the evaluations of the fare structure will be predicated on existing proportionals and divisions, we should gain considerable insight into this and will then be in a better position to decide what further action is appropriate in that regard.

As previously indicated, Order 75–6–42 required the recurrent filing by U.S. carriers of special reports showing their cost and traffic data for transatlantic scheduled combination aircraft services, and various passenger statistics by fare category. In order that the staff may properly conduct the cost analysis discussed above, it is necessary that these data be augmented with the additional North Atlantic entity data specified in the Appendix attached, and their provision will be ordered herein. These additional data consist primarily of cost inputs not included in the currently filed reports and more particularized information on discount fares. A special passenger survey is also being requested to determine, by fare category, the amount of revenue dilution attributable to the division of joint fares for the various circuitous routings and stopovers that are available under the present North Atlantic fare structure. Although, for the reasons discussed above, the rulemaking will not address the appropriate means by which joint fares should be divided, submission of this survey data is being required to assess the extent to which North Atlantic fares are affected by existing divisions. While, like the earlier reported data, we are ordering these supplemental data to be filed by U.S. carriers, we repeat our previous invitation to the foreign air carriers to provide similar data in the same or comparable format.

We turn next to the requests for reconsideration. Petitions for reconsideration have been filed by Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (TWA), and the United States Department of Transportation (DOT).[1] The essential thrust of all three is that the investigation should be expanded to include in issue the reasonableness of passenger charter rates in the North Atlantic market, with particular focus on the costs of providing the various types of charter service now offered. Pan American further requests that, if this issue is included, the U.S. supplemental carriers be made parties to the investigation and be required to furnish the same type of detailed cost and traffic information required of the U.S. scheduled carriers.

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[1] DOT also requests that the scope of the investigation be expanded to include re-evaluation of the basic underlying IATA machinery which, it alleges, is responsible for the resolutions submitted as agreements which the Board must act upon. However, the scope of investigation is the determination of the appropriate structure of North Atlantic fares, and the issue of the IATA machinery is not germane to that determination.

It is alleged that any investigation of North Atlantic fares would be incomplete without consideration of charter rates; that the cost of providing transatlantic charter service has never been fully examined and that this proceeding provides a unique opportunity to do so; that there is a distinct interrelationship between charter rates and fares on scheduled services; and that, absent investigation of charter costs, the Board would not be in a position to regulate charter rates and hence to evaluate the reasonableness of scheduled service fares. Pan American, in addition, requests that the investigation go beyond the question of the cost of providing charter service and into the appropriate interrelationship between per-passenger charter rates and fares on scheduled services. Pan American contends that the Board has acknowledged the interplay between charter and scheduled-service pricing and that the fare structure on scheduled service reflects a necessary competitive response to charter activity.

Finally, TWA requests clarification as to the public availability of data to be submitted during the course of this proceeding, and contends that certain ordered reporting requirements constitute an undue burden on the carriers since the data are already routinely submitted to the Board. TWA also requests that the Board modify its timing requirement for submission of profit and loss statements and investment and revenue data.

Answers in opposition to the petitions for reconsideration have been filed by the Airlines Charter Tour Operators Association (ACTOA), Capitol International Airways, Inc. (Capitol), Davis Agency, Inc. (Davis), Overseas National Airways, Inc. (ONA), Spantax, S.A. (Spantax), and Trans International Airlines, Inc. (TIA). An answer in support of the petitions to incorporate charter rate levels in issue has been filed by British Caledoian Airways Limited (BCAL). With the exception of BCAL, these parties contend that the Board's order was clearly directed toward the reasonableness of fares in scheduled service and that expanding the scope of the proceeding to include charter rates would involve undue complexity to the point that it would become unmanageable. It is alleged that such an expansion of the issues would divert the focus of the case from the Board's primary intention—an examination into the fare structure of scheduled service on the North Atlantic. The respondents refer to the Board's previous statements that charter services do not appear to have diverted traffic unduly from scheduled services, and they contend that consumers have benefited from expanding levels of service at inexpensive rates, and that the scheduled carriers' problems stem from operation of overcapacity and illegal rebating. ONA suggests that, if the reasonableness of North Atlantic charter rates is to be pursued, it should be in the context of the rulemaking proceeding in Docket 25875.

Upon consideration of the petitions, the answers thereto, and other relevant matters, the Board has decided to deny the requests that rates and costs of providing charter service on the North Atlantic be included in issue in this proceeding.

In substance, charter services and scheduled services have inherently different characteristics which involve separate and distinct costing and pricing considerations. Thus, charter rates are based on the economics of full-planeload operations whereas scheduled services are priced in relation to anticipated load factors. In the Board's opinion, inclusion of charter costs in this proceeding would unduly complicate development of the record and unnecessarily deter our most immediate objective of developing a definitive policy for North Atlantic scheduled service fares.

In Docket 25875, the Board sought to ascertain the cost of charter services and to arrive at a regime which would be equitable to both the charter and scheduled carriers. This did not prove feasible in the context of that proceeding. We recognize as we did then that, as a practical matter, charter services have an important bearing upon the fares which the IATA carriers agree upon for their scheduled services. However, this is essentially a matter of relative price. Our primary interest in this proceeding is to analyze the North Atlantic fare structure and develop reasoned policies by which to evaluate future passenger-fare agreements.

It cannot, of course, be denied that the level of charter prices will have an effect upon the level of fares which the carriers will wish to offer in scheduled service at the lower end of the spectrum. This is a factor which cannot realistically be ignored in the market place. The impact of charter rates on pricing of scheduled service, of course, is a factor which will be examined in this proceeding. On the other hand, we perceive on mandate of law or policy which would require the establishment of charter prices on the basis of some artificial relationship to scheduled service prices. In the Board's opinion, inclusion of the issue of the cost of charter service, which by its nature involves significantly different facts and circumstances, would unduly complicate an already extremely complex proceeding. Accordingly, we will deny the petitions.

TWA requests an extension of time for filing the required profit and loss statement, and investment data for scheduled North Atlantic service on the grounds that such data can only be developed after preparation of the regular Form 41 reports. The 20 days requested beyond the date for filing Form 41 reports is acceptable to the Board. Also, we will permit the carriers to accumulate their monthly fare usage data by quarter and submit these data simultaneously with the quarterly profit and loss and investment data described above. This, in substance, meets TWA's need for additional time to file these data.[2] However, we are unable to accept TWA's request that traffic and capacity statistics be eliminated from the special reporting requirements in the Appendix to Order 75–6–42 because these materials are already submitted to the Board. We are not persuaded that the effort which is involved will constitute an undue burden. The reporting which has been required is an obligation of the carriers to the development of a useful record in this proceeding.[3]

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, 412, 414, and 1002 thereof,

It is ordered, That:

1. The petitions of Pan American World Airways, Inc., Trans World Airlines, Inc., and the Department of Transportation for reconsideration of Order 75–6–42, to the extent not granted herein, be and they hereby are denied;

2. The motions filed by Department of Transportation to expedite proceedings in this Docket be and they hereby are dismissed;

3. Ordering paragraph 4 of Order 75–6–42 is hereby amended to read as follows:

"National Airlines, Inc., Pan American World Airways, Inc., and Trans World Airlines, Inc. shall supply in this Docket the following information:

"(1) a quarterly report showing the profit and loss, and investment data for scheduled North Atlantic service outlined in Appendix B of this order; and

"(2) a quarterly report showing, by month, the fare usage data (i.e., passengers enplaned, revenue passenger-miles, and passenger revenue for each fare category in the North Atlantic structure) specified on page four of this order.

These data shall be submitted 20 days after the date for filing Form 41 reports covering the same time period."

4. National Airlines, Inc., Pan American World Airways, Inc., and Trans World Airlines, Inc. shall supply in this Docket the North Atlantic entity data specified in the attached Appendix,[4] these data to be submitted as follows: (1) the data required in paragraphs A, B, and C shall be reported for the 12-month period ending June 30, 1976, and each year ended June 30 thereafter, and shall be submitted by the following December 1; *Provided, however*, That the data for the year ending June 30, 1976 shall be sub-

[2] Inasmuch as the monthly reporting on North Atlantic passenger traffic by fare category required by Order 75–6–42 duplicates the information being provided by Pan American and TWA in response to Order 70–2–124, the filing requirement with respect to the latter order will be terminated.

[3] The Department of Transportation has filed two separate motions to expedite the proceedings instituted in Order 75–6–42. However, in view of the action taken herein to establish the procedural framework of the investigation, these motions have become moot and will be dismissed.

[4] Appendix filed as part of original document.

mitted by November 1, 1976; and (2) the passenger survey data required in paragraph D shall be accumulated on a quarterly basis and submitted simultaneously with the data reported pursuant to Order 75-6-42; [5] and

5. The reporting requirements as set forth in the Appendix to Order 70-2-124 be and hereby are terminated.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-29681 Filed 10-7-76;8:45 am]

[Docket 29845; Order 76-10-21]

EL AL ISRAEL AIRLINES LTD.

Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of September, 1976.

By tariff revisions filed September 8, 1976, for effectiveness October 8, 1976, El Al Israel Airlines Ltd. (El Al) proposes a special 50-percent reduction from the U.S.-Israel normal economy fares "for members of the official national teams participating in the Chess Olympic Games and members of the Official National Delegations to the congress, traveling from a point in the U.S.A. or Canada to Israel." The fares would be available from October 14 through November 21, 1976, and were filed pursuant to an order of the Government of Israel.

Upon consideration of all relevant matters, the Board has concluded that the proposed fares may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the fares should be suspended pending investigation.

Extension of a special discount to a limited group of U.S. residents based on their membership in a specific cultural or other organization clearly presents a prima facie case of unjust discrimination which is inconsistent with the statute. Were the Board to approve this filing, we could reasonably expect to receive numerous requests for special discounts for other groups. Moreover, the discount fares available on an equal basis to all members of the traveling public, adopted by the members of the International Air Transport Association (IATA), including both the U.S. and Israel flag carriers and approved by both governments, would appear to provide an adequate facility for the carriage of participants in the Chess Games.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 801 and 1002(j) thereof,

It is ordered, That:

1. An investigation be instituted to determine whether the provisions in Rule 298-B, on 16th Revised Page 82-J, to Passenger Fares Tariff No. PF-4, C.A.B. No. 44, issued by Air Tariffs Corporation, Agent, and practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to take appropriate action to prevent the use of such provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the tariff provisions specified in paragraph 1 above are suspended and their use deferred from October 8, 1976 to and including October 7, 1977, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President[1] and shall become effective on October 8, 1976;

4. The investigation ordered herein be assigned for hearing before an administrative law judge of the Board at a time and place hereafter to be designated; and

5. Copies of this order be filed in the aforesaid tariff and be served upon El Al Israel Airlines Ltd.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-29682 Filed 10-7-76;8:45 am]

CIVIL SERVICE COMMISSION

ADVISORY COMMITTEE ON ADMINISTRATIVE LAW JUDGES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the Advisory Committee on Administrative Law Judges will meet at 9:30 a.m. on Friday, October 29, 1976. This meeting will be held in Room 5323 of the U.S. Civil Service Commission Building, 1900 E Street NW., Washington, D.C.

The Advisory Committee's agenda will consist of a discussion of recruitment and selection procedures for Administrative Law Judges, including the nature of the application process and information required at the various stages in the selection process. There will be further discussion of the qualifications criteria; application of Veterans Preference Act requirements; experience required; the use of personal investigation and the vouchering system; the desirability of continuing selective certification procedures; and, such other matters as members of the Advisory Committee may wish to discuss including issues to be considered at future meetings.

This meeting will be open to the public.

Inquiries regarding this notice may be addressed to Arthur L. Burnett, Assistant General Counsel, Legal Advisory Division, Office of General Counsel, Civil Service Commission, 1900 E Street NW, Washington, D.C. 20415, telephone: Area Code 202-632-5421 or 632-5422.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.76-29905 Filed 10-7-76;10:01 am]

DEPARTMENT OF DEFENSE

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Director for Policy and Program Development (Civilian), Directorate for Policy and Program Development (Civilian), ODASD (Equal Opportunity), OASD (Manpower and Reserve Affairs), Office of the Secretary of Defense.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.76-29254 Filed 10-7-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Assisted Housing, Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

UNITED STATES CIVIL SERVICE COMMISSION.
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.76-29253 Filed 10-7-76;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS FROM MALAYSIA

Adjustment of Import Levels

Correction

In FR Doc. 76-28051, appearing in the issue for Friday, September 24, 1976, and corrected at 41 FR 43440, October 1, 1976, the letter that was contained in the above document should have read as set forth below. Please note the footnotes and their references.

[5] The initial survey report shall include a description of the basis for the sampling method employed in accumulating the data, including full source references and notes.

[1] This order was submitted to President on September 29, 1976.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

SEPTEMBER 21, 1976.

DEAR MR. COMMISSIONER: On December 22, 1975, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning January 1, 1976 and extending through December 31, 1976 of cotton and man-made fiber textile products in certain specified categories, produced or manufactured in Malaysia, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to paragraph 5 of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 8 and May 16, 1975, between the Governments of the United States and Malaysia, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed, effective on September 24, 1976 and for the twelve-month period beginning on January 1, 1976 and extending through December 31, 1976, to amend the levels of restraint established for Categories 22/23 and 26 to the following amounts:

Category:	*Amended twelve-month level of restraint* [2]
22/23	2,824,800 square yards.
26	6,474,600 square yards.

[2] The levels of restraint have not been adjusted to reflect any entries made after December 31, 1975.

The actions taken with respect to the Government of Malaysia and with respect to imports of cotton textile products from Malaysia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance.

ESTABLISHING IMPORT LEVELS FOR CERTAIN COTTON, WOOL AND MAN-MADE FIBER TEXTILES

Products From the Republic of Korea, Effective October 1, 1976

Correction

In FR Doc. 76–29089, appearing at page 43440 in the issue for Friday, October 1, 1976, the levels of restraint in the table and the footnotes should read as set forth below:

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

SEPTEMBER 29, 1976.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 26, 1975, between the Governments of the United States and the Republic of Korea, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on October 1, 1976 and for the twelve-month period extending through September 30, 1977, entry into the United States for consumption of cotton textile products in Categories 9/10, 18/19 and part of 26, 22/23, part of 26, 39, 42/43/62 pt., 45/46/47, 48, 49, 50/51, 52, 62 pt., and 63; wool textile products in Categories 104, 116/117, 120, 121 and 124; and man-made fiber textile products in Categories 208, 210, 218, 219, 221, 222, 224, 228, 229, 234, 235, 237, and 238 in excess of the following levels of restraint:

Category:	*Twelve-month level of restraint*
9/10	6,583,024 square yards.
18/19/26 (printcloth)[1]	5,235,626 square yards.
22/23	3,604,345 square yards.
26 (duck)[2]	21,943,401 square yards.
39	311,880 dozen pairs.
42/43 and part of 62[3]	3,200,000 square yards equivalent.
45/46/47	3,186,797 square yards equivalent.
48	22,453 dozen.
49	51,039 dozen.
50/51	192,817 dozen (of which not more than 102,184 dozen shall be in Category 50 and not more than 138,309 dozen shall be in Category 51).
52	70,727 dozen.
pt. 62[4]	195,652 pounds.
pt. 63 (T.S.U.S.A. Nos. 380.3980 and 382.3380)	1,086,957 pounds.
pt. 63[5]	1,086,957 pounds.
104	2,200,000 square yards.
116/117	470,815 pounds.
120	320,448 numbers.
121	193,920 numbers.
124	1,010,000 numbers.
208	18,000,000 square yards (of which not more than 8 million square yards shall be in T.S.U.S.A. Nos. 338.3035 and 338.3036).
210	1,750,000 square yards.
218	897,790 dozen.
219	4,082,036 dozen.
221	2,801,092 dozen.
222	1,025,100 dozen.
pt. 224 (only T.S.U.S.A. Nos. 380.0420 and 380.8143).	41,333 dozen. 48,485 dozen.
pt. 224[6]	4,358,974 pounds.
228	881,517 dozen.
229	752,455 dozen.
234	3,845,407 dozen.
235	1,422,840 dozen.
237	155,555 numbers.
238	218,013 dozen.

[1] In Category 26 the T.S.U.S.A. Numbers for printcloth are: 320.—34, 321.—34, 322.—34, 326.—34, 327.—34, 328.—34.

[2] In Category 26 the T.S.U.S.A. Numbers for duck fabric are: 320.—01 through 04,06,08, 321.—01 through 04,06,08, 322.—01 through 04,06,08, 326.—01 through 04,06,08, 327.—01 through 04,06,08, 328.—01 through 04,06,08.

[3] In Category 62, only T.S.U.S.A. Nos.: 380.0024, 380.0027, 382.0002, 382.0605, 382.0610, 382.3904, 382.6904.

[4] In Category 62, all T.S.U.S.A. Numbers not listed in Footnote 3.

[5] In Category 63, all T.S.U.S.A. Numbers except T.S.U.S.A. Nos. 380.3980 and 382.3380.

[6] In Category 224, all T.S.U.S.A. Numbers except T.S.U.S.A. Nos. 380.0402, 480.0420, 380.8103 and 380.8143.

In carrying out this directive, entries of cotton, wool and manmade fiber textile products in the foregoing categories, produced in the Republic of Korea and exported to the United States prior to October 1, 1976, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period October 1, 1975 through September 30, 1976. In the event that the levels of restraint established for that twelve-month period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of June 26, 1975 between the Governments of the United States and the Republic of Korea which provide, in part, that: 1) within the aggregate and applicable group limits, specific levels of restraint within Group I may be exceeded by 10 percent; within Group II, by 7 percent; and within Group III, by 5 percent; 2) these

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 8 and May 16, 1976, between the Governments of the United States and Malaysia which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Appropriate adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; 3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and 4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers and factors for converting category units into equivalent square yards was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 31, 1975 (40 FR 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,

Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1976

Additions to Procurement List

Notice of proposed additions to Procurement List 1976, November 25, 1975 (40 FR. 54742) of the commodities listed below were published in the FEDERAL REGISTER on July 16, 1976 (41 FR 29472) and July 23, 1976 (41 FR. 30380).

After consideration of all the relevant data presented, the Committee has determined that the commodities listed below are suitable for procurement by the Government under Pub. L. 92-28, 85 Stat. 77. Accordingly, they are hereby added to the Procurement List.

Class 7530

Pad, Writing Paper (IB)
7530-00-285-3083 (for GSA Region 8 and Franconia Depot in GSA Region 3 only)
7530-00-285-3088 (for GSA Region 5 only)

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.76-29617 Filed 10-7-76;8:45 am]

PROCUREMENT LIST 1976

Deletions From Procurement List

Notice of Proposed Deletions from Procurement List 1976, November 25, 1975 (40 FR 54742), was published in the FEDERAL REGISTER on August 6, 1976 (41 FR 32943) and August 13, 1976 (41 FR 34350).

Pursuant to the above notices the following commodity and military resale items are deleted from the Procurement List:

Class 7510

Pointer, Pencil
7510-00-237-4926

Military Resale Item and Number

906 Broom, corn
921 Mop, self-wringing
927 Mophead, wet
929 Mop, dusting
930 Applicator, wax
931 Refill, wring easy mop
938 Refill, wax applicator
939 Refill, mophead, dusting
942 Cloth, dish
943 Cloth, dishwashing
953 Scrubber, plastic
967 Bag, laundry
981 Cloth, all purpose
982 Cloth, polishing
984 Cloth, wash
985 Bib, terrycloth
992 Mat, floor
997 Duster, all purpose

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.76-29618 Filed 10-7-76;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Availability

Environmental impact statements received by the Council on Environmental Quality from September 27 through October 1, 1976. 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. (November 22, 1976) 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: Coordinator of Environmental, Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 359-A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Deer Island Unit Plan, Gallatin National Forest, Alaska, September 28: Proposed is a land management plan for the 9,100-acre Deer Island Management Unit, Tongass N.F., on Ernest Sound, Alaska. The plan calls for construction of 8 to 10 miles of access road and initiation of timber harvest within 8,290 acres of forest containing an estimated 200 million board feet of timber. For the 5-year period of 1977 through 1981, 14 million board feet of timber is to be harvested, followed by a rotating harvesting period averaging from 90 to 120 years. The conversion of old-growth stands to second groth stands will modify the wildlife habitat, and the area will no longer be suitable for Wilderness classification. (190 pages). (ELR Order No. 61421.)

Vernon Unit Plan, Kisatchie National Forest, Vernon County, La., September 27: Proposed is a 10-year management plan for the Vernon Unit, Kisatchie National Forest. The 84,874-acre unit is divided into 2 zones according to the degree of military use, ranging from "Intensive" to "Limited Use." This statement proposes timber management on 573 acres, site preparation on 433 acres, thinning on 2,500 acres, prescribed burning on 14,500 acres, and development of range facilities and trails. Adverse impacts include soil movement, stream siltation, and effects caused by timber harvesting. (118 pages). (ELR Order No. 61416.)

Mount Hebgen Management Alternatives, Gallatin County, Mont., September 28: Proposed is the issuance of a special use permit to Ski Yellowstone, Inc., to develop ski facilities on Mount Hebgen, Montana. The plan consists of the construction of a mountain-top restaurant, an 8,300-foot long gondola, and 11 double chair lifts serving 637 acres of ski slopes and trails. The facility, to be built over a 10-year period, will have a capacity of 6,500 skiers. Negative impacts include minor slope instability, soil erosion, increased demands on existing facilities, and degradation of air due to increased automobile emissions. (206 pages). (ELR Order No. 61420.)

Final

Pioneer Mountains Unit, Challis and Sawtooth National Forest, Custer, Blaine, and Butte counties Idaho, September 28: The statement concerns a land use plan for the 695,964-acre Pioneer Mountain Planning Unit of Sawtooth and Challis National Forest. Two percent of the land is owned by the State of Idaho or private interests. The new plan differs from the existing one in that it provides for the construction of 16 miles of public access road into Meridian Creek and East Pass Creek, the increase of study areas from 108,200 acres to 180,300 acres, the availability of 243,000 of the existing 543,000 acres of roadless area for timber harvests, the intense management of livestock allotments, the increase of the capacity for recreation sites, and the artificial rehabilitation of 1300 acres. (336 pages). Comments made by: EPA, DOI, AHP, DOC, HUD, State and local agencies, and concerned citizens. (ELR Order No. 61422.)

RURAL ELECTRIFICATION ADMINISTRATION

Draft

Gamerco Coal Mine, McKinley County, N. Mex., October 1: Proposed is the development, by Arizona Electric Power Cooperative, Inc., of 8,011 acres of land, located approximately 3 miles northwest of the City of Gallup, as a coal stripmine facility. Associated with the mine will be a proposed coal washing plant with associated settling and freshwater holding ponds, coal loadout facility, 2.1 mile railroad spur, 116 one-hundred-ton coal railroad cars, shops and offices, deepwater well, haul roads, and substation. Adverse effects include disturbances to topography, soils, air quality, and archeological resources. (345 pages). (ELR Order No. 61441.)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Development, Attn:

DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, 202–693–6795.

Final

New River and Phoenix City Streams, Maricopa County Ariz., September 27: The project is the second phase of a 5-phase plan designed to serve as a framework for flood control in the Phoenix area. Three flood control dams, to be located on Cave Creek, Skunk Creek, and New River, will be constructed. A 17 mile long diversion channel, containing both earth and concrete sections will be constructed immediately north of and parallel to the Arizona Channel. Adverse impacts include the loss or alteration of 410 acres of riparian habitat, the alteration or destruction of 3 archaeological sites, the urbanization of 310 acres of open space, and the relocation of 288 homes and 38 businesses (Los Angeles District (323 pages). Comments made by: USDA, HEW, EPA, DOI, DOT, DOC, and State and local agencies, and concerned citizens. (ELR Order No. 61442.)

Calleguas Creek Flood Control, Ventura County Calif., September 27: Proposed is the development of a flood control project in Simi Valley. The project includes flood control channels, a total of 253 acres of park and trail development, and flood plain management for both Simi Valley and Moorpark. Adverse impacts include the loss of 62 acres of riparian wildlife, and the urbanization of 185 acres of open space and agricultural land. (Los Angeles District). (158 pages). (District). (80 pages). Comments made by: USDA, HEW, HUD, DOI, DOT, EPA, FPC, and State and local agencies, and concerned citizens. (ELR Order No. 61415.)

Bear River Flood Protection Plan, Yuba County, Calif., September 28: Proposed is a flood protection plan for the Bear River Basin area, in Yuba County, California. The project includes use of 3,300 acres of flowing easements; enlargement of Linda Drain; and construction of new flood channels, levees, a pumping plant, and recreation facilities. Low-yield crop and pastureland, future residential land, and reaches of existing stream channel will be converted for project levees and channels. The major impact will be loss of about one acre of natural stream section. (Sacramento District). (76 pages). Comments made by: DOI, EPA, HEW, DOT, and State and local agencies, and concerned citizens. (ELR Order No. 61424.)

Morrison Creek Stream Group, Sacramento, Calif., September 30: Proposed is a flood control project for the southern Sacramento metropolitan area. Included are an 11,000 acre-foot reservoir, 25.8 miles of levees, 66.3 miles of channel works, and a 7,800 acre flood retardation basin. There may be water quality problems in the reservoir. Approximately 3,085 acres will be committed to project structures, with 460 of the amount being permanently inundated and 1,600 acres being intermittently inundated; 50.9 miles of natural stream will be converted to excavated trapezoidal cross section; 7,800 acres will be acquired for the retention basin. (150 pages). Comments made by: USDA, DOC, HEW, DOI, DOT, EPA, and State and local agencies, and concerned citizens. (ELR Order No. 61433.)

Nearman Creek Generating Station, Wyandotte County, Kans., October 1: Proposed is the construction of a 246 Megawatt coal-fired steam-electric generating facility and appurtenant structures on and in the Missouri River between River Miles 377 and 379 in the City of Kansas City, Kans. The proposed powerplant would convert approximately 725 acres of agricultural land and wildlife habitat to industrial use, and plant operation would result in the release of waste by-products of combustion and a heated discharge into the Missouri River. (Kansas District). (382 pages). Comments made by: USDA, DOC, HEW, HUD, DOI, DOT, EPA, AHP, and State and local agencies, and concerned citizens. (ELR Order No. 61437.)

Grand Isle and Vicinity, Jefferson County La., September 30: Proposed is the construction of a 2,600 foot stone jetty at Caminada Pass, in order to stabilize the western end of Grand Isle; and a 7.5 mile sandfill dune and berm to protect the island's gulf shore from beach erosion and hurricane waves. There will be adverse impact to aesthetics and to marine biota. (New Orleans District). (90 pages). Comments made by: DOI, DOC, HEW, USCG, EPA, and State and local agencies, and concerned citizens. (ELR Order No. 61432.)

Wears Creek, Jefferson Creek Flood Control, Cole County Mo., September 28: Proposed is the construction of a flood protection project consisting of enclosing the lower reaches of Wears Creek in a covered conduit and filling the surrounding area with hydrolic fill dredged from the Missouri River. The project will displace 135 residences and 70 businesses, and will result in the loss of recreational potential of the natural Wears Creek setting, relocation of five historic buildings, and removal and relocation of some railway transportation facilities which serve area industry. (Kansas City District). (172 pages). Comments made by: USDA, HUD, DOI, DOT, USCG, EPA, FPC, AHP, and State and local agencies, and concerned citizens. (ELR Order No. 61423.)

Flathead Flood Control, Kalispell, Flathead County Mont., September 27: Proposed is a project for flood control for the Flathead River near Kalispell. The plan includes construction of a 6.25-mile setback levee and appurtenant structures on the bank of Flathead River, addition of flap gates to two existing culverts, and local flood plain zoning. Adverse impacts include the possible lowering of water quality, loss of agricultural potential, loss of wildlife habitat, increased potential damages to communities should an extremely great flood occur, and possible loss of archaeological information. (Seattle District). (170 pages). Comments made by: USDA, EPA, HEW, DOI, DOT, and State and local agencies, and concerned citizens. (ELR Order No. 61413.)

New Jersey Coastal Inlets and Beaches, Barnegat to Longport, Ocean County N.J., September 27: The proposed action consists of the construction of jetties, groins, bulkheads, beach berms, sand bypassing and the placement of beachfill and dunefill for the purpose of meeting beach erosion control, storm protection, and navigation needs of the inlets and beaches between Great Egg Harbor Inlet and Barnegat Inlet. The project includes dredging the channel at Barnegat Inlet and Absecon Inlet. Dredging at ocean borrow sites will cause turbidity and benthic disruption. (Philadelphia District). (175 pages). Comments made by: EPA, DOI, HEW, DOT, HUD, and State and local agencies, and concerned citizens. (ELR Order No. 61411.)

New Jersey Coastal Inlets and Beaches (2), N.J., September 30: The statement refers to the proposed construction of jetties, groins, bulkheads, and a breakwater, and the placement of beach and dune fill for the purposes of meeting beach erosion control, storm protection, and navigation needs of the inlets and beaches between Hereford Inlet and the Delaware Bay entrance of the Cape May Canal. Adverse impact will occur to marine biota. There will be malodorous gases from polluted beach fill, and increases in the pollution levels of the backbays due to increased use of motorboats. (Philadelphia District). (63 pages). Comments made by: EPA, DOI, HEW, HUD, and State and local agencies, and concerned citizens. (ELR Order No. 61431.)

Beach Erosion Control, Presque Isle Peninsula, Pa., September 27: The proposed project is the construction of three partial breakwaters alone the north shore of Presque Isle State Park, to control beach erosion. The breakwaters along the north shore of Presque segments located 100 feet apart in 10 feet of water 1,000 feet offshore. An initial 1,600,000 cubic yard beach sand replenishment will be required. The project will destroy some lake bottom habitat, disrupt recreation, and affect the litoral drift of sandspits at Gull Point. (Buffalo District). (220 pages). Comments made by: USDA, DOC, EPA, DOI, DOT, and State and local agencies, and concerned citizens. (ELR Order No. 61409.)

Hay Creek Flood Control Project, Birdsboro, Pa., September 27: The project involves the construction of approximately 4,150 linear feet of levees and floodwalls along portions of Hay Creek. The East Main and East First Bridges will be raised by 6 and 4 feet respectively, to accommodate the levees and floodwalls. The Penn Central Railroad Bridge is to be modified by moving the center pier 16 ft. eastward so that it would be out of the Hay Creek channel. There will be temporary adverse effects of construction including traffic congestion, noise, and turbidity. (Philadelphia District.) (78 pages.) Comments made by: USDA, DOI, and State and local agencies, and concerned citizens. (ELR Order No. 61410.)

Neches River Salt Water Barrier, Jefferson County, Tex., September 27: The proposed action consists of the maintenance of a permanent barrier across the Neches River at the city of Beaumont to prevent intrusion of salt water to upstream freshwater supply intakes. The proposed barrier will consist of a gated dam in the river, a gated navigation bypass channel, an auxiliary dam in a small tributary bayou, an access road and service bridge, and other related works. Fifty-seven acres of land will be lost, and closure of the barrier will impede upstream migration of estuarine animals. (Galveston District.) Comments made by: USDA, HEW, DOI, EPA, DOT, State and local agencies, and concerned citizens. (ELR Order No. 61412.)

Richmond Flood Protection Measures, Va., September 30: Proposed is a flood protection plan for Richmond, Virginia. The statement recommends the construction of 2 floodwalls to protect the Shockoe Creek area and the South Side industrial and commercial area, designed for 39.5 feet m.s.l. at the Great Ship Lock or City Lock. A portion of the old Libby Prison site would be permanently covered by the wall on the north side, and a concrete gravity wall will cover an area of river bottom 900' x 50'. (Norfolk District). (60 pages). Comments made by: EPA, USDA, DOI, AHP, and State and local agencies, and concerned citizens. (ELR Order No. 61429.)

Virginia Beach Streams Canal No. 2, Va., September 30: Proposed is the improvement of the drainage canal between the Eastern Branch of the Lynnhaven River and Shipps Corner. The proposal consists of improving 2.3 miles and maintaining 2.2 miles of existing canal. Environmental impacts include loss of 7 acres of marsh, loss of benthos, temporary turbidity, potential alteration of salinity distribution, and alteration of succession in cypress-gum swamps of West Neck Creek. (Norfolk District). (63 pages). Comments made by: EPA, DOI, USDA, DOT, and State and local agencies, and concerned citizens. (ELR Order No. 61430.)

U.S. Route 209 Relocation, Pa., DWGNRA (S–1), Monro County, Pa., September 30:

Proposed is the construction of Relocated U.S. 209, a four-lane, limited access highway to be constructed in two phases. Phase I consists of a two-lane, limited access facility having at-grade intersection. Phase II will result in construction of an additional two lanes when traffic conditions warrant and funds become available. Relocated U.S. 209 will start from near Bushkill, Pa. northward for 23 miles to its terminus near the U.S. Route 6 interchange with Interstate Route 84 just west of Milford, Pa. The highway relocation is authorized by Congress as part of the Tocks Island Lake Project. (Philadelphia District). (95 pages). (ELR Order No. 61434.)

NAVY

Supplement

Dredge R. Channel, USN Submarine Base, New London (S–2), Suffolk County, Conn., October 1: This statement supplements a final EIS filed in 1972. It describes continued dredging requirements of the Navy to insure the successful introduction of the new deep-draft SSN 688 class submarines at the USN Submarine Base, and also corrects deficiencies noted in the decision of the U.S. Circuit Court of Appeals in National Resources Defense Council et al. v. Callaway et al., dated September 9, 1975. Navy dredging requirements in support of the SSN 688 class submarines are projected over a ten-year period. (1800 pages). (ELR Order No. 61438.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Ms. Rebecca W Hanmer, Director, Office of Federal Activities, Room WSMW 537, 401 M Street, SW., Washington, D.C. 20460, 202–755–0780, (stop 460).

Supplement

Lead-Deadwood Sanitary Facilities (S–2), S. Dak., October 1: This statement supplements a final EIS filed with CEQ in 1972. Proposed is the construction of an advanced waste treatment facility and interceptor collector system for the Lead and Deadwood areas in the Black Hills. The plant will consist of secondary treatment plus ammonia and chlorine removal, and will provide the sewage treatment facilities the town currently lacks. Sludge disposal will be by truck haul to a landfill area near the Black Hills. Adverse effects include leaching problems, minor odors, and a variety of construction related impacts (Region VII) (310 pages). (ELR Order No. 61436.)

ENERGY RESEARCH AND DEVELOPMENT ADMISTRATION

Contact: Mr. W. Herbert Pennington, Office of Assistant Administrator, E–201, ERDA, Washington, D.C. 20545, 301–973–4241.

Draft

High Performance Fuel Laboratory, Hanford Reservation, Benton County, Wash., October 1: Proposed is the construction of a High Performance Fuel Laboratory (HPFL) at the ERDA Hanford Reservation in Richland, Washington. The HPL will provide a pilot scale facility to support the liquid metal fast breeder reactor program, and will be used to develop manufacturing processes for fuels comprising oxides of plutonium and uraniuu. The project will result in limited release of chemicals to waste ponds, loss of wildlife habitat, and degradation of air. (500 pages). (ELR Order No. 61440.)

FEDERAL POWER COMMISSION

Contact: Dr. Jack M. Heinemann, Acting Assistant Director for Environmental Quality, 441 G Street, N.W., Washington, D.C. 20426, 202–275–4791.

Draft

Santee-Cooper Project No. 199, several counties, S.C., September 27: Proposed is the granting of a new license for the continued operation of South Carolina Public Service Authority's constructed Santee-Cooper Project No. 199, located on the Santee and Cooper Rivers in Berkely, Calhoun, Clarendon, Organgeburg, and Sumter Counties, South Carolina. The project consists of 110,-600 acre Lake Marion impounded by Santee Dam on the Santee River, a 7.5 mile long Diversion Canal connecting Lake Marion to Lake Moultrie, and adjacent 60,400 acre reservoir impounded by Pinopolis Dam and several dikes, and a 4.5 mile long Tailrace Canal discharging into the Cooper River. Continued operation would perpetuate conditions modified over 35 years ago. (275 pages). (ELR Order No. 61418.)

Supplement

Alaska Natural Gas Transportation Systems (S–2), September 27: This supplement presents the results of a revised economic analysis, including the Northwest proposal, for the Alaska Natural Gas Transportation Systems, Alcan Pipeline Project. This work is based upon an improved model for estimating gross benefits that eliminates some of the deficiencies of the final ELS model. (21 pages). (ELR Order No. 61408.)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7528, 451 7th Street, S.W., Washington, D.C. 20410, 202–755–6308.

Draft

Monte Brisas Development, Fajardo, Puerto Rico, September 29: Proposed is the approval of the third section of the Monte Brisas Development, Fajardo. This third and final section calls for the construction of 396 units on a 63.85 acre tract of land over a period of approximately 3 years. The project will also contain active and passive park areas, cultural and recreational facilities, and supporting community commercial facilities. Adverse effects include construction disruption, and increased solid waste collection and disposal activity. (ELR Order No. 61426.)

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 LAND MANAGEMENT

Final

Timber Management Program, September 27: Proposed is a 10-year timber management program on 22.9 million acres of forest land in the Western United States. Only the program thrust of the major area, western Oregon, is described in the statement. The plan includes harvest of mature timber, road construction, salvage of dead trees, commercial thinning of marketable trees, site preparation and reforestation, and mechanical and chemical forms of protection for the trees. Adverse impacts include massive soil movements due to clearcutting and partial cutting, interruption of natural succession of forest vegetation, and disruption of aquatic life due to stream channel changes. (594 pages). Comments made by: EPA, USDA, HEW, AHP, DOI, and State and local agencies, and concerned citizens. (ELR Order No. 61414.)

BUREAU OF RECLAMATION

Draft

Savery-Pot Hook Project, Colorado & Wyoming, September 28: The proposed Savery-Pot Hook Project would involve the construction of two earthfill dams and two conveyance systems in the Little Snake River Basin in south-central Wyoming and northwest Colorado. It would supply water for irrigation and benefit fisheries, recreation, and flood control. A 6-year construction period is anticipated. Adverse effects include the inundation of good stream fisheries, and intrusion upon the natural setting by man-made structures. Three families would be required to relocate. (205 pages). (ELR Order No. 61419.)

Final

Dallas Creek Project, several counties Colo., September 28: The proposed project calls for the construction of two earthfill dams and water collection and delivery systems in the Uncompahgre River Basin, Colorado. This project would supply water for irrigation, municipal, and industrial use, as well as benefit fisheries, recreation, and flood control. Adverse effects include the reduction of wildlife habitat and hunting opportunities by the inundation of 1,030 acres of land and the acquisition of 1,000 acres of land for an intensive wildlife management area. (410 pages). Comments made by: AHP, HEW, HUD, DOI, USDA, COE, EPA, and State and local agencies, and concerned citizens. (ELR Order No. 61425.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Benard Rersche, Director of Division of Reactor Licensing, P–722, NRC, Washington, D.C. 20555, (301) 492–7373.

Final

Manufacture of Floating Nuclear Power Plants, Sept. 30: The statement is the second of two separately prepared environmental statements relating to the proposed siting and operation of floating nuclear power plants in the coastal waters of the Atlantic Ocean and the Gulf of Mexico. The previous statement covered the siting and operation of the offshore facility located at Blount Island, and this generic statement concerns the environmental considerations of siting and operation of floating nuclear power plants in general. Adverse impacts discussed include only those unique to offshore siting, specifically dredging and once-through cooling systems. (550 pages). Comments made by: AHP, USDA, COE, DOC, HUD, DOI, DOT, TREA, ERDA, OEO, and State and county agencies, and concerned citizens. (ELR Order No. 61435.)

Marble Hill Nuclear Generating Station, Units 1 and 2, Jefferson County, Indiana, Sept. 27: The proposed action is the issuance of construction permits to the Public Service Company of Indiana, Inc., for the construction of the Marble Hill Nuclear Generating Station, Units 1 and 2. The MH 1 & 2 stations will employ two pressurized water reactors to produce up to 3425 MWt and 2360 MWe each. The exhaust steam will be cooled by mechanical draft cooling towers with make-up water obtained from and discharged to the Ohio River. Construction of the plant will disturb 250 acres of forest and cropland, and transmission lines constructed by the applicant will require about 3475 acres of land for the corridors. (375 pages). Comments made by: USDA, AHP, COE, DOC, HEW, HUD, DOT, ERDA, EPA, FPC, FEA, and State and local agencies and concerned citizens. (ELR Order No. 61417.)

TENNESSEE VALLEY AUTHORTIY

Contact: Dr. Peter Krenkel, Director of Environmental Planning, 720 Edney Building, Chattanooga, Tennessee 37401, (615) 755-2002.

Draft

Phipps Bend Nuclear Plant, Units 1 & 2, Hawkins County, Tennessee, Sept. 30: Proposed is the construction and operation of a 2-unit nuclear plant in Hawkins County, Tennessee. Operation of the closed-cycle cooling towers will result in evaporation of water and release of heat and minor amounts of particulates into the air. A small amount of land will be converted from agricultural to industrial use. (370 pages). (ELR Order No. 61428.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

FEDERAL AVIATION ADMINISTRATION

Draft

Schuyler Municipal Airport, Nebraska, Colfax Couty, Nebraska, Sept. 29: Proposed is the approval of an airport site and a 20-year development plan for a general utility airport at Schuyler, Nebraska. Land (370 acres) will be taken out of crop production for airport use. Adverse effects include increases in noise and emission levels in the immediate area of the airport, and the displacement of some wildlife. (130 pages). (ELR Order No. 61427.)

Final

Harry S. Truman, Airport, St. Thomas, Virgin Islands, Sept. 28: The proposed project involves the consrtuction of a new Runway 9-27, 7,000×150 feet with parallel taxiway and attendant facilities, 1,200 feet of extended safety areas, installation of lighting and landing aids, a commercial terminal and cargo area on hydraulic fill, new general aviation facilities, construction of access road, fencing, and the removal of obstructions to air navigation. Construction of the project will alter the configuration, esthetics and ecology of Brewer's Bay. The associated dredging and filling operation will impact a total of 408 acres of the marine environment. (614 pages). Comments made by: DOI, EPA, COE, FHWA, HEW, HUD, DOC, State and local agencies, and concerned citizens. (ELR Order No. 61407.)

GARY L. WIDMAN,
General Counsel.

[FR Doc.76-29616 Filed 10-7-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 628-8; OPP-30122A]

ELANCO PRODUCTS CO.

Application To Register Pesticide Product Containing New Active Ingredient

On September 20, 1976, the Environmental Protection Agency (EPA) announced (41 FR 40550) that Elanco Products Co., Div. of Eli Lilly and Co., PO Box 1750, Indianapolis IN 46206, had submitted an application to register the pesticide product SWARD 50W (EPA File Symbol 1471-RNA), containing 50 percent of the active ingredient prosulfalin [N-[[(4-dipropylamino)-3,5-dinitrophenyl] sulfonyl]-S,S-dimethylsulfilimine] which has not been included in any previously registered pesticide products. The application received from Elanco Products Co. proposed that the product be classified for general use as a turf herbicide.

Application for registration of the technical grade product had not been submitted by Elanco Products. Co. prior to their application with regard to SWARD 50W. Therefore, notice is given at this time that Elanco Products Co. has submitted an application to register PROSULFALIN TECHNICAL (EPA File Symbol 1471-RNT), which contains 95% of the active ingredient prosulfalin, which has not been included in any previously registered pesticide products. PROSULFALIN TECHNICAL is intended for use in the formulation of other pesticide products.

Application was made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136 et seq.), and the regulations thereunder. Notice of receipt of this application is given in accordance with the provisions of section 3(c)(4) of FIFRA [40 CFR 162.2(b)(6)] and does not indicate a decision by this Agency on the application.

Any Federal Agency or other interested persons are invited to submit comments on these applications to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Room 401, East Tower, 401 M St. SW, Washington DC 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. The comments must be received on or before November 4, 1976, and should bear the EPA file symbols cited. Comments received within the specified time period will be considered before a final decision is made with respect to the pending applications. Comments received after the specified time period will be considered only to the extent possible without delaying processing of the applications. Specific questions concerning these applications should be directed to Product Manager (PM) 24, Registration Division (WH-567), Office of Pesticide Programs, at the above address or by telephone at 202/755-2196.

Notice of approval or denial of these applications to register PROSULFALIN TECHNICAL and SWARD 50W will be announced in the FEDERAL REGISTER. The labeling furnished by Elanco Products Co., as fell as 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.

Dated: October 4, 1976.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.76-29709 Filed 10-7-76;8:45 am]

[FRL 628-2]

SCIENCE ADVISORY BOARD ECOLOGY ADVISORY COMMITTEE

Notice of Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Ecology Advisory Committee of the Science Advisory Board will be held beginning at 9 a.m., October 28-29, 1976, in the Administrator's Conference Room (Room 1101), Waterside Mall West Tower, 401 M Street SW., Washington, D.C.

This is the tenth meeting of the Ecology Advisory Committee. The agenda includes a report on the Science Advisory Board's activities; review of EPA's National Ecology Research Plan 1978-1982; response to the Committee's September 13, 1976, Advisory Statement, "Ecosystem Research Can Save Money"; discussion of the feasibility study of the possible containment or removal of kepone contaminants in the James River; ecological problems in the Office of Water and Hazardous Materials; discussion of items for the Committee's future consideration; and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend, participate, or obtain additional information should contact Dr. J. Frances Allen, Executive Secretary, Ecology Advisory Committee (703) 557-7720.

THOMAS D. BATH,
Staff Director,
Science Advisory Board.

OCTOBER 1, 1976.

[FR Doc.76-29703 Filed 10-7-76;8:45 am]

[FRL 628-1]

ENVIRONMENTAL MEASUREMENTS ADVISORY COMMITTEE

Notice of Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Environmental Measurements Advisory Committee will be held beginning at 8:30 am November 1 and 8:00 am November 2, 1976, in the auditorium of the U.S. Environmental Protection Agency's Environmental Research Center, Research Triangle Park, North Carolina.

This is the third meeting of the Committee. The agenda includes current activities of the Science Advisory Board; presentations by laboratory and program directors of the Center describing current measurement, instrumentation, and monitoring activities; comments on an interim method of determining the asbestos content of water samples; progress toward the establishment of a subcommittee to provide advice and assistance in the study of emissions from automotive catalytic exhaust control devices; a briefing on the activities of agency Standing Working Groups on Air and Water Monitoring; and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain additional information should contact Dr. A. F. Forziati, Executive Secretary, Environmental Measurements Advisory Committee, (703) 557-7720 by close of business on October 28, 1976.

THOMAS D. BATH,
Staff Director,
Science Advisory Board.

OCTOBER 1, 1976.

[FR Doc.76-29702 Filed 10-7-76;8:45 am]

[FRL 628-4]

NATIONAL AIR POLLUTION CONTROL TECHNIQUES ADVISORY COMMITTEE

Notice of Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held at 9 am on November 3 and 4, 1976, at the U.S. Environmental Protection Agency, Region IX, Conference Rooms A, B, and C (2nd floor), 100 California Street, San Francisco, California 94111.

The purpose of the meeting will be to discuss two New Source Performance Standards to be proposed under sec. 111 of the Clean Air Act—hydrocarbon emissions from degreasing facilities and revision to the nitrogen oxide standard for fossil fuel-fired steam generators. A third item on the agenda will be a discussion of simplifying the data collection and technical documentation in the development of the new source performance standards.

Also on the agenda is a discussion of the revision of the standard of performance for primary aluminum reduction plants, which was promulgated on January 26, 1976 (41 FR 3826). In August 1976, the Anaconda Co., Aluminum Division, submitted to the Administrator information on fluoride emissions and a request to revise the standard of performance. Based on information submitted in support of this request and a preliminary Environmental Protection Agency investigation at an Anaconda aluminum plant, the Agency is reconsidering the standard of performance. Petitions for review of this standard of performance filed by the Aluminum Co. of America, National Steel Corp., Kaiser Aluminum and Chemical Corp., and Revere Copper and Brass Inc. are also currently pending in the United States Court of Appeals of the District of Columbia.

All meetings are open to the public. Anyone wishing to attend or submit a paper should contact Mr. Don R. Goodwin, Director, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

The area code and telephone number are (919) 688-8146, extension 271.

Date: October 1, 1976.

ROGER STRELOW,
Assistant Administrator for
Air and Waste Management.

[FR Doc.76-29704 Filed 10-7-76;8:45 am]

[FRL 629-1]

NATIONAL DRINKING WATER ADVISORY COUNCIL

Open Meeting

Pursuant to Public Law 92-423, notice is hereby given that a meeting of the National Drinking Water Advisory Council established under Public Law 93-523, the "Safe Drinking Water Act," will be held at 9:00 a.m., October 27, 1976, in Room 402, and at 8:30 a.m., October 28, 1976, in Room 436, Statler Hilton Hotel, Park Square at Arlington Street, Boston, Massachusetts 02203.

The purpose of the meeting will be to discuss the status of the Environmental Protection Agency's current work on organics in drinking water and the responses to EPA's Adanvce Notice of Proposed Rule Making for the control of organics in drinking water. The background, purpose, and public comments on EPA's proposed Underground Injection Control Regulations will be discussed. In addition, regional water supply problems will be addressed.

The meeting will be open to the public. The Council encourages the hearing of outside statements and allocates a portion of the meeting time for public participation. Any outside parties interested in presenting an oral statement should petition the Council in writing. The petition should include the general topic of the proposed statement and and the petitioner's telephone number.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at Council meetings.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement should contact Patrick Tobin, Executive Secretary for the National Drinking Water Advisory Council, Office of Water Supply (WH-550), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The telephone number is: Area Code 202/426-8847.

EDWIN L. JOHNSON,
Acting Assistant Administrator
for Water and Hazardous Materials.

[FR Doc.76-29797 Filed 10-7-76;8:45 am]

[FRL 628-6; OPP-33000/468]

PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 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 ["Interim Policy Statement"]. On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in Support of an Application" [41 FR 3339]. This document described the changes in the Agency's procedures for implementing Section 3(c)(1)(D) of FIFRA, as set out in the Interim Policy Statement, which were effectuated by the enactment of the recent amendments to FIFRA on November 28, 1975 [P.L. 94-140], and the new regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 [40 CFR Part 162].

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street, SW., Washington DC 20460. In the case of applications subject to the new Section 3 regulations, and applications not subject to the new Section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, is being used to support an application described in this notice, (c) desires to assert a claim 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 or the status of such data under Section 10 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 Product Control Branch, Registration Division (WH-567), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington DC 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 11, 12, & 13—202/755-9315
PM 15, 16, & 17—202/426-9425
PM 21 & 22—202/426-2454
PM 23—202/755-1397
PM 24—202/755-2196
PM 25—202/426-2632
PM 31—202/426-2635
PM 32—202/426-9486
PM 33—202/755-9041
PM 34—202/426-9490

The Interim Policy Statement requires that claims for compensation be filed on or before December 7, 1976. With the exception of 2(c) applications not subject to the new Section 3 regulations, and for which a sixty-day hold period for claims is provided, EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under Section 10 of FIFRA, as amended, should be made on or before November 8, 1976.

Dated: October 5, 1976.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

APPLICATIONS RECEIVED (OPP-33000/468)

EPA Reg. No. 16-58. Dragon Chemical Corp., PO Box 7311, Roanoke VA 24019. DRAGON 5% MALATHION DUST. Active Ingredients: Malathion 5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 59-119. Cooper Div., Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park NC 27709. 4% MALATHION DUST. Active Ingredients: Malathion (0,0-dimethyl dithiophosphate of diethyl mercaptosuccinate) 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 100-455. Ciba-Geigy, Agricultural Div., PO Box 11422, Greensboro NC 27409. MILOGARD 80W. Active Ingredients: Propazine: 2-chloro-4,6-bis (isopropylamino)-s-triazine 80%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 148-359. Thompson-Hayward Chemical Co., PO Box 2383. Kansas City KS 66110. MALATHION DUST NO. 5. Active Ingredients: Malathion 5.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 148-1016. Thompson-Hayward Chemical Co. 4% MALATHION DUST. Active Ingredients: Malathion 4.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 148-1120. Thompson-Hayward Chemical Co. DED-WEED MCPA AMINE SALT. Active Ingredients: Dimethylamine salt of 2-methyl-4-chlorophenoxyacetic acid 52.4%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA File Symbol 148-RRAG. Thompson-Hayward Chemical Co. DED-WEED MCPA—RICE AMINE SALT. Active Ingredients: Dimethylamine salt of 2-methyl-4-chlorophenoxyacetic acid 52.4%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 228-143. Riverdale Chemical Co., 220 E. 17th St., Chicago Heights IL 60411. RIVERDALE MCP. Active Ingredients: Dimethylamine Salt of 2-methyl-4-chlorophenoxyacetic acid 52.2%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 239-1281. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. ORTHO DIBROM 8 EMULSIVE. Active Ingredients: Naled 58%; Xylene 20%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 239-2410. Chevron Chemical Co. ORTHO MCP 4 WEED KILLER. Active Ingredients: Dimethylamine salt of 2-methyl-4-chlorophenoxyacetic acid 52%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 264-47. Amchem Products, Inc., Brookside Ave., Ambler PA 19002. WEEDAR MCPA CONCENTRATE. Active Ingredients: Dimethylamine salt of 2-methyl-4-chlorophenoxyacetic acid 52.1%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA File Symbol 264-GNR. Amchem Products, Inc. WEEDAR MCPA CONCENTRATE. Active Ingredients: Dimethylamine salt of 2-methyl-4-chlorophenoxyacetic acid 52.1%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 264-55. Amchem Products, Inc. WEEDAR SODIUM MCPA. Active Ingredients: Sodium salt of 2-methyl-4-chlorophenoxyacetic acid 24.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA File Symbol 264-GNE. Amchem Products, Inc. WEEDAR SODIUM MCPA. Active Ingredients: Sodium salt of 2-methyl-4-chlorophenoxyacetic acid 24.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 264-240. Amchem Products, Inc. WEEDONE MCPA ESTER. Active Ingredients: Butoxyethanol ester of 2-methyl-4-chlorophenoxyacetic acid 66.7%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA File Symbol 264-GNG. Amchem Products, Inc. WEEDONE MCPA ESTER. Active Ingredients: Butoxyethanol ester of 2-methyl-4-chlorophenoxyacetic acid 66.7%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 299-105. C. J. Martin Co., 606 W. Main St., Nacogdoches TX 75961. 5% MALATHION DUST. Active Ingredients: Malathion 5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 449-104. Techne Corp., c/o Farmland Industries, Inc., Box 7305, Kansas City MO 64116. TECHNE DRI-DUST INSECTICIDE. Active Ingredients: Malathion (O,O-Dimethyl dithiophosphate of diethyl mercaptosuccinate) 4.0%; Sulphur 17.5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 550-45. Van Waters & Rogers, Box 3200 Rinconannex, San Francisco CA 94119. GUARDSMAN MALATHION 5% DUST. Active Ingrdeients: Malathion [O,-O-dimethyl dithiophosphate of diethyl mercaptosuccinate] 5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16.

EPA Reg. No. 595-161. Haviland Agricultural, 1845 Sterling, N.W., Grand Rapids MI 49504. HAVILAND MALATHION DUST NO. 4. Active Ingredients: Malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) 4%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 595-222. Haviland Agricultural. HAVILAND MALATHION DUST NO. 5. Active Ingredients: Malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) 5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 606-23. The Corn King Div., King Castle, Inc., PO Box 189, Marion IA 52302. CORN KING DRY INSECTICIDE. Active Ingredients: Malathion 4.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA File Symbol 677-GGT. Diamond Shamrock Corp., Agricultural Div., Union Commerce Bldg., Cleveland OH 44114. DACONIL 2787 FUNGICIDE (75% WETTABLE POWDER) FOR ORNAMENTAL TURF AND ORNAMENTALS. Active Ingredients: Chlorothalonil (tetrachloroisophthalonitrile) 75.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 677-229. Diamond Shamrock Corp. BLAZON FUNGICIDE (75% WETTABLE POWDER). Active Ingredients: Chlorothalonil (tetrachloroisophthalonitrile) 75.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 677-282. Diamond Shamrock Corp. BRAVO W-75 (75% WETTABLE POWDER) AGRICULTURAL FUNGICIDE. Active Ingredients: Chlorothalonil (tetrachloroisophthalonitrile) 75.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 677-326. Diamond Shamrock Corp. CHLOROTHALONIL FLOWABLE 2.88. Active Ingredients: Chlorothalonil (tetrachloroisophthalonitrile) 2.6%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA File Symbol 707-RGE. Rohm and Haas Co., Indepedence Mall West, Philadelphia PA 19105. KATHON WT. Active Ingredients: 5-Chloro-2-methyl-4-isothiazolin-3-one 8.6%; 2-Methyl-4-isothiazolin-3-one 2.6%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA Reg. No. 802-138. The Chas. H. Lilly Co., 7737 N.E. Killingsworth, Portland OR 97218. MILLER'S MCP AMINE 4. Active Ingredients: Dimethylamine Salt of 2-Methyl-4-Chlorophenoxyacetic acid 52%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 829-69. Southern Agricultural Insecticides, Inc., PO Box 218, Palmetto FL 33561. SA BRAND 50 4% MALATHION DUST. Active Ingredients: Malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) 4.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 829–75. Southern Agricultural Insecticides, Inc. SA BRAND 50 25% MALATHION WETTABLE SPRAY CONCENTRATE. Active Ingredients: Malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 908–42. Capitol Chemical Co., 5455 Butler Rd., Washington DC 20016. CAPITOL DDVP–CONCENTRATE. Active Ingredients: 2,2-Dichlorovinyl Dimethyl Phosphate 46.5%; Related Compounds 3.5%. Method of Support: Application proceeds under 2(a) of interim policy. PM13

EPA Reg. No. 1023–23. Upjohn Co., 7171 Portage Rd., Kalamazoo MI 49001. ENIDE 50W DIPHENAMID. Active Ingredients: Diphenamid (N,N - Dimethyl - 2,2 - diphenylacetamide) 50%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 1023–38. The Upjohn Co. ENIDE DICHONDRA & ORNAMENTAL WEED CONTROL. Active Ingredients: Diphenamid (N,N - dimethyl - 2,2 - diphenylacetamide) 50%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 1145–127. Amoco Oil Co., 200 E. Randolph Dr., Chicago IL 60601. AMOCO MCPA WEED KILLER–M. Active Ingredients: Dimethylamine salt of 2-Methyl-4-Chlorophenoxyacetic acid—MCPA 52.1%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 1159–189. Seacoast Laboratories, Inc., 257 Highway 18, PO Box 157, East Brunswick NJ 08816. TWIN LIGHT GRANULAR TURF FUNGICIDE CONTAINS CHLOROTHALONIL. Active Ingredients: Chlorothalonil (Tetrachloroisophthalonitrile) 5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 1159–115. Seacoast Laboratories, Inc. TWIN LIGHT MALATHION 4% DUST. Active Ingredients: Malathion 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 1159–119. Seacoast Laboratories, Inc. TWIN LIGHT MALATHION 25% WETTABLE POWDER. Active Ingredients: Malathion 25.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 1202–83. Puregro Co., 1025 W. 6th St., Los Angeles CA 90017. MALATHION 25W. Active Ingredients: Malathion 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 1202–119. Puregro Co., 1111 W. 6th St., Los Angeles CA 90017. PHOSDRIN 2 DUST. Active Ingredients: Alpha Isomer of 2 - Carbomethoxy - 1 - Methylvinyl Dimethyl Phosphate 1.2%; Related Compounds 0.8%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 1202–155. Puregro Co., 1052 W. 6th St., Los Angeles CA 90017. PUREGRO MALATHION 4 DUST. Active Ingredients: Malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM16

[FR Doc.76–29707 Filed 10–7–76;8:45 am]

[FRL 628–7; OPP–50262]

ROHM AND HAAS CO.

Issuance of Experimental Use Permit

Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) *et seq.*), an experimental use permit has been issued to the following applicant. Such permit is in accordance with, and subject to, the provisions of 40 CFR Part 172; Part 172 was published in the FEDERAL REGISTER on April 30, 1975 (40 FR 18780), and defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 707–EUP–80. Rohm and Haas Company, Philadelphia, Pennsylvania 19105. This experimental use permit allows the use of 9,000 pounds of the herbicide 2,4-dichlorophenyl p-nitrophenyl ether on wheat to evaulate control of various weeds. A total of 2,925 acres is involved; the program is authorized only in the States of Arizona, California, and Oregon. The experimental use permit is effective from September 23, 1976, to October 4, 1977. A temporary tolerance for residues of the active ingredient in or on wheat has been established.

Interested parties wishing to review the experimental use permit are referred to Room E–315, Registration Division (WH–567), Office of Pesticide Programs, EPA, 401 M St., S.W., Washington, D.C. 20460. It is suggested that such interested persons call 202/755–4851 before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. This file will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: October 5, 1976.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

[FR Doc.76–29708 Filed 10–7–76;8:45 am]

NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES

PUBLIC HEARING

OCTOBER 5, 1976.

The National Commission on Supplies and Shortages hereby announces the date, time, and location of its previously-announced public hearing. The hearing will be held on Wednesday, October 13, in Room 2010, New Executive Office Building, 726 Jackson Place, NW, Washington, DC. The hearing will begin at 9:30 am and run through 5:30 pm with a break for lunch. The tentative list of witnesses and the subjects they will cover are as follows:

General Issues

9:30–11:30 ——— Mr. Edgar R. Fiedler, Vice President, Economic Research, The Conference Board.
Mr. Jack Carlson, Salt Lake City, Utah (Former Assistant Secretary for Energy and Minerals, Department of Interior).
Ms. Jocelyn Gutchess, Senior Associate, Ruttenberg, Friedman, Kilgallon, Gutchess and Associates, Inc.

The International Perspective

11:30–12:30 ——— Dr. Timothy Stanley, President, International Economic Policy Association.
Dr. C. Fred Bergsten, Senior Fellow, The Brookings Institution.

Materials Information

1:30–3:30 ——— Dr. William L. Fisher, Assistant Secretary for Energy and Minerals, Department of the Interior.
Dr. James Boyd, President, Materials Associates.
Michael West, Editorial Director, Mining Journal.

Economic Stockpiling

3:30–4:30 ——— Mr. Paul E. Kindig, Manager, Material Resource and Traffic Operation, General Electric Company.
Mr. R. D. Coursen, Director, The Malayan Tin Bureau.
Mr. William Lawrence, Vice President, Willking International.

OTA Studies

4:30–5:00 ——— Mr. Emilio Q. Daddario, Director, Office of Technology Assessment.

Recycling

5:00–5:30 ——— Mr. A. Blakeman Early, Environmental Action, Inc.

The above list is subject to change. A final witness list will be made available on the day of the hearing.

Several individuals have expressed a desire to submit statements for the record. The Commission welcomes such statements and will accept any received on or before Wednesday, October 20, 1976. All written statements plus a summary of the hearing transcript will be published by the Commission as an addendum to its final report.

GEORGE C. EADS,
Executive Director.

[FR Doc.76–29685 Filed 10–7–76;845 am]

NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

MEETING

A meeting of the National Commission on New Technological Uses of Copyrighted Works will be held at 10 a.m. on October 21, and 9 a.m. on October 22, 1976, at the offices of the Commission, located in Room 910, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia. The proceedings will be devoted to the presentation of testimony providing information relating to the problems of photocopying of copyrighted materials.

Various invited witnesses will testify on their ongoing activities relating to this subject. This is the first in a number of fact-finding hearings which will be held on the photocopying issue. The hearings will be open to the public.

All members of the public, including representatives of groups concerned, are invited to submit requests to present testimony in future hearings on this subject. Such request should be accompanied by brief written statements identifying the individual or group requesting to testify on the issue of photocopying of copyrighted materials and the evidence desired to be given.

All such requests should be addressed to Robert W. Frase, Assistant Executive Director, National Commission on New Technological Uses of Copyrighted Works, Washington, D.C. 20558.

ARTHUR J. LEVINE,
Executive Director.

[FR Doc.76-29746 Filed 10-7-76;8:45 am]

FEDERAL ENERGY ADMINISTRATION

FEDERAL POLICY ON LIQUEFIED NATURAL GAS (LNG) IMPORTS

Public Hearing

The Federal Energy Administration (FEA), on behalf of the Energy Resources Council (ERC), hereby announces it will conduct public hearings and receive public comments on selected issues associated with Liquefied Natural Gas (LNG) imports.

In his energy message of February 26, 1976, the President stated imports of liquefied natural gas (LNG) could be expected to grow to supplement our declining domestic supply of natural gas and directed the ERC to implement a new national policy which would balance energy needs with the assurance that the United States would not become overly dependent on LNG imports.

The ERC established an inter-agency task force to investigate various aspects of LNG imports, including such issues as the potential world market in LNG, the implications of dependence upon LNG imports on various regions of the U.S., and the impact of domestic energy decisions on LNG import policy.

Upon completion of this initial effort, the ERC, on August 5, 1976, issued a policy statement elaborating on the President's LNG policy. This statement included guidance on such issues as import dependency, pricing, government financing of LNG projects, and contingency planning in the event of supply cutoff.

The ERC also identified certain additional issues which would require further analysis and directed the Task Force to investigate these issues and report its findings to the ERC. These additional issues are (1) the procedures and problems associated with the siting and safety of LNG terminals and (2) the design dimensions and implementation of supply contingency plans.

In conducting its analysis, the ERC is interested in obtaining input from all interested persons. To this end the ERC and FEA are particularly interested in obtaining at the hearing, data, views and arguments on the following questions:

1. Procedures & Problems Associated with LNG Terminal Siting and Safety.—What are the major procedural and substantive problem areas in obtaining full approval for terminal sites and what actions could be taken to mitigate them?

To the extent that overlaps or gaps in authority exist among Federal agencies, and between Federal and state/local agencies, what is the impact?

How can the LNG import site approval process be streamlined?

What has been the impact of delays in obtaining approval for these LNG import projects?

What are the major unresolved questions or problems with respect to safety, and what may be needed to resolve them?

Would a uniform set of criteria or guidelines or increased Federal analytical efforts assist in the resolution of some or all of these problems?

How do safety issues affect the siting of facilities?

Should LNG facilities be concentrated in a few sites or should they be dispersed?

2. *Supply Contingency Plans.*—What specific techniques or procedures should be included in a supply contingency plan? Interested parties should address the following:

Length of supply interruption for which a contingency plan should be designed.

Establishing additional gas reserves (either LNG or gas storage).

Mandatory exchange agreements with pipeline interconnections where such interconnections do not exist or are inadequate as to size or location.

Stand-by mandatory authority for allocating gas supplies among gas pipeline and distribution systems.

Use of SNG or propane/air plants to provide contingency supplies.

Methodology for planning, designing and operating a contingency plan, including who is to bear that cost.

What would be the effect of requiring such plans on proposed LNG projects?

The public hearings will be held at 9:30 a.m., e.d.s.t. on October 26, 1976, and will continue, if necessary, on October 27, 1976, in Room 3000A, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C.

Any person who has an interest in this proceeding, or who is a representative of a group or class of persons that has an interest in it may make a written request for an opportunity to make an oral presentation at the hearing. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., e.d.s.t. on October 15, 1976. Such a request may be hand delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should be prepared to describe the interest concerned, if appropriate, to state why she or he is a proper representative of a group or class of persons that 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 October 22. Each person selected to be heard will be so notified by FEA before 4:30 p.m., e.d.s.t., October 18 and should submit 100 copies of his or her statement to FEA, Room 3309, 12th and Pennsylvania Avenue, N.W., before 4:30 p.m., e.d.s.t., on October 22.

FEA reserves the right to select the persons to be heard at these hearings, to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of 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 hearings. These will not be judicial or evidentiary-type hearings, and there will be no cross-examination of persons presenting statements.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Interested persons who do not intend to participate in the hearings, or who wish to submit additional information, are invited to submit written data, views, or arguments with respect to the subject matter set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Such written comments should specify Box JG, at the address set forth above, and should be identified on the outside of the envelope and on documents submitted with the designation, "LNG Import Policy."

Fifteen copies should be submitted. All comments received by October 26, 1976, and all relevant information, will be considered by the Federal Energy Administration. 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 the determination.

Issued in Washington, D.C., October 6, 1976.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

[FR Doc.76-29792 Filed 10-7-76;8:45 am]

TRANS-ALASKA PIPELINE

Priorities Assistance for Construction

CROSS REFERENCE: For a document regarding the priorities assistance and allocations support under the Defense Production Act of 1950, as amended, for the development and production of Alaska North Slope oil resources, see FR Doc. 76-29543 appearing in the Notices Section of this issue.

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

Meeting

OCTOBER 4, 1976.

Pursuant to section 10(a) of Pub. L. 92-463, entitled the Federal Advisory Committee Act, notice is hereby given of the meeting of the Federal Savings and Loan Advisory Council on Monday, Tuesday, and Wednesday, November 29, 30, and December 1, 1976. The meeting will commence at 9 a.m. on November 29, at 9 a.m. November 30, and 9 a.m. December 1. The locations of the meetings are listed below.

MONDALY, NOVEMBER 29

9:30 a.m., Valley Forge Room, Hyatt Regency Washington.

The intent of present insurance regulations relative to:

1. Market value appraisal.
2. The accounting treatment of loss reserves under the AICPA Audit Guide.
3. The effect if FASB-12 Market Value Accounting is expanded to include debt securities.

FHL Bank Board investment in service corporations financing low and moderate income projects.

Review of service charges on savings accounts.

Up-date on Mortgage Corporation regarding inner city lending and multi-family advance commitments.

Federal Home Loan Bank Board responsibilities under Federal Home Loan Mortgage Disclosure Act, Truth in Lending Act, Fair Credit Reporting Act, Flood Insurance Act, and similar acts.

2 p.m., Federal Home Loan Bank Board Building.

Role of holding companies in the S&L industry.

Expansion of list of securities eligible as liquid assets.

Review of scheduled items:

a. Real estate transferred to service corporations.

b. Mobile homes "slow loans."

c. Modification of construction loans on 1-4 unit properties.

d. Slow loan definition—time element.

Restatement of the importance of the FHLB System to the housing industry.

Federal Home Loan Banks' dividend policy.

Capital adequacy.

Establish farm loan category.

TUESDAY, NOVEMBER 30

9 a.m., Federal Home Loan Bank Board Building.

Continued discussion of Monday afternoon topics.

2 p.m., Columbia Room A, Hyatt Regency Washington.

General Discussion.

WEDNESDAY, DECEMBER 1

9 a.m., Columbia Room C, Hyatt Regency Washington.

General Discussion.

The meeting of the Federal Savings and Loan Advisory Council is open to the public.

GARTH MARSTON,
Acting Chairman.

[FR Doc.76-29654 Filed 10-7-76;8:45 am]

FEDERAL MARITIME COMMISSION

ATLANTICA, S.P.A. CONSORTIUM

Agreement Filed

Notice is hereby given that the following agreement, accompanied by a statement of justification, 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 and the statement of justification at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W. Room 10126; or may inspect the agreement and the statement of justification 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 October 25, 1976. 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:

Stanley O. Sher, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C.

Agreement No. 9958-3, among the members of the above-named agreement, previously appeared in the FEDERAL REGISTER of July 8, 1976, Vol. 41, No. 132, page 28011. This amendatory agreement has now been modified to delete Canadian Pacific Steamship Limited as a party and to add to the geographic scope of the basic agreement. French ports in the Bay of Biscay from Les Sables d'Olonne to the Spanish border.

By Order of the Federal Maritime Commission.

Dated: October 5, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-29665 Filed 10-7-76;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 46 CFR Part 542.

Certificate No.	*Owner/operator and vessels*
01011---	Aktieselskabet Det Ostasiatiske Kompagni: *Morella.*
01015---	A/S Rederiet Odfjell: *Bow Star.*
01233---	Buries Markes Limited: *La Cumbre.*
02163---	J. Lauritzen A/S. *Evita Dan.*
02243---	Astramar Compania Argentina de Navegacion Sociedad Anonima Comercial: *Astrapatricia.*
02295---	The Great Eastern Shipping Co. Ltd.: *Jag Dharma.*
02436---	Alexander Shipping Company Limited: *Lynton Grange.*
02610---	Peter Dohle Schiffahrts K.G.: *Sagitta.*
02727---	Societe Maritime Des Petroles BP: *Chaumont.*
02734---	Italia Societa Per Azioni Di Navigazione: *Acadia, Andrea Gritti.*
02889---	Showa Kaiun K.K.: *Sensho Maru.*
02959---	Kokuyo, Kaiun K.K.: *Chitosegawa Maru.*
02976---	Arthur-Smith Corporation: *Star Shamrock.*
03064---	Societe Navale Gaennaise: *Phryne, Antee*
03280---	Det Forenede Dampskibs-Selskab A/S: *Drachenfels.*
03432---	Hinode Kisen K.K.: *Kasuga Maru.*
03477---	Nissui Shipping Corporation: *Matsushima Maru, Matsushima Maru No. 2, Matsushima Maru No. 3, Nippon Maru, Nippon Maru No. 3, Amazon Maru, Sachikaze Maru, Kazushima Maru, Suzukaze Maru.*
03484---	Sanko Kisen K.K.: *Hakko Maru, Bunko Maru, Shuko Maru.*
03636---	Smith-Rice Company: *Super Scoop.*
03744---	Ocean Fisheries Inc.: *South Pacific.*

No.	Owner/operator and vessels
	Cumbre.
03836	Splosna Plovba: *Maribor.*
03837	N.M. Paterson & Sons Limited: *Soodoc.*
03865	Oceanic Navigating Co., Ltd.: *Frigora.*
04099	Waterways Marine of Memphis, Inc.: *JIH–44.*
04173	Foss Launch & Tug Co.: *Foss 180.*
04196	Otto Candies Inc.: *OC–254, OC–255.*
04242	Astro Dichoso Compania Naviera S.A.: *Dirphys II.*
04276	Rivtow Straits Limited: *Powell Carrier.*
04299	Erie Navigation Company: *Atlas Traveler.*
04793	Snam S.P.A.: *Agip Monjalcone, Agip Lazio.*
05208	Gaelic Tugboat Company: *Court-Land.*
05271	Compania Chilena De Navegacion Interoceanica: *Aysen.*
05577	Far Eastern Shipping Company: *Khudozhnik Zhukov, Yuriy Savinov.*
05631	Manson Construction & Engineering Co.: *Manson 40.*
05636	Takashiromaru Kaiun Kabushiki Kaisha: *Takashiro Maru No. 28.*
06130	Northern Shipping Co.: *Kapitan Glazachev.*
06248	Commercial Corporation "Sovrybflot": *Zharkij.*
06676	Overseas Maritime Limited: *Grace Boeing.*
07255	Teh Tung Steamship Co. Ltd.: *Splendid Albatross.*
07550	Erato Shipping Inc.: *Golden Pine.*
07598	Vroon Shipping (Liberia) Limited: *Merino Express.*
07640	Exxon Company U.S.A.: *CTCO 190–7, CTCO 192–7, Exxon Barge No. 331.*
07880	Logicon, Inc.: *Logicon 2701.*
08045	Nagan (Panama) S.A.: *Attica.*
08172	Teleglobe Canada: *John Cabot.*
08377	Tri-Ocean Shipping Corporation Ltd.: *Oji Gloria.*
09003	Vtg Vereinigte Tanklager und Transportmittel Gmbh: *Burgtor.*
09371	Bilbo E. Williamson: *GTC–5.*
09786	Rederij H. & P. Holwerda *Roelof Holwerda.*
10260	Hollywood Marine, Inc.: *Hollywood 7001.*
10303	Almare Societa Di Navigazione S.P.A.: *Almare Quarta.*
10433	Estonian Shipping Company: *Andrej Andreev.*
10434	Chelsea Navigation Co., Inc.: *Paola X.*
10460	Steelside Navigation Co., Ltd. S.A.: *Katori.*
11085	M.R.L. Barge Service Inc.: *MMS 101, MMS 102.*
11289	Sajo Industrial Co. Ltd.: *Oryong No. 32.*
11391	Atunera Del Golfo, S.A.: *Moby Dick III*
11489	Maritime Shipping Corporation: *Ytai.*
11518	Sabah Pacific Shipping Co., S.A.: *Loi Kim.*
11519	Pan-Arab Shipping Co.: *Abulfeda.*
11569	Jorgen P. Jensen Rederi A/S: *Wangkoll, Wangli, Wangskog.*
11574	Arctic Transportation Ltd.: *Arctic Taglu, Arctic Hooper.*
11580	Polyegos Shipping Co. Inc.: *Kate A.*
11581	Berenice Compania Naviera S.A.: *Andria.*

Certificate No.	Owner/operator and vessels
11603	Charterhouse Shipping Co. Ltd.: *Najsika.*
11615	Naviera Devalmar C.A.: *San Cayetano.*
11617	Dampskibsaktieselskabet Laly: *Leal.*
11650	Action Shipping Co. S.A.: *Astoria.*
11657	Megaron Shipping Ltd.: *Ridgeway.*
11658	Costonco Compania Naviera S.A.: *Soula C.*
11661	Excelsior Maritime Limited: *Spirit of 77.*
11667	Ingram Transportation Co.: *Clarence G. Frame, 1B1102B, 1B1103B, 1B2003L, 1B2004T, 1B2005L, 1B2006T, 1B2302B, 1B2303B.*
11677	Aegean Sky Inc.: *Blue Zoe.*
11689	Kawasaki (HK) Ltd.: *Taiwan Phoenix, Hongkong Phoenix, Korea Phoenix.*
11691	Estrella Verde S.A.: *Corinthian Star.*
11692	Eleftheria Niki Compania Naviera S.A.: *Eleftheria Niki.*
11695	Trans World Seaway Co. Ltd.: *World Hercules.*
11699	Tanaga Shipping Co. S.A.: *Despina R.*
11700	CF Petroleum Company: *Gary.*
11701	Chi Ho Navigation S.A.: *Chi Ho.*
11703	Aichi Ken: *Aichimaru.*
11704	Marinsigne Armadora S.A.: *Pentalon.*
11705	Valera Compania Naviera S.A.: *Areti S.*
11706	Kepmount Shipping (PTE) Ltd.: *Kahikatea.*
11707	Akraris Shipping Corp. S.A.: *Akra Sigri.*
11709	Kalamaras Shipping Inc.: *Ceuta.*
11711	Simon Mokster: *Hystein.*
11717	Republic Marine Carriers Inc.: *C.R. Clements, Sam B. Thomas.*
11718	Sotiras Maritime Corp.: *Kalliopi.*
11719	Captain Steven Scott, Inc.: *Caribe.*
11720	Komiton S.A.: *Ilena.*
11721	Tepeleni Compania Naviera S.A.: *Poseidon.*
11722	Sami Maritime Corp.: *Nikos.*
11726	Oceanic Princess Maritime Co. S.A.: *Princess I.*
11727	Highseas Navigation Corp. S.A.: *Nanwu.*
11728	Taiko Suisan Kabushiki Kaisha: *Taiko Maru No. 11.*
11731	Fredericksburg Shipping Co.: *Fredericksburg.*
11732	Alavuden Puunjalostustehdas Oy: *Kuurtanes.*
11733	East Seas Shipping Inc.: *Newton.*
11736	Bayolena Compania Naviera S.A.: *Vasilis.*
11739	Midas Shipping Corp.: *Midas Arrow.*
11740	Midas Maritime Corp.: *Midas Prince.*
11741	Midas Navigation Corp.: *Midas Rhein.*
11747	Irish Sea Operators: *Kerry.*
11748	Lindinger Ruby K/S: *Lindinger Ruby.*
11749	Pactolus Compania Naviera S.A.: *Cleanthes.*
11752	Seaways Oil Transport Ltd.: *Andros Tanker.*
11753	Interessentskapet Grey Master: *Grey Master.*
11754	Perca Asiatica S.A.: *Toyu Maru.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-29662 Filed 10-7-76;8:45 am]

[Docket No. 76–55]

MATSON NAVIGATION CO.

Petition for Declaratory Order

Notice is hereby given that Matson Navigation Company has petitioned the Commission for a declaratory order regarding capitalization of the cost of funds used to finance the construction of a new vessel.

Matson Navigation Company (Matson") is a common carrier of property by water, operating, among other routes, between ports of the Pacific Coast of the United States and ports of the State of Hawaii. Matson has a new containership under construction by Bath Iron Works Corporation under a contract contemplating progress payments during construction.

Matson Navigation Company ("Mat-

(1) Authorizing it to capitalize, as a part of the capital cost of the vessel, the cost to Matson, during the construction period, of funds used to finance the construction of such new containership;

(2) Stating that such capitalized cost of funds will be recognized by the Commission as part of Matson's investment in the vessel for ratemaking purposes;

(3) Stating that such ruling will be applicable to any subsequent use by Matson of funds used for construction of other vessels, subject to such amendment or modification thereof as may be made by the Commission from time to time.

Matson requests that the Commission determine the cost of funds to be capitalized as (a) actual interest paid on funds borrowed to meet construction costs, and (b) income foregone by Matson on other funds used to meet construction costs, calculated at the average rate earned during the preceding calendar month on funds from which such other funds are withdrawn. Matson requests, however, that the Commission defer ruling as to the capitalization of income foregone on funds representing deferred income taxes.

By means of this notice interested persons, including the Commission's Bureau of Hearing Counsel, are invited to comment on the petition. Any such comments, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 on or before October 26, 1976. Any person desiring a hearing on the petition shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. A copy of any such comments shall be forwarded to counsel for petitioner, David F. Anderson, 100 Mission Street, San Francisco, California 94105.

Interested parties may inspect and obtain a copy of the petition at the Washington office of the Federal Maritime Commission, 1100 L St., NW., Room 11409; or may inspect the petition at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-29664 Filed 10-7-76;8:45 am]

[Docket No. 69-75; Agreement No. T-2336]

NEW YORK SHIPPING ASSOCIATION COOPERATIVE WORKING ARRANGEMENT

Action; Correction

OCTOBER 4, 1976.

In the Commission's notice served in this proceeding September 20, 1976 and published in the FEDERAL REGISTER September 23, 1976 (41 FR 41749) the word "divided" which appears in the third sentence should read "multiplied".

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-29663 Filed 10-7-76;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. G-9947, et al.]

ASHLAND OIL, INC., ET AL.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

SEPTEMBER 28, 1976.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 27, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applictions in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-9947 C 9-20-76 [1]	Ashland Oil, Inc., P.O. Box 1503, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, Camrick Field, Texas and Beaver Counties, Okla.	[2] 58¢	14.65
CI70-917 C 6-25-76, 9-20-76	Phillips Petroleum Co., 5 C4 Phillips Building, Bartlesville, Okla. 74004.	Panhandle Eastern Pipe Line Co., Douglas Plant, Powder River Basin Area, Converse and Campbell Counties, Wyo.	(3)	14.73
CI74-528 C 9-20-76	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	El Paso Natural Gas Co., Sand Hills Field, Crane County, Tex.	[4] $1.6791	14.65
CI76-564 C 9-22-76	Arkla Exploration Co., P.O. Box 1126, Shreveport, La. 71163.	Arkansas Louisiana Gas Co., West Wilburton Field, Pittsburg County, Okla.	[2] 151.9979¢	14.65
CI76-677 A 9-20-76	Texas Pacific Oil Co., Inc., 1700 One Main Place, Dallas, Tex. 75250.	El Paso Natural Gas Co., Penrose Federal No. 1 Well (Drinkard) Lea County, N. Mex.	[2] 76.5¢	14.73
CI76-748 A 9-7-76 [6]	American Petrofina Co. of Texas, P.O. Box 2159, Dallas, Tex. 75221.	El Paso Natural Gas Co., San Juan Basin, San Juan County, N. Mex.	[7] 0.6110487¢	15.025
CI76-749 A 9-7-76	Shell Oil Co., P.O. Box 2099, Houston, Tex. 77001.	Southern Natural Gas Co., Vermilion Block 22, offshore Louisiana.	[2] 184.275	15.025
C176-750 A 9-7-76	Northern Natural Gas Producing Co., Three Greenway Plaza East, Suite 800, Houston, Tex. 77046.	El Paso Natural Gas Co., Basin (Chacra) Field, San Juan County, N. Mex.	[2] 155.17¢	14.73
CI76-751 A 9-3-76	Zapata Exploration Co., 3000 One Shell Plaza, Houston, Tex. 77002.	Transcontinental Gas Pipe Line Co., Block 185 Area, South Timbalier Area, Gulf of New Mexico.	[2] 156.072	15.025
CI76-752 A 9-7-76	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., West Delta Block 117, offshore Louisiana.	[2] 174.56¢	15.025
CI76-753 A 9-3-76	Tenneco Oil Co., 3000 One Shell Plaza, Houston, Tex. 77002.	Tennessee Gas Pipeline Co., Eugene Island Block 367, offshore Louisiana.	[8] $1.453539	15.025
CI76-754 A 9-3-76	Tenneco Exploration, Ltd., 3000 One Shell Plaza, Houston, Tex. 77002.	Tenneco Oil Co., Eugene Island Block 367, offshore Louisiana.	[8] $1.453539	15.025
CI76-755 A 9-3-76	Tenneco Exploration II, Ltd	Tenneco Oil Co., Eugene Island Block 267, offshore Louisiana.	[2] $1.453539	15.025
CI76-756 A 9-3-76	Tenneco Oil Co	Tennessee Gas Pipeline Co., Eugene Island Block 367 and Ship Shoal Block 343, offshore Louisiana.	[2] $1.453539	15.025
C176-757 B 9-7-76	Frio Production Co., et al., P.O. Drawer 290, Alice, Tex. 78332.	United Gas Pipe Line Co., South Weesatche Field, Goliad County, Tex.	(9)	
CI76-758 A 9-10-76	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	Transco Gas Supply Co., Brazos Area (south addition), Block A-133, offshore Louisiana.	[2] $1.75	15.025
CI76-759 A 9-10-76	Getty Oil Co	Brazos Area (south addition), Block A-70, offshore Louisiana.	[2] $1.75	15.025
CI76-760 B 9-13-76	Camp Oil Co. (operator) et al., 1115 National Bank of Commerce Bldg., San Antonio, Tex. 78205.	Texas Eastern Transmission Corp., Hostetter Field, McMullen County, Tex.	(10)	
CI76-761 A 9-13-76	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Spraberry Field, Midland County, Tex.	[11] $1.8422	14.73
CI76-763 A 9-13-76	Exxon Corp	Trunkline Gas Co., West Cameron Block 616, offshore Louisiana.	[2] $1.90	15.025
CI76-764 A 9-13-76	Stephens Production Co., P.O. Box 248, Fort Smith, Ark. 72901.	Arkansas Louisiana Gas Co., Witcherville, Sebastian County, Ark.	65¢	14.65
CI76-766 A 9-13-76	Skelly Oil Co., P.O. Box 1650, Tulsa, Okla. 74102.	Transco Gas Supply Co., OCS Lease G-2219, Block 480, West Cameron Area, offshore Louisiana.	[2] $1.4484	15.025
CI76-767 A 9-13-76	Skelly Oil Co	Transco Gas Supply Co., block 137, High Island Area, offshore Texas.	$1.5268	14.65
CI76-768 A 9-13-76	do	Transco Gas Supply Co., blocks 110, 111, 138 (N/2), High Island Area, offshore Texas.	[2] $1.5268	14.65
CI76-769 A 9-13-76	Phillips Petroleum Co	El Paso Natural Gas Co., Jicarilla 28-3 No. 1 well, Rio Arriba County, N. Mex.	[2] 142.0¢	14.73
CI76-770 A 9-15-76	Amoco Production Co., P.O. Box 5910-A, Chicago, Ill. 60680.	Tennessee Gas Pipeline Co. and Columbia Gas Transmission Corp., block 617, West Cameron Area, offshore Louisiana.	[2] $1.82994¢	15.025
CI76-771 B 9-15-76	Pennzoil Producing Co., P.O. Box 2967, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., Second Bayou Field, Cameron Parish, La.	(10)	
CI76-772 A 9-15-76	Phillips Petroleum Co	Transcontinental Gas Pipe Line Corp., block 154 field, High Island Area, offshore Jefferson County, Tex.	[2] [12] $1.63	14.73

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI76-773..... A 9-14-76	Columbia Gas Development Corp., P.O. Box 1350, Houston, Tex. 77001.	Columbia Gas Transmission Corp., platform "G," block 309, Eugene Island Area, offshore Louisiana.	[2] [12] $1.75	15.025
CI76-774..... D 9-14-76	Houston Oil & Minerals Corp., 1212 Main St., Houston, Tex. 77002.	United Gas Pipe Line Co., Sardis Church Field, Caldwell Parish, La.	[13]	.....
CI76-775..... A 9-17-76	Tenneco Exploration II, Ltd., P.O. Box 2511, Houston, Tex. 77001.	Tenneco Oil Co., block N667 E070 of the Mobile South No. 1 Area, offshore Louisiana.	[2] [8] $1.453539	15.025
CI76-776..... A 9-17-76	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., block N667 E070 of the Mobile South No. 1 Area, offshore Louisiana.	[2] [8] $1.453539	15.025
CI76-777..... B 9-22-76	John H. Wallace, d/b/a Coastal Equipment Co., (operator), P.O. Box 940,McAllen, Tex. 78501.	United Gas Pipeline Co., Keemac Field Area, Jim Wells County, Tex.	[16]	.....
CI76-778..... A 9-22-76	Shell Oil Co.....	Transcontinental Gas Pipe Line Corp., Vermilion Block 22, offshore Louisiana.	[2] [14] 184.275¢	15.025
CI76-779..... A 9-22-76	Champlin Petroleum Co., P.O. Box 1257, Englewood, Colo. 80110.	McCulloch Interstate Gas Corp., Manning Field, Converse County, Wyo.	[2] $1.7895	14.65
CI76-780..... A 9-22-76	Shell Oil Co.....	Florida Gas Transmission Co., Vermilion Block 22, offshore Louisiana.	[2] [11] 184.275	15.025
CI76-781..... B 9-10-76	Mitchell Energy Corp., 12th floor, Houston Club Bldg., Houston, Tex.	Natural Gas Pipeline Co. of America, Boonsville/Bend Conglomerate, Wise County, Tex.	[16]	.....
CI76-782..... A 9-21-76	Arkla Exploration Co., P.O. Box 21734, Shreveport, La. 71151.	Arkansas-Louisiana Gas Co., Kiowa Southwest Field, Pittsburg County, Okla.	[2] [17] 151.9979¢	14.65
CI76-783..... A 9-21-76	do.....	Arkansas-Louisiana Gas Co., Stonewall Field, DeSota Parish, La.	[2] $1.30	15.025
CI76-785..... A 9-22-76	Enserch Exploration, Inc., 1817 Wood St., Dallas, Tex. 75201.	Natural Gas Pipeline Co. of America, Ward County, Tex., University 10-18 No. 3 Well, NW/4, sec. 10, block 18, University Land Survey.	[2] [12] [18] $1.5268 [2] [12] [19] $1.5375 [2] [12] [20] $1.5414	14.65 14.65 14.65

[1] Acreage previously covered under Gas Rate Schedule No. 187.
[2] Subject to upward and downward British thermal unit adjustment.
[3] 101¢ per 1,000 ft³ for 2.9 1,000,000 ft³ per day and 142¢ per 1,000 ft³ with 1¢ per 1,000 ft³ quarterly escalations commencing Oct. 1, 1976, for 1.06 1,000,000 ft³ per day pursuant to opinion No. 770.
[4] Includes 13.74¢ Btu adjustment and 1.49¢ gathering.
[5] Plus British thermal unit adjustment.
[6] Applicant is filing to cover its own interest heretofore authorized in docket No. CS76-73 to become a large producer.
[7] Applicant is willing to accept certification at an initial rate equal to the applicable nationwide area rate fixed in opinion No. 699-H, including any increases in such rate prescribed by the Commission, provided that applicant shall be entitled to file increases to any higher contractually authorized price in accordance with the Natural Gas Act.
[8] Includes 0.51¢ gathering.
[9] Production ceased.
[10] Depleted.
[11] Subject to upward British thermal unit adjustment.
[12] Applicant is willing to accept a certificate conditioned to a rate determined in accordance with opinion No. 770.
[13] Nonproductive.
[14] Includes 9.275¢ Btu estimated at 1,053 Btu per cubic feet.
[15] Includes 9.275¢ Btu.
[16] Well released from the gas sales contract by the purchaser.
[17] National rate established by opinion No. 770 effective July 27, 1976, for wells commenced on or after Jan. 1, 1975.
[18] Includes $0.1145 tax.
[19] Includes $0.1153 tax.
[20] Includes $0.1161 tax.

[FR Doc.76-29361 Filed 10-7-76;8:45 am]

LANDS WITHDRAWN IN PROJECT NO. 1261

Finding and Order Vacating Land Withdrawal Under Section 24 of the Federal Power Act

SEPTEMBER 29, 1976.

The Forest Service, United States Department of Agriculture, has requested that the land withdrawal for transmission line Project No. 1261 be vacated insofar as it pertains to lands within the Roosevelt National Forest, thereby requiring Commission consideration under Section 24 of the Federal Power Act. This order pertains to all lands withdrawn for Project No. 1261. The lands affected by the withdrawal are listed in the Attachment hereto.

Project No. 1261 consisted of several 13 kV lines with an aggregate length of 5.7 miles, near the towns of Gold Hill, Salina, Sugarloaf, and Switzerland Park, in Boulder County, Colorado. The 30-year license for the project, held by the Public Service Company of Colorado, expired on February 15, 1967.

By letter dated April 6, 1967, the staff advised the Public Service Company of Colorado that the subject transmission lines were not primary lines or part of a "project" as defined in Section 3(11) of the Federal Power Act and, therefore, were not within the licensing authority of the Commission. Consequently, the Company obtained authorization from the Bureau of Land Management and the Forest Service for the continued occupancy of the Federal lands traversed by the lines.

The Commission finds, that the land withdrawal for Project No. 1261 no longer serves a useful purpose and should be vacated in its entirety.

The Commission orders, the land withdrawal for Project No. 1261 is hereby vacated in its entirety.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

PROJECT NO. 1261-COLORADO

PUBLIC SERVICE COMPANY OF COLORADO

SIXTH PRINCIPAL MERIDIAN, COLORADO

Portions (totaling about 73 acres) of the following described lands were withdrawn pursuant to the filing on November 28, 1933, as supplemented March 6, 1936, of an application for license for Project No. 1261 for which the Commission gave notice of land withdrawal to the General Land Office (now Bureau of Land Management) by letter dated March 26, 1936.

T. 1 N., R. 71 W.,
Sec. 7, NW¼SW¼, S½SW¼;
Sec. 8, SW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼;
Sec. 17, W½NW¼, NW¼SW¼;
Sec. 18, N½NE¼, SE¼NE¼, NE¼NW¼, E½SE¼;
Sec. 19, E½E½, NW¼NE¼, E½NW¼, SW¼NW¼, NW¼SW¼.
T. 1 N., R. 72 W.
Sec. 1, SE¼SW¼, SW¼SE¼;
Sec. 12, W½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 13, SE¼SW¼, SW¼SE¼;
Sec. 24, N½NE¼, SE¼NE¼;
Sec. 25, W½W½;
Sec. 34, SE¼SW¼, SE¼;
Sec. 35, NE¼, NE¼NW¼, S½NW¼, NE¼SE¼;
Sec. 36, SE¼NW¼, N½SW¼.
T. 1 S., R. 72 W.,
Sec. 4, NE¼NE¼, NE¼SW¼, SW¼SW¼, NW¼SE¼.

[FR Doc. 76-29628 Filed 10-7-76;8:45 am]

LANDS WITHDRAWN IN PROJECT NO. 1093

Order Vacating Land Withdrawal Under Section 24 of the Federal Power Act

SEPTEMBER 29, 1976.

The Forest Service, United States Department of Agriculture, has requested that the land withdrawal for Project No. 1093 be vacated in its entirety, thereby requiring Commission consideration under Section 24 of the Federal Power Act.

By letter dated May 26, 1930, the Commission gave notice to the General Land Office (now Bureau of Land Management) of the withdrawal of the following described land pursuant to the filing by L. P. Starkey of Fort Collins, Colorado, on May 21, 1930, of an application for license for Project No. 1093:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 7 N., R. 73 W.,
Sec. 20, NE¼SW¼.
(40 acres.)

A re-examination of our records shows that only 1.63 acres within said subdivision were affected by the project.

Project No. 1093 was an 18-horsepower diversion-conduit development on Fall Creek, a small tributary of the South Fork Cache la Poudre River, near the north boundary of Rocky Mountain National Park, in Laramie County, Colorado. The last of three 10-year licenses for the project expired on August 25, 1960, and an incomplete application for a fourth license was dismissed by Commission order issued August 12, 19764. The Forest Service reports that power development was discontinued many years ago and that the Federal land involved has been restored to a satisfactory condition.

The Commission finds, that the land withdrawal for Project No. 1093 no longer serves a useful purpose.

The Commission orders, that the land withdrawal for Project No. 1093 is hereby vacated in its entirety.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29629 Filed 10-7-76;8:45 am]

[Docket No. ER76-911]

ARIZONA PUBLIC SERVICE CO.

Cancellation and Termination of Rate Schedule

SEPTEMBER 30, 1976.

Take notice that, effective September 30, 1976, Supplement No. 11 to Arizona Public Service Company Rate Schedule FPC No. 6 is to be cancelled, pursuant to notice received by the Company from Navajo Tribal Utility Authority.

Take further notice that, effective September 30, 1976, Navajo Tribal Utility Authority will cease furnishing electric service for the construction needs at the Navajo Generating Station, and that therefore Supplement No. 10 to the wholesale Power Supply Contract between Arizona Public Service Company and Navajo Tribal Utility Authority will, by its own terms, expire on September 30, 1976.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 October 15, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29633 Filed 10-7-76;8:45 am]

[Docket No. RP75-105]

COLUMBIA GULF TRANSMISSION CO.

Proposed Changes in FPC Gas Tariff

OCTOBER 1, 1976.

Take notice that on September 24, 1976 Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing Second Substitute Twenty-Second Revised Sheet No. 7 to its FPC Gas Tariff, original Volume No. 1.

Columbia Gulf states that this tariff sheets represents its settlement rates in the referenced docket, and is filed in accordance with ordering Paragraph (C) of the Commission's Order issued September 13, 1976 in the proceeding.

Columbia Gulf states that copies of the filing were made on Columbia Gas Transmission Corporation.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 19, 1976. Comments will be considered by the Commission in determinining the appropirate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29646 Filed 10-7-76;8:45 am]

[Docket No. CP76-523]

COLUMBIA GAS TRANSMISSION CORP.

Application

OCTOBER 1, 1976.

Take notice that on September 16, 1976, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP76-523 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Gas Transport, Inc. (Gas Transport), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to receive into its Lines Q-217 and C-106 in Barlow Township, Washington County, Ohio, all of the gas delivered by Gas Transport, which gas would be purchased under the gas purchase agreement between Gas Transport and Dolph Anderson (Anderson), a small producer, by which Gas Transport would pay Anderson $1.42 per Mcf of gas at 14.7 psia, increasing one cent per Mcf every three months starting October 1, 1976. It is stated that Applicant would redeliver such gas to an existing point of delivery to Anchor Hocking Corporation (Anchor Hocking) at Lancaster, Ohio, for the account of Gas Transport. Applicant proposes to charge for such transportation 21.99 cents per Mcf of gas at 14.4 psia and would retain for company-use and unaccounted-for gas 3.6 percent of the total volume of gas delivered into its system by Gas Transport.

Applicant proposes to transport gas delivered by Gas Transport in the Ohio counties of Sciota, Jackson, Lawrence, Gillia, Meigs, Athens, Vinton, Hocking, Fairfield, Perry, and Muskingum, on a best efforts basis subject to the limitation that all gas received from Gas Transport and all other existing transportation and exchange agreements between Applicant, Gas Transport and/or Anchor Hocking would not result in a total delivery to Anchor Hocking at Lancaster, Ohio, in excess of 12,000 Mcf per day.

It is stated that the transportation obligation of Applicant hereunder would be subject to the limits of its pipeline capacity and to its customer service obligations, and that transportation charges would be subject to adjustment as reflected in pending and future FPC rate filings.

The application further states that the facilities of Gas Transport are physically located in an area of declining natural gas production, and to supplement its gas supply, Gas Transport became a wholesale customer of Applicant, which supplies approximately 75 percent of Gas Transport's daily requirements. In the winter season of 1975-76, it is indicated, Columbia Transmission curtailed its normal delivery to Gas Transport by 56 percent and has estimated that curtailment for the winter period of 1976-77 to Gas Transport would be 68 percent of normal delivery. The application states that due to a dwindling supply of its own gas and severe curtailment by Applicant, Gas Transport has expanded its operations into geographic regions of greater natural gas potential, and has several opportunities either to purchase or develop natural gas reserves in the twelve-county area hereinbefore enumerated.

Applicant asserts that the transportation of gas as requested herein would permit utilization of existing pipeline facilities, making it unnecessary for Gas Transport to undertake major duplicative pipeline construction in the same area.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1976, 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29649 Filed 10-7-76;8:45 am]

[Docket No. CP76-534]

EASTERN SHORE NATURAL GAS CO.

Application

OCTOBER 1, 1976.

Take notice that on September 22, 1976, Eastern Shore Natural Gas Company (Applicant), 201 East Main Street, Salisbury, Maryland 21801, filed in Docket No. CP76-534 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to render a special service to any person to whom it normally sells or for whom it normally transports natural gas or who, although he may not normally receive service from Applicant, requires such service to meet an emergency on his system or to offset curtailments to high-priority customers, but only where pre-existing high-priority users would otherwise be without natural gas supply due to emergency situations or curtailment, and Applicant would so condition its sales agreement to any such purchaser, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes that the rate schedule under which such emergency service would be provided (SG-1) would apply to all natural gas which Applicant may have available from time to time, and from whatever source, which it is willing to sell on an interruptible basis and at an incremental price to offset curtailment or alleviate emergencies on the system of any buyer. It is said that sales made hereunder would be of short-term duration, would be made on such basis as may be mutually agreeable to buyer and Applicant and in such manner as to meet the stated emergency but not to impair Applicant's ability to render service to its other customers. Sales for resale would be at rates satisfactory to the Federal Power Commission, to whom copies of all agreements covering such sales would be submitted, it is stated, and any agreements so submitted would be accompanied by relevant cost data, including the cost of the purchased gas, and cost of transportation, necessary to demonstrate the manner in which the proposed service is consistent with the public interest.

Applicant asserts that it is a natural-gas company within the meaning of the Natural Gas Act only by virtue of its unique geographic location on the Delmarva Peninsula where its facilities cross the borders of several states, and that it has no storage facilities of its own and is unable on its own behalf to accommodate major fluctuations in gas supply.

It is maintained that difficulties encountered during the 1975-76 winter compel Applicant to seek the authorization requested herein, so that it may be protected against the economically precarious situation in which it found itself as a result of its efforts to offset an impending shortage during the past winter.

Applicant explains that on October 15, 1975, in Docket Nos. RP71-121 and RP72-21 Applicant submitted a report as to how projected shortages would impact on its system, how it planned to deal with such shortages, and the flexibility it and its customers might call upon in dealing with these supply deficiencies.

It is stated that in that report, Applicant indicated that it purchases its entire supply of natural gas from Transcontinental Gas Pipe Line Corporation (Transco), that its entitlement for November 1, 1975, through March 31, 1976, was expected to be 1,206,986 Mcf of gas based upon Transco's existing, flowing gas supply, and that this entitlement represented sharp curtailment of supply and indicated that Applicant would have to curtail deliveries to jurisdictional customers, including some sales in Priority 1.

Further, it is stated that Applicant also submitted curtailment projections based upon its receipt from Transco of an entitlement of 2,424,000 Mcf of gas, which entitlement assumed that Transco would be able to effectuate emergency gas purchases and was not based on Transco's existing, flowing gas supply. Even on the basis of that entitlement, it is said, Applicant's customers were expected to be curtailed by approximately 220,085 Mcf, but only large, industrial nonjurisdictional customers would be affected.

Applicant indicates that because of this threatened adverse impact on its market area, preliminary negotiations were completed on October 6, 1975, with McCormick Oil and Gas Corporation (McCormick) for the purchase of gas on a 60-day emergency basis from the North Johnson Bayou Prospect and from the Carter Well, Kings Bayou, both in Cameron Parish, Louisiana. It is said that these emergency purchases, each in the amount of some 3,000 Mcf per day, were to be for the benefit of Applicant's direct industrial customers and that the transportation was to be provided by Texas Eastern Transmission Corporation (Tetco) and Transco.

It is stated that Applicant was to pay McCormick $1.40 per Mcf for all gas thus delivered and was to pay any expenses to be incurred in connection with the transportation and delivery of the gas, including the cost of building field laterals which would be required to transport the gas from the wells in question to the facilities of Transco and Tetco plus all related taxes. The sales and deliveries of such gas were expected to commence on or about January 1, 1976, it is said.

Further, it is stated that on September 9, 1975, in Docket No. RP76-9, Applicant tendered for filing tariff sheet revisions to its FPC Gas Tariff which provided for an excess and emergency service which would have facilitated the sale of gas purchased on an emergency basis to all classes of customers on a nondiscriminatory basis.

It is shown that on September 30, 1975, the Commission issued an order rejecting the aforementioned revised tariff sheets, presumably because of earlier Commission disapproval of Transco's efforts to be saved harmless in selling emergency gas it might purchase at prices in excess of the National Area Rate.

While Applicant was thus aware of the fact that it might be faced with certain difficulties in disposing of gas to high-priority customers for which it had agreed to pay $1.40 per Mcf plus transportation charges, Transco's projected curtailment was of such magnitude that it is maintained that Applicant regarded its exposure as minimal, and in due course consummated the agreement to purchase the gas from McCormick. However, it is shown that the unusually warm weather of the 1975-76 winter, plus Transco's ability to reduce its projected curtailments, resulted in Applicant's having available to it sufficient gas to meet the high-priority requirements of its market area. Thus, Applicant states that the McCormick gas was no longer needed for its intended purpose.

It is stated that since the Commission's order of April 30, 1975, denied Applicant the opportunity to dispose of such gas for high-priority uses, Applicant's only choice was either to sell this gas on an interruptible basis for boiler fuel or to cancel the McCormick contract, which Applicant chose to do to its financial detriment.

It is said that Transco's curtailment impact study for the period November 1, 1976, through October 31, 1977, indicates that Applicant's annual period allotment would be 2,730,000 Mcf for Priority 1 and Priority 2A, with a winter period allotment of 1,123,000 Mcf. Applicant asserts that since Transco is Applicant's exclusive pipeline supplier, Applicant would once again have to locate supplies of gas elsewhere if it is to meet the high-priority requirements of its market. It is maintained that Applicant must assume that such gas can only be obtained at relatively high prices and that this application is submitted in an effort to assure Applicant's full recovery of all costs incurred in providing the emergency service in the event it goes forward once more to meet its service obligations to its market.

Applicant indicates that it does not intend to consummate emergency gas purchases again unless it receives some assurance that it can lawfully recoup the additional costs of such gas. Applicant lieves that, with such assurance, it can purchase sufficient volumes of emergency gas to offset curtailment of high-priority customers during this coming winter-heating season and the service herein proposed is designed to enable it to meet that objective.

Applicant states that no additional facilities would be required to effectuate such service.

It is stated that the Commission itself has, in Section 2.79 of its General Policy and Interpretations, recognized that certain customers should be accorded an opportunity to purchase natural gas directly in the intrastate market for their own use and obtain the transportation of that gas by interstate pipelines. Inherent in the policy of Section 2.79, it is said, is the conclusion that certain customers can obtain significant benefits by paying incremental prices for supplies of natural gas not available through traditional pipeline sources and should

be permitted to do so. Applicant asserts that its proposal brings the benefit of this policy to those customers who are too small in and of themselves to utilize the procedures of Section 2.79 by permitting the pipeline itself to purchase a short-term supply of gas to be sold to those customers desiring such service at incremental rates. It is maintained that approval of this application would avoid the alternatives of inflationary alternative fuel supplies or unemployment and attendant economic dislocation produced by the unavailability of a needed energy source. Further, it is said that the service could be rendered promptly and on a basis which would make it subject to close Commission scrutiny.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1976, 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29637 Filed 10-7-76;8:45 am]

[Docket No. ER76-902]

EDISON SAULT ELECTRIC CO. CLOVERLAND ELECTRIC COOPERATIVE, INC.

Filing

SEPTEMBER 30, 1976.

On September 10, 1976, Edison Sault Electric Company (Edison Sault) and Cloverland Electric Cooperative, Inc. (Cloverland) submitted for filing supplemental agreement No. 5(a) to Rate Schedule FPC No. 2 between the two parties. This contract has been executed pursuant to a contract between Edison Sault and the Secretary of the Army, Contract DA-20-064-ENG-632, a contract to which Cloverland is a third party beneficiary.

The contract filed herein relates to currently effective wheeling and demand charges for energy delivered to Cloverland. Cloverland has filed a Certificate of Concurrence. Such charges become effective within 30 days from the date of filing.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions 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 available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29630 Filed 10-7-76;8:45 am]

[Docket Nos. G-2730, *et al.*]

HILDA B. WEINERT, ET AL.

Intent To Act

OCTOBER 1, 1976.

On August 31, 1976, Natural Gas Pipe Line Company of America and Transcontinental Gas Pipe Line Corporation filed a renewal of a joint motion for an order approving a settlement agreement in this docket certified on November 11, 1974. The settlement proposes an arrangement for dividing the remainig production from the La Gloria Field, Jim Wells and Brooks Counties, Texas, between the two pipelines. The settlement has been effectuated up to now on a temporary basis subject to payback conditions pursuant to temporary authorizations issued November 15, 1974, January 17 and August 19, 1975, and March 31, 1976, pending submission of new gas sales agreements and agreement amendments conforming to the settlement terms by all the La Gloria Field producers subject to the present proceeding.

The present joint motion advises that all producers have made the the necessary submissions. In view of the numerous submisisons that are involved, additional time is required for review beyond the thirty days provided for action on the present motion by Section 1.12(e) of the Commission's Rules of Practice and Procedure.

The Commission finds: It is necessary and in the public interest to extend the time limit for action on the renewed joint motion.

The Commission orders: The joint motion shall not be deemed denied by the passage of time.

By Direction of the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29647 Filed 10-7-76;8:45 am]

[Docket No. RP73-14 (PGA76-4)]

MICHIGAN WISCONSIN PIPE LINE CO.

Proposed Change in Rates

OCTOBER 1, 1976.

Take notice that on September 27, 1976, Michigan Wisconsin Pipe Line Company (Mich Wis) tendered for filing a revised tariff sheet to its FPC Gas Tariff, Second Revised Volume No. 1, seeking increased rates under the purchased gas cost adjustment provision of its tariff and Commission Opinion No. 770. The increase reflects an increase in annual jurisdictional rates of $212 million reflecting increased costs of purchased gas based on increases resulting from Commission Opinion Nos. 770 and 749 and an increase in the cost of gas imported from Canada; a regular surcharge to recover approximately $29 million; and a special surcharge to recover increased costs as a result of the effect of Opinion No. 770 for the period July 27 through October 31, 1975, of $22.9 million.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 October 14, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29642 Filed 10-7-76;8:45 am]

[Docket No. RP71-16 (Southern System) (PGA76-6)]

MIDWESTERN GAS TRANSMISSION CO.

PGA Filing Pursuant to Opinion No. 770

OCTOBER 1, 1976.

Take notice that on September 27, 1976, Midwestern Gas Transmission Company (Midwestern) tendered for filing Second Substitute Fifteenth Revised Sheet No. 5 to Third Revised Volume No. 1 to its FPC Gas Tariff to be effective on October 27, 1976.

Midwestern states that the purpose of this revised tariff sheet is to adjust Midwestern's rates for its Southern System pursuant to the PGA provision of Article XVII of the General Terms and Conditions to reflect increased purchased gas costs resulting from the rate increase

filed September 27, 1976, by its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) which is based solely on producer filings made pursuant to Opinion No. 770. The annualized amount of claimed purchased gas cost increases is $64,554,462 or 36.45 cents per Mcf.

Midwestern requests waiver of Sections 1.2 and 1.3 of Article XVII of its FPC Gas Tariff in order to make the revised tariff sheet effective on October 27, 1976. Midwestern states that the proposed effective date is in accord with Opinion No. 770 which specifically allows such PGA increases to become effective on that date.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 October 15, 1976. 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; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29640 Filed 10-7-76;8:45 am]

[Docket No. RP75-20]

MISSISSIPPI RIVER TRANSMISSION CORP.

Proposed Change in Rates

OCTOBER 1, 1976.

Take notice that on September 24, 1976, Mississippi River Transmission Corporation ("Mississippi") tendered for filing six (6) copies of Substitute Forty-Fourth Revised Sheet No. 3A to its FPC Gas Tariff, First Revised Volume No. 1, to become effective September 27, 1976, and six (6) copies of Substitute Forty-Sixth Revised Sheet No. 3A to its FPC Gas Tariff, First Revised Volume No. 1, to become effective October 1, 1976.

Mississippi states that the instant tariff sheets are being submitted to adjust Mississippi's effective base tariff rates to reflect the appropriate level of transportation costs associated with Mississippi's purchases of gas in the Mills Ranch Field. Mississippi notes that in accordance with the terms of its transportation agreement with Natural Gas Pipeline Company of America ("Natural"), Natural transports natural gas for Mississippi from the Mills Ranch Field in consideration for the right of Natural to purchase one-third (⅓) of the subject gas at eighty-five percent (85%) of the actual cost of such gas to Mississippi. Accordingly, the cost to Mississippi of such transportation services varies directly with the cost of the natural gas being transported. As a result, Mississippi states that Article V of the Stipulation and Agreement settling Mississippi's last general rate increase proceeding at Docket No. RP75-20 provides for the filing of adjustments to Mississippi's effective base tariff rates to reflect the appropriate level of Mills Ranch Field transportation costs.

The instant tariff sheets serve to adjust Mississippi's base tariff rates which will be effective as of September 27, 1976, and October 1, 1976, to reflect the increase in transportation costs associated with Mississippi's purchases of gas in the Mill Ranch Field due solely to the increase in the wellhead price of natural gas as a result of Opinion No. 770. Mississippi requests waiver of the notice requirements of the Commission's Regulations and all other applicable provisions of the Commission's Regulations as may be necessary in order that the subject tariff sheets become effective as of the dates proposed. Mississippi also requests waiver of the notice requirements and the filing dates contained in the aforementioned Stipulation and Agreement at Docket No. RP75-20.

Mississippi has submitted work papers containing computation supporting the proposed rate changes. Mississippi states that copies of its filing were served on Mississippi's jurisdictional customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission in accordance with Sections 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 October 15, 1976. 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 unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29650 Filed 10-7-76;8:45 am]

[Docket No. RP71-125 and RP75-108 (PGA76-8a)]

NATURAL GAS PIPELINE CO. OF AMERICA

Purchased Gas Cost Adjustment to Rates and Charges

OCTOBER 1, 1976.

Take notice that on September 20, 1976 Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets, to be effective September 1, 1976:

Second Substitute Twenty-ninth Revised Sheet No. 5
Second Substitute Fourth Revised Sheet No. 5A

Natural states that it filed a PGA unit adjustment on July 16, 1976, to be effective September 1, 1976, which the Commission by order issued August 31, 1976, accepted for filing, but suspended the effective date until September 2, 1976, when it would become effective subject to refund. Ordering Paragraph (B) of said order authorized Natural to file a revised PGA unit adjustment to become effective September 1, 1976 which would reflect the elimination of (a) that portion of 60-day emergency purchases in excess of the rate level prescribed in Opinion No. 770 and (b) those costs associated with non-jurisdictional purchases.

Natural also states that on September 9, 1976, it filed an Application for Reconsideration or Rehearing in which it stated that its rates as filed on July 16 did not reflect any 60-day emergency purchases at prices in excess of Opinion No. 770 after adjustment for production tax reimbursement as provided for in that Opinion, and that further, the only cost associated with the non-jurisdictional purchase was, in fact, a refund which was credited to the Deferred Purchased Gas Cost Account which had the effect of reducing the level of the PGA unit adjustment filed for.

Therefore, pursuant to Ordering Paragraph (B) and taking into consideration the facts relative to emergency and non-jurisdictional purchases as set out in Natural's Application for Reconsideration or Rehearing, Natural requested that the Commission accept the PGA unit adjustment as set out on the filed tariff sheets to be effective September 1, 1976, without any refund obligation. The PGA unit adjustment as filed reflects the level ordinarily filed on July 16, 1976. Natural also revised Sheet No. 5A to reflect the rate level for Rate Schedules MS-3 and LS-1 which have previously been accepted by the Commission to be effective on May 21, 1976 by letter order issued August 24, 1976 (Docket No. CP76-325) and July 1, 1976 by letter order issued August 18, 1976 (Docket No. CP75-256) respectively.

Natural states that it does not believe any waivers of the Commission's Regulations are necessary but respectfully requested the Commission to grant such waivers as it may deem necessary to accept the filed tariff sheets to be effective September 1, 1976.

Copies of this filing were mailed to Natural's jurisdictional customers and interested state regulatory agencies.

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 Section 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 October 22, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29651 Filed 10-7-76;8:45 am]

LIQUEFIED NATURAL GAS IMPORTATION AND STORAGE TERMINALS

[Docket No. RM76-13]

Answer to Petition To Intervene; Acceptance of Filing

OCTOBER 1, 1976.

On September 17, 1976, the States of New Jersey, Pennsylvania, and Delaware, the Attorney General of New York, the Public Advocate of New Jersey, the Township of Woodbridge, New Jersey, and the Honorable John M. Murphy, United States Representative, filed a motion for acceptance of the late-filed answer to petitions to intervene.

Upon consideration, notice is hereby given that the answer to petitions to intervene has been accepted as timely filed.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29652 Filed 10-7-76;8:45 am]

PACIFIC POWER AND LIGHT CO.

Commission License Term Policy for Projects Where Taum Sauk is the Basis for Commission Jurisdiction

OCTOBER 5, 1976.

Public notice is hereby given that, in a September 24, 1976, Order Issuing License (Major) for Pacific Power & Light Company's Big Fork Project No. 2652, the Commission enunciated a license term policy for unlicensed, non-Federal hydroelectric projects where the Taum Sauk decision, *FPC* v. *Union Electric Co.*, 381 U.S. 90 (1965), provides the basis of Commission jurisdiction. That order requires the publication of an appropriate notice in the FEDERAL REGISTER.

The Commission spelled out a three-pronged policy designed to encourage compliance with the Federal Power Act, provide incentives for owners of unlicensed projects to review the jurisdictional status of these projects and to file applications in conformance with the Act, conserve the Commission's administrative resources, eliminate the inequities in the Commission's previous policy without sacrificing the desirable features of that previous policy, and give appropriate consideration to unauthorized post-1935 construction. First, for license applications on file with the Commission as of September 24, 1976, the Commission stated that licenses for these projects would, except as noted below, terminate twenty-five years from the date of issuance of a Commission licensing order. Second, for those Taum Sauk projects where no license application has been filed, the Commission stated that, for all owners of these projects who, within 90 days of notification by the Secretary of this order, file with the Secretary a reasonable schedule for the filing of license applications, not to exceed three years, and subsequently file applications consistent with that schedule, any license issued for that project would terminate twenty-five years from the date of filing of the license application. Third, in cases where license applications cannot be processed (for failure to file or timely file an application acceptable for processing or requested information) or where the Commission incurs substantial administrative, investigative, or litigative expense directly related to the project owner's recalcitrance, a license issued for that project would terminate fifty years from the date of any unauthorized post-1935 construction or September 1, 2001, whichever is earlier.

All owners of unlicensed, non-Federal hydroelectric projects should review the jurisdictional status of their projects and other matters discussed in the order. The September 24, 1976, order is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-29636 Filed 10-7-76;8:45 am]

[Docket No RP73-36 (PGA76-4)]

PANHANDLE EASTERN PIPE LINE CO.

Change in Tariff

OCTOBER 1, 1976.

Take notice that on September 2[illegible], 1976, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing Eighteenth Revised Sheet No. 3-A to its F.P.C. Gas Tariff, Original Volume No. 1, such sheet proposed to be effective November 1, 1976.

The Company submits that this revised sheet is filed in accordance with Paragraph (D) of the Commission's Opinion No. 770 issued July 27, 1976, as modified by FPC order issued September 22, 1976, and pursuant to the provisions of the General Terms and Conditions of Panhandle Eastern Pipe Line Company's FPC Gas Tariff.

Panhandle states that the revised tariff sheet reflects only those increases in purchase gas costs as authorized by the Commission in Opinion No. 770 to be effective July 27, 1976. No other increases in purchase gas costs are included in the filing. In accordance with the Commission's order of September 22, 1976, Panhandle has elected to file for a surcharge (including a nine (9) percent carrying charge) to recover costs incurred as a result of Opinion No. 770 from July 27, 1976 to November 1, 1976, such surcharge to be effective for the twelve (12) month period commencing November 1, 1976. Panhandle shall maintain a separate account relating to such surcharge amounts and any imbalance in the account at the end of the twelve (12) month period shall be transferred to the Deferred Purchased Gas Cost Account maintained in accordance with Section 18.3 of the General Terms and Conditions of Panhandle's tariff.

The annualized amount of claimed purchased gas cost increases under Opinion No. 770 is $67,291,580. The proposed surcharge to recover unrecovered purchased gas costs attributable to Opinion No. 770, including carrying charges, is $13,172,065.

Also, the revised tariff sheet reflects the flow through of amounts resulting from Trunkline Gas Company's rate adjustment to be effective November 1, 1976, which Trunkline is filing concurrently herewith. Trunkline's rate adjustment is also filed in accordance with the provisions of Opinion No. 770. The annualized amount of the Trunkline increase is $76,270,955, including surcharge and carrying charges.

The Company submits that the purchased gas cost increases by reason of Opinion No. 770 rates effective July 27, 1976, which Panhandle has included in its rates herein, have been calculated on the basis of producer filings with the Commission. To the extent that the amounts filed by the producers are subject to refund, the related amounts included in Panhandle's rates shall also be subject to refund in accordance with Section 18.5 of the General Terms and Conditions of Panhandle's tariff.

To the extent required, if any, Panhandle has requested that the Commission waive those sections of the regulations and provisions of Opinion No. 770 as it may deem necessary for the acceptance of this filing to become effective November 1, 1976.

Copies of this filing were served on Panhandle's jurisdictional customers and applicable state regulatory agencies.

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 Sections 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 October 15, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29638 Filed 10-7-76;8:45 am]

[Docket No. ER76-909]

PHILADELPHIA ELECTRIC CO.

Revised Schedules of EHV Transmission System Agreement

SEPTEMBER 30, 1976.

Take notice that on September 17, 1976, Philadelphia Electric Company

(PECO) tendered for filing revised Schedules 2.03, 3.03, 4.03, 6.02, and 8.04 modifying the EHV Agreement which is on file with the Commission according to PECO. PECO states that the parties to this Agreement are:

Public Service Electric and Gas Company
Philadelphia Electric Company
Atlantic City Electric Company
Delmarva Power & Light Company
Pennsylvania Power & Light Company
Baltimore Gas and Electric Company
Potomac Electric Power Company
Pennsylvania Electric Company
Metropolitan Edison Company
Jersey Central Power & Light Company
UGI Corporation

PECO states that the parties to the EHV Agreement have approved PECO's filing.

PECO states that the revised Schedules update the description of two transmission lines covered by the EHV Agreement. PECO states that there is no provision for any change in the monthly rate for excess of investment over investment responsibility as previously filed.

PECO states that the changes have an effective date of November 1, 1976.

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 Sections 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 October 13, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29634 Filed 10-7-76;8:45 am]

[Docket No. ER76-912]

PUGET SOUND POWER & LIGHT CO.

Notice of Filing of Contract

SEPTEMBER 30, 1976.

Take notice that on September 20, 1976, Puget Sound Power & Light Company (Puget) tendered for filing a Power Sales Contract between it and the City of Pasadena, California. Puget states that the contract provides for sales from its share of certain coal fired generation for the months of August through April each year through 1981.

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 Sections 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 October 20, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29635 Filed 10-7-76;8:45 am]

[Docket No. RP76-22]

SOUTH GEORGIA NATURAL GAS CO.

Filing of Proposed Settlement Agreement

SEPTEMBER 30, 1976.

Take notice that on September 17, 1976, South Georgia Natural Gas Company (South Georgia) tendered for filing a proposed Stipulation and Agreement.

South Georgia states that the Stipulation and Agreement is the product of discussions among the parties to the proceeding and that the Stipulation and Agreement is fully supported by all parties. In view of the support of all parties for the Stipulation and Agreement, South Georgia requests that the period for comments be shortened to fifteen days.

South Georgia requests, further, that the Commission accept for filing South Georgia FPC Gas Tariff, First Revised Volume No. 1, with Original Sheet Nos. 1 through 44 to be effective as of April 10, 1976, with First Revised Sheet No. 4 to be effective May 14, 1976, and with Second Revised Sheet No. 4 to be effective July 2, 1976, all of which sheets are filed in conjunction with the Stipulation and Agreement.

Any person desiring to be heard or to protest said filing should file comments with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 4, 1976. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of the filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29632 Filed 10-7-76;8:45 am]

[Docket No. RP73-49 (PGA76-6)]

SOUTH GEORGIA NATURAL GAS CO.

Revision to Tariff

OCTOBER 1, 1976.

Take notice that on September 27, 1976, South Georgia Natural Gas Company (South Georgia) tendered for filing Twenty-first Revised Sheet No. 3A to Original Volume No. 1 of its FPC Gas Tariff.

South Georgia states that the above sheet represents a rate change under its PGA clause for the purpose of tracking a rate increase filing made by Southern Natural Gas Company on September 27, 1976. South Georgia states that the instant filing will increase South Georgia's jurisdictional rates by $5,084,696. An effective date of October 27, 1976 is proposed.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 October 15, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29644 Filed 10-7-76;8:45 am]

[Docket No. RP76-53]

SOUTH TEXAS NATURAL GAS GATHERING CO.

Motion To Place Proposed Rates Into Effect

SEPTEMBER 30, 1976.

Take notice that on August 31, 1976, South Texas Natural Gas Gathering Company (South Texas) filed a motion, pursuant to Section 4(e) of the Natural Gas Act and Section 154.67 of the Commission's Regulations, that the proposed tariff sheets filed by South Texas on January 12, 1976, as supplements to South Texas' FPC Gas Rate Schedule Nos. 1 and 2 go into effect, subject to refund, as of August 31, 1976.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 October 8, 1976. 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 are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29631 Filed 10-7-76;8:45 am]

[Docket No. RP73-64 (PGA76-4)]

SOUTHERN NATURAL GAS CO.

Proposed Changes in FPC Gas Tariff

OCTOBER 1, 1976.

Take notice that Southern Natural Gas Company (Southern), on September 27, 1976, tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1, to become effective October 27,

1976. Southern claims such filing is pursuant to and in accordance with the Commission's Opinion No. 770 and Order Modifying Opinion No. 770 issued September 22, 1976.

Southern states that the filing provides for an increase in Southern's rates for the current cost of gas of 24.331¢ per Mcf, or $131,014,729 annually, and a surcharge adjustment of 3.624¢ per Mcf to recover an estimated $18,000,000 which was paid to producers for the period July 27, 1976 through October 26, 1976. Southern states that such surcharge adjustment includes an estimated amount for carrying costs at 9% in the amount of .188¢ per Mcf, or approximately $984,000.

Southern states that copies of the filing are being served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 October 15, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29641 Filed 10-7-76;8:45 am]

[Docket No. RP73-114 (PGA 76-4)]

TENNESSEE GAS PIPELINE CO.

Proposed PGA Filing Pursuant to Opinion No. 770

OCTOBER 7, 1976.

Take notice that on September 27, 1976, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing Substitute Thirteenth Revised Sheet Nos. 12A and 12B to Ninth Revised Volume No. 1 of its FPC Gas Tariff to be effective on October 27, 1976.

Tennessee states that the sole purpose of these revised tariff sheets is to reflect an increase in its rate of 36.02 cents per Mcf based solely on increases in its purchased gas cost resulting from producer rate increases pursuant to Opinion No. 770. Tennessee further states that this increase is based on a twelve-month amortization period for its Unrecovered Purchased Gas Cost Account and the inclusion of a 9% annual carrying charge on the balance in that account resulting from Opinion No. 770 in accord with the Commission's order issued September 22, 1976, in Docket No. RM75-14.

The annualized amount of claimed purchased gas cost increases under Opinion No. 770 is $316,076,818. The proposed surcharge to recover unrecovered purchased gas costs attributable to Opinion No. 770 for the period July 27, 1976, through October 26, 1976, is $77,775,762. Carrying charges on the unrecovered purchased gas costs are $4,182,209. The total amount claimed is $398,034,789.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 October 15, 1976. 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; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition.

Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29645 Filed 10-7-76;8:45 am]

[Docket No. RP75-75]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Tariff Filing

OCTOBER 1, 1976.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on August 10, 1976 tendered for filing revised tariff sheets to its FPC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. Such tariff sheets reflect a 0.1¢ reduction in the commodity portion of the rates which are currently effective (July 1, 1976) and those filed on July 16, 1976 to be effective on September 1, 1976. This reduction is being filed to eliminate the rate effect of separate compression charges reserved in Article XI of Transco's Settlement Agreement in Docket No. RP75-75. Transco states that because the acquisition agreement with Union Oil supersedes the letter agreement which provides that Transco pay a separate compression charge and because Transco expects to make similar arrangements with the other two producers, the issue has become moot and consequently, a rate reduction is appropriate. Transco also states that it will refund to its customers, with interest, on or about August 13, 1976 the amounts collected under Article XI of the Settlement Agreement in the instant docket which relates to the reserved issue on compression charges.

The Company states that copies of the filing have been mailed to each of the Company's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 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 October 22, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29643 Filed 10-7-76;8:45 am]

[Docket Nos. RP75-3 and RP75-75]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Tariff Filing

OCTOBER 1, 1976.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on August 30, 1976 tendered for filing revised tariff sheets to its FPC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. Such tariff sheets reflect a 0.5¢ reduction in the commodity portion of the rates to be effective August 1, 1976, September 1, 1976 and October 1, 1976. Transco states that this reduction is being filed to eliminate the rate effect of all costs related to the naphtha gasification study. In addition to the rate reduction, Transco also states that it will refund to its customers, with interest, on or about September 3, 1976 the amounts collected during the period February 1, 1975 through July 31, 1976.

In the approved settlement agreement in Docket Nos. RP74-48 and RP75-3, there was deferred for separate disposition in Article III, Section 8, the "Propriety of Inclusion of Costs Related to Expenditures in the Unsuccessful Search for Alternate Gas Supplies." Also, such issue was deferred in the approved settlement agreement in Docket No. RP75-75 (Article VII) pending the disposition in Docket No. RP75-3. Included in the costs labeled "unsuccessful search for alternate gas supplies", are costs related to a naphtha gasification study. In its Motion for Approval of Attached Offer of Settlement filed July 2, 1976 in Docket Nos. RP74-48 and RP75-3, Transco proposed among other things, to remove from cost of service in that case all costs related to the naphtha gasification study since the proposed naphtha gasification plant has obtained renewed vitality. Now that Transco is moving forward on this project, the propriety of inclusion in Transco's rates of costs related to the naphtha gasification study has become moot. Consequently, a rate reduction and refunds to eliminate such costs are appropriate.

The Company states that copies of the filing have been mailed to each of the Company's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 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 October 22, 1976. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29648 Filed 10-7-76;8:45 am]

[Docket No. RP76-35 (PGA76-3)]

UTAH GAS SERVICE CO.

Proposed Change in FPC Gas Tariff

OCTOBER 1, 1976.

Take notice that Utah Gas Service Company, on September 24, 1976, tendered for filing a Notice of Rate Change pursuant to the Purchased Gas Cost Adjustments provision of its Special Rate Schedule No. X-1 under which surplus gas is sold to Northwest Pipeline Corporation.

The purpose of the filing is to recover the jurisdictional portion of the increase in purchased gas costs resulting from Opinion No. 770. Based on estimated sales in the 12-month period ended July 31, 1976 the increase in revenues on an annual basis would be $342,395, subject to Btu adjustment. In addition, the filing provides for a surcharge to permit recovery of increases in the cost of purchased gas delivered prior to October 27, 1976, in an estimated amount of $114,589 including carrying charges.

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 Sections 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 *October 14, 1976*. 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-29639 Filed 10-7-76;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST ARABIAN CORP.

Formation of Bank Holding Company

The First Arabian Corporation, Paris, France, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842 (a)(1)) to become a bank holding company through acquisition of more than 25 per cent of the voting shares of Bank of the Commonwealth, Detroit, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 5, 1976.

Board of Governors of the Federal Reserve System, October 1, 1976.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-29619 Filed 10-7-76;8:45 am]

FIRST NATIONAL BANCORPORATION, INC.

Order Approving Acquisition of Bank

The First National Bancorporation, Inc., Denver, Colorado, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of The First National Bank of Montrose, Montrose, Colorado ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received, including those submitted by the Attorney General of the State of Colorado and by the Comptroller of the Currency,[1] in light of the factors set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

Applicant, the largest banking organization in Colorado, controls 11 banks (including the largest bank in the State) with aggregate deposits of $1.2 billion, representing approximately 16 per cent of the total deposits held by commercial banks in that State.[2] Colorado currently has 10 multi-bank holding companies that collectively control approximately 67 per cent of the total deposits and 34 per cent of all the banks in the State. The five largest banking organizations (all multi-bank holding companies) control approximately 57 per cent of total deposits and 25 per cent of all the banks in Colorado. Acquisition of Bank[3] by Applicant would contribute to some extent to increasing deposit concentration in Colorado; however, the Board regards the effects upon concentration to be only slight inasmuch as Applicant's share of State deposits would increase by no more than approximately four-tenths of one per cent.

Bank (deposits of $30 million) is the larger of two banks[4] in the relevant banking market[5] and controls approximately 63 percent of the total deposits in that market. Applicant has no subsidiaries operating in the relevant banking market, and its closest bank subsidiary to Bank is located 61 miles to the northwest of Montrose. It appears that no meaningful competition currently exists between Bank and any of Applicant's subsidiary banks, and that it is unlikely that significant competition between these institutions would develop in the future in view of the distances involved. On the basis of the facts of record, the Board concludes that consummation of the proposal would not have any significant adverse effect upon existing competition in the relevant banking market.

Applicant, as the largest banking organization in Colorado, appears to possess the financial and managerial resources necessary to establish a *de novo* bank in the relevant market and, thereby, to increase the number of banking alternatives operating therein. Although population per banking office for the market is 7,800,[6] compared to 9,300 for the State, and deposits per bank in the market[7] are below the average deposits per bank for the entire State, Montrose is growing rapidly and exhibits good prospects for continued growth in population, income, and employment oppor-

[1] In a letter to the Board, dated March 30, 1976, the Comptroller of the Currency recommended approval of this application stating that it was in the public interest. The Attorney General of Colorado, in a letter to the Board, dated March 17, 1976, while not recommending denial of the application, requested that the Board consider issues pertaining to concentration in the Colorado banking industry, competition in both the State and relevant banking markets, convenience and needs of the community to be served, and public benefits to be derived from consummation of the proposal. The Boards' conclusions with respect to these issues as they relate to this application are herein set forth.

[2] All banking data are as of June 30, 1975, unless otherwise indicated.

[3] Bank is the 18th largest independent bank and the 50th largest of the 277 banks in Colorado.

[4] The smaller bank is a subsidiary of the second largest banking organization in Colorado. In addition, a new bank opened on August 30, 1976, in Olathe, which is ten miles north of Montrose.

[5] The relevant banking market is approximated by the eastern portion of Montrose County, which is divided in half by the Uncompahgre Forest.

[6] This figure is reduced to 5,200 when the new bank in Olathe is taken into account.

[7] Nevertheless, the market's average for deposits per bank is nearly double that of any of the three adjacent counties.

tunities.[8] As a result, the Montrose banking market may be regarded as marginally attractive for *de novo* entry in the future. In light of the future economic prospects for the Montrose area and Applicant's ability to effect an alternative means of entry into the area, consummation of this proposal would eliminate Applicant as a potential *de novo* entrant into the relevant market. However, the effects of this elimination are minimized by the existence of several other potential entrants into the relevant market, including several Colorado multi-bank holding companies that have not entered the market but have the resources to do so. Inasmuch as the relevant market is only marginally attractive for *de novo* entry in the future and there exist other potential entrants into that market, it is the Board's judgment that, on balance, consummation of Applicant's proposal would have only slightly adverse effects upon potential competition.

The financial and managerial resources and future prospects of Applicant, its subsidiaries, and Bank are considered to be generally satisfactory based upon information in the record, including all bank examination information available to the Board. In addition, Applicant's overall financial condition will enable it to augment the capital of any of its subsidiaries should there be a need to do so in the future. Accordingly, the Board regards the banking factors as being consistent with approval of the application.

Affiliation of Bank with Applicant would enable Bank to receive Applicant's financial and managerial expertise and would provide a variety of additional services to the market. In view of the increase in economic activity that is expected in the Montrose area, it appears that the provision of these additional services by Applicant, through Bank, will have some beneficial effect upon the area in providing for its convenience and needs for banking services. Accordingly, the Board concludes that the considerations relation to the convenience and needs of the community to be served lend weight toward approval of the application and are sufficient to outweigh any slightly adverse effects that the proposal may have on potential competition. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record,[9] the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[10] effective September 30, 1976.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-29620 Filed 10-7-76;8:45 am]

[8] From 1970–1975, the populations of Montrose County and town, respectively, increased 13.6 and 25.9 percent. In addition, the average household income for Montrose County increased 85.6 percent during the same period.

[9] Dissenting Statement of Governor Coldwell filed as part of the original document. Copies are available upon request to Board of Governors of the Federal Reserve System, Washington, D.C. 20551 or to the Federal Reserve Bank of Kansas City.

[10] Voting for this action: Vice Chairman Gardner and Governors Wallich, Jackson, and Lilly. Voting against this action: Governor Coldwell. Absent and not voting: Chairman Burns and Governor Partee.

FIRST NATIONAL CHARTER CORP.

Proposed Acquisition of Charter Bankers Life Insurance Company

First National Charter Corporation, Kansas City, Missouri, has applied, pursuant to Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Charter Bankers Life Insurance Company, Kansas City, Missouri. Notice of the application was published on August 11, 1976, in "The Kansas City Star," a newspaper circulated in Kansas City, Missouri.

Applicant states that the proposed subsidiary would engage in the activities of underwriting credit life and credit accident and health insurance directly related to extensions of credit by its credit-granting subsidiaries. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 3, 1976.

Board of Governors of the Federal Reserve System, September 30, 1976.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-29621 Filed 10-7-76;8:45 am]

FIRST OKMULGEE CORP.

Formation of Bank Holding Company

First Okmulgee Corporation, Okmulgee, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares of First National Bank and Trust Company, Okmulgee, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 2, 1976.

Board of Governors of the Federal Reserve System, October 4, 1976.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-29622 Filed 10-7-76;8:45 am]

LISCO STATE CO.

Order Approving Formation of a Bank Holding Company

Lisco State Company, Lisco, Nebraska ("Applicant"), has applied for the Board's approval pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)) and § 225.3(a) of Regulation Y (12 CFR 225.3(a)) to become a bank holding company through the acquisition of 89 percent or more of the voting shares of Lisco State Bank, Lisco, Nebraska ("Bank").

Notice of the application, affording an opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act (41 FR 30068). Time for filing comments and views has expired and the application and all comments received have been considered in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Upon acquisition of Bank (deposits of $3.6 million), Applicant would control the 356th largest bank in Nebraska, holding .05 percent of total deposits in commercial banks in the State.[1] Bank is the smallest of the three banks located in Garden County, which approximates the relevant banking market, and controls 20.52 percent of deposits therein. Acquisition of Bank would result in no immediate change in banking services available in the relevant market.

[1] Unless otherwise indicated, all banking data are as of December 31, 1975.

Applicant's principal shareholder has ownership interests in one Colorado and two Nebraska one-bank holding companies. The subsidiary banks of these holding companies are located considerable distances from Bank and operate in different banking markets. Inasmuch as the proposal to form a bank holding company represents a restructuring of the existing ownership of Bank into corporate form, consummation of the proposal would eliminate neither existing nor potential competition, nor does it appear that there would be any adverse effects on other banks in the trade area.

The financial and managerial resources and future prospects of Applicant, which are dependent on those of Bank, are considered satisfactory and consistent with approval. The debt to be incurred by Applicant appears to be serviceable from the income derived from Bank without having an adverse effect on the financial condition of either Applicant or Bank. Accordingly, considerations relating to banking factors are consistent with approval of the application.

Although consummation of the proposal would cause no changes in the banking services offered by Bank, considerations relating to the convenience and needs of the community to be served are consistent with approval. It has been determined that consummation of the transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[2] effective October 1, 1976.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-29623 Filed 10-7-76;8:45 am]

SANTA ANA BANCORP., INC.

Formation of Bank Holding Company

Santa Ana Bancorp., Inc., St. Ann, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 per cent or more of the voting shares of Bank of St. Ann, St. Ann, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 29, 1976.

Board of Governors of the Federal Reserve System, October 4, 1976.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-29624 Filed 10-7-76;8:45 am]

[2] Voting for this action: Vice Chairman Gardner and Governors Coldwell, Jackson, Partee, and Lilly. Absent and not voting: Chairman Burns and Governor Wallich.

GENERAL SERVICES ADMINISTRATION

Proposed Policy Revision

FEDERAL AGENCY HOUSING AND COMMUNITY PLANNING

Opportunity for Comment

Notice is hereby given that the General Services Administration is considering a revision to its policy on Federal agency housing and community planning to reflect, among other things, criteria by which Federal building construction proposals would be developed. The proposed change is presented as it would appear in Chapter 4, Public Buildings and Space, of the GSA Policy Manual.

Any person who wishes to submit written data, views, or objections pertaining to the proposed policy may do so by filing them, in duplicate, with the Commissioner, Public Buildings Service, (P), General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, on or before December 8, 1976. This notice is being published at the request of the Office of Management and Budget.

Dated: October 6, 1976.

TERRY CHAMBERS,
Acting Administrator.

CHAPTER 4. PUBLIC BUILDINGS AND SPACE

PART I. FEDERAL AGENCY HOUSING AND COMMUNITY PLANNING

1. *Federal Agency Housing.*

a. *Basic Policy.* The General Services Administration (GSA) will satisfy the long range space requirements of Federal agencies through the most cost effective methods practicable with full consideration given to such factors as compatibility with local plans for development or redevelopment and the socioeconomic impact of the proposed actions. The term "Federal agencies" includes all establishments for which GSA provides space as defined in the Public Buildings Act of 1959. Long range plans for housing Federal agencies shall be developed after careful analysis of appropriate housing alternatives, including continued use of Government-owned or leased space; major alterations, conversions, and/or extensions to existing Government-owned space; new construction; acquiring lease space; the purchase of privately owned buildings; or a combination of these.

b. *Operating Policy.* (1) GSA will maintain a system for monitoring the short range and long range housing requirements of Federal agencies. (2) In order to properly evaluate Federal construction as an alternative in satisfying agency space requirements, direct Federal construction proposals shall be developed according to the following criteria:

(a) Federal construction projects will be developed based on their comparative urgency of need with due regard for the eqiutable distribtuion of public buildings throughout the Nation.

(b) Proposals with a unitized cost significantly greater than existing housing shall require substantial justification.

(c) Proposed projects shall result in effective consolidation of agency activities. Priority shall be given to consolidation of related activities of individual agencies and to consolidating agencies with similar program missions. General consolidation of unrelated Federal activities shall be given a lower priority.

(d) The construction of the proposed project will provide for the consolidation of Federal activities and will result in significantly improved delivery of Government services and convenience to the public.

(e) The project proposal will be compatible with, to the greatest extent practicable, local plans for growth and development.

(f) The construction of the proposed project will result in expanded socioeconomic benefits to the community. This criterion shall be considered satisfied when the community for which the project is proposed has experienced a recent history of high and/or persistent unemployment in its geneal economy and in the construction industry, and the delineated area for the proposed project contains an urban development or redevelopment area or it is considered a low income area.

(g) Adequate low and moderate income housing will be available and accessible on a nondiscriminatory basis to the Federal employees to be housed in the proposed project.

(3) In unique situations such as international border station facilities as one example, Federal construction may be the only viable option for satisfying agency requirements. In such circumstances, the criteria listed in (2) above may be waived, subject to those established by applicable laws, orders, or directives.

(4) When the leasing of privately owned space is determined to be the preferred method of satisfying agency requirements, suitable space shall be acquired at rental rates commensurate with prevailing price levels for comparable space in the rental market of the community where the project will be located.

2. *Community Planning.*

a. *Basic Policy.* Federal space requirements shall be determined through continuous surveys and investigations of agency space needs in communities throughout the Nation. Plans for housing Federal agencies shall be developed pursuant to the requirements established by the Public Buildings Act of 1959, as amended; Executive Order 11512; Intergovernmental Cooperation Act of 1968; National Environmental Policy Act of 1969; and other applicable laws, orders, and directives.

b. *Operating Policy.* (1) Basic community planning data will be assembled in the development of Federal projects to ensure their compatibility with local planning objectives. Federal projects are defined as public building construction projects and lease construction projects required to be authorized in accordance with, or in the manner provided by, the provisions of the Public Buildings Act of 1959, as amended, and projects involving a significant change in the use of Federally owned property or property to be acquired by exchange in connection with a public buildings project authorized under the provisions of the Public Buildings Act of 1959, as amended, or in the Federal Property and Administrative Services Act of 1949, as amended.

(2) In the conduct of space surveys and planning studies, GSA will take care to avoid

any implication to Federal, State, or local officials or others that the planning survey will lead to a Federal project in the community.

(3) In developing long range housing plans for Federal agencies, maximum use shall be made of existing Government-owned buildings (including excess property) which are adequate or economically adaptable to the space needs of agencies. In determining whether to retain or excess an existing Government-owned building, its historical and/or architectural significance and the development or redevelopment plans of the community shall be given consideration in the planning analysis.

(4) In determining the need for development or redevelopment, the availability of low and moderate income housing, and other socio-economic conditions in connection with planning studies for particular communities, GSA will also consult with and receive advice from the Departments of Housing and Urban Development; Health, Education, and Welfare; Commerce; and others, as appropriate.

(5) Planning proposals shall reflect the objective of promoting the efficient performance of the missions and programs of the executive agencies with due consideration given to convenience to the public, beneficial socioeconomic impact, and safe and healthful working conditions for employees and the public.

(6) Because of the importance of the Federal interest in the National Capital Region and in order that the effect of the Federal Government's activities will be consistent with and directed in a manner which will foster the implementation of modern planning concepts, GSA, in collaboration with other Federal agencies, will be guided by the development policies and guidelines issued by the National Capital Planning Commission in its Comprehensive Plan for the Washington, D.C., area. The feasibility of decentralizing services or activities which can be carried on elsewhere in the Nation without excessive costs or significant loss of efficiency shall be considered in accordance with the general criteria promulgated under the Office of Management and Budget Circular A–60, Criteria for Decentralizing Federal Activities from the National Capital Region.

(7) In the development of planning proposals for particular communities, contact shall be made with the United States Postal Service (USPS) at the earliest practicable date in the planning process so as to ensure effective coordination between GSA and USPS in satisfying Government space requirements.

[FR Doc.76–29868 Filed 10–7–76;8:45 am]

[Federal Procurement Rgs.; Temporary Rg. 40]

NEGOTIATED CONTRACTS INCLUDING ADMINISTRATION OF COST ACCOUNTING STANDARD 414

Pricing Policy

• 1. *Purpose.* This FPR Temporary Regulation provides interim policies and procedures to implement the Cost Accounting Standards Board (CASB) Part 414—Cost Accounting Standard (CAS), Cost of money as an element of the cost of facilities capital. •

2. *Effective date.* This regulation is effective October 1, 1976.

3. *Expiration date.* This regulation will continue in effect until canceled.

4. *Background.* a. Subpart 1–3.12 prescribes policies and procedures with respect to the application of regulations and standards of the CASB to both negotiated national defense contracts and negotiated nondefense contracts, effective as promulgated by the CASB. CAS 414, which is effective October 1, 1976, establishes criteria for the measurement and allocation of the cost of capital committed to facilities. The computation is required on each CAS-covered contract (defense and nondefense) in accordance with a form (CASB–CMF) and instructions stipulated in the standard. This technique takes explicit account of the varying capital asset commitments among contracts and therefore provides improved understanding of this factor in pricing determinations.

b. Present FPR pricing policy requires that capital asset commitments should be considered in determining profit or fee in all contracts; i.e., § 1–3.808–2 (d), (e), and (f), respectively, extent of Government assistance, extent of the contractor's investment, and character of contractor's business.

c. Until the publication of Defense Procurement Circular (DPC) Number 76–3, effective October 1, 1976, the Armed Services Procurement Regulation (ASPR) also considered capital asset commitments as factors in determining profit or fee. Additionally, for many contracts negotiated under cost analysis techniques, the ASPR utilizes a structured methodology (Weighted Guidelines) to arrive at the Government's going-in profit objective.

d. DPC 76–3 makes changes in this structured profit policy to provide more specifically that the level of facility investment, as measured by CAS 414 techniques, will be recognized in reaching the prenegotiation profit objective. The DPC also provides that the imputed costs measured and allocated in accordance with CAS 414 are to be allowable costs on most negotiated DOD contracts which are priced on the basis of cost analysis. The DPC provides for a profit objective offset of the allowed imputed cost both (1) in the formula under the Weighted Guidelines structure, and (2) by an appropriate reduction in the profit objective to compensate for CAS 414 allowed costs where other methods (nonstructured) are used to establish a profit objective.

e. The Office of Federal Procurement Policy (OFPP) is actively considering the issues raised by CAS 414, particularly in relation to the Commission on Government Procurement recommendations A–28, A–30, and A–35 concerning Government-wide principles on cost allowability, uniform guidelines for equitable profit objectives, and stimulation of contractor acquisition of production facilities. It is anticipated that the policies and procedures expressed in this temporary regulation will be superseded by policies evolving from OFPP initiatives.

5. *Agency action.* a. Agencies may employ, during the term of this regulation, pricing policies consistent with the rules and regulations of the Cost Accounting Standards Board (CASB), the Federal Procurement Regulations, and this temporary regulation. In this regard, five options are provided by subparagraphs (1) through (5) of this paragraph 5.

(1) *Option 1.* Agencies may elect not to change pricing policies. If this option is elected, the following pricing policies are applicable:

(a) Recognition of contractor investment will continue as a factor in determination of profit or fee (§ 1–3.808–2 (d), (e), and (f)).

(b) Negotiated contracts which are subject to the provisions of Subpart 1–3.12, Cost Accounting Standards, both defense and nondefense (§ 1–3.1203(a) (1) and (2), respectively), require measurement and allocation of the cost of money as an element of the cost of facilities capital in accordance with CAS 414 (CAS 414 imputed costs).

(c) CAS 414 imputed costs, for contracts subject to Subpart 1–3.12, shall be treated in accordance with CAS 405, Accounting for unallowable costs, and will be considered in accordance with subparagraph (a) above.

(2) *Option 2.* Agencies may elect to withdraw the applicability of CAS 414 to nondefense contracts. If this option is elected, the following pricing policies are applicable:

(a) Recognition of contractor investment will continue as a factor in determination of profit or fee (§ 1–3.808–2 (d), (e), and (f)).

(b) Negotiated defense contracts (§ 1–3.1203(a)(1)) which are subject to the provisions of Subpart 1–3.12, Cost Accounting Standards, require measurement and allocation of the cost of facilities capital in accordance with CAS 414 (CAS 414 imputed costs).

(c) CAS 414 imputed costs for defense contracts subject to Subpart 1–3.12 shall be treated in accordance with CAS 405, Accounting for unallowable costs, and will be considered in accordance with subparagraph (a) above.

(d) Negotiated nondefense contracts otherwise subject to CASB rules will not be subject to CAS 414. This status shall be reflected by contract clause (see subparagraph d) recognition in each affected contract.

(3) *Option 3.* Agencies may elect to withdraw the applicability of CAS 414 to nondefense contracts and to make CAS 414 imputed costs allowable only for CAS-covered defense contracts. If this option is elected, agencies shall modify their profit policies applicable to defense CAS-covered contracts to take into consideration the explicit recognition of CAS 414 imputed costs; i.e., on an overall agency basis, a policy objective shall be that aggregate prices will not increase. Defense CAS-covered contracts shall include contract clause (see subparagraph e) recognition for progress payment or cost reimbursement purposes. Nondefense CAS-covered contracts shall include contract clause (see subparagraph d) recognition of CAS 414 withdrawal.

(4) *Option 4.* Agencies may elect to make CAS 414 imputed costs allowable for both defense and nondefense CAS-covered contracts. If this option is

elected, agencies shall modify their profit policies applicable to both defense and nondefense CAS-covered contracts to take into consideration the explicit recognition of CAS 414 imputed costs; i.e., on an overall agency basis, a policy objective shall be that aggregate prices will not increase. CAS-covered contracts shall include contract clause (see subparagraph e) recognition for progress payment or cost reimbursement purposes.

(5) *Option 5.* Agencies may elect to make CAS 414 imputed costs allowable for contracts subject to cost accounting standards pursuant to Subpart 1-3.12 and also to any other negotiated contracts. Agencies shall modify their profit policies which are applicable to contracts for which CAS 414 imputed costs have been made allowable so that the policies take into consideration the explicit recognition of CAS 414 imputed costs; i.e., on an overall agency basis, a policy objective shall be that aggregate prices will not increase. Such contracts shall include contract clause (see subparagraph e) recognition for progress payment or cost reimbursement purposes.

b. Agencies shall ensure that subcontract flow-down provisions are compatible with agency pricing policy elections.

c. If an agency now utilizes a structured pricing policy and elects to make CAS 414 imputed costs allowable, the agency shall take into consideration the explicit recognition of such costs; i.e., on an overall agency basis, a policy objective shall be that aggregate prices will not increase.

d. The following contract clause is suggested for use when an agency elects Options 2 or 3:

COST ACCOUNTING STANDARD WITHDRAWAL

Cost Accounting Standard 414—Cost of money as an element of the cost of facilities capital—is withdrawn from application to the provisions of the clauses in this contract entitled "Cost Accounting Standards" and "Administration of Cost Accounting Standards."

e. The following contract clause is suggested for use when an agency elects Options 3, 4, or 5:

FACILITIES CAPITAL COST OF MONEY

Costs defined, measured, and allocated in accordance with Cost Accounting Standard 414—Cost of money as an element of the cost of facilities capital—qualify as costs incurred for purposes of the "Allowable Cost, Fee, and Payment" or "Progress Payments" clause of this contract.

f. With reference to the content of CAS 414, the purpose of Form CASB-CMF is to accumulate capital values and convert them to cost of money factors. Additional computation is required to determine facilities capital employed for a specific contract. It is suggested that agencies consider use of DD Form 1861 (July 30, 1976) and accompanying instructions for this purpose. This information is contained on pages 36 and 37 of DPC 76-3, 1 September 1976.

g. Agencies shall furnish a copy of each policy action issued pursuant to this temporary regulation to the General Services Administration (FV), Washington, DC 20406.

Dated: October 1, 1976.

JACK ECKERD,
Administrator of General Services.

[FR Doc.76-29541 Filed 10-7-76;8:45 am]

[GSA Bulletin FPMR D-143]

SMOKING IN GSA-CONTROLLED BUILDINGS AND FACILITIES

Guidelines

SEPTEMBER 17, 1976.

• 1. *Purpose.* This bulletin notifies Federal agencies of the guidelines established by the General Services Administration for controlling smoking in public areas and large working areas in GSA-controlled buildings and facilities. •

2. *Expiration date.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *Background.* a. During the past several years, GSA has received numerous letters from nonsmokers requesting that smoking be prohibited either altogether or in certain areas of buildings under GSA jurisdiction. Answers to these letters emphasized the vast number of buildings and amount of space therein managed by GSA, involving hundreds of thousands of employees and visitors, and the impracticability of controlling smoking except in areas where inherent dangers are obvious.

b. In view of the continuing concern about this matter, further consideration was given in November 1973, to the finding of the Surgeon General, as reflected on each pack of cigarettes and in advertising, that cigarette smoking is dangerous to one's health and to studies by the Department of Health, Education, and Welfare showing that an atmosphere contaminated with tobacco smoke can contribute to the discomfort of many individuals. GSA Bulletin FPMR D-102, Smoking in GSA-controlled buildings, was issued November 27, 1973, setting forth guidelines.

4. *Rights of employees.* GSA recognizes the right of individuals working or visiting in GSA-controlled buildings or space to an environment which is reasonably free from contaminants. Consideration should also be given to the right of an employee to smoke under reasonable conditions as determined by the supervisor of the organizational unit to which he or she is assigned.

5. *Action by agency officials and employees.* a. GSA requests that the agency head in each building take affirmative action to implement the guidelines set forth in this bulletin.

b. The full cooperation of all supervisors and employees is requested in ensuring that an equitable balance is maintained between the rights of nonsmokers and those of smokers in implementing or enforcing the smoking guidelines set forth in par. 6.

6. *Guidelines.* Occupant agency officials are requested to observe the following guidelines:

a. *Auditoriums and conference rooms.* Smoking is not permitted in auditoriums. Action will be taken by each GSA buildings manager to post no smoking signs outside the entrances to auditoriums and to place receptacles for cigarette butts outside all entrances to auditoriums. Smoking may be permitted in conference rooms only (1) if they are properly ventilated, as jointly determined by each buildings manager and/or each area manager and each local head of each occupant agency, or (2) if they are equipped with mechanical air cleaners. If not, smoking should be prohibited in these areas, and signs and receptacles should be placed outside the entrances.

b. *Cafeterias.* No smoking areas should be established in cafeterias contracted by GSA. These areas should be designated by each GSA buildings manager in collaboration with the heads of occupant agencies based on an estimate of the relative number of smoking and nonsmoking patrons served, which may be adjusted on the basis of local experience. The no smoking areas should be identified by appropriate signs.

c. *Elevators.* Elevators should be designated as no smoking areas. No smoking signs should be posted in all elevators.

d. *Shuttle vehicles.* Smoking will be prohibited in shuttle vehicles under the jurisdiction of GSA. No smoking signs will be posted in all such vehicles.

e. *Work areas.* The establishment of no smoking work areas in large open space with many employees (e.g., engineering and drafting offices, typing pools, and card punch areas) should be thoroughly investigated. Supervisors should plan work space in such a way that employees who desire a no smoking area can be accommodated, provided that: (1) Efficiency of work units will not be impaired; (2) additional space will not be required; and (3) costly alterations to the space or procurement of additional office equipment will not be necessary. The no smoking areas should be identified by appropriate signs. In establishing and continuing a smoking policy in work areas under their jurisdiction, supervisors should strive to maintain an equitable balance between the rights of nonsmokers and those of smokers.

f. *Medical care facilities.* In medical clinics and employee health units, smoking should be restricted to visitor waiting areas, staff lounges, private offices, and specially designated areas. If possible and practical, waiting areas should be divided into smoking and no smoking areas.

7. *Cancellation.* GSA Bulletin FPMR D-102, issued November 27, 1973, is canceled.

NICHOLAS A. PANUZIO,
Commissioner,
Public Buildings Service.

[FR Doc. 76-29542 Filed 10-7-76;8:45 am]

TRANS-ALASKA PIPELINE

Priorities Assistance for Construction

This notice amends the General Services Administration and Federal Energy

Administration notices of December 30, 1974 (40 FR 26), and January 31, 1975 (40 FR 5409), which notices amended that of September 23, 1974 (39 FR 34608). Together, these notices, subject to the terms and conditions contained therein, authorize priorities assistance and allocations support under the Defense Production Act of 1950, as amended, for the development and production of Alaska North Slope oil resources.

This action is necessary because the construction schedule for the third flow station and associated facilities (Increment 3) on the east field has been delayed pending resolution of issues relating to unitization of the Prudhoe Bay field. In addition, severe weather conditions and uncertain transportation capability constitute an added threat to the timely delivery of equipment and supplies.

In the formulation of this notice, there was consultation with representatives of industry receiving the priorities and allocations suport, and consideration has been given to their recommendations. Further consultation with other industries, including trade associations, was rendered impracticable because this notice applies to numerous trades and industries.

By virtue of the authority vested in the President by Title I of the Defense Production Act of 1950, as amended, and delegated pursuant to Executive Orders 10480 of August 14, 1953, 11725 of June 27, 1973, and 11790 of June 25, 1974, the General Services Administration and the Federal Energy Administration notices of December 30, 1974, and January 31, 1975, are ameded to revise the expiration date appearing in those notices to read December 1, 1976. These notices are further amended to limit the use of the priorities assistance and allocations support to the construction schedule for the third flow station and associated facilities on the east field of the North Slope, for the materials and equipment to be shipped to Prudhoe Bay through the summer of 1978.

This notice is effective as of October 1, 1976.

Dated: October 4, 1976.

FRANK G. ZARB,
Administrator.
Federal Energy Administration.

LESLIE W. BRAY, JR.,
Director, Federal Preparedness Agency, General Services Administration.

[FR Doc.76-29543 Filed 10-7-76;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR MATHEMATICAL SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Mathematical Sciences.

Date and Time: October 28 and 29, 1976; 9:00 am each day.

Place: Room 321, National Science Foundation, 1800 G Street, N.W., Washington, D.C.

Type of meeting: Part Open—Open 10/28 all day. Closed 10/29—9:00 a.m.-10 a.m., open remainder of meeting.

Contact person: Dr. William H. Pell, Head, Mathematical Sciences, Section, Rm. 302, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-7377.

Summary minutes (open Portion): May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Rm. 214, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in the mathematical sciences.

AGENDA

THURSDAY, OCTOBER 28

9:00 a.m.	Introduction and Opening Remarks—Dr. William H. Pell, Head, Mathematical Sciences Section.
9:15 a.m.	Recapitulation of FY 1976 and FY 1976 Transition Quarter Operations—Dr. William H. Pell and Dr. Alvin I. Thaler, Program Director for Algeb.
10:00 a.m.	Remarks on the NSF FY 1977 Budget—Dr. John R. Pasta, Director, Division of Mathematical and Computer Sciences.
10:45 a.m.	The Peer Review System—Section Staff.
11:30 a.m.	The Mathematical Sciences in China—Dr. G. F. Carrier, T. Jefferson Coolidge Professor of Applied Mathematics, Harvard University.
12:15 p.m.	Recess.
1:30 p.m.	Review of the Applied Mathematics Program—Mr. B. R. Agins, Program Director for Applied Mathematics.
5:00 p.m.	Adjourn.

FRIDAY, OCTOBER 29

9:00 a.m.	(Closed) Review and Evaluation of Research Proposals—Staff.
10:00 a.m.	Future Plans; The Mathematics Research Institute—Dr. Pasta and Section Staff.
11:30 a.m.	Discussion of possible Replacements of Rotators.
12:30 p.m.	Adjourn.

Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act. Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

OCTOBER 5, 1976.

[FR Doc.76-29712 Filed 10-7-76;8:45 am]

ADVISORY PANEL FOR METABOLIC BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, P. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology.

Date and time: October 28, and 29, 1976; 9:00 a.m. each day.

Place: National Science Foundation, 1800 G Street, N.W., Washington, D.C., Room 511.

Type of meeting: Closed

Contact person: Dr. Elijah B. Romanoff, Program Director for Metabolic Biology, Room 331, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4312.

Purpose of panel: To provide advice and recommendations concerning support for research in Metabolic Biology.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is, thus, subject to exemption (5) of the Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

OCTOBER 5, 1976.

M. REBECCA WINKLER,
Acting Committee Maagement Office.

[FR Doc.76-29713 Filed 10-7-76;8:45 am]

ADVISORY PANEL ON SCIENCE EDUCATION PROJECTS

Renewal

Pursuant to the Federal Advisory Committee Act, P.L. 92-463, I have hereby determined that the renewal of the Advisory Panel on Science Education Projects is necessary and is in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Office of Management and Budget (OMB), pursuant to section 14(a)(1) of the Federal Advisory Committee Act and OMB Circular No. A-63, Revised.

Authority for this advisory panel shall expire on October 8, 1978, unless the Director of the National Science Foundation formally determines that continuance is in the public interest.

RICHARD C. ATKINSON,
Acting Director.

OCTOBER 5, 1976.

[FR Doc.76-29711 Filed 10-7-76;8:45 am]

ADVISORY PANEL FOR SCIENCE EDUCATION PROJECTS; SUBPANEL ON UNDERGRADUATE RESEARCH PARTICIPATION PROGRAM

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel on Undergraduate Research Participation Program, Advisory Panel for Science Education Projects.

Dates and times: October 28–30, 1976—9 a.m. to 5 p.m. each day.

Place: Sheraton-Park Hotel, 2660 Woodley Road, N.W., Washington, D.C. and simultaneously at Quality Inn Downtown, Massachusetts Avenue and Thomas Circle, N.W., Washington, D.C.

Type of meeting: Closed.

Contract person: Dr. Lafe R. Edmunds, Coordinator, Student-Oriented Programs, Room W–400, National Science Foundation, Washington, D.C. 20550, tel: (202) 282–7150.

Purpose of subpanel: To provide advice and recommendations concerning support in the Undergraduate Research Participation Program.

Agenda: To review and evaluate specific education proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. Rebecca Winkler,
Acting Committee Management Officer.

October 5, 1976.

[FR Doc.76–29714 Filed 10–7–76;8:45 am]

OFFICE OF TELECOMMUNICATIONS POLICY

UNITED STATES INMARSAT PREPARATORY COMMITTEE WORKING GROUP

Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and the Office of Management and Budget (OMB) Circular No. A–63, and after consultation with OMB, the Director of the Office of Telecommunications Policy has determined that the establishment of the U.S. INMARSAT Preparatory Committee Working Group is in the public interest in connection with the performance of duties imposed on this Office by Sec 2(d) of Executive Order 11556, 3 CFR 956 (1970).

The Working Group will advise the Director on the various positions to be taken by the U.S. Government on issues under consideration by the INMARSAT Preparatory Committee. That Preparatory Committee was established by the Second Session of the International Conference on the Establishment of an International Maritime Satellite System (INMARSAT) to conduct economic and technical studies and to prepare draft organizational structure and financial and staff regulations. The Office of Telecommunications Policy will continue to require the advice of the Working Group until such time as the INMARSAT Preparatory Committee is replaced by a fully functioning INMARSAT organization.

The Working Group will consist of approximately 25 members. In order to provide for an adequate balancing of views, representatives will be appointed from all entities having an interest in INMARSAT, including but not limited to those parties who participated in the initial INMARSAT negotiations.

The Working Group will report and be responsible to the Director and will function solely as an advisory body in compliance with the Federal Advisory Committee Act and OMB Circular A–63. Copies of its charter shall be filed under the Act on or before October 26, 1976.

Interested persons are invited to submit comments regarding the establishment of the U.S. INMARSAT Preparatory Committee Working Group. Such comments, as well as related inquiries, may be addressed to Mr. L. Daniel O'Neill, Advisory Committee Management Officer, Office of Telecommunications Policy, 1800 G Street NW., Washington, D.C. 20504, 202–395–5174.

Thomas J. Houser,
Director.

October 6, 1976.

[FR Doc.76–29914 Filed 10–7–76;10:14 am]

SMALL BUSINESS ADMINISTRATION

FARGO DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Fargo District Advisory Council will hold a public meeting at 9:30 a.m., Thursday, October 21, 1976, at the Ramada Inn, Jamestown, North Dakota, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information write or call E. Maine Shafer, U.S. Small Business Administration, Federal Office Building—Room 218, P.O. Box 3086, Fargo, North Dakota 58102, (701) 783–5131.

Dated: October 5, 1976.

Henry v. Z. Hyde, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.76–29599 Filed 10–7–76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of 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 September 29, 1976 (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

U.S. CIVIL SERVICE COMMISSION

Test study of paid leave provisions:
Single-time, private establishment employing 50 or more employees, Strasser, A., 395–5867.

DEPARTMENT OF COMMERCE

National Bureau of Standards:
Private sector R & D management interview Guide, NBS–1069, single-time, private sector R & D performers and manufacturers, Ellett, C. A., 395–5867.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education:
Data collection forms in response to section 437, GEPA, calendar 1976 collection, single-time, 50 states, Washington, D.C. 2 regional offices, Kathy Wallman, 395–6140.

Food and Drug Administration:
Effects on offspring of high level exposure to microwave radiation, single-time, armed forces personnel exposed to radar, Richard Eisinger, 395–6140.

Social Security Administration:
Hospital, hospital-skilled nursing facility complex, cost, SSA–2551, 2551 A through, annually, hospitals, skilled nursing facilities, Caywood, D.P., 395–3443.
Individualized service plan (short form, extended form 1 and 2), SSA–3407, 34 3407B, on occasion, all medicare-certified clinical psychologists, Caywood, D. P., 395–3443.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Policy development and research:
Survey of Landlords-Section 8 program, single-time, landlords in 90 SMSA's, housing, veterans and labor division, Sunderhauf, M. B., 395–3532.

Contract H–2555 Community Issues Dialog Northwest Regional Foundation, Spokane, Wash., single-time, individuals, housing, veterans and labor division, information systems division, 395–3532.

Housing Management:
Field Office Inventory of Deferred Maintenance on Capital Improvement Needs; Regional Office Summary, HUD–53002, HUD–53002–A, single-time, selected public housing agencies, housing, veterans and labor division, Sunderhauf, M. B., 395–3532.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration:
Regulations Governing Applications Under Section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, on occasion, railroads and other persons, Strasser, A., 395–5867.
Regulations Governing Applications Under Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, on occasion, railroads and other persons, Strasser, A., 395–5867.

Federal Highway Administration:
Highway Needs and State Revenues From Energy Resource Activities, single-time, State highway departments, Strasser, A., 395–5867.

REVISIONS

VETERANS ADMINISTRATION

Physician's Approval for Hypodermic Injections, 5–3986, on occasion, private physicians, Warren Topelius, 395–5872.

DEPARTMENT OF COMMERCE

Bureau of Census:
(Part of 1980 Decennial Census of Population and Housing) Prelist Address Register DE 101, DE 102, single-time, housing units in test area not covered by commission mailing list, George Hall, 395–6140.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration:
Statement Regarding School Attendance, SSA–1372, on occasion, full-time students between 18–22, Caywood, D. P., 395–3443.

DEPARTMENT OF LABOR

Employment and Training Administration:
Claims and Payment Activities, ES–213, monthly, State employment security offices, Strasser, A., 395–5867.
Interstate Arrangement for Combining Employment and Wages, MA5–86, quarterly, State employment security offices, Strasser, A., 395–5867.

EXTENSIONS

GENERAL SERVICES ADMINISTRATION

Forms for use by Displaced Persons in Applying for Benefits Under the Uniform Relocation Assistance and Real Property Act, SF 260, on occasion, individuals, Caywood, D. P., 395–3443.

DEPARTMENT OF COMMERCE

Bureau of Census:
Asphalt and Tar Roofing and Siding Products-Monthly Shipments, MA–29A, monthly, manufacturers, Cynthia Wiggins, 395–5631.
Hardwood Plywood (Consumption of Selected Materials, Production and Shipments) Annual Report, MA–24F, annually, manufacturers, Cynthia Wiggins, 395–5631.
Annual Report on Shipments and Production of Industrial Gases, MA–28E.2, annually, manufacturers, Cynthia Wiggins, 395–5631.
Electric Housewares and Fans, MA 36E, annually, manufacturers, Cynthia Wiggins, 395–5631.
Cotton, Man-Made Fiber Staple and Raw Linters Consumption and Stocks, MA–22P, annually, manufacturing plants consuming raw cotton and manmade fiber, Cynthia Wiggins, 395–5631.
Commercial Steel Forgings, MA34C, annually, manufacturers, Cynthia Wiggins, 395–5631.
Selected Industrial Air-Pollution Equipment—Annual Manufacturers Report, MA–35J, annually, manufacturing establishments, Ellett, C. A., 395–5867.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education:
Application for Federal Assistance (Short Form)—Section 1203 HEA Comprehensive Planning Grants, OE 1279, annually, State Commission, Caywood, D. P., 395–3443.

Center for Disease Control:
A Research Action Evaluation Program for Venereal Disease in Los Angeles, CDC 1107, single-time, VD clinic patients and VD clinic personnel, George Hall, 395–6140.

Social Security Administration:
Home Health Agency Statement of Reimbursable Cost—Hospital Based Home Health Agency Statement of Reimbursable Cost, SSA–1728, annually, health care providers, Caywood, D. P., 395–3443.
Notice of Change in School Attendance, SSA–1383, on occasion, student beneficiaries, Warren Topelius, 395–5872.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management:
Application for Tenant Eligibility Under the Section 236 Program, FHA 3131, on occasion, low and moderate income households, Housing, Veterans and Labor Division, 395–3532.
Biennial Certification of Family Income and Composition Under The Section 236 Program, FHA 3132, on occasion, low and moderate income households, Housing, Veterans and Labor Division, 395–3532.

DEPARTMENT OF JUSTICE

Offices, Boards, Divisions:
Short Form Registration Statements of Individuals (Foreign Agents) (OBD Criminal), LEAA–66, on occasion, individuals, Warren Topelius, 395–5872.
Exhibit A to Registration Statement (Foreign Agents), DJ–306, on occasion, individuals, Warren Topelius, 395–5872.
Exhibit B to Registration Statement, DJ–304, on occasion, individuals, Warren Topelius, 395–5872.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76–29771 Filed 10–7–76;8:45 am]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS

Notice of 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 Farms and Rural Development Act, as amended, 7 USC 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. 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 cility upon the local labor market, with 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 Employment and Training, 601 D St., NW, Washington, D.C. 20213.

Signed at Washington, D.C. this Fourth day of October, 1976.

BEN BURDETSKY,
Deputy Assistant Secretary for Employment and Training.

Applications received during the week ending Oct. 1, 1976

Name of applicant	Location of enterprise	Principal product or activity
The Village Motel	White Sulphur Springs, W. Va.	Rental of rooms and apartments.
Brogdon Industries, Inc. (tenant of town of Andrews).	Andrews, S.C.	Manufacture of fishing rods, radio antennas and other fiberglass and cellulose products.
Bonders, Inc. (tenant of city of Dunn)	Dunn, N.C.	Manufacture of ladies' coats.
J. & C. Co.	Newbern, Tenn.	Building and leasing of facility for agricultural implement sales.
Gibson Products Co. of Cordele, Inc.	Americus, Ga.	Retailing general merchandise.
Shalleo, Inc.	Smithfield, N.C.	Manufacture of audio attenuators and rotary switches.
Shallcross Investment Realty Co.	do.	Leasing factory.
Hipps Produce Inc. (tenant of North Carolina Department of Agriculture) Asheville, N.C.	Asheville, N.C.	Wholesale produce and trucking.
C. & J. Produce (tenant of North Carolina Department of Agriculture).	do.	Wholesale produce.
Omega Development	Eveleth, Minn.	Rental of land and buildings.
Quandahl Associates, Inc.	Sparta, Wis.	Manufacture and sales of kitchen cabinets, counter tops, and floor coverings.
Lake County Nursery Exchange, Inc.	Perry, Ohio.	Nursery stock.
Thurman L. Warren	Marlin, Tex.	Grocery and washateria.
Sprinkles-Perkins	do.	Automobile and farm equipment sales and service.
Park Control, Inc.	Phoenix, Ariz.	Manufacture of parking equalizers.
Adamson's Inc.	Carey, Idaho	Sale of petroleum products, auto parts, farm machinery, and other products.

[FR Doc.76-29603 Filed 10-7-76;8:45 am]

JOB CORPS CENTER, GLENMONT, N.Y.

Decision Not To Issue Environmental Impact Statement

Notice is hereby given that pursuant to the Code of Federal Regulations, Title 40, Chapter V, Part 1500 the Department of Labor has determined that an environmental impact statement is not required in order to establish a Job Corps Center at Our Lady of Angels Seminary in Glenmont, New York. Reasons for this determination are set forth below.

The proposed New York Job Corps Center will be a training center with residential and educational facilities for 275 disadvanted young men and women, ages 16 through 21 who need and can benefit from intensive employment related services. The function of the center and the staff of approximately 100 will be to provide skill training in selected vocational courses and continuing and/or remedial education in academic subjects.

The center will be a self-contained facility on a ridge on the westerly slope of the Valley of the Hudson River, approximately four miles from Albany. The facility consists of approximately 11 buildings constructed on concrete and steel with brick exterior walls. The campus is located on a 240 acre wooded tract, next to a commerical area, with no more than 14 families living within four miles of the grounds.

The proposed Job Corps Center at Our Lady of Angels is not one of "major Federal actions significantly affecting the quality of the human environment" within the meaning of § 1500.6(c). The intended purpose is the same as the use of the site by the previous occupants, specifically residential living and instruction in an educational institution.

Sewage facilities are planned to include the installation of an aeration tank and establishment of a settlement area. Provision will be made for chlorination of the effluent. Effluent will be discharged into a basin.

Two wells on the property more than adequately meet the volume requirements and standards for water supply. A third well, chemically treated, will be used as a back-up.

Noise will not be a factor since the center will be located in brick buildings off a highway in an isolated area on 244 acres with abundant trees.

Furthermore, the center will be operated in compliance with 29 CFR 97a.116, the standard Job Corps procedures on environmental health, which include:

(a) Center Directors adhere to Federal, State and local regulations concerning environmental health. Routine environmental health inspections of dormitories, food preparation and serving areas, and water waste treatment facilities, will be performed at least once a week by the center physician or his designee. The Center Director will also arrange for formal environmental health inspections by qualified noncenter personnel.

(b) The water supply:

(1) It will be adequate for the center's needs, and shall satisfy the latest U.S. Public Health Services Regulations on Drinking Water Standards (42 CFR 72.201-207).

(2) In case of any construction or renovation of the water supply system, design, specifications, and construction procedures will be conducted in compliance with regulations of State and local or other health authorities and their approval.

(3) The Center Director will maintain records which shall show the amount of water treated, amount of chlorine used, daily free chlorine residual, and other data pursuant to standards set by the EPA and local authorities pertaining to water treatment. The Center Director will arrange for all necessary bacterial and chemical tests to be performed by State and local health authorities with the exception of the daily routine residual chlorine test which shall be done by center staff.

(4) The Job Corps center will comply with the water quality and related standards of the State and with the standards established by the Federal Water Pollution Control Act, 33 U.S.C. 1151 et seq.; by Executive Order 11752; 3 CFR 380, (1974) and by the Environmental Protection Agency.

(5) The Center Director will see that septic tanks are inspected by appropriate non-center personnel at least once a year.

(6) The installation will be designed, operated, and maintained so as to conform to Federal air quality standards, including those found in Executive Order 11752, 3 CFR 380, (1974) and at 40 CFR, Part 76.

(c) Food handling practices shall meet local and United States Public Health Department Standards; all meat products shall meet U.S. Department of Agriculture standards; and pesticides shall not be used where food is prepared or served.

(d) Insecticides will be used only in conformance with State and Federal pesticide laws including the regulations of the Environmental Protection Agency.

Signed at Washington, DC this 4th day of October, 1976.

PIERCE A. QUINLAN,
Administrator, Office of Comprehensive Employment Development.

[FR Doc.76-29586 Filed 10-5-76;8:45 am]

NOTE: This document is reprinted without charge from the issue of Wednesday, October 6, 1976.

Office of Federal Contract Compliance Programs

FEDERAL ADVISORY COMMITTEE FOR HIGHER EDUCATION EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Redesignation

On February 10, 1976 the Office of Federal Contract Compliance Programs published a notice in the FEDERAL REGISTER, 41 FR 5880, designating Leonard J. Biermann as Executive Secretary of the Federal Advisory Committee for Higher Education Equal Opportunity Programs. Dr. David G. Speck, is hereby designated as the Executive Secretary, and will replace Leonard J. Biermann who has served as Executive Secretary of the Committee since its inception. Any persons wishing to correspond with or submit documents to the Committee may do so by sending them to the redesignated Executive Secretary:

Dr. David G. Speck, Executive Secretary, Office of Federal Contract Compliance Programs, Federal Advisory Committee for Higher Education Equal Employment Opportunity Programs, New U.S. Department of Labor Building, Room C3325, Washington, D.C. 20210.

Signed at Washington, D.C., this 5th day of October, 1976.

LAWRENCE Z. LORBER,
Director, Office of Federal Contract Compliance Programs.

[FR Doc.76-29913 Filed 10-7-76;10:19 am]

Occupational Safety and Health Administration

COLORADO STATE STANDARDS

Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 12, 1973, notice was published in the FEDERAL REGISTER (38 FR 25172) of the approval of the Colorado plan and the adoption of Subpart M to Part 1952 containing the decision.

The Colorado plan provides for the adoption of Federal standards as State standards after public hearings. Section 1952.193 of Subpart M of 29 CFR Part 1952 sets forth the State's schedule for the adoption of Federal standards. By letter dated June 15, 1976, from Norman L. Sothan, Chief of Labor Services, to Curtis A. Foster, Regional Administrator, and incorporated as part of the plan, the State submitted Supplement No. 1, Rules and Regulations for Construction Standards which are comparable to the Construction Safety and Health Standards of 29 CFR 1926, as published in FEDERAL REGISTER (39 FR 22801) dated June 24, 1974. These standards, which are contained in the Colorado Occupational Safety and Health Rules and Regulations for Construction, were promulgated after hearings which were held on July 26, 1974, October 17, 1974, and October 9, 1975, and with resolutions adopted by the Colorado Occupational Safety and Health Standards Board on December 19, 1974, April 3, 1975, and October 30, 1975, pursuant to Section 8-11-104, Colorado Revised Statutes 1973.

2. *Decision.* The State submission having been reviewed in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards as of June 24, 1974. In addition, the State standards are more specific in several areas, particularly with respect to the rules and regulations which apply to Illumination, Warning Vests, Material Hoppers, Chutes, Bins and Tank Openings, Tar Kettles, Specific Excavation Requirements, Flooring Requirements and Structural Steel Assembly.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 15010, Federal Building, 1961 Stout Street, Denver, Colorado 80202; Office of the Chief for Labor Services, 1313 Sherman Street, Room 414, Denver, Colorado 80203; and the Technical Data Center, Room N3620, 200 Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Colorado State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason.

The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

This decision is effective October 8, 1976.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Denver, Colorado, this twentieth day of August 1976.

CURTIS A. FOSTER,
Regional Administrator.

[FR Doc.76-29715 Filed 10-7-76;8:45 am]

Office of the Secretary

[TA-W-1091]

AMERICAN ATHLETIC SHOE, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On September 23, 1976 the Department of Labor received a petition dated September 2, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of American Athletic Shoe, Inc., Ware, Massachusetts (TA-W-1091).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with hockey skates and baseball shoes produced by American Athletic Shoe, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment assistance, at the address shown below, not later than October 18, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 23rd day of September 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-29716 Filed 10-7-76;8:45 am]

[TA-W-993]

BIENEN-DAVIS, INC.

Certification Regarding Eligibilty To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-993; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 19, 1976 in response to a worker petition received on July 19, 1976 which was filed on behalf of workers and former workers producing ladies' handbags at Bienen-Davis, Inc. located in New York, New York.

The notice of investigation was published in the FEDERAL REGISTER on July 30, 1976 (41 FR 31957). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bienen-Davis, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers declined 11.5 percent from 1973 to 1974 and then declined 13.0 percent from 1974 to 1975. Employment declined 28.6 percent in the first four months of 1976 compared to the first four months of 1975. Employment of all workers was terminated in April 1976 when the plant closed.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Annual sales of handbags by Bienen-Davis declined 16.6 percent in value from 1973 to 1974 and 24.4 percent from 1974 to 1975. Sales declined 34.1 percent in the first four months of 1976 compared to the first four months of 1975.

INCREASED IMPORTS

Imports of leather handbags increased 56.8 percent in quantity from 1971 to 1972. Imports declined 8.6 percent from 1972 to 1973 and 40.9 percent from 1973 to 1974. Imports increased 28.7 percent from 1974 to 1975 and increased 36.8 in the first quarter of 1976 compared to the first quarter of 1975. Domestic production and consumption figures for leather handbags are not separately identifiable from total handbag production and consumption figures.

Imports of all handbags increased 18.5 percent in quantity from 1971 to 1972. Imports declined 0.3 percent from 1972 to 1973 and 18.8 percent from 1973 to 1974. Imports increased 6.4 percent from 1974 to 1975 and increased 52.9 percent in the first quarter of 1976 compared to the first quarter of the previous year. The ratios of imports to domestic production and consumption increased from 93.9 percent and 48.8 percent, respectively, in the first quarter of 1975 to 122.7 percent and 55.8 percent, respectively, in the first quarter of 1976.

CONTRIBUTED IMPORTANTLY

The Department's investigation revealed that customers of Bienen-Davis have indicated that they have reduced purchases from Bienen-Davis and increased purchases of imported handbags. The price differential between domestic and imported handbags was the factor cited most frequently as the reason that customers switched from domestic to foreign suppliers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ladies' handbags produced by Bienen-Davis, Inc. contributed importantly to the total or partial separations of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of handbags at Bienen-Davis, Inc. of New York, New York who became totally or partially separated from employment on or after July 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of September 1976.

JAMES F. TAYLOR,
Director, Officer of Management, Administration and Planning.

[FR Doc.76-29718 Filed 10-7-76;8:45 am]

[TA-W-1094]

B & M SHRIMP CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On September 27, 1976 the Department of Labor received a petition dated September 21, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of B & M Shrimp Company, Tampa, Florida (TA-W-1094).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the shrimp caught by B & M Shrimp Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of September 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-29717 Filed 10-7-76;8:45 am]

[TA-W-987]

CARDINAL SHOE CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-987: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 8, 1976 in response to a worker petition received on that date which was filed by workers and former workers producing women's footwear at Cardinal Shoe Corporation, Lawrence, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on July 27, 1976 (41 FR 31275). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Cardinal Shoe Corporation.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales, production, or both, of the firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important

but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, the first and second criteria have not been met.

Employment and average weekly hours worked at Cardinal increased in each quarter from the first quarter of 1975 through the second quarter of 1976 when compared to the same quarter of the previous year.

From the first quarter of 1975 through the second quarter of 1976, both sales and production of women's footwear at Cardinal increased in each quarter when compared to the same quarter of the previous year.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at Cardinal Shoe Corporation have not become, and are not threatened with becoming, totally or partially separated from employment at the firm, and that neither sales nor production of women's footwear at Cardinal Shoe Corporation, Lawrence, Massachusetts have decreased obsolutely as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of September 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-29719 Filed 10-7-76;8:45 am]

[TA-W-1,095]

GE-RIC, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On September 27, 1976 the Department of Labor received a petition dated September 21, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Ge-Ric, Incorporation, Tampa, Florida (TA-W-1,095).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the shrimp caught by Ge-Ric, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 18, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of September 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-29720 Filed 10-7-76;8:45 am]

[TA-W-1,092]

J. BASS CO., INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On September 23, 1976 the Department of Labor received a petition dated August 20, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of J. Bass Company, Inc., West Hazleton, Pennsylvania (TA-W-1,092).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the printing and dyeing of materials by J. Bass Company, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 18, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 23rd day of September 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-29721 Filed 10-7-76;8:45 am]

[TA-W-1,096]

JAN, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On September 27, 1976 the Department of Labor received a petition dated September 21, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Jan, Incorporated, Tampa, Florida (TA-W-1,096).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the shrimp caught by Jan, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a

substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of September 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-29722 Filed 10-7-76;8:45 am]

[TA-W-992]

JONELL SHOE CO.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-992: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 19, 1976 in response to a worker petition dated July 2, 1976 which was filed by the United Shoe Workers of America on behalf of workers and former workers producing women's casual canvas shoes at Jonell Shoe Company, Lawrence, Massachusetts, a subsidiary of Morse Shoe Company, Canton, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on July 30, 1976 (41 FR 31959). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jonell Shoe Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

The investigation revealed that although criteria one and two were met, criteria three and four were not met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at Jonell declined 6.3 percent from 1973 to 1974 and declined 23.5 percent from 1974 to 1975. In the first six months of 1976, the average number of production workers increased 8.1 percent compared to the first six months of 1975.

Average weekly hours worked declined 0.3 percent from 1973 to 1974 and declined 12.4 percent from 1974 to 1975. In the first six months of 1976, average weekly hours worked increased 9.5 percent compared to the first six months of 1975.

The average number of salaried workers remained stable from 1973 to 1974 and from 1974 to 1975. In the first six months of 1976 the average number of salaried employees declined 5.9 percent compared to the first six months of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

The value of sales of women's canvas shoes by Jonell increased 8.3 percent from 1973 to 1974 and then declined 4.8 percent from 1974 to 1975. In the first six months of 1976 the value of sales increased 12.4 percent compared to the first six months of 1975.

Production of women's canvas shoes at Jonell declined 8.0 percent from 1973 to 1974 and declined 22.1 percent from 1974 to 1975. In the first six months of 1976, production increased 6.4 percent compared with the first six months of 1975.

INCREASED IMPORTS

Imports of canvas footwear declined absolutely and relatively from 1971 to 1972 and then increased absolutely and relatively from 1972 to 1973 and from 1973 to 1974. Imports declined absolutely from 1974 to 1975, and in the first quarter of 1976 compared with the first quarter of 1975. The ratios of imports to domestic production declined from 18.2 percent in 1974 to 17.8 percent in 1975 and declined from 18.9 percent in the first quarter of 1975 to 15.6 percent in the first quarter of 1976.

The category canvas footwear (SIC 30212) consists largely of traditional styles of sneakers and includes women's casual canvas shoes with rubber soles. Import data for women's casual shoes could not be isolated from the basket category.

CONTRIBUTED IMPORTANTLY

The Department's investigation revealed that customers reduced purchases of women's canvas shoes from Jonell in 1975. The customers agreed that the shoes were not selling as well as anticipated. Consequently, purchases were reduced because the retailers were overstocked with Jonell's shoes.

Several customers indicated, however, that they were increasing purchases from Jonell in 1976. None of the customers purchased imports of this type of shoe.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's casual canvas shoes produced at Jonell Shoe Company, Lawrence, Massachusetts did not contribute importantly to the total or partial separations of workers of that plant.

Signed at Washington, D.C., this 29th day of September 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-29723 Filed 10-7-76;8:45 am]

[TA-W-985]

LOWELL SHOE COMPANY, INC.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-985: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 14, 1976 in response to a worker petition dated June 8, 1976 which was filed on behalf of workers and former workers producing women's duty shoes at Lowell Shoe Company, Incorporated, Lowell, Massachusetts, a subsidiary of Morse Shoe Company, Inc., Canton, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on July 23, 1976 (41 FR 30418). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lowell Shoe Company, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criteria (1) and (2) have not been met.

The evidence developed in the Department's investigation reveals that sales and production by Lowell Shoe Company, Incorporated increased 20 percent in 1975 from 1974. Production increased 5 percent in the first six months of 1976 compared to the first six months of 1975. When compared to the same quarter of the previous year, production increased during eight consecutive quarters from the second quarter of 1974 through the first quarter of 1976.

Employment of production workers at Lowell Shoe Company, Incorporated increased 7 percent in 1975 from 1974 and increased 1 percent in the first 5 months of 1976 compared to the first 5 months of 1975. The average weekly hours worked by production workers increased 6 percent in 1975 from 1974 and increased 3 percent in the first 5 months of 1976 compared to the first five months of 1975.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at Lowell Shoe Company, Incorporated, Lowell, Massachusetts are not threatened with becoming, totally or partially separated from employment at the firm, and that neither sales or production of women's duty shoes at Lowell Shoe Company, Incorporated, Lowell, Massachusetts have decreased absolutely as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of September 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-29724 Filed 10-7-76;8:45 am]

[TA-W-957]

LEISURE MANUFACTURING CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-957: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 29, 1976 in response to a worker petition received on June 29, 1976 which was filed on behalf of workers and former workers producing women's boat deck sandals at Leisure Manufacturing Company, Haverhill, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on July 16, 1976 (41 FR 29515). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Leisure Manufacturing Co., its customers, the U.S. Department of Commerce, U.S. Interntional Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important that any other cause.

The Department's investigation revealed that criterion (4) has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATION

The average number of production workers declined 33 percent in 1975 compared to 1974. The average number of production workers declined 33 percent in the first six months of 1976 compared to the first six months of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

A fire at the Leisure plant in January 1975 destroyed all records prior to that period and closed the plant from January through March 1975.

Production at Leisure prior to January 1975 was estimated by company officials. Production at Leisure based on these estimates declined 37.6 percent in 1975 compared to 1974.

INCREASED IMPORTS

Imports of women's and misses' non rubber footwear, including sandals, increased absolutely each year from 1971 through 1975 with the exception of 1974. While the ratio of imports to domestic production decreased from 102.6 percent in 1974 to 101.0 percent in 1975 and decreased from 134.1 percent in the first quarter of 1975 to 113.7 percent in the first quarter of 1976, imports increased absolutely from 187.6 million pairs in 1974 to 190.7 million pairs in 1975 and increased from 55.5 million pairs in the first quarter of 1975 to 66.6 million pairs in the first quarter of 1976.

CONTRIBUTED IMPORTANTLY

The Department's investigation indicated that Leisure Manufacturing Company produces a specialized women's non-skid boat deck sandal. These sandals are sold primarily to stores located in boating marinas in Florida. Leisure's customers stated that they have never carried any imported women's boat deck sandals.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's boat deck sandals produced by Leisure Manufacturing Company did not contribute importantly to the total or partial separation of the workers of that firm.

Signed at Washington, D.C. this 30th day of September 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-29729 Filed 10-7-76;8:45 am]

[TA-W-1097]

M & B SHRIMP CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On September 27, 1976 the Department of Labor received a petition dated September 21, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of M & B Shrimp Co., Tampa, Florida (TA-W-1097).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the shrimp caught by M & B Shrimp Co. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assist-

ance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of September 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-29730 Filed 10-7-76;8:45 am]

[TA-W-982]

MINI SHOE COMPANY, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-982: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 9, 1976 in response to a worker petition dated June 4, 1976 which was filed on behalf of workers and former workers producing canvas uppers for casual footwear at Mini Shoe Company, Incorporated, Lowell, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on July 23, 1976 (41 FR 30419). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Mini Shoe Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers at Mini Shoe Company, Incorporated declined 19 percent from 1974 to 1975 and increased 24 percent in the first six months of 1976 compared to the first six months of 1975. Average weekly hours for production workers were reduced 50 percent during May-August 1975 and from March 1976 to the present time.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales by Mini Shoe Company, Incorporated decreased 24 percent in 1975 from 1974. All sales to the customer accounting for 95 percent of sales by Mini in 1975 were terminated in February 1976, resulting in a sharp decline in output by Mini Shoe Company in the first hal fof 1976.

INCREASED IMPORTS

Most shoe uppers of foreign construction enter the United States as component parts of completed shoes; imported canvas shoe uppers are therefore not separately identifiable within the Tariff Schedules of the United States. After declining from 1971 to 1974, imports of cotton shoe uppers—including canvas—increased 12 percent from 1.3 million pounds in 1974 to 1.5 million pounds in 1975. Imports increased 19 percent in the first seven months of 1976 compared to the same period of 1975.

CONTRIBUTED IMPORTANTLY

A customer accounting for 95 percent of sales by Mini Shoe Company terminated all orders from Mini in February 1976 and began ordering instead from a foreign source. Imports by the customer, which entered the United States for the first time in July 1976, contributed to a 35 percent increase in U.S. imports of cotton shoe uppers in July 1976 compared to July 1975. Reduced sales due to the loss of its major customer resulted in the separation of the workers of Mini Shoe Company.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with canvas shoe uppers produced at Mini Shoe Company, Incorporated, Lowell, Massachusetts contributed importantly to the total or partial separation of the workers of that firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers of Mini Shoe Company, Incorporated, Lowell, Massachusetts who became totally or partially separated from employment on or after June 4, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of September 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-29725 Filed 10-7-76;8:45 am]

[TA-W-1007]

QUAKER KNITTING MILLS, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1007: investigation regarding certification of eligibility to apply for work adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 30, 1976 in response to a worker petition received on July 30, 1976 which was filed on behalf of workers and former workers producing men's sweaters at the Quaker Knitting Mills, Berlin, New Jersey, a division of Warnaco, Inc., Bridgeport, Connecticut.

The notice of investigation was published in the FEDERAL REGISTER on August 13, 1976 (41 FR 34393). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Warnaco, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Plant employment declined 23.5 percent in 1975 compared to 1974 and de-

clined 18.9 percent in the last six months of 1975 compared to the like period in 1974. All workers were laid off on or before December 5, 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Plant production of men's sweaters declined 31.0 pecent in 1975 compared to 1974 and declined 25.7 percent in the last six months of 1975 compared to the like 1974 period. The plant ceased production in November 1975.

The Berlin, New Jersey plant produces men's sweaters which are distributed by the Men's Sportswear Division of Warnaco. Division sales of men's sweaters declined 28.0 percent in 1975 compared to 1974 and declined 13.6 percent in the last six months of 1975 compared to the like 1974 period.

INCREASED IMPORTS

Imports of men's sweaters increased 84.2 percent from 5.7 million units in the January through June period of 1975 to 10.5 million units for the like 1976 period.

CONTRIBUTED IMPORTANTLY

A geographic sampling of the customers of Warnaco's Men's Sportswear Division indicates that customers who have reduced purchases of men's sweaters from Warnaco, have increased their purchases of imported men's sweaters.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of men's sweaters have contributed importantly to the total or partial separation of workers at Quaker Knitting Mills, Berlin, New Jersey a division of Warnaco, Inc., Bridgeport, Connecticut. In accordance with the provisions of the Act, I make the following certification:

All employees at Quaker Knitting Mills, Berlin, New Jersey a division of Warnaco, Inc., who became totally or partially separated from employment on or after July 26, 1975, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of September 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-29726 Filed 10-7-76;8:45 am]

[TA-W-949]

STRIDE RITE SHOE CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-949: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 21, 1976 in response to a worker petition dated June 10, 1976 which was filed on behalf of workers and former workers producing children's footwear at the Newburyport, Massachusetts plant of the Stride Rite Manufacturingg Corp., Boston, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 27804) on July 6, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Stride Rite Manufacturing Corp., its customers, the American Footwear Industries Assn., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that although the third criterion has been met, the first, second, and fourth criteria have not been met.

Significant total or partial separations. From 1974 to 1975, the average number of production workers at the Newburyport plant increased six percent, and average weekly hours decreased one percent. In the first half of 1976 employment and weekly hours were 14 percent and three percent above respective levels in the same period of 1975.

Sales or production, or both, have decreased absolutely. Production at the Newburyport plant rose in quantity by 21 percent from 1973 to 1974 and by three percent from 1974 to 1975. In the first half of 1976 plant production was 15 percent above that in the like period of 1975.

Increased imports. Imports of nonrubber footwear for infants and babies declined in volume each year from 1972 through 1974 and then increased in 1975 over 1974. Imports rose in volume in the first quarter of 1976 compared to the like period in 1975.

Imports of children's nonrubber footwear decreased in volume each year from 1972 through 1975 and increased in the first quarter of 1976 compared to the same period in 1975.

Imports of nonrubber footwear for youth and boys decreased in volume each year from 1972 through 1974 and rose in 1975 over 1974. Imports increased in volume in the first quarter of 1976 compared to the like period of 1975.

Imports of misses' nonrubber footwear declined in volume each year from 1972 through 1975 and increased in the first quarter of 1976 compared to the same period in 1975.

Contributed importantly. A survey of customers who bought children's footwear from the Stride Rite Manufacturing Corp. indicated that those customers who reduced their purchases from Stride Rite did not switch to imports. Customers indicated that Stride Rite's footwear had higher quality than and were generally price competitive with imports.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with the children's footwear produced at the Newburyport, Massachusetts plant of the Stride Rite Manufacturing Corp. did not contribute importantly to the total or partial separations of the workers at such plant.

Signed at Washington, D.C. this 30th day of September 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-29727 Filed 10-7-76;8:45 am]

[TA-W-905]

SUPERIOR PLASTICS, INC.

Negative Determination Regarding Eligibility for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-905: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 27, 1976 in response to a worker petition dated May 12, 1976 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers formerly producing custom molded plastic parts for televisions at the Chicago, Illinois plant of Superior Plastics, Inc.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 26771) on June 29, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Superior Plastics, its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, and U.S. Department of Labor files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first two criteria have been met, criteria (3) and (4) have not been met.

Significant total or partial separations. The average number of production and salaried workers declined 29 percent from 1973 to 1974 and fell 38 percent from 1974 to 1975. Average employment then rose 7 percent in the first quarter of 1976 compared to the first quarter of 1975. Average weekly hours worked fell 5 percent from 1973 to 1974 and then fell 10 percent from 1974 to 1975. Average weekly hours worked increased 11 percent in the first quarter of 1976 compared to the first quarter of 1975.

Sales or production, or both, have decreased absolutely. Sales declined 27 percent from 1973 to 1974 and 24 percent from 1974 to 1975. Sales increased 56 percent in the first quarter of 1976 compared to the first quarter of 1975. Production fell 24 percent from 1973 to 1974, and 23 percent from 1974 to 1975. Production increased 72 percent in the first quarter of 1976 compared to the same quarter, previous year.

Increased imports. Imports of custom molded plastic parts for televisions fell both absolutely and relative to domestic production and consumption in each year from 1971 through 1975. Imports fell from 0.07 percent and 0.08 percent of domestic production and consumption, respectively, in 1974 to 0.06 percent of each domestic production and consumption in 1975. The ratio of imports to each domestic production and consumption fell to 0.05 percent in the first quarter of 1976 from 0.06 percent in the same quarter of the previous year. From 1974 through the first quarter of 1976, imports comprised an insignificant percentage of domestic production and consumption, never exceeding one tenth of one percent.

According to Department of Labor industry analysts, domestic production, exports, and imports of custom molded plastic parts for stereos all follow the same pattern as production, exports and imports of plastic parts for television.

Contributed importantly. The Department's investigation indicated that customers of Superior Plastics did not switch from purchases of plastic products made by Superior to purchases of imported plastic products.

A major customer decreased purchases of component parts from Superior Plastic because of a shift in production of complete television sets. Production of custom molded plastic parts for television sets are a local adjunct to complete television set production.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with plastic products, including plastic parts for televisions and stereos, produced at the Chicago, Illinois plant of Superior Plastics, Inc., did not contribute importantly to the total or partial separations of workers at that plant.

Signed at Washington, D.C. this 30th day of September 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-29728 Filed 10-7-76;8:45 am]

[TA-W-1,098]

TARA LOU, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On September 27, 1976 the Department of Labor received a petition dated September 21, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Tara Lou, Inc., Tampa, Florida (TA-W-1,098). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the shrimp caught by Tara Lou, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of September 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-29731 Filed 10-7-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18128; FCC 76-886]

AMERICAN TELEPHONE & TELEGRAPH CO., LONG LINES DEPARTMENT

Memorandum Opinion and Order Terminating Proceedings Regarding Revisions of Tariff FCC No. 260 Private Line Service, Series 5000 (TELPAK)

Adopted: September 23, 1976.

Released: October 1, 1976.

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KEY TO REFERENCE ABBREVIATIONS

Brief	Br.
Brief in Reply to Exceptions	BRE
Brief in Support of Exceptions	BSE
Exhibit	Exh.
Exception(s)	Expt.
Page	p.
Paragraph	par.
Paragraphs	pars.
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Transcript	T.

I. INTRODUCTION AND SUMMARY

1. The issues involved in this proceeding can be traced to the early 1960's with the inception of Docket 14251 (the original TELPAK investigation) and Docket 14650 (an inquiry into Western Union's domestic telegraph and other services). Docket 18128 originally concerned the lawfulness of TELPAK rate increases of March 25, 1968. However, through consolidation of certain issues extant in Docket 16258 (which concerned appropriate interstate service revenue contributions) and Docket 18684 (which concerned revised video transmission rates), the scope of this proceeding now includes the issue of the general lawfulness of overall rate levels[1] and interservice rate level relationships of Bell's major categories of interstate service. (Findings in this proceeding apply to those services of Western Union which exhibit matching rate levels.) Implicit in the determination of appropriate earnings relationships of Bell's services is our parallel determination of the proper methodology by which each service's contribution to total earnings is to be measured.

2. It is Bell's position that each category of service should yield revenues, at a minimum, to cover its forward looking, long-run incremental costs (LRIC). Actual rates should exceed such minimums so that aggregate revenues from all services yield the overall interstate revenue requirement. Bell has employed a "basic service philosphy" with regard to determining how total revenue requirements are to be recovered by its private line and monopoly services (MTS and WATS). That is, private line service rates are to yield an "optimum" contribution to earnings above minimum LRIC levels. MTS and WATS rates are to cover residual revenue requirements not met by private line service revenues. Bell has proposed an incremental, prospective "burden test" allegedly to show that its rates are free from cross-subsidization, and a "retrospective accountability" test for purposes of providing comparative information concerning forecast and actual results.

3. The Chief of the Common Carrier Bureau released a Recommended Decision (RD) herein on January 19, 1976. The case is before us on exceptions filed to the RD. The RD did not accept Bell's LRIC-oriented basic service philosophy, but supported Fully Distributed Costs (FDC) Method 1 to determine each service's relevant costs. The RD relied on individual service deviations from the Method 1 computed return on investment as an indication of the existence of cross-subsidization and to determine the lawfulness of rate levels and rate level relationships. (The RD held that MTS rates should be designed so as to yield earnings no more than the lesser of Bell's maximum allowed rate of return, or the overall rate of return actually being realized. Private line categories of service rates should be designed to yield no less than the minimum allowable overall rate of return).

4. We find it encumbent to select the costing methodology which best reflects our statutory mandate (see Section VIII). Our prior policy supports the position that actual costs of providing service underline the statutory requirement that rates be just, reasonable, and nondiscriminatory, albeit this does not mean that costs are the only criterion useful in determining whether rates are lawful under the Act. Further, we conclude that the public interest is not generally served by interservice cross-subsidization, but recognize that statutory and social policies may lend sanction to some intraservice subsidies. Finally, we make findings regarding proper cost standards, measures of cross-subsidization, and acceptable departures from cost of service as a criterion of the justness and reasonableness of return levels and relationships.

5. We hold that Bell's use of LRIC and, generally, its basic service philosophy do not satisfy the constructs of true marginal cost pricing principles. Indeed, we note that it is not possible to make a strict translation from neoclassical marginal costing theory to the pragmatic world of telecommunications. On the basis of these determinations, we have concluded that no "optimal" social welfare or beneficial public interest characteristics could be imputed to Bell's costing methodology. To the contrary, we find Bell's basic service philosophy merely a variant of a full costing approach.

6. We determine that an FDC costing approach is most consistent with our objectives and responsibilities under the Act, and should be the basic standard by which the justness and reasonableness of rates will be judged. Of the seven FDC methods of record, Method 7's historical cost causation basis of allocating costs is determined to be most consistent with our mandate to ensure just, reasonable and nondiscriminatory rates. However, we recognize that such factors as demand fluctuations and varying growth patterns between services could cause distortions between historical causation and actual cost patterns. For this reason, we require that revised Method 1 data be filed concurrent with that of revised Method 7 to document comparative current relative use cost patterns, and to establish the veracity of the cost patterns determined under the historical cost causation approach. Revisions are found to be necessary in the case of both Method 1 and Method 7 to correct certain infirmities in these methods as they have previously been implemented. These revisions are to be made before these methods are used as the basis of revised interstate rates, supportive data for subsequent rate changes, or continuing surveillance.

7. We find that Method 1 and Method 7, full cost data currently available from the record provide an adequate "zone of reasonableness" for purposes of drawing conclusions concerning the unlawfulness of Bell's past and present rate levels. On the basis of a zone of reasonableness defined by Method 1 and Method 7, data, we find the current WTS return level lawful under section 201(b), and that since 1969, at least, MTS has earned a level of return that has not been unduly excessive. Present WATS return levels appear, on the data in this record, excessive and indicative of the presence of cross-subsidization. Past WATS levels of return likewise appear excessive, inclusive of the period from the Seven-Way Cost Study (1964) to the present. However, as we note below, we are uncertain as to the actual costs of providing WATS and will await a refiling and cost justification of new WATS rates in accordance with our re-

[1] "Rate levels" and "return levels" are generally used interchangeably herein.

cent WATS decision. We also find that the present return levels for Bell's other services (Private Line Telephone, Private Line Telegraph, Audio/Radio, Television, and the "Other" services classifications) are deficient, and, as such, are being subsidized by other services. Past return levels for these services are generally also found to have been unlawfully low, although in some years the return level of certain services could have been considered to have approached the zone of reasonableness.

8. We have investigated the lawfulness of Bell's rate levels for its interstate services under section 202(a). Consistent with the Commission's TELPAK decision we find that the RD correctly recognized that competitive necessity may justify what might otherwise be considered as unlawfully discriminatory rates. However, we disagree with the RD's conclusion, relying on the Telpak Sharing proceeding, that discriminatory pricing based on competitive necessity is permissible only if the carrier meets the three criteria enunciated in that proceeding. We also depart from the RD by concluding that the competitive necessity criteria need not be applied to all Private Line Services.

9. We find that only two of the three competitive necessity criteria are pertinent and should be applied to Bell's TELPAK offering to determine if there are violations of section 202(a): (1) That those benefitting from the discrimination have an alternative supply source which will be utilized in the absence of discrimination and, (2) that the discrimination benefits users discriminated against. We find the record shows that the threat from private microwave and indeed from competing terrestrial and satellite carriers has not and still does not warrant the extent of discrimination manifested by Bell in its TELPAK category of service. There has been no showing that this specific TELPAK bulk rate response is commensurate with any real competitive threat. Nevertheless, we recognize that a bulk rate offering of some other nature and magnitude may be warranted. We therefore order Bell to refile its TELPAK offering.

10. Under our guidelines, we direct Bell to assign all extant facilities to its services to provide a facility "datum." Such a datum will provide the distributive basis for related cost assignments, and will ensure carrier accountability and nondiscriminatory treatment of all users. Nevertheless, we conclude that certain demand and supply conditions may warrant the offering of less than full cost ("discount") rates. This might be permissible if the carrier can make a definitive and clear showing of recovery of full recorded costs by the service involved within a reasonable time certain, and if such departures are in the public interest and consistent with the Commission's basic mandate. Further, we have directed Bell to develop acceptable forecasting techniques in conjunction with the Bureau Staff for use in Method 7 procedures, and that the Staff, in consultation with Bell, revise Method 7 and Method 1 procedures to correct certain infirmitives. These revisions will permit the use of these methods as the foundation of our basic evaluative procedures. Finally, we direct the staff to complete the methodological revisions within three months, and, direct Bell to file rates for all its services based on a revised Method 7 analysis (supplemented by revised Method 1 data) within eight months, both from the effective date of this order.

II. History of the Proceedings

11. This docket is an outgrowth and consolidation of several significant and complex proceedings before the Commission over the past fifteen years. Consequently, we believe it helpful to present an abridged case history to facilitate an understanding of its evolution. We note that the RD contains a more elaborate history.

12. On September 7, 1961, we instituted Docket No. 14251, an investigation into Bell's original TELPAK tariff.[2] TELPAK, a bulk private line offering, was filed in anticipation of competition from private microwave arising from our Above 890 decision.[3] On March 18, 1964, we issued our Tentative Decision in Docket 14251, concluding that:

(a) Services furnished under the TELPAK tariff and those furnished under the various other private line tariffs are like communications services.

(b) There are no material cost differences attributable to furnishing a number of channels of one customer under TELPAK as opposed to furnishing the same number of channels to several customers under the other private line tariffs.

(c) There is no justification for TELPAK A and TELPAK B in terms of competitive necessity, inasmuch as the rates for the equivalent number of channels offered under ordinary private line tariffs are reasonably competitive with the costs of private microwave systems.

(d) There is apparent justification for TELPAK C and D classifications in terms of meeting competition from private microwave systems having channel capacities comparable to those offered by such TELPAK classifications. However, we are unable to determine on this record that the rates for TELPAK C and D classifications are compensatory in relation to the costs of furnishing the services offered thereunder, and therefore are unable to find that the other users of AT&T services will benefit and not be burdened by the application of such rates.[4]

We affirmed these conclusions by a final decision, adopted December 23, 1964. However, we held that the record should be reopened to allow Bell to furnish probative cost data showing that the TELPAK C (60 voice-grade channels)[5] and TELPAK D (240 voice-grade channels) offerings are compensatory and do not burden other users of Bell's services. We ordered Bell to file tariffs to eliminate the unlawful discrimination found to exist between TELPAK A (12 voice-grade channels) and TELPAK B (24 voice-grade channels) and private line rates.[6]

13. In 1962, while the TELPAK proceeding was underway, we instituted Docket No. 14650, a broad inquiry into Western Union's domestic telegraph and other services.[7] In response to allegations by Western Union that Bell had historically used its monopoly voice services, to subsidize its competitive services, the Commission's Telephone and Telegraph Committees requested Bell to perform a study to ascertain Bell's interstate investment, revenues, and expenses, and net earnings among its seven categories of service: MTS, wide area telephone service (WATS), teletypewriter exchange service (TWX), private line telephone service, private line telegraph service, TELPAK, and all others.[8]

14. Bell submitted study results known as the "Seven-Way Cost Study," on September 10, 1965. The study showed that for the twelve month period ending August 31, 1964, the return on Bell's investment ranged from 10.1 percent for WATS to 0.3 percent for TELPAK. Further, Bell's return on its competitive services were significantly below its system-wide average, while its return on monopoly services, MTS and WATS, were above the average.[9] However, the Commission did not address the questions of compensativeness and cross-subsidy in Docket 14650.

15. As a result, in part, of the Seven-Way Cost Study we instituted Docket No. 16258 on October 27, 1965.[10] This proceeding was a general investigation into the rate levels and rate level relationships existing with respect to Bell's interstate services. We noted the importance of such investigation, stating that:

> Certain of the services involved are furnished by the Bell System in direct competition with services offered by other carriers. To the extent that these services may be underpriced by the Bell System, this may have a competitive impact on such other carriers.[11]

16. Following affirmation of our *Telpak* decision,[12] we terminated Docket No. 14251 and amended our designation order in Docket No. 16258 to include the issue of whether TELPAK C and D were compensatory. We ordered the record in Docket No. 14251 incorporated by reference into Docket No. 16258. We also stressed that if Bell were to submit additional tariff filings with respect to its TELPAK offerings, such filings should

[2] FCC 61-1039 (1961).

[3] 27 FCC 359 (1959); reconsideration denied, 29 FCC 825 (1960).

[4] 38 FCC 270, 395 (1964).

[5] The bandwidth of a single voice-grade channel is generally regarded as 4 kHz.

[6] 37 FCC 1111, 1117-1118 (1964), aff'd sub. nom., American Trucking Assn. v. FCC, 377 F.2d 121 (1966), cert. denied, 386 U.S. 943 (1967).

[7] FCC 62-533.

[8] Report of the Telephone and Telegraph Committees in the Domestic Telegraph Investigation, Docket No. 14650, p. 200.

[9] Id. at 200-204.

[10] 2 FCC 2d 871 (1965).

[11] Id. at 872.

[12] *American Trucking Assn. v. FCC*, 377 F. 2d 121 (1966), cert. denied 396 U.S. 943 (1967).

be examined in a separate proceeding, not as a part of the general issues of Docket No. 16258.[13]

17. On March 25, 1968, Bell filed certain rate increases in its interstate private line TELPAK tariffs. By Order adopted April 10, 1968, we suspended such revised tariffs for the statutory period and instituted Docket No. 18128, an investigation into the lawfulness of the tariff increases.[14] By subsequent Order, adopted July 10, 1968, we further delineated the scope of this proceeding, distinguishing it from those issues in Docket No. 16258 (then designated as Phase 1–B) which was to establish a basis for the formulation of principles to govern the establishment and maintenance of overall rate levels for each of Bell's interstate services.[15] Additionally, we broadened the issues herein:

> Because TELPAK service is, in essence, a rate classification within the family of private line services offered by (Bell) appropriate consideration of the reasonableness of TELPAK rates requires simultaneous and coordinate consideration of respondents' private line tariffs. Accordingly, our Order herein will specify the issues in Docket No. 18128 to embrace all of the private line tariffs, except audio and video program transmission services, but including the charges for teletypewriter station equipment.[16]

Thus, while Docket No. 16258 was concerned with the general issue of the appropriate revenue contribution to be made by each interstate service to the overall revenue requirement, Docket No. 18128 was concerned with the lawfulness under sections 201(b) and 202(a) of the Act of each private line category, except audio and video. Additionally, at that time we imposed an accounting order and held the hearings in Docket No. 18128 in abeyance, pending the determination in Docket No. 16258 of appropriate ratemaking principles and resolution of the TELPAK sharing proceedings in Docket No. 17457.[17] Finally, the scope of this proceeding was broadened by further Order of the Commission on July 24, 1968 suspending tariff rate increases for Western Union's teleprinter station equipment. The issues related to the lawfulness of AT&T's rates were found applicable to Western Union's rates.[18]

18. As Docket No. 16258 proceeded, the Commission, acting through its Telephone Committee, initiated conferences among the parties in order "to facilitate the possibility of resolution of some or all of the pending issues by mutual agreement."[19] As a result of these conferences, the parties and the Chief, Common Carrier Bureau agreed to a "Statement of Ratemaking Principles and Factors." This "Statement," which was issued on May 28, 1969, declared certain ratemaking principles and factors to be acceptable to the parties and the Bureau.[20] It also suggested procedures to effectuate the ratemaking principles, including new studies to be made by AT&T, and possible rate changes, in conformity therewith. On July 29, 1969, we took note of the "Statement," without necessarily approving it, and adopted the recommended procedures except for the recommendation that the "Telpak Sharing" proceeding be reopened and consolidated with the proceedings herein. At the same time, we incorporated the record of Phase 1–B of Docket No. 16258, including the record of the original Telpak proceeding, Docket No. 14251, into this docket.[21] Thus, by July 1969, Docket 18128 had grown from the original investigation into the lawfulness of TELPAK rate increases to a general investigation of AT&T's and Western Union's private line tariffs, other than program transmission services, including issues as to the overall revenue contribution that should be made by each service and whether TEL PAK C and D were compensatory.

19. As a result of the "Statement of Ratemaking Principles and Factors," Bell filed new proposed TELPAK tariff rate increases on October 1, 1969, based on updated studies. On October 29, 1969, these tariffs were suspended and set for hearing in this proceeding.[22] Additionally, we directed that the hearings herein be removed from deferred status and that they proceed as expeditiously as possible. Western Union matched AT&T's TELPAK increases; these rates were also suspended and set for hearing herein.[23]

20. On February 18, 1970, Phase 1–B of Docket No. 16258 was procedurally terminated. However, we stated that the various rate revisions made by Bell, allegedly in conformity with the "Statement of Ratemaking Principles," and the lawfulness of the rate levels of each of AT&T's service categories including MTS and WATS, would be reviewed in the context of this proceeding and in Docket No. 18684.[24]

21. Docket No. 18684 was instituted on September 24, 1969 as an investigation into the lawfulness of AT&T's revisd video transmission rates.[25] Bell also filed revised tariffs on September 25, 1969, for its audio program transmission service. These too, were set for hearing in Docket No. 18684.[26] Through informal conferences the issues concerning the audio services were resolved.[27] However, the lawfulness of the video private line services continued unresolved. On June 10, 1970, we consolidated Docket No. 18684 with this proceeding in order to "view the totality of costs for all of AT&T's interstate services so that the question of interstate burden can be examined and if necessary corrected * * *."[28] Hearings commenced on September 28, 1970 following three prehearing conferencse.

22. On November 20, 1970 AT&T filed tariffs designed to increase rates for MTS in order to achieve a higher overall return on total investment. At our request, Bell postponed the effectiveness of these tariff revisions pending an expedited rate hearing. As an interim measure the Commisison granted special permission to AT&T to file lesser rate increases. These were suspended and set for hearing with an accounting order in Docket No. 19129.[29] However, certain of the issues raised by the MTS rate increases were designated as issues to be determined herein. In particular, Bell was required to show that its claimed additional interstate revenue requirement should be met solely through increased charges to the MTS customer and further that the rate increase at issue in Docket No. 19129 did not involve cross-subsidization of any other service.[30]

23. On December 6, 1971, AT&T filed revised private line tariffs, increasing rates for TELPAK and private line telephone and telegraph services. These increases were suspended and the lawfulness of the revision designated for hearing in this proceeding.[31] Similar increased rates filed by Western Union were also placed in issue in this Docket.[32]

24. Bell also sought to revise its video program transmission tariffs. By Memorandum Opinion and Order released May 15, 1973, we designated aspects of the video tariff revision for oral argument on July 26, 1973, in Docket 18684.[33] Oral argument was held, after which the Chief of the Common Carrier Bureau held a number of settlement conferences with the parties. By stipulation signed November 27, 1973, the participants agreed to a two year experimental period during which certain stipulated rates and conditions would apply to video private line service. We approved this stipulation and terminated Docket No. 18684 on December 11, 1973.[34] However, although the rate structure issue in Docket No. 18684 is now moot, the issue of the rate level for the video program transmission service remains at issue herein.

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[13] 7 FCC 2d 30, 31 (1965); 6 FCC 2d 177, 180 (1966).
[14] FCC 68–388 (1968).
[15] 13 FCC 2d 853, 855 (1968).
[16] Id. at 857.
[17] Ibid.
[18] FCC 68–756 (1968).
[19] FCC 69M–197 (1969).
[20] Docket No. 16258, T. 22329–22341; 18 FCC2d 761, 765–769 (1969).
[21] 18 FCC2d 761, 763–764 (1969).
[22] 20 FCC2d 383, 388 (1969), petitions for reconsideration denied, 21 FCC2d (1970). We also set for hearing Bell's Series 11000 wideband service. This service was terminated on May 1, 1973. On Petition for Review, the United States Court of Apepals for the District of Columbia Circuit affirmed our decision not to reject the TELPAK increases. Associated Press v. FCC, 448 F.2d 1095 (D.C. Cir. 1971).
[23] FCC 69–1345 (1969).
[24] 21 FCC2d 495, 496–497 (1970).
[25] FCC 69–1038 (1969).
[26] FCC 69–1197 (1969).
[27] See Orders of the Examiner, FCC 70–M–808, June 5, 1970, and FCC 70–M–941, July 1, 1970.
[28] 23 FCC2d 503, 509. By this Order we also denied various petitions for reconsideration of our February 18, 1970 action which included the lawfulness of the rate levels of all of Bell's major services as an issue herein. 23 FCC2d at 507.
[29] 27 FCC2d 149 (1971).
[30] 27 FCC2d 151, 156–157 (1971). AT&T later agreed to consider further rate increases for services other than MTS subject to final determination in Docket No. 18128. 30 FCC2d 503 (1971).
[31] 33 FCC2d 522 (1972).
[32] 34 FCC2d 839 (1972).
[33] 40 FCC2d 901 (1973), rev'd in part, *AT&T v. FCC*, 487 F.2d 864 (2d Cir. 1973).
[34] 44 FCC2d 525 (1973).

25. Evidentiary hearings herein began on September 28, 1970 and were concluded on August 8, 1972. Fifty-three witnesses presented testimony and evidence. There are now approximately 27,000 pages of transcript and exhibits before us in this docket alone, in addition to the record from Docket 16258. The Administrative Law Judges closed the record herein on December 11, 1972.[35] Proposed Finding of Facts and Conclusions were filed on March 12, 1973 and Replies thereto on May 14, 1973. The Recommended Decision of the Chief, Common Carrier Bureau was released on January 19, 1976. The parties' Exceptions and Supporting Briefs were submitted one month later. We entertained oral argument on July 14, 1976.

III. Issues To Be Resolved

26. As can be seen from the preceding summary of the history of this case, our present questions as to the legality of rate levels and rate level relationships arose initially from tariff submissions in Docket 18128 (with respect to the private line offerings of Bell and Western Union), in Docket 18684 (with respect to Bell's Audio and Television Program Transmission Services) and in Docket 19129 (with respect to MTS). As originally designated, the questions of lawfulness of these tariff submissions included not only a consideration of the rate levels of each service category, but also an examination of the internal rate structure of each such service category in light of the statutory language of Sections 201–205 of the Act. As the RD recognized, however, the broad inquiry into the lawfulness of the tariffs in this proceeding was subsequently narrowed.[36] Thus, in Docket Nos. 19129 and 18684, we ruled that the MTS, WATS and Audio/Video tariffs were to be considered herein, but only insofar as the lawfulness of the rate levels of each such class of service was concerned.[37] We have stated that this proceeding is to resolve the fundamental and important question:

> What should be the appropriate earnings relationship among the various interstate services offered by the Bell System? And, *how should the contribution to total earnings by each service be measured?* (33 FCC 2d 522, 524) (Emphasis added.)

27. We thus have before us the lawfulness of overall rate levels and the lawfulness of interservice rate level relationships with respect to the following interstate categories of service offered by Bell:

Private Line Telephone Service
Private Line Audio Program Transmission Service
Private Line Television Program Transmission Service (Video)
TELPAK Service
Private Line Teletypewriter Service (Private Line Telegraph)
Long Distance Message Telecommunications Service (MTS)
Wide Area Telecommunications Service (WATS)

and the following categories of service offered by Western Union:

Leased Line Telegraph Service
Leased Line Telephone Service
Leased Line Telpak (Broadband) Service
Telpak Bulk Rates for Leased Line Telephone & Telegraph Service

In statutory terms we have stated the issues herein as follows:

(a) Whether the rate levels for (1) message toll telephone service, (2) WATS, (3) private line telephone grade service, (4) private line telegraph grade service, (5) audio and video program transmission services, (6) TWX and (7) all other services are or will be just and reasonable within the meaning of section 201(b) of the Communications Act of 1934.

(b) Whether the rate levels for the above-mentioned services will subject any person or class of persons to unjust or unreasonable discrimination, or give any undue or unreasonable preference or advantage to any person, class of persons or locality, or subject any person, class of persons or locality to any undue or unreasonable prejudice or disadvantage within the meaning of section 202(a) of the Communications Act of 1934.

(c) Whether the Commission should prescribe just and reasonable rate levels with respect to any or all of the above-mentioned services placed at issue by this order, and, if so, what rate levels should be prescribed. (21 FCC 2d 495, 497).

Thus, in summary, we are concerned herein with the lawfulness of rate levels, interservice rate level relationships and with the appropriate basis for measuring same.

28. The RD proposed (par. 36) that ten questions be addressed in resolving the fundamental issues discussed above.[38] Bell, the Airlines, ARINC, and the Ad Hoc Telecommunications Committee[39] object to one or more of these questions. They argue that the questions do not fairly reflect the issues herein or that the questions assume answers to issues yet to be resolved. To the contrary, we believe that in general these questions do reflect the issues herein. However, while our resolution of the issues will, of necessity, provide answers to these questions, we do not intend to limit our discussion below to only these.

29. Western Union, Bell, and AIA except to the RD's failure to address the question of the propriety of Western Union's rate levels. The RD concluded that the Commission need only be concerned in this proceeding with the rate levels of Bell's service classifications. We agree with the RD that the primary purpose of this proceeding is to focus on Bell's offerings and that an indepth analysis of the lawfulness of Western Union's rate levels would unduly complicate this already complex and protracted proceeding, with no concomitant benefit. The record shows that Western Union's rate levels for its leased line and TELPAK services were based solely to be competitive with Bell's service offerings and that Western Union has neither adopted Bell's theory of ratemaking at issue herein nor supported the claim that Bell's rate levels are lawful. Thus, to the extent we find Bell's rate levels unlawful, we cannot find lawful the matching rate levels of Western Union. With regard to its prior filings, it is clear that Western Union's increases in its TELPAK and private line rates were justified and that no refunds would therefore be due. Accordingly, we are terminating the accounting orders issued herein with respect to Western Union's services.

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[35] FCC 72M-1528.

[36] Exceptions have been raised with respect to the RD's failure to reach the lawfulness of various rate structure elements. Insofar as we agree with the RD that the issues herein were narrowed to encompass only return levels and inter-service return level relationships, we do not address any rate structure questions. Furthermore, because the parties have addressed themselves almost entirely to return level issues, the record herein is inadequate to make any findings with respect to rate structure.

[37] See also 34 FCC 2d 839, 840 (1972).

[38] These questions are:

(1) Whether and to what extent there is or will be any cross-subsidization among the aforementioned eight principle interstate service and rate categories of Bell;

(2) Whether and to what extent the "Long Run Incremental Cost" (LRIC), "burden test," and the "retrospective accountability" approaches and principles as proposed by Bell herein, are appropriate as a basis for the pricing of their services;

(3) Whether and to what extent the "Fully Distributed Cost" (FDC) principles, as proposed by certain parties, should be used as a basis for the pricing of these services;

(4) Whether and to what extent Bell should be permitted to earn in excess of its overall allowable interstate fair rate of return (currently 9.5 percent–10.0 percent) on investment allocated on an FDC basis to its monopoly MTS and WATS services;

(5) Whether and under what circumstances Bell should be permitted to price its competitive private line services individually, or as a group, at less than the interstate fair rate of return on its investment allocated on an FDC basis to such services;

(6) Whether the past and present disparities in the levels of bulk TELPAK and non-TELPAK rates for like Private Line Telephone and Telegraph Services constitute undue discrimination or preference in violation of section 202(a) of the Act;

(7) Whether and to what extent the past and present overall levels of Bell's bulk TELPAK rates for ordinary Private Line Telephone and Telegraph Services are now or have been noncompensatory or otherwise unjust and unreasonable under section 201(b) of the Act;

(8) Whether and to what extent the various tariff filings revising the rate levels for Private Line Telephone, Private Line Telegraph, Private Line Audio, TELPAK Broadband, Private Line Video Program Transmission Services, and TELPAK bulk rates have been justified by Bell;

(9) Whether and to what extent Bell's pricing practices with respect to the level of rates for its principal categories of service derogate against the regulatory policies and objectives of the Commission as set forth in its Specialized Common Carrier decision in Docket No. 18920; and

(10) Whether and to what extent the Commission should order revisions to be made in the rate levels of MTS, WATS, or of Bell's other principal categories of service in the light of the findings and conclusions reached on the above-stated issues.

[39] These and other parties are identified in Section IV, *infra*.

IV. BASIC POSITIONS OF THE PARTIES [46]

BELL SYSTEM RESPONDENTS (BELL OR AT&T)

30. We find that the Bell System fairly characterized its position in summary form in its Proposed Findings of Fact and Conclusions (pars. 1–17) and in its Exceptions to the RD (Bell Expt., pp. 25–27). The Bell System maintains that it seeks to obtain revenues from all its interstate services sufficient to meet its total interstate revenue requirement. It notes that each category of service should yield revenues to cover the costs incurred in furnishing the service, including the cost of capital, and in addition to make a contribution toward the coverage of common costs. Bell maintains that the relevant costs to be considered are long-run incremental costs (LRIC), not fully allocated or fully distributed costs. Bell stated that its LRIC studies "represent the full amount of the effect on the total cost to the firm resulting from a difference in one level of output compared with another level of output". (T. 2237). Bell maintains that although costs play an essential role in determining rate levels, rates cannot be based solely on costs. Incremental costs determine the minimum rates for a service category. Actual rates should exceed such minimums so that the aggregate revenues from all services yield the overall interstate revenue requirement.

31. In pricing its private line services, Bell states that it seeks to establish rate levels which are competitively effective and yield an "optimum" contribution to earnings. Bell notes that its objective is to keep MTS charges as low as possible and still meet its interstate revenue requirement. Relevant ratemaking factors such as market conditions and rate relationships may lead Bell to choose an "optimum" rate which does not make the maximum possible contribution. MTS and WATS rates are set to cover the portion of the overall revenue requirement not met by private line service revenues. "Contribution" from a service is defined as the difference between the service's total revenues and its incremental costs, counting, where appropriate, cost savings and revenues foregone. This defines what we term Bell's "basic service" philosophy.

32. In comparing alternative rate proposals, Bell maintains the basis of comparison should be forward looking LRIC and long-run incremental revenues. Such analyses should account for any material cross-elastic effects. Bell proposes a "burden test" to determine the existence of cross-subsidy. The burden test is performed as an incremental analysis which contemplates comparison between total overall costs and revenues with the service included and the total costs and revenues with the same service excluded. Bell claims that the burden test demonstrates that none of its private line services are burdening the users of MTS or any other service and that significant contributions are being made to its total revenue requirements by such services. Thus, Bell asserts that no service is cross-subsidizing any other service. Bell further claims that LRIC, the burden test and its "retrospective accountability" test (which will be described below) give the Commission a totality of information which will allow it to approve rates and monitor results. Bell contends that fully distributed cost studies used for ratemaking purposes do not provide a relevant measure of cross-subsidy or service rate levels. Thus Bell argues that the method proposed in the RD is anti-competitive and creates a protective umbrella for its competitors.

33. Bell claims that TELPAK is justified by competitive necessity and is compensatory and not a burden on MTS or any other service category. The rates under investigation are said not to be unjust, unreasonable, unlawful nor excessive and that such rates yield optimum contributions to earnings. Finally, Bell asserts that no basis has been shown for prescription by the Commission of any rates or regulations under Section 205 of the Act, and that there is no need to order refunds with respect to any rates under investigation herein which have been subject to accounting orders and possible refund.

THE AIRLINE INDUSTRY PARTIES (AIRLINES)

34. The Airlines agree that there should be no cross-subsidization, but they contend that it is neither necessary nor desirable for Bell to maintain the same relationships between revenues and costs, or the same rate of return, for each class of service. They note that cost-indicated rates are useful ratemaking tools. As a general rule rates should produce sufficient revenues to cover relevant costs, but cost is not the sole determinant of price. Appropriate consideration must also be given to other pertinent factors, especially as applied to a class of competitive service which is supplementary to the principal or monopoly services of the carrier. In order to assure the viability of the carrier and avoid the subsidization of one class of service by other classes, the Airlines state that rates should be "compensatory", i.e., the rates for a class of service should provide revenues sufficient at least to cover the "relevant" costs of furnishing that service, and that the "relevant" costs in determining whether rates are compensatory are "long-run incremental costs," defined as the increase in the total cost of investment and expenses, including a reasonable rate of return on capital, which would be incurred by the addition of a particular class of service, or of furnishing additional quantities of service in an existing service category, or, more stringently, "avoidable costs", the costs which would be saved, escaped, or not occasioned if the class of service were discontinued or not offered. (Airline Parties, Exh, No. 1, pp. 5–11).

35. It is asserted that properly measured long-run incremental costs determine the rate floor or minimum rate level of a class of service. If the rates of a service cover their LRIC, they are compensatory and cause no burden on other services (Airlines P.F., pp. 83–88). However, the Airline parties contend that Bell's meaning and definition of burden is different in that the Bell burden test is oriented toward cross-elasticity. The Airlines maintain that failing the Bell burden test does not mean that the service must be eliminated as non-compensatory (Airlines P.F., pp. 79–88).

36. As to the specific TELPAK rates at issue herein, the Airlines contend that the original TELPAK rates were probably compensatory and that the "interim" rates effective September 1, 1968 were clearly compensatory. The Airlines maintain that the TELPAK rates effective February 1, 1970 and May 4, 1972 are unreasonably high, unjust and unreasonable. The amounts collected above the interim rates (which the Airline parties claim should be a rate ceiling justified on the basis of costs of competitive alternatives) effective September 1, 1968 should be refunded pursuant to the accounting orders under which those rate increases were originally suspended. (Airlines P.F., pp. 70–75, Airlines BSE, pp. 60–65). Finally, the Airlines suggest that a new bulk rate communications offering would appear to be appropriate, based on competitive necessity and route density. (Airlines P.F., pp. 162–68). Bell's monopoly users would be protected by holding monopoly rates to a "ceiling" reflecting the company's revenue requirement minus the costs directly attributable to the competitive services, on the basis of retrospective cost-causing responsibility. (Airlines BSE, pp. 46–53; Airlines P.F., pp. 151–58).

AERONAUTICAL RADIO, INC. (ARINC)

37. Arinc's position is generally the same as that of the Airlines. It contended that the bulk rates of the Telpak offering have stimulated the growth of the communications market, assisted the effective operation of the government, have promoted a major betterment in the conduct of major industrial and business enterprises, and have generally benefited the public at large through improved safety, services, and productivity. (Airlines, Exhs. 2–5, DOD, Exhs. 1–2, Ad Hoc Committee, Exh. 1)

38. Arinc contends that except where strong public interest considerations dictate a lower rate level, the rates for each service offered by a common carrier should be "compensatory." A service is compensatory if it covers the LRIC (or in some cases, the "avoidable" cost) of offering the services (Arinc P.F., pp. 32–5). No method of FDC analysis based on historical costs can test for compensativeness. FDC requires a distribution of costs which cannot be allocated by any rational principle. (Arinc P.F., pp. 35–40). Resort to an FDC method based on historic cost responsibility may be useful in setting maximum rates for monopoly services, but such analysis has no role in determining minimum rates. (Arinc P.F., p. 126, Airlines BSE, pp. 33–38).

39. Arinc argues that a rate may somewhat exceed the minimum level of com-

[46] The following parties have filed Proposed Findings of Fact and Conclusions of Law in this proceeding.

pensativeness and remain reasonable. Rates in total should be high enough for the carrier to make a reasonable return on investment. Competitive service ratemaking must consider market conditions. Such rates must be low enough so that the carrier will be able to retain the business which would otherwise be lost. (Arinc P.F., pp. 126–127).

40. Arinc contends that the cost of comparable service from a private microwave system serves as an independent standard of the maximum rate level for the carriers. Further, TELPAK service has been shown to be compensatory at the original rate level. The "interim" TELPAK rates of September 1968, although less competitive than the original rates, are reasonably related to the cost of private microwave. Arinc asks that the rates of February 1970 and May 1972 be cancelled because they were substantially above the cost of competitive alternatives and thus unjustly and unreasonably high. TELPAK rates should be returned to their original level and the telegraph to voice equivalency should be returned to 12:1 (Arinc P.F., pp. 115–17) Arinc requests that increased charges for teletypewriter station equipment, private line terminals, installation charges and CCSA service have not been supported by Bell and should be rescinded. (Arinc Expt., pp. 87–103).

THE DEPARTMENT OF DEFENSE AND U.S. EXECUTIVE AGENCIES (DOD)

41. In behalf of the U.S. government executive agencies, DOD takes the position that the availability of a bulk rate offering, such as TELPAK, is required and justified by comeptitive necessity. Such an offering is essential to the efficient accomplishment of the tasks of the Federal executive agencies and its elimination would lead to a degradation of national defense capability. Lower TELPAK rates are justified and the elimination of TELPAK would force the government to consider private microwave since government policy requires procurement at the lowest cost (DOD P.F., pp. 8–10). DOD has maintained that long-run average cost (LRAC) techniques (versus LRIC) must be employed to assure that a rate is compensatory. DOD noted that for a particular interval of service and period of time, if all resource costs are included LRIC equals LRAC. DOD P.F., pp. 24–27). Where such long-run average cost analyses cannot be supplied a burden test, as an "equality" rather than an "inequality," must be used for a finding of compensativeness (DOD P.F., pp. 28–29, 79–80). It is further maintained that FDC cannot be used as a test for interservice subsidy and that FDC Method 1, in particular, is invalid, inaccurate and inapplicable as a cost mechanism, and its use would result in an anticompetitive umbrella. (DOD P. F., pp. 30–34). DOD notes that if the Commission feels bound to employ fully distributed costs, it should use Method 7 because it reflects economic reality to the maximum extent possible. DOD also finds Bell's market studies inaccurate and unreliable. (DOD Expt. No. 1; DOD P.F., p. 32).

AD HOC TELECOMMUNICATIONS COMMITTEE (AD HOC)

42. This party, in behalf of a number of large industrial users of private line services, concurs generally in the position of the Airline parties and contends that a differential between the TELPAK and non-TELPAK rates for regular private line telephone and telegraph services is justified by the volume needs of larger users and the carriers need to compete with private microwave systems. (Ad Hoc BSE, pp. 7–16). It is stated that TELPAK is compensatory and should be continued in essentially its present form. (Ad Hoc P.F., p. 45; BSE, p. 5.)

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS (NAMBO)

43. NAMBO concurs in and adopts the position of the Airline parties and urges the Commission to roll back the TELPAK rates "at least to the levels proposed by the Airlines" and to order refunds to the users who paid in excess of such levels. (LAMBO P.F., p. 6; Expt. pp. 2–3.)

MICROWAVE COMMUNICATIONS INC. (MCI)

44. MCI argues that FDC Method 1 must be the principal working tool of the Commission for the determination of rate levels for Bell System services. This is a proper allocation method and the only methodology in the record which attempts to measure the costs of providing service on the basis of current actual usage of facilities. Bell's rates, according to MCI, must provide revenue to cover all costs of the service including the system-wide rate of return on net investment if such rates are to be compensatory and non-discriminatory. MCI asserts that in a competitive market the most efficient carriers will be identified and will succeed, if fully allocated costs are required and the distortions of subsidy are eliminated.

45. MCI contends that Bell's approach is not reliable or effective and should not supplant the Commission's traditional analytical tool of fully allocated or fully distributed costs. Bell's burden test cannot measure cross-subsidy from MTS and WATS to competitive services. It is further asserted that Bell's LRIC is substantially different from that found in economic theory and that the development of proper LRIC techniques and the training of regulatory personnel to handle filings based on LRIC analysis would be difficult and costly.

46. MCI contends that Bell's and Western Union's rates for TELPAK C and D, private line telephone, and private line telegraph should be raised forthwith to the levels indicated by the best presently available fully distributed costs studies and the rates for the monopoly services should be reduced correspondingly (MCI P.F., pp. 104–108; MCI BSE, pp. 3–5, 6–7).

DATA TRANSMISSION CO. (DATRAN)

47. Datran contends that Bell's application of long-run incremental costs (LRIC), if adopted by the Commission, would create a positive inducement to Bell to practice interservice cross-subsidization (Datran P.F., pp. 15–16). Monopoly rates are based on historical costs and competitive prices are based on forecasts. LRIC is inimical to full and fair competition since no other carrier has a monopoly service which under the LRIC theory remains as a catch-all and guarantor of support for Bell's competitive services (Datran P.F., p. 16).

48. Datran finds that Bell's application of LRIC deficient. Datran views LRIC as a planning concept for the selection of the best course of action before decisions are made and reflects only the differences in cost between two specific alternatives. Datran claims that there may be an infinite number of LRIC's depending on the judgments of the decision maker. The burden test is inappropriate as a measure of cross-subsidy because it assumes perfect knowledge of future alternatives. Thus the burden theory only measures Bell's expectations of whether a service is expected to be a burden under specifically defined circumstances. (Datran P.F., pp. 16–18).

49. Datran argues for the adoption of a fully distributed cost standard. The FDC standard would allow Bell at least as much pricing flexibility as any other carrier and spread advantages of economies of scale (if any) to all services. FDC is consistent with the criteria used in determining Bell's interstate revenue requirement and its use would add realistic cost benchmarks to the Commission's regulator information base. Datran notes that FDC should be adopted as the rate ceiling for Bell's monopoly services. (Datran P.F., pp. 18–19).

THE WESTERN UNION TELEGRAPH CO. (WESTERN UNION OR WU)

50. Western Union asks us to reject LRIC and other ratemaking principles advocated by Bell and accept fully distributed costs as the most reliable and practical basis for pricing Bell's services (WU P.F., pp. 55–58). It is contended that Bell should be allowed to make no more than a fair rate of return on MTS and WATS. Further, Bell's competitive services should be priced no lower than the fair rate of return on investment reasonably allocated to such services. Upon a showing of competitive necessity, Bell may price these services lower. However, such rates must permit Bell to recover its fully allocated revenue requirements for such services within a reasonably foreseeable future period. (WU P.F., pp. 57–8).

51. Western Union claims that the TELPAK service should be cancelled because it is non-compensatory and therefore unjust and unreasonable under Section 201(a) of the Act. Also, minimum rates should be prescribed for Bell's private line telephone and private line telegraph classifications which result in earnings (on a fully allocated basis) at the lower end of the allowed interstate return range. Bell should also lower its MTS and WATS rates so that they are

earning in the middle of the allowed range. (WU P.F., pp. 96–98)

THE NETWORK PARTIES (ABC/CBS/NBC) (NETWORKS)

52. The networks contend that FDC is inappropriate for ratemaking purposes. FDC, they claim, ignores economic circumstances which should be considered in determining rates for services to be provided in the future (Networks P.F., pp. 44–60). LRIC, on the other hand, meets all of the criticisms levied against FDC and attributed costs on an economically justifiable cost-causing responsibility basis. The forward looking LRIC analysis leads to an optimal allocation of resources while accounting for relevant future costs and demand elasticities as well as other applicable rate making and public interest considerations. LRIC is consistent with judicial and administrative precedent. (Networks P.F., pp. 78–83).

53. The Networks contend, however, that Bell's application of LRIC has erroneously led to the attribution of unduly high costs to the program transmission services. (Networks P.F., pp. 194–219). When excessive and unneeded plant is eliminated from the cost base attributed to the video services, the record shows that such services do not cause any burden to other Bell services. The Networks claim that even without such adjustments, private line video services are shown by AT&T's own data to provide a substantial annual contribution to the overall costs of the firm.

54. The Networks find that current rates discriminate unlawfully against contract service users in favor of occasional service users. They request generally lower rates for the future and appropriate refund of excessive contract charges paid to AT&T since October 2, 1969. (Network P.F., pp. 220–30). The Networks also point out that they already make extensive use of competitive alternatives and that further increases in Bell's rates will cause them to transfer even more of their business away from AT&T. (Networks Expt., p. 5).

HUGHES SPORTS NETWORK, INC. (HSNI)

55. HSNI opposes Bell's proposed rates for private line video program transmission services as violative of the Commission's rate structure decision in "Hughes Sports Network v. AT&T," 22 FCC 2d 550 (1970). It is argued that there is insufficient evidence of any real threat of competition to Bell. LRIC offers unique opportunities for Bell to impose its "bias" and "anticipatory view of competition" into its ratemaking approach. (HSNI P.F., p. 89). Sound policy requires responses by a carrier to only actual and demonstrated competitive consequences. AT&T, however, has been pressured to lower contract rates by the networks who have threatened to move their business to competitive alternatives. There is no record support for a competitive response by AT&T. (HSNI P.F., pp. 57–72). Further, the Commission should not allow AT&T to revise its tariff structure to the benefit of contractual users (and the detriment of occasional users) without any pretense of showing or justifying proper allocation of costs between the two groups of users. (HSNI P.F., pp. 50–52).

UNITED PRESS INTERNATIONAL (UPI)

56. UPI contends that the increased charges involved in the private line service rate revisions filed by Bell on December 6, 1971 are unjust and unreasonable; that these rate revisions were filed at a time when no determination had been made by the Commission in either this Docket or Docket 19129 of the need by AT&T for any increased revenues, and indeed without significant regard for any impact upon overall earnings level considerations; and that the objective asserted by Bell was, in part, to improve the contribution to earnings of the private line services for the benefit of the users of other services, such as MTS, by raising the level of rates to what Bell considers the "optimum" level under presently foreseeable market conditions—this in spite of the fact that the private line telephone services were already making a substantial contribution to earnings and were thereby benefiting the users of other services, including MTS. (UPI P.F., p. 14).

57. Further, UPI states that Bell made "selected" increases that were confined to the channel terminal components without any offsetting decreases in line haul charges and without any separate cost studies; that, therefore, a disproportionately large portion of the increases fell upon those customers, particularly the press wire services, whose communications systems involve multipoint network configurations with large numbers of service points, as distinguished from customers with point-to-point service and relatively few service points; and that the press was treated in an unfair and discriminatory manner, particularly by increases in the telephotograph services (Series 4000). UPI urges the Commission to conclude that the rates of December 6, 1971 are unlawful because they discriminate against press customers. (UPI P.F., pp. 15–17).

ASSOCIATED PRESS (AP)

58. AP contends that AT&T has largely ignored services other than TELPAK and has not justified the increases imposed on short haul circuits or the increases in the monthly and installation charges for single channel private line service terminals. Further, the increased monthly charges for service terminals result in relatively higher charges to AP, and the press generally, which have not been shown to correspond to the cost of serving the press (AP P.F., pp. 7–11). Consequently, AP argues that these increased charges constitute an unjust and unreasonable discrimination against the press and subject it to an undue and unreasonable prejudice or disadvantage. (AP P.F., pp. 3–4.) Moreover, AP states that if AT&T is capable in the future of convincingly demonstrating that short-haul charges must be increased, it would seem that the appropriate approach would be increases for those line haul mileage bands where AT&T can show that revenues do not cover long-run incremental costs. (AP P.F., p. 15.)

AEROSPACE INDUSTRIES ASSOCIATION (AIA)

59. AIA states that TELPAK is competitively justified, in fact some of its members have already turned to competitive alternatives (T. 15753). It is further urged that the Commission evaluate the contributions made by AT&T's private line services using the principles of long-run incremental costs (AIA P.F., p. 59) and that no rate prescription be made until a new cost study is performed by AT&T.

V. STATUTORY STANDARDS

60. We agree with the RD that sections 201, 202, 205, and 214 of the Communications Act provide the relevant statutory standards for resolution of the issues herein. Principally, we are guided by section 201 which requires that charges, practices, classifications and regulations shall be just and reasonable. And, in determining to what extent costs should be allocated among Bell's service categories, consideration is to be given Bell's obligation under the above sections to provide, upon reasonable request, service without regard to whether the service is characterized as monopoly or competitive. Furthermore, our decision herein maintains that a carrier has a duty to continue to provide an already existing service, unless the Commission permits discontinuance pursuant to section 214 of the Act. As the RD recognized, appropriate rate levels for Bell's service categories must also comply with the standards of section 202(a) of the Act. This section prohibits a common carrier from making any unjust or unreasonable discrimination in changes, practices, classifications, regulations, facilities, or service in connection with like communications services. Additionally, service is to be provided without any undue or unreasonable preference, advantage or disadvantage. These standards are discussed in greater detail below. It is also recognized that several statutory provisions (sections 201(b), 210(b), and 396(h)) expressly permit differential pricing by carriers for certain classes of communications under specified conditions.

61. The Airline parties, ARINC, and DOD have noted as an exception the RD's failure to specifically include Section 1 of the Communications Act as a relevant standard in resolving the issues in this proceeding. While our reading of the RD leads us to conclude that this section containing the Act's basic mandate was implicit as a standard, we here explicitly acknowledge our obligation to "* * * make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges, for the purpose of the national defense * * *."

VI. Legal Precedent

62. Several parties criticize the RD's reliance on "Northern Pacific Ry. v. North Dakota," 236 U.S. 585 (1915) and other decisions as support for the position that fully allocated costs are the appropriate standard in determining rates for individual service categories. These parties claim that Northern Pacific Ry. is inapposite since it pertains to a state's unlawful attempt to set maximum rates no greater than incremental costs in contrast to the instant proceeding, where a carrier's attempt to establish incremental costs as a pricing floor is at issue. These parties cite and rely upon another line of cases from which they argue that there exists regulatory and judicial approval for incremental costs as the appropriate ratemaking standard. It is correct that courts have found rates compensatory, when they are set above incremental costs.[41] However, our reading of these cases fails to reflect any manifestation of judicial preference for an incremental costing approach, as opposed to a fully allocated approach.

63. We do, however, take judicial guidance from "American Commercial Lines v. Louisville and Nashville R. Co.," 392 U.S. 571 (1968). This case concerned the question of whether incremental costing or a fully allocated costing methodology was the appropriate standard in determining inherent cost advantages between modes of transportation. American Commercial Lines stands for the proposition that in the absence of clear Congressional directives, it is within the sound discretion of a regulatory agency to establish appropriate economic policy to effectuate its legislative mandate.[42] We note that the Communications Act contains no express direction regarding the choice of a particular costing methodology. Consequently, in view of American Commercial Lines, we need not distinguish among the holdings of the cases relied on in the RD and by the various parties, nor need we consider any particular costing methodology to be judicially sanctioned. Our conclusions will, therefore, be based on the record, the mandate to ensure just, reasonable and non-discriminatory rates.

64. It is argued by a number of the parties that the RD's conclusion that FDC Method 1 is the appropriate costing approach is unwarranted and that any method that attempts to allocate common costs is inherently arbitrary inasmuch as there are any number of ways to allocate costs. We agree that there is no one perfect method by which to allocate costs of services.[43] But, this does not mean that we are precluded from choosing a reliable costing method that best reflects our policy objectives emanating from the Act.[44] (See Section VIII *infra*.) Thus it is within the exercise of our informed judgment to choose the methodology we find proper under the attending circumstances.[45] Many years ago the Supreme Court recognized that "* * * it is much easier to reject [costing formulas] as being misleading than to find one apparently adequate."[46] Yet, it is our responsibility to make such a choice by this decision.

65. For these reasons we conclude that we are not constrained, merely because other methods are also plausible, in the selection of the methodology we employ herein for determining appropriate rate levels and the presence of cross-subsidy among individual categories of interstate telephone service.

VII. Prior Policy

66. The RD found prior Commission policy supports the following conclusions related to resolution of this case (RD, par. 95):

(1) Ascertainment of the actual cost of providing services underlies the requirement that rates be just, reasonable and nondiscriminatory;

(2) The public interest is not generally served by interservice cross-subsidization; and

(3) The Commission has previously dealt with the question of cross-subsidization, but in the context of fully distributed costs.[47]

Bell, the Airline parties, ARINC, AIA, and DOD have excepted to the appropriateness of one or more of these basic conclusions as reflecting prior Commission policy.

67. The importance of costs has long been recognized in our determination of the lawfulness of rates of telecommunications services.[48] It thus follows that our determination of the lawfulness of the rate levels of the major interstate service categories at issue herein, must be justified in relation to the cost of furnishing the particular service. This does not mean, however, that cost is necessarily the only criterion useful in determining whether rates are lawful under the Act. Prior cases have made it clear that besides using costs as the basis for setting rates, costs can be used as benchmarks to guide us in measuring the extent and lawfulness of any departure from actual costs, where non-cost considerations enter the ratemaking calculus.[49] Of course, departures from rates based directly on costs must be justified.[50]

68. There have been a limited number of circumstances where rates have been allowed to depart from costs. We previously, held, with respect to like communications services, that competitive necessity might justify differential pricing, even though the differential is not cost related provided certain conditions are met.[51] Likewise, the RD recognized that departure from costs in setting rates for press communications services might be warranted (RD, par. 93). However, to date no showing has been made before the Commission that would justify any non-cost differential pricing for press services.[52] It is also clear that where Congress has made special provision, rates for particular service categories may depart from costs. Thus, under section 396(h) of the Act, we have allowed Bell to provide private line service to educational television stations at reduced rates, even though the costs of such service were not fully recovered in the tariffed charges.[53] However, the extent to which non-cost considerations such as market demand and competitive factors should be taken into account in permitting departure from costs has not yet been settled.[54] This is one of the questions to be addressed herein. (In answer we set forth the guidelines to determine cost of service, as well as the basis for justifying departure therefrom. We make clear, however, as did the RD, that we will continue to entertain other appropriate bases of departure from the cost standards sanctioned herein, upon appropriate justification.)

69. We are in further agreement with the RD that our prior decisions reflect that cross-subsidization is generally not in the public interest. In the Private Line Rate Cases we stated:

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[41] See, e.g., *ICC* v. *New York*, N.H. & H.R. Co., 372 U.S. 744 (1963).

[42] We are thus not bound by the Supreme Court's decision upholding the ICC's determination that under section 15a(3) of the Interstate Commerce Act, 49 U.S.C. 15a(3) (1970), fully distributed costs should be used respecting the particular intermodal rate controversy, pending a subsequent rulemaking. We do note, however, the Court's lengthy footnote, 392 U.S. at 586–89, n.16, wherein it raised serious questions concerning the economic rationale of a costing methodology that is conceptually similar to LRIC. However, the Court concluded that the resolution of such questions is within the discretion and expertise of the regulatory tribunal.

[43] See, e.g., *Colorado Interstate Co.* v. *FPC*, 324 U.S. 581 (1945).

[44] E.g., *Consolidated Gas Supply Corp.* v. *FPC*, 520 F.2d 1176 (D.C. Cir. 1975).

[45] See, e.g., *Panhandle Eastern Pipeline Co.* v. *FPC*, 324 U.S. 635 (1945).

[46] *Groesback* v. *Duluth*, S.S. & A. Ry. Co., 250 U.S. 607, 614–615 (1919).

[47] The RD's conclusions concerning our prior policy with respect to differential pricing under Section 202(a) is discussed below at Section XII.

[48] E.g., Private Line Rate Cases, 34 FCC 217, 231, (1963); 34 FCC 244, 297 (1961); "Hi-Lo" 55 FCC 2d 224 (1975), 58 FCC 2d 362, 366 (1976); WATS, 59 FCC 2d 671, 678 (1976).

[49] 34 FCC at 231; 34 FCC at 297; WATS, 59 FCC 2d at 678.

[50] Private Line Rate Cases, 34 FCC at 231; 34 FCC at 297; WATS, 59 FCC 2d at 678.

[51] Telpak Rates, 38 FCC 370 (1964).

[52] Charges and Classifications for Services Furnished to the Press, 24 FCC 2d 565 (1970), 25 FCC 2d 5 (1969), aff'd sub. nom., Copley Press v. FCC, 425 F.2d 1290 (1971). We note that we are investigating the issue of preferential press rates in Docket No. 20667. That proceeding, however, is being held in abeyance pending resolution of the issues herein and in Docket No. 20814, an investigation into AT&T's Multi-Schedule Private Line (MPL) rate filing. Preferential Rates for Press Use of Domestic Private Line Service, 56 FCC 2d 796 (1976); FCC 76-718 (Released, August 13, 1976).

[53] Free or Reduced Rates, 17 FCC 2d 155 (1969), 20 FCC 2d 491 (1969); 31 FCC 2d 496 (1971).

[54] We recognize that in the Private Line Rate Cases consideration was given to non-cost criteria including value of service and competitive effects in prescribing the appropriate rate levels for individual services. 34 FCC at 227; 34 FCC at 298. It is nevertheless clear that the cost of providing service was at the heart of that decision. 34 FCC at 228, 231; 34 FCC at 297, 300.

Care must be taken to avoid excessively high rates for a carriers' noncompetitive services (or for a noncompetiitve classification) which tend to offset deficiencies resulting from unduly low rates for competitive services. 38 FCC at 301

Similarly in *Re WADS*[55] we expressed concern that there might be cross-subsidization between different classes of WADS service. More recently, we ruled that Bell had to demonstrate that there was no cross-subsidization among the distinct service elements of its "Hi-Lo" offering as well as between the Hi-Lo service and other services offered by the company.[56]

70. From the foregoing it is manifest that costs have played a predominent role in determining whether rates are just and reasonable under our statutory standards. But, in certain circumstances, other noncost criteria can be employed in the ratemaking process, provided we have full awareness of what the costs of services are, and the extent of departure therefrom. Furthermore, we have established that cross-subsidization between services is generally inimical to the public interest, but acknowledge that definitiveness and certainty are presently lacking in any definition of cross-subsidy.

71. We feel that these broad principles, which have served as the foundation of our ratemaking decisions for the past fifteen years, continue to be viable for purposes of resolution of the instant proceedings. Nevertheless, in view of the position taken by Bell and others we emphasize that we have not "prejudged" certain issues herein based on past holdings. We have examined de novo the issues and questions presented herein on the record. Thus, it still must be determined in this proceeding whether some form of fully distributed costs, marginal or long-run incremental costs or, indeed, some other variety or combination of costs should serve as the relevant costing standard. Furthermore, in determining the lawfulness of the rate levels at issue herein we must decide whether circumstances exist justifying a departure from a cost standard. Finally, we must define what constitutes cross-subsidization and whether cross-subsidization exists between the service categories under examination. Numerous orders in this proceeding,[57] as well as in proceedings dealing with related questions[58] make it clear that we have not resolved nor predetermined the issues posed herein.

VIII. Statutory Objectives and Responsibilities

72. Underlying resolution of the basic issues in this proceeding (the determination of the lawfulness of rate levels and rate level relationships of Bell's principal categories of service) are the objectives and responsibilities which evolve from our enabling statute and prior decisions. In the discussion above on prior Commission policy (Section VII), it was shown that our prior decisions held cross-subsidization generally undesirable. Furthermore, the recognition of costs as providing primary underlying support for determining the lawfulness of rates and rate structures has been established, but the determination of what constitutes "relevant" cost remains.

73. We emphasize that ascertaining relevant costs is essential to our primary ratemaking responsibilities under the Act—the determination of whether rates are just, reasonable and not unduly discriminatory. Likewise, knowledge of the cost of service permits identification of inter-service burdens and cross-subsidization. An understanding of relevant costs is directly related to carrier accountability for the rates, charges, rules and practices contained in its published tariffs.

74. Pursuant to sections 219 and 220 of the Communications Act of 1934, as amended, we are empowered to prescribe uniform accounting systems and depreciation charges, and to require submission of such records, reports, and studies as we deem necessary to carry out our legislative mandate. Likewise, the Commission may, under Section 218, inquire into the management of common carriers and keep itself informed as to the manner and method of management. Consequently, the Commission may make periodic inquiry of the carriers it regulates and establish appropriate reporting rules to facilitate determination of the justness and reasonableness of carrier rates, practices, classifications, and regulations. This is illustrated by the requirements of §§ 1.363 and 61.38 of the Commission's rules and regulations. Thus, our statutory mandate and our rules manifest our paramount responsibility to the public to ensure carrier accountability for the rates, charges, practices and rules published by the carriers.

75. Until the early 1960's, the Commission relied primarily on informal procedures termed "continuing surveillance" as the principal vehicle for carrying out its statutory responsibilities. This approach could best be characterized by the Commission regulating rates through "frank" and informal negotiations in lieu of rate investigation, hearing and prescription.

76. With the advent of declining costs resulting from recurring technological breakthroughs in transmission and switching, escalating demand, authorization of private microwave systems, and competition in the intercity private line market by terrestrial and satellite carriers, the need arose for more structured and formal rate regulation. Likewise, there also arose the commensurate need for reporting rules. Indeed, the sections of the Commission's rules cited above were developed in the period after the emphasis on carrier accountability had shifted from informal to more structured and formal procedures.[59] The current proceeding evolved in this era and the Commission's objective of ensuring carrier accountability became intertwined in the controversy surrounding the related issues of proper ratemaking principles and procedures.

77. Ensuring carrier accountability is one of our primary objectives and responsibilities. All parties appear to agree that an established carrier should be held accountable for its pricing and investment decisions. There is also agreement that the modern complex structure of the industry characterized by the importance of technology and controversy over appropriate capital structures requires that a formal approach to carrier accountability be taken. However, the parties do differ regarding proper pricing and costing methodologies as the same reflect on accountability. The parties also disagree as to proper forecasting and tracking procedures, and the appropriate data to be used for such purposes. Additionally, the parties do not concur regarding the role forecast data should play in setting rates, or how uniform the employment of forecasting and tracking procedures should be between services. Furthermore, they are ambiguous in their description of how acknowledged substandard performance should be handled, including the important matter of shortfalls in net revenues resulting from deviations between actual and projected results. Finally, the parties do not clarify whether the Commission should employ yearly or more frequent audits, single or recurrent evaluative references to base year forecasts, or adjusted (rolled forward) or fixed baseline projections.

78. The RD proposes ratemaking on the basis of historical FDC Method 1 costs and also the submission of forecasts on a basis consistent with Method 1. This dual use of Method 1 effectively circumvents incompatibility between forecasting and tracking procedures, and, assuming the acceptance of the Method 1 approach, makes detection of cross-subsidization somewhat perfunctory (see RD, par. 179). Comparisons of forecast and test year evidence would be submitted including forecast rates of return (except on wholly new services for which no test year data would be required) (RD, pars. 212–215). The RD acknowledged that retrospective comparisons of forecast and actual data have the inherent limitation of considering performance only opposite the alternative chosen (RD, Appendix B, pars. 20–39; CCB Exhs. 7 and 25). The RD also favors closer examination of the carrier's justification for not choosing other rate alternatives as part of the overall accountability process.

79. The RD's references to accountability are oriented toward the determination of full cost rate levels to cover historical revenue requirements. It is noted that "FDC study results by serv-

[55] 35 FCC 166, 183 (1963).

[56] 55 FCC 2d 224, 230 (1975); 58 FCC 2d 362, 368 (1976). The "Hi-Lo" filing was rejected, in part, because of Bell's failure to make an adequate showing that cross-subsidization did not exist among the services.

[57] 18 FCC 2d 761, 763; 23 FCC 2d 503, 508–509; 41 FCC 2d 593–594.

[58] Specialized Common Carriers, 29 FCC 2d 871, 916–917 (1971); "Hi-Lo," 58 FCC 2d 362, 364 (1976).

[59] See e.g., Final Report and Order in Docket 18703, 25 FCC 2d 957 (1970).

ice are useful for tracking the results of rate changes and all other influences that affect the revenue-cost relationship of major service categories" (RD, Appendix C, par. 85). The RD is concerned that any comparisons that would be made of forecasts with the results of operations should be as firmly founded in actual data as possible. It is partly for this reason that the RD held objectionable the suggestions of other parties that use be made of Methods 3 to 7 for tracking purposes. The RD relied on Method 1 rather than Method 7, for example, since it concluded that results under Method 7 are partly composed of data drawn from forecasts of the "near and distant future" (RD, Appendix C, par. 87).

80. The RD does not address several of the ambiguities regarding "accountability" referred to earlier. While its use of Method 1 provides for consistency between forecast and actual results, projected data need not have any actual part in setting rates. Indeed, the RD's conclusions suggest that forecast results would only be informational. Furtheremore, there are no provisions made for incorporating "rewards or penalties" into the RD's scheme of ratemaking to recognize disparities that might be found between actual and projected results. Shortfalls would presumably be covered by rate adjustments. Finally, the RD does not clearly delineate what it would consider to be proper procedures for a tracking or continuous surveillance program, as opposed to the more general projections currently required under § 61.38 of the rules.

81. The RD's recommendations on the use of forecast data and procedures are tied to its concern with cross-subsidization—especially as it might be accomplished through the vehicle of managerial judgment in cost allocation. The RD generally found that reliance upon such judgment in the ratemaking process is not in the public interest. To this end, only minimal importance is attached to such data for purposes of the ratemaking process.

82. The Bell System's most prominent reference to "accountability" was in connection with its "retrospective accountability" analysis. Bell maintained that there is no evidence of record supporting the validity or feasiblity of projecting Method 1 data. Bell argued that such projections and any deviations in actual results from these projections have no import for ratemaking purposes (Bell Expt., pp. 3–5, and 120–121). Bell has also maintained that any proper test of cross-subsidization must be of an incremental, forward-looking nature such as the Burden Test proposed by its witness, Dr. Baumol (Bell Exh. 18, pp. 6–7). It was in addressing the objections of Common Carrier Bureau witness, Dr. William Melody, to such a test that Bell directed its attention to the issue of retrospective accountability (CCB Exh. 7, pp. 5–27). Bell acknowledges the Commission's need for historical cost based analyses to serve as "benchmarks" in evaluating interstate service rates (Bell BSE, pp. 47–54).

83. Dr. Melody testified (CCB Exh. 7, pp. 19–22, 32–25) that under Bell's incremental analysis the Commission would have no way of assuring itself that projected data was not biased. He also objected to the analysis in that it offered no information on actual performance. While not directly addressing the question of bias in an accountability context, Bell maintained that any forecast, including full cost projections, are susceptible to the bias criticism. Bell asserted that proper documentation and record keeping by the carrier can minimize the "nonobjective" aspects of forecasting (Bell Exh. 18, pp. 13–20). With regard to the needs of the Commission for results of actual performance, Bell concurs with Dr. Melody that a comparison of actual and projected results is appropriate in ensuring carrier accountability (Bell Exh. 20, pp. 13–19). It alleged, however, that only the directly attributable costs of a service should be compared with forecasted changes in revenue/cost relationships as estimated by incremental studies (Bell P.F., pp. 108–119).

84. We find that accountability for the Commission's purposes should involve comparative evaluations of forecast and actual costs, and should incorporate the findings of such analyses into the ratemaking process. This is in accord with our prior policy, as formulated in the Private Line and WATS cases wherein we stated that costs can be used as benchmarks in the ratemaking process.[60] While the parties' interpretations of accountability seem to approve use of more than simply the informational aspects of forecasting, there is no delineation of the specific means of implementing the results of the evaluative process. We deem the latter to be requisite. Additionally, we find that accountability should also involve consistency in forecast and actual methodology and in the dimensions of the data employed. Finally, we find that accountabiltiy should be implemented across all services and for anticipatory (continuous surveillance) as well as retrospective purposes. Thus, accountability is the touchstone of the "just and reasonable" provision of section 201.

85. Other statutory objectives and responsibilities include ensuring equitable and non-discriminatory treatment of all service users, (generally referred to herein as "equity"), promoting efficiency and technological innovation, and providing a precise and clear set of market rules for planning and decision making purposes. As indicated, these objectives collectively have a direct bearing on the major issues of lawfulness of return levels and relationships and also on the selection of proper costing methodologies and procedures for the future.

86. Equity can be viewed in a general framework, as follows: Users of the carrier's various offerings are entitled to non-discriminatory treatment with regard to the quality and diversity of service made available to them. This is true with respect to the carrier's definition, selection and allocation of costs, the type of facilities dedicated to various services, and the "relative weight" assigned by management to the myriad of other objective and implicit factors used in determining particular service rates. Furthermore, equity extends to such decisional areas as research and development and to facility construction program designs. These decisions must be commensurate or reconciled with the relative levels of earned return and benefits afforded users of Bell's various services.

87. The presence of competition in certain market segments raises certain equity questions concerning the compatibility of pricing philosophies designed to "meet competition" vis-a-vis those used to price monopoly services. The concept of equity is embodied in section 202(a) of the Act. This section specifies that it is unlawful for any carrier "to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality * * *." Further, section 201(b) of the Act specifies that "all charges, practices, classifications and regulations for and in connection with such communication services, shall be just and reasonable * * *." The Bell parties, as we have discussed, espouse a "basic service" philosophy of ratemaking, i.e., Bell alleges that it is reasonable to price competitive services on a "contributional" or marginal basis while simultaneously requiring monopoly service rates to cover all other costs; thus acting as guarantor that the overall revenue requirement is met (T. 15592–15609). Whether such a basic service theory of ratemaking is equitable and, indeed, lawful under sections 202(a) and 201(b) of the Act is at issue herein.

88. The RD concludes "that it is unjust and unreasonable to require users of any class of service * * * to contribute earnings on such services in excess of what the Commission has found, after hearing, to be reasonably necessary to meet the overall revenue requirements of the carrier" (RD, par. 183). Additionally, the RD maintains that our prior decisions reject the view that pricing monopoly services at higher levels than competitive services to prevent shifts between them is justified (RD, par. 87). Further, the RD states that we have found that the "bare fact that a service may be enjoying a more rapid rate of growth does not itself justify imposing artificial rate burdens on it" (Private Line Cases, 34 FCC 217, 228; RD, par. 86). However, the RD does acknowledge that we have stated "our intention to permit the existing carriers to price their competitive services in a fashion that will realistically and reasonably reflect economic advantages, if any, that are inherent in the plant and operations of those carriers" (Specialized Common Carrier Decision, 29 FCC 2d at 915; RD, par. 208).

89. On balance, what we have at issue with respect to equity among users when viewed in the perspective of sections 201(b) and 202(a) of the Act and our prior decisions is the lawfulness of the

[60] 34 FCC 217, 231 (1963); 59 FCC 2d 671, 678 (1976).

results of Bell's disparate pricing philosophy on the residual (monopoly) service ratepayer. As discussed in more detail below, it is not clear that Bell's ostensible efficiency-related rationale for its pricing approach coincides with the ratemaking objectives of the Commission. However, assuming arguendo, that we could accept the basic service philosophy of pricing as the appropriate economic means of reflecting Bell's economic advantages of scale and of being the "going concern" vis-a-vis its incipient competitors, could we properly hold lawful the corollary results of the basic service theory that may dictate higher rates for monopoly users? That is, should the Commission find Bell's economic arguments advanced for its pricing philosophy so persuasive that special treatment of competitive users as selected "marginal customers" overrides other precedental and statutory considerations?

90. The above discussion of underlying legal and economic factors was predicated on the assumption that the basic service philosophy was the proper pricing approach. As will be explained in reviewing the arguments respecting full and marginal costing, below, this assumption implies that monopoly users would have lower discounted revenue requirements for the time period including "the near and distant future" due to the special treatment afforded competitive customers. If, however, treating competitive and monopoly service users in a disparate fashion does not satisfy this assumption, the Bell position then stands to prejudice monopoly ratepayers.

91. Another objective of the Commission is to encourage efficiency and innovation in the provision of telecommunications services. Under the basic mandate contained in Section 1 of the Communications Act, we are to "make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges * * *." The RD related efficiency directly to production and costs and also to discrimination:

> Generally, rate regulation is intended to be a substitute for competition in special market situations where an essential service or good is produced and maximum efficiency (that is, minimum cost) can be achieved * * *. It is intended that rates be designed to cover the necessary costs at levels which allow no excess over the minimum cost of efficient operation and which reflect no undue discrimination * * * (RD, par. 97).

92. The RD and other parties recognize the interdependence of efficiency and other Commission goals and criteria:

> For a multi-service concern it is necessary to develop techniques for detecting and correcting cross-subsidization * * *. Effective regulation requires appropriate measures by which to gauge the overall performance of the regulated enterprise and a system of incentives which will pull the operation in the direction of maximum efficiency * * *. In this regard, one of the principal regulatory needs is to establish an accountability standard which provides the regulator and management alike the means for evaluating the overall effect of a myriad of interdependent decisions * * * (RD, par. 100).

93. Likewise, ARINC relates specification of costing methodolgy, as part of the spectrum of "fair competition" rules, to efficiency. Of course, ARINC's particular methodological advocations are not in juxtaposition with those of the RD. However, both appear to concur that improper specification of costing and ratemaking rules would negate desired efficiency and innovational benefits of competition at their inception. ARINC quotes the concurring statement of Commissioner Washburn in the *Hi-Lo* case to the effect that improper costing signals "create strong incentives which will tend to distort the efficient use of existing plant * * *." (ARINC BSE, pp. 31–32). The essence of ARINC's argument is that the dimensions of efficiency extend beyond isolation of the cost of factor inputs for a particular production function and operating constraints (both physical and procedural).

94. Bell has contended in this and other proceedings that rates related to marginal costing rather than FDC methods should be used for pricing its competitive services to ensure efficient use of its facilities and to avoid protecting inefficient specialized carriers (see, 29 FCC 2d at 899). Thus, Bell states that "reliance on an FDC criterion interferes with pricing decisions designed to achieve more efficient utilization of facilities and to foster lower unit costs of providing services to all classes of communications users" (Bell P.F., p. 145). Bell contends that only costs causally allocable to each service alone are relevant for ratemaking purposes, although, as discussed heretofore, Bell argues that other non-cost ratemaking factors are relevant as well. Others find fault with this philosophy. The RD, for example maintains that overall, incremental cost based rates do not cover total costs, and that by definition, allocation and selective application of such costs in determining rates involves unreasonable and unlawful levels of management judgment, contrary to the interests of all service users. These issues are discussed at length in later sections (see Sections IX–XI).

95. We find our obligation to promote efficiency and innovation to encompass cost definition, minimization, and allocation. Furthermore, we recognize the interdependence of efficiency and costing. We do not limit our consideration of efficiency only to measurable transactions, but realize that the public interest may be served by recognizing factors not directly traceable to the marketplace. Thus our concept of efficiency incorporates such considerations as equity and social welfare. It is, therefore, broader than that espoused by economists or individual carriers. Accordingly, our selection of a proper costing methodology from this standpoint will be determined by defining the term "optimal" in a fashion quite apart from the "relevant ratemaking factors" used by Bell.

96. A final major objective of the Commission is clarification of market rules. In general, these concern market entry and exit, proper supporting material for tariffs, rate level floors and ceilings, interservice rate relationships, and the myriad of other marketplace specifications needed by suppliers for proper decision making and planning. The Commission's prior decisions encouraging competition in certain markets were made to attract those firms which will prove over time to be viable and effective alternative sources of supply. Such firms should be able to accurately gauge the attractiveness of communications markets with full knowledge of the rules pertaining to their own and the established carriers' opportunities, responsibilities, and limitations. For example, in other proceedings, we have endeavored to provide rules regarding interconnection and service and equipment definitions. In this proceeding our attention is directed to ratemaking principles. Our findings and conclusions herein are intended to provide the rules necessary to properly relate costs and both relative rates and rate levels. They should dissuade both incipient and established suppliers from participating in a particular service area because of the presumption that "protective umbrellas" will offset any patent inherent economic shortcomings.

97. In our Specialized Common Carrier Services decision, 29 FCC 2d 870, 915–916 (1971) we declared that we favored fair competition between established carriers and their then incipient competitors for the intercity private line market. We noted the relevance of costs in this regard, but did not make a finding on what constituted a proper costing methodology, deferring that issue to this proceeding. We stressed (29 FCC 2d at 915–916) that it was, "our objective to promote and maintain an environment within which existing and any new carriers shall have an opportunity to compete fairly and fully in the sale of specialized services. Our ratemaking and regulatory policies and practices will be appropriately adapted to accomplish this objective * * *" in Docket 18128.

98. The Commission has also expressed itself on fair competition in other proceedings. In the area of interconnection, for example, the Commission held unlawful attempts by established carriers to maintain unduly restrictive tariff provisions violative of fair competition:

> In Specialized Common Carrier Services, the Commission authorized new specialized private line carriers and issued a broad directive to the established carriers to make available to such new carriers local distribution facilities on a reasonable and nondiscriminatory basis. 29 FCC 2d at 940. Although Bell provided local loop service to specialized common carriers, it would not interconnect its plant with [specialized carrier] facilities for the purpose of providing FX and CCSA services. In Bell System Tariff Offering, Bell argued that the interconnection policies enunciated in the Specialized Common Carrier decision did not require such interconnection. The Commission disagreed and, inter alia, ordered AT&T and the Bell System Companies to cease and desist from denying specialized carriers reasonable interconnection services similar to those provided to AT&T's Long Lines Department * * *. The Commission concluded that competition between Long Lines and the special-

ized carriers in the interstate private line services market would not be *full and fair* if the specialized carriers were prevented from providing FX and CCSA services by reason of monopoly control by Bell and other telephone companies over local plant. Similarly, we believe that competition between Long Lines and specialized carriers on routes served by both cannot be *full and fair* if subscribers of Tariff 260 services cannot terminate those services at IRC and specialized carrier premises. (emphasis added) (Memorandum Opinion and Order, FCC 76–684, July 30, 1976.)

99. There is general agreement in principle with the objective of fair competition (RD, pars. 208–210; Bell BSE, pp. 29–36) and that any costing methodology selected by the Commission for use in evaluating tariff filings and rate levels and relationships should be consistent with such objective. There is no agreement, however, in the interpretation and delineation of what constitutes "fair competition."

100. The RD relies on the Private Line Rate Cases 34 FCC 244 (1961), 34 FCC 217, 231 (1963) in support of full cost pricing as the cornerstone of fair competition. The RD acknowledges that other pricing approaches may be warranted and, indeed, tendered for consideration by the Commission, but it notes that there must be special support in each such instance. Further, the RD holds that the burden of supporting specialized ratemaking always rests upon the applicant (RD, pars. 89–94). Within the context of full costing, the RD finds limitations on monoply service earnings may be necessary to satisfy the requirements of Section 201(b) of the Act (RD, pars. 181–184). Without such limitations, the RD finds that cross-subsidization cannot be avoided, and that the Bell System would enjoy an unwarranted, anticompetitive "protective umbrella" (RD, pars. 208–210). Finally, within the context of fair competition the RD objects to any pricing approach that will not tend to provide maximum amelioration and coverage of revenue shortfalls that necessarily result from full cost pricing departures (RD, pars. 196–199).

101. The Bell System Respondents advocate that fair competition without cross-subsidization involves departures from full costing for certain services. However, full costs, appropriately defined, constitute part of Bell's overall approach. In this regard Bell advances its basic service philosophy as the ratemaking approach appropriate for the realization of fair competition (T. 15592–15600).

102. The apparent bases for Bell's pricing of services varies from service to service. For competitive (private line) service rates, Bell maintains that only long-run incremental costs are relevant. Bell suggests that its objective in employing a marginal cost based pricing approach is to minimize the share of total costs to be borne by monopoly (MTS and WATS) service users. Bell alludes to the theoretical efficiency of pricing in accordance with a service's marginal costs. However, Bell acknowledges that it uses a combination of cost, demand, and other factors in actually setting competitive service rates. (T. 15592–15604; Bell Expt., pp. 7–15, Bell P.F., pp. 26–39). Bell sets its monopoly service rates with the objective of meeting its aggregate revenue requirement (including cost of capital) for all its services. Since monopoly services are the "residual" or non-marginal offerings, Bell's objective of covering overall costs, in effect, makes these services responsible for covering costs not provided for by private line services.

103. Thus, the basic service philosophy of pricing provides an integral part of Bell's concept of full and fair competition. Under its view, prices related to incremental costs are to apply only to competitive services. However, Bell recognizes that investors presently view the firm as a whole, and that costs it regards for service category ratemaking as "economically irrelevant," (because of their historical nature) are in fact, "financially important" and if not recovered are reflected in its aggregate cost of capital. For this reason Bell asserts that these costs must be covered by the residual services (MTS and WATS), if Bell is to earn its allowed rate of return. Rates for these two services are, therefore, not viewed from a contributional standpoint as are competitive services. Basic service prices are set so that they cover the costs not contributed to by private line services revenues. (Bell P.F., pp. 26, 36).

104. Bell's conception of fair competition includes conclusions regarding "pricing flexibility" that can only be reached under its basic service philosophy. The RD generally does not support the contention that there is a need for flexibility in determining proper cost/price relationships among services, within the context of fair competition (RD, pars. 144–145, 157–159, and 185–187). However, whereas the RD held use of an FDC rate ceiling for MTS as necessary to avoid cross-subsidization, Bell finds this ceiling constitutes a limitation on its pricing flexibility and thus on the claimed contributional and efficiency related benefits all customers are alleged to derive from use of incremental cost related prices for other services (T. 15604–15606; Bell BSE, pp. 29–36). Bell maintains that such a ceiling for MTS defines a floor for other (especially competitive) services (Bell P.F., p. 51). This result naturally follows from Bell's stipulation that it must earn its overall revenue requirement (Bell P.F., pp. 50–52). To summarize, Bell advocates that it be given the flexibility to reflect the latest technological advances and factor market prices in its private line rates, only under the presumption that uncovered costs become the responsibility of its monopoly service users. We note that we believe reasonable pricing flexibility to be desirable, consistent with our findings and conclusions herein. However, as elaborated below, we cannot accept Bell's concept of pricing flexibility.

IX. The Costing Methodologies

A. Introduction

105. In Section VIII (Statutory Objectives and Responsibilities) we noted the existence of crtain common ground among the enumerated objectives, and also areas of interaction between these objectives and the costing principles at issue beneath the penumbra of the Act. Further, given the foundation of our objectives, embracing concepts of *both* law and economics, employment of these objectives can produce alternative judgments or conclusions which, in varying degrees, need not be reinforcing. Judgments emphasizing the more legally oriented equity and accountability objectives, for example, may conflict with economic concepts of efficiency and fair market rules. Indeed, we noted that in given situations there may be conflicting legal and economic interpretations concerning proper employment of even a single objective.

106. In this section we outline and explore the concepts and underlying characteristics of fully distributed cost methodologies and marginal costing. We delve, as did the RD, into the origins and evolution of relevant complex socio-economic theory. Also for the necessary purpose of deciding this case as rationally as possible within the statutory, legal, economic and other technical and interdisciplinary constraints (such as accounting and engineering) which influence performance of our regulatory functions, we explore fundamental elements of the foregoing; indeed, sometimes esoteric elements and postulations. On such bases we explore the advantages and disadvantages of FDC and marginal costing in light of the objectives and responsibilities previously delineated. Thus, in the ensuing discussion we will, for example, examine the alleged efficiency shortcomings of FDC as well as the equity and accountability deficiencies ascribed to marginal costing.[61] Likewise, we will discuss the suitability of FDC for determining the lawfulness of rates and rate level relationships and of marginal costing in certain contexts.

107. The RD sets forth the role of costing methodologies in the regulatory process as follows:

> Generally, rate regulation is intended to be a substitute for competition in special market situations where an essential service or good is produced and maximum efficiency (that is, minimum cost) can be achieved by allowing one large-scale producer to supply a given market area. Restricting production to one producer in the market is for purposes of gaining the alleged benefits of economies of scale, i.e., the lower unit costs which are sometimes realized as the volume or scale of production increases. In the aggregate, the regulated enterprise is supposed to operate at "cost," where the term "cost" includes the cost of capital. It is intended that rates be designed to cover the necessary cost at levels which allow no excess over the minimum cost of efficient operation and which reflect

[61] Although it has been suggested on the record that economists can pursue their ends wihtout the need to consider conflicting logic and data and without making value judgments (T. 10685–10695), the Commission is not so fortunate. We must decide this proceeding based upon a weighing of any number of factors, some of which may be at odds with each other.

no undue discrimination, either between classes of service or among different customers within a given service classification.

In some instances it may be both feasible and appropriate as a matter of public policy for a single producer to engage in both regulated monopoly and competitive markets. Here, a further objective of rate regulation is to prevent the presence of the integrated supplier from distorting the competitive market place, in order that the benefits of the full interplay of competitive market forces not be lost. This requires that the rates for competitive service offerings be set at appropriate compensatory levels, such that competitors are not subjected to unfair competition and the users of monopoly services are not required to subsidize the competitive service offerings of the integrated supplier.

In order to accomplish the various goals of regulation, certain tools and techniques are required. These include requirements for uniform systems of accounts and reports, audits, and related tests to ascertain the reasonableness of rate base elements and operating expenses including the costs of capital of the regulated enterprise. All of these elements taken together constitute a program of cost surveillance, since rates are to be designed to cover reasonable "costs." (RD, pars. 97–99).

In a firm which engages solely in competitive services, and where genuine competition exists for each service there is, of course, no public interest requirement to track the consequences of * * * management decisions; the free interaction of consumer choice and competitive response will automatically reward wise management decisions and penalize mistakes. Bell does not, however, fall in this category. The vast bulk of its service offerings enjoy monopoly or quasi-monopoly status, and are offered under uniform tariffs. The pricing of these services obviously cannot be and is not subject to the automatic corrections of the competitive marketplace. As Bell has eloquently argued in this and other proceedings, its monopoly and competitive services are provided via a single, integrated network involving extensive use of common facilities, personnel, management, and marketing resources. The allocation of proportionate use and value of these resources between monopoly and competitive services, and among classes of competitive services, constitute important management decisions not subject to the corrections of the competitive marketplace. Given the preponderance of its monopoly service demand, costs, and revenues, slight imperfections in these decisions will have little consequences for Bell's overall revenues and earnings; but for the same reason, even the slightest imperfection can have a major impact on the pricing of Bell's competitive services, with significant implications for both the users of those services and for Bell's competitors. In short, even small errors in management decisions in this area can result in significant underpricing or overpricing of Bell's competitive services, without a corresponding effect on its overall costs or revenues. This situation in turn can result in either predatory pricing or false entry signals for Bell's competitors (RD, par. 101).

B. FULL COSTING

108. Aggregate company full costs have historically had an important role in regulation and, indeed, were the primary regulatory cost concept in telecommunications prior to this proceeding. Previously we had focused almost exclusively on total revenue requirements and rate base related issues.[62] The carriers were allowed virtual autonomy in determining how revenue requirements were to be satisfied among various classes of service.[63]

109. Full costs of operations include current operating expenses such as wages, salaries, fuel, maintenance, advertising and research. They also include annual charges such as depreciation and operating taxes. Operating expenses parallel standard accounting concepts of costs. That is, costs generally are recorded at original or historical values and are recovered over time, hopefully, in a manner consistent with their associated revenue flows. It is consistent with the theory of regulation that rate base items and operating expenditures disallowed by a Commission for ratemaking purposes should, in effect, be charged to the firm's stockholders.[64] However, disallowances (such as the revenue shortfalls discussed earlier) eventually have impact on a firm's cost of capital, particularly the equity component. In this case the important question is from which service or services, if any, are such costs to be recovered when there is a shortfall? When a firm serves a number of classes of users, each with varying demand characteristics, rate adjustments stemming from upward costs pressures would logically be directed toward those classes of users with the most inelastic demand, e.g., monopoly service users. In the past, before competition in telecommunications came to the fore, the problem of how particular increases in costs were to be handled was less acute. Generally, there were other downward cost pressures, notably those resulting from rapid technological advances yielding more efficient and cost effective plant. Furthermore, there existed ameliorative exogenous factors such as the nation's low inflation rates and productivity increases, and the relative structural stability of the telecommunications industry itself. Problems of rate levels for particular services and interservice rate levels were considered as secondary to the determination of overall revenue requirements.[65]

110. When either a carrier's rate levels or interservice rate relationships are at issue the allocation of costs among services becomes essential to the performance of regulatory functions. Thus questions arise concerning the justness and reasonableness of relative rates vis-a-vis the cost of providing service. In this proceeding the major areas of contention center on the general appropriateness of FDC for such pricing and ratemaking purposes (especially the rationale for its use and its alleged compensativeness and efficiency consequences). There is also controversy herein concerning which specific FDC method(s) is appropriate under an accountability standard. In particular, should the historical nature of full costs and the alleged inherent arbitrariness of requiring distribution of certain common and joint operating costs according to FDC methods preclude their usefulness for ratemaking purposes? Furthermore, do efficiency and revenue contribution losses proximately result from such a distribution, and, if so, are these losses of a significant magnitude? Finally, when FDC methods are employed for accountability purposes, what distributive measure(s) constitute a proper basis for the assignment of costs?

111. The RD favors use of FDC for both ratemaking and accountability purposes. The RD describes FDC as follows:

> In a fully distributed cost (FDC) analysis, the totality of all historically recorded investment and operating costs for all services offered during a specified test period are first determined. In addition, the total historical volume of each service actually provided during the test period is determined from the carrier's records.
>
> Direct costs which can be identified for a a particular service offering are segmented and attributed to the relevant service. The remaining common and joint costs are allocated among the services according to statistical and/or judgmental determinations as to the *proportionate use* which each service made of the facilities, personnel, and operations supported by such costs. At the conclusion of the process, it is possible not only to compute a rate of return for each service, but also to establish *definitive unit costs* for each of the services offered during the test period, which can be used as a basis for determining the *appropriate cost-based price* for each service which would have satisfied the carrier's total revenue requirement—including cost of capital. The rates for each service may be computed so as to have contributed an equal rate of return on investment or each service rate may be computed to have produced different rates of return while the aggregate of all *satisfies the overall revenue requirement.* In all these calculations, appropriate factors for demand elasticities (including cross-elasticities among services) may be introduced. Finally, these *calculations may be used as a basis for setting future rates, with appropriate adjustments for market forecasts, projected demand elasticities, projected cost increments, etc.* (RD, pars. 106–107) (Emphasis added).

C. MARGINAL COSTING AND PRICING

112. Marginalist theories with their ties to "optimum social welfare" have a long history. Like most major evolutionary advances in conceptualization, these theories have evolved from the efforts of a number of writers. Clearly, the pioneering work of Jevons, Menger, and Leon Walras stand out regarding utility-oriented marginalism with its overtones for optimization. Jevon's followers, Edgeworth and Wicksteed, Weiser and Böhm-Bawerk of Menger's Austrian School, and Pareto of the Lausanne School's general equilibrium tradition, made notable con-

[62] Total revenue requirements are comprised of the full costs of operations (expenses) plus an allowed rate of return on net plant and other tangible and intangible assets in service. Communications Satellite Corp., 56 FCC 2d 1101, 1131 (1975).

[63] 1 Kahn, The Economics of Regulations, pp. 54–56 (1970).

[64] *Id.*, pp. 26–7, 31. See also, Garfield and Lovejoy, Public Utility Economics, pp. 48–56 (1964).

[65] For a discussion of the FCC's regulation of common carriers in the "precompetitive" era, see Garfield and Lovejoy, *supra*, at pp. 194–5.

tributions to marginalism, as did the Cambridge School of Marshall and such American writers as J. B. Clark.[66] What came to be addressed by some authors as the marginal cost pricing approach of neoclassical economics eventually tied together both demand and supply factors. Walras and Marshall were perhaps most noteworthy for their contributions to this synthesis. Within the context of general equilibrium, the relationships between demand and supply traced themselves through to the welfare of society as a whole: pricing theory and welfare were at last integrated. Economists often assume for conceptualization purposes that real world market situations closely parallel the constructs of the neoclassical competitive model. We note that under their assumed conditions, these scholars alone, apart from other social scientists and policymakers, would be in the unique position of being able to prescribe a social policy regarding pricing which was "best" not only for the firm or the individual, but for the aggregate public welfare as well. Unfortunately for economists, the constructs of neoclassical theory have not easily lended themselves to practical implementation. Underlying restrictive assumptions which lead to narrowly applicable results have subjected neoclassical theory to criticism of its precepts and, indeed, its relevance.

113. Despite inconsistencies with real world conditions, marginalism and marginal costing and their ties to social welfare still remain an intrinsic ingredient of the foundations of modern economic theory. Certain writers have adapted economic theory to more pragmatic conditions. However, others have furthered its hypothetical constructs. Writers like Robbins and Schumpeter went so far as to maintain that there exists a body of immutable "universal laws" of economic behavior that apply to all stages of capitalism. Such laws were unaffected by the particular social mores and institutions in existence at any particular time. Even those writers who were willing to bring cultural elements, externalities, and nonefficiency criteria into their analysis, still have the tendencies to embellish their recommendations with overtones of optimality.[67] Indeed, the RD maintained (to which Bell excepted) that "Bell's witnesses in this proceeding who have proposed LRIC as the appropriate basis for pricing do so in large part because of their view that it leads to a 'social optimum'" (RD, par. 102). In practice, of course, a compelling case can be made for any number of alternative professional approaches to pricing, such as accounting, financial, statistical, and legal. Moreover, policymakers concerned with legislative and other noneconomic criteria must well weigh these concerns in reaching yet other pricing alternatives.

114. The RD describes the theory of marginal costing and pricing generally as follows:

> Briefly, this theory holds that the most economically efficient allocation and use of society's resources will be achieved when the price of each individual unit of goods of services is set equal to the actual marginal or incremental cost of producing that particular unit. It is alleged that such a pricing scheme will best force consumers to weigh the value of a public utility good or service against its actual costs, thus limiting production to the minimum essential level which the aggregate of all consumers finds economically justifiable. It was recognized at the outset, of course, that any practical application of this theory would require its modification, since for reasons of administrative and operating efficiency as well as equity among utility consumers it would not be feasible to charge each user a different rate for essentially the same goods or services. The resultant necessity of identifying appropriate objectives short of the particular "social optimum" initially contemplated, and of finding practical methods of applying marginal cost pricing theories in a real world environment (both of which involve value judgments outside the realm of economic theory) remains a source of continuing controversy both among economists and between economic theory and other social sciences.
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> Initially, the concept of marginal cost pricing was applied primarily to the study of investment decisions required to satisfy a constant or steadily expanding demand; the emphasis was thus placed on so-called "long-run" marginal cost * * *. The application of the theory of marginal cost pricing to the privately owned regulated utility has been very recent; and its application to the relevance for the pricing of a mix of services supplied under both monopoly and competitive market conditions by a single integrated firm is perhaps a case of first impression in this proceeding. As is evidenced by the record herein, there remains much controversy with respect to any practical application of these theories, but particularly so in the latter case of the private firm engaged in both monopoly and competitive markets.
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> The short-run marginal cost pricing rule is normally expressed in terms of imposing on the customers who demand service at the peak period the full capital costs for plant and equipment of the system * * *. Application of short-run marginal cost pricing theory in this manner leads to one "social optimum", with higher rates being charged for service at the peak than for off-peak service. Regulated telephone utilities have thus far opposed general application of this form of marginal cost pricing, citing *practical limitations* due to administrative and operating problems, *overriding considerations of equity* among customers, and *other factors beyond the realm of economic theory*.
>
> There appears to be a general consensus among economists that once the plant has been built its capacity should be allocated for use by pricing the service at the short-run marginal cost. The consensus breaks down, however, with respect to the addition of new plant or the replacement of old plant. Some economists argue that where plant must be added to provide a service, the service should then be priced at the long-run marginal cost of the added plant. Others argue that the service should be priced at the short-run marginal cost associated with use of the added plant. Those in the latter group appear to believe that the added plant should be designed so that the short-run marginal cost (utilization cost) of the plant will be the same as the long-run marginal cost at the intended level of output, and that if output will vary over the plant life, the price should be set at short-run marginal cost in each period, being below long-run marginal cost when the plant has excess capacity and above long-run marginal cost when the plant capacity must be allocated among competing users. (RD, pars. 109–112) (Emphasis added).

115. In evaluating marginal costing and pricing, the RD (par. 115) notes that:

> Bell's principal witness, Professor Baumol, claims on the record herein that fully allocated costs do not have economic significance, and that only incremental or marginal costs should be considered by the manager of the regulated public utility in setting rates for various services. The LRIC pricing rule proposed by witnesses Baumol and Bonbright represent Bell's attempt to apply marginal cost pricing theory to the pricing of certain of its telecommunications services.

116. The RD further states that:

> There remains considerable controversy both among economists and between economists and members of other disciplines concerning the application of marginal cost pricing theory to situations and conditions which differ significantly from the publicly owned monopoly supplier of utility services, which was the situation assumed in the development of the theory * * *. There are several specific problems relating to the application of marginal cost pricing to the mixture of monopolistic and competitive telecommunications services offered by Bell.
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> The economic theory underlying marginal cost pricing was developed in the context of a monopolistic industry. Taking the theory on its own terms and accepting, *arguendo* the value judgment that the particlar social optimum that would result from the theory's application is somehow of particular merit, it is clear that the theory must be modified if it is to be applied to a competitive situation in telecommunications. According to the theory, if a monopoly charges its marginal cost for its output, the cost to society of producing that output is exactly equal to the price (for the last unit sold), and the equality maximizes some measure of benefit to society. If the firm is not a monopoly, no such maximization is necessarily made, for the simple reason that the marginal cost to the firm is not the same as the marginal cost to society.
>
> There are several reasons for the inequality of cost to the firm and cost to society in competitive industries: first, the several firms all produce different combinations of output, with plant designed for their particular outputs * * *. Clearly, if this be so, the cost to each carrier is different, and no carrier can claim that its cost for producing an incremental output is that of the industry as a whole. But even if all firms in a competitive industry had identical plants, the marginal cost to one need not be the marginal cost to the industry as a whole. Put simply, if one firm increases its output, it may assume it will have no effect on the prices of the goods it purchases from other industries, and its other factors of production.
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> As previously noted, efforts to apply marginal cost profit maximization theory to public utility firms also engaged in competitive enterprises are a relatively recent development, and remain the subject of considerable controversy. At the outset, we note that in the case of the regulated public utility, profit

[66] Samuelson, Economics, Chapter 32, (1970). See also, Rima, Development of Economics Analysis, Chapter 11–17 (1967).

[67] See, for example, Bator, "The Anatomy of Market Failure," Quarterly Journal of Economics, Vol. LXXII (1958) pp. 351–79; Arrow, Social Choice and Individual Values, (1951).

maximization would appear to be contrary to public policy. One of the principal functions of regulation is to prevent exploitation of consumers through the setting of excessive rates. Proper regulation thus specifically forbids profit maximizing behavior on the part of the utility and specifically requires that the utility establish prices which will provide the maximum quantity of service consistent with its allowed rate of return. Yet, to the extent that a carrier has monopoly power, the equating of marginal cost with marginal revenue for the purpose of profit maximization will yield a price greater than cost for the ultimate quantity of service provided.

Economists do not generally agree on either the objectives of the managers of large unregulated firms, or the pricing rules managers use in meeting their objectives.

* * * * *

Theory of marginal cost pricing for utilities (setting marginal cost equal to price) attains the results its proponents claim (the "social optimum") only if other firms are maximizing profit, the utility prices all services according to the marginal cost rule, and there is no overall revenue requirement for the utility. If these conditions are not adhered to, the pricing rule must be modified in some way—price must differ from marginal cost.

* * * * *

Whatever the motivation and practices of the unregulated firm, it is clear that the regulated utility operates under a different set of incentives. It can be shown with the rigor of mathematics that a utility subject to rate of return regulation may find it profitable to expand output beyond the level which an unregulated firm would produce. (RD, pars. 116–122) (citations omitted)

* * * * *

[I]t has not been conclusively shown that marginal cost pricing can be applied to one service without a subsidy from some other service or source. When economists suggest (as in this proceeding) the use of "inverse elasticity rules" for price discrimination among services or classes of customers to allow the company to meet its overall revenue requirement, they are suggesting that those customers with inelastic demand subsidize those with elastic demand. While it has not been established by probative evidence in this or any other case of which we are aware, it is commonly assumed by economists that the demand for monopoly services is less elastic than is that for competitive services.

* * * * *

[T]he relevance and utilization of marginal cost pricing in both regulated and unregulated firms may be found in the accounting procedures employed. Effective use of marginal cost pricing clearly requires detailed information on both marginal costs and marginal revenues for each product or service. Yet standard accounting systems (including the ones used in the telecommunication industry) typically do not provide such data. At best, they provide data only on average unit costs for particular product lines. (RD, pars. 126–127).

117. The significance of this discussion relates to Bell's advocation of marginal costing and how such an advocation should be viewed. Bell is promoting an approach to competitive service pricing which is optimal in terms of Bell's viewpoint and which suits its pecuniary objectives. Thus, the "aura of optimality" associated with Bell's approach and theoretical marginal costing needs to be closely examined and understood. It is not at all clear that this has yet happened, despite the RD's entreaties along these lines (RD, pars. 102–105), and, indeed, Bell's own disavowal of ties between its approach and a social optimum (Bell Expt., pp. 46–49). In oral argument, for example, it was noted as part of a question posed by a Commissioner that "we could insist from a socially optimal *point of view* that it is efficient for all marginal costs to be identified in some way. All costs should be identified in terms of *marginal cost allocation* and that the prices [should] be set at or around that, and as long as the marginal costs are increasing that would be the correct decision would it not?" (T. 11598) (emphasis added). Bell's response emphasized that its "* * * objective is not to price at marginal costs or at Long-Run Incremental Costs. It is a method of analysis to determine the greatest contribution that you can make to the common costs." (T. 15598). Bell's "responses both in Brief and orally were found [,however] to be not totally satisfactory * * *" (T. 15600). The Commission recognizes that a ratemaking philosophy having just *some* aspects of an "optimal approach" need not be optimal at all.[98] The record amply demonstrates that Bell's LRIC is not faithful to the theoretical postulates of marginalist theory. (We shall discuss this in detail in Section X.) Again, we emphasize that the Commission must weigh all proposals in light of its statutory objectives, not those of individual parties. Where such objectives coincide, we feel confident that their pursuit is in the public interest. Where such objectives conflict, the broader interests, which we feel we represent, must prevail. In this instance, we cannot find that Bell's proposed LRIC meets our objectives of efficiency, nor does its proposal evidence properties which would otherwise serve the public interest, such as accountability. Even if a convincing case had been made that Bell's proposal would lead to greater economic efficiency, many other factors including those of a legal and social nature must be considered in our evaluation process.

118. Under the assumption that a faithful reproduction of LRIC *could* be constructed, it is well to examine LRIC's associated allocative features respecting their possible incorporation into a regulatory framework. The theoretical long-run involves a planning concept under which the firm is considered to be unencumbered by any of its historical investment or operating decisions. The firm can plan to employ whatever conceivable facilities and other resources it believes best suits its projected demand and managerial objectives. In the long-run the firm is in what is termed a "fully adapted position." That is, all inputs are variable, and all combinations of technology and factors of production are within its grasp. The firm is in a relatively unconstrained state. To be sure, common facilities exist in the long-run just as in the short-run. However, in the long-run these facilities are "common" only in a functional—not in a planning sense. They could be used for the expected demand of the various services in several manners. One could ask what additional facilities would be needed for the competitive services, assuming that monopoly service facilities were already constructed. Such questioning or logic, however, is irrelevant to cost allocation. The long-run planner is in the position of projecting demand by service when all costs are variable. He "knows" which services are expected to use which facilities and how much supportive activity ("overhead") is needed per unit of output. Finally, note that if total cost in this planning world is not projected to be covered by total revenue, the service in question would not be planned for. "Competitive necessity" in the short-run sense is of no consequence here. Moreover, all costs should be traceable, dollar for dollar, to each service without residuals. There are no direct costs. When actual events unfold, it is expected that these projected total costs "caused" by the individual services can be favorably compared to results from operations.

119. Of more concern is the problem of the allocation of "residual" costs resulting from pragmatic conditions. These residual costs may result, first, from differences between actual and forecast costs or, secondly, because the firm priced its services according to projected costs before it was in a "fully adapted" position (i.e., in the presence of existing fixed costs). In the first instance, operating performance may exceed or fall below that forecast. The marginal approach, being prospective and assuming perfect knowledge, does not suggest how the dollar value of revenue excesses or shortfalls generated by these circumstances should be accounted for in the determination of individual service rates, particularly for a multi-service, partially competitive firm. The latter instance, which we believe applies to Bell's marginal pricing methodology, ignores the vast existing plant of a carrier like Bell. The presence of fixed costs here implies a short-run situation. (As we noted before, in the theoretical long-run all costs are variable.) The long-run, "fully adaptive" theoretical rules are not applicable in the short-run. Nevertheless, existing fixed costs must be accounted for and recovered.

120. The Commission recognizes infirmities in the marginal cost, long-run approach to pricing, and finds that any strict translation of its procedures from theory to the practical telecommunications world infeasible. We find rates developed with only partial reference to a LRIC formulation to hold no particular advantages with regard to achievement of a social optimum. Additionally, we find that the freedom this approach grants Bell to allocate residual costs (resulting from deviations between forecast

[98] For discussion of this "second best" problem in a regulatory context, see, Alfred E. Kahn, *Economics of Regulation*, Vol. I, pp. 69–70, 195–98.

and actual conditions or between expected and existing plant) to the monopoly services to be violative of our accountability, equity and fair market objectives and responsibilities. We do find, however, long-run marginal costing's causational assignment of costs to be attractive from an accountability standpoint. In the sense that facility construction is undertaken to meet certain needs, we note that historical cost causation can be a measure of the acumen and efficiency of a carrier's operation when viewing actual results. Similarly, we find that the flexibility of the carrier to develop rates commensurate with expected costs aligns with the efficiency objective. These marginal costing features should be melded into any statement of proper ratemaking principles.

121. Short-run marginal costing and pricing received favorable treatment from both Bell and the RD, albeit for different applications. Bell recommended its LRIC (which is shown to be essentially an incremental, short-run concept below) and burden test for use as part of its basic service philosophy of pricing (Bell P.F., pp. 26–119). The RD, on the other hand, suggested that the "most direct and immediate application of the concept would appear to be in the peak/off-peak pricing of monopoly services * * *" (RD, par. 145). Of course, according to Bell, marginal costing should be a *pivotal* aspect of ratemaking, whereas the RD viewed marginal costing in a more corollary role to a basic FDC approach. No detailed discussion of short-run marginal costing is appropriate here since the concept and both of these viewpoints are explored more extensively in the next section. However, some further comments regarding the general efficiency, equity, and accountability aspects of short-run marginal costing should be made in concluding our discussion here.

122. Bell takes exception to the RD's examination of short-run marginal costing, especially with regard to peak-off-peak pricing. "While peak-off-peak pricing is of concern in the rate structure of network services, it has no application to dedicated full-time private line services * * *. Bell advocates off-peak pricing for MTS * * * where the MTS rate structure is at issue" (Bell Expt., p. 57). The Commission recognizes the difference between the choice of a marginal customer class by time of day where cost differences exist, and the arbitrary choice of classes of services to be treated as marginal users. In the first instance, the Commission may agree with differential pricing for peak-off-peak users. However, the arbitrary choice of a select group of (competitive) services which are treated as marginal users where users of other services are treated differently is patently discriminatory. In the latter case, we cannot approve the loading of short-run overhead, depreciation, and other fixed costs on "nonmarginal" users.[69]

123. We thus find disparate treatment of potential marginal customers to be unjust and unreasonable. We do not agree that the carrier should be free to choose any service it desires as the "marginal offering," nor will we accept an overall ratemaking philosophy which incorporates this freedom. In the interests of efficiency, we may permit preferred treatment of certain services if cost economies will be realized and can be demonstrated. However, a showing must be made that full costs will be covered within some reasonable time certain. Further, the relationships to full costs must also be established.

X. Bell's LRIC Versus Neoclassical Theory

124. The RD characterizes Bell's LRIC as follows:

> Bell's LRIC proposal is an attempt to apply marginal cost pricing principles on a selective basis to certain of its service offerings (e.g., private line services subject to competition). Bell does not, in either its LRIC proposal or its existing rate structure, attempt to apply marginal cost pricing to the type of services and for the purposes for which the theory was initially proposed and for which it has been brought to the most advanced stage of development; i.e., to the peak/off-peak pricing of monopoly public utility services so as to achieve the most economically efficient production of such services. Furthermore, Bell's LRIC proposal does not contemplate that the overall pricing of its monopoly services will be based on the same long run incremental cost basis as would its competitive services. Instead, the monopoly service prices would be set at whatever level is required to satisfy Bell's total revenue requirements (including all its historical costs as well as projected but non-allocated incremental costs), after the competitive service prices are set on the basis of forecast long run incremental costs and forecast "burden" analyses.
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> Bell's LRIC proposal contains certain features apparently intended to circumvent some of the more obvious practical problems (e.g., the proposed use of incremental cost forecasts to avoid the difficult if not impossible task of determining true marginal costs from Bell's books of accounts, and the proposed use of a "burden" test to alleviate concerns that the incremental pricing scheme inherently implies subsidization of one service by another). However, besides failing to satisfactorily resolve these problems, the LRIC proposal appears to erode some of the basic principles of marginal cost pricing and to further exacerbate its basic problems. (RD, pars. 128, 129).
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> A primary objective and responsibility of regulation, on the other hand, is to hold the carrier fully accountable to its customers for its investment, operating, and pricing decisions; and, if necessary, to disallow costs which are not justified or rates which are either excessive as compared to legitimate costs or are unlawfully discriminatory. Under the LRIC approach, virtually all effective methods for establishing and maintaining accountability would be eliminated. The Commission's role, in the first instance, would be to review Bell's future-oriented cost, demand, and revenue forecasts.
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> * * * * *
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> Stated somewhat differently, under conventional regulatory philosophy and statutes, both the right and the responsibility for important management decisions such as the choice of alternative investment strategies, service offerings, and rates are afforded, in the first instance, to the carriers' management. While the Commission is afforded some limited control over capital investments and proposed tariffs, its primary function as surrogate for the competitive market place is to conduct ex post facto evaluations of these management decisions as reflected in subsequent market and earnings developments, and to make such corrections to the carriers' ongoing programs as are found necessary, pursuant to these evaluations, to protect the public interest. These ex post facto evaluations require the existence of a record of actual vs. projected results, and a means for determining what changes if any would have been required in management's original decisions to have satisfied the requirement that tariff rates and conditions be just, reasonable, and non-discriminatory. (RD, pars. 131, 132).

125. The underlying principles of long-run incremental cost (Bell's application of marginal cost)[70] were described by Bell in Docket 16258 (Bell Exh. 25 and 26). Bell described incremental cost as referring to "the change in total cost occasioned by the supply of an additional output of service or a lesser amount of service" (Bell, Expt. p. 28). The measure of change is accomplished by discounting to present value the stream of estimated future net cash outlays made by the firm resulting from the commitment to supply a particular service over the "long-run." These principles stem from neoclassical (or marginalist) theory. An important step in the application of these principles, however, is defining what is meant by "long-run," since in theory, the

[69] We will carefully scrutinize Bell's dedications of facilities as "direct plant". Dedication of common facilities and resultant cost allocation implications do not impact on our evaluation of the equity of the cost distribution process, since clearly such dedications are subject to managerial discretion and manipulation. We will not, therefore, permit the carrier's dedication of facilities to various services to circumscribe our responsibility to evaluate allocations of so-called "directly attributed" plant.

[70] Incremental cost is a more general concept than marginal cost. Incremental cost is the cost ascribable to any specified change in volume of output, or service, whereas marginal cost is the limit of that increment, as the change in volume approaches zero. In economics, marginal cost reers to the chagne economics, marginal cost refers to the change in cost associated with the additional output of one unit. Thus for practical application, marginal cost considers a change in volume generally too small to be of any practical significance.

concept relates to that future point in time at which costs become variable, and for which there are no restrictions concerning the choice of any factors of production, including restrictions engendered by historical plant facilities.

126. It is manifest from the record that Bell's concept of "long-run" does not conform to this definition. Although the Bell concept includes estimates of capital costs required to permit adaptation of plant capacity to the size of the market (Docket 16258, Bell Exh. 24; Docket 18128, Bell Exh. 3), there are, nevertheless, inherited plant costs which are considered fixed and which are not planned to vary during the forecast period. Thus arise the terms "fungible" and "non-fungible," as well as "non-attributable" costs, which in effect, give recognition to the constraints that reality places on the corporate planner in estimating true long-run incremental costs (RD Appendix C, par. 45). As Dr. Melody testified in Docket 16258, the firm "sets prices in a state of partial adaptation to the capacity that it has inherited from the past, and therefore is not considering all the long-run effects of its decision to supply service." (CCB, Exh. 52).

127. As indicated in the RD (Par. 128), Bell proposed to apply its LRIC techniques only to its private line services. This results in a mixed approach to costing (i.e., Bell's basic service philosophy), with forecast costs being used in setting rates for competitive services and historical costs being used to determine monopoly rates. Since future costs are predicted by Bell to be lower than current and historical costs, incremental costs sum to less than total costs, and a shortfall in revenue is necessarily created when prices are set at Bell's LRIC (i.e., revenues covering only incremental costs would be insufficient to cover total costs, including cost of capital).[71] Further, under its basic service approach, Bell proposes to add a markup above the LRIC floor it determines for private line services. Rates are set at a level, which in Bell's judgment, will yield an "optimum contribution" to other services (RD, par. 113). Any portion of Bell's total revenue requirement not covered by revenues from the private line services becomes the responsibility of MTS and WATS ratepayers. Bell claims it relies on economic theory in support of its utilization of marginalist techniques (see Bell Expt., 89), but there is no theoretical or record support for selective application of these techniques.

128. Bell asserts that application of incremental analysis to private line services is designed to measure true "economic" costs, i.e., those costs which vary with a change in the level of output. Yet incremental analysis is not designed to address what is to be done with "unallocable" common or fixed costs.[72] When asked how the Commission should account for common costs which are unattributable to any specific service, Dr. Baumol responded: "by definition those unattributable common costs never enter into incremental costs, and therefore, they can cause no ambiguity in the incremental cost figure" (T. 10397). Bell stated in Exception 41 that a LRIC study determines the total changes in costs (including any effects on common costs) and revenues over the long run as a result of offering a service at a particular rate, as compared with alternative rates." Clearly, costs which remain unattributable as a result of not changing in response to alternative rates lie outside the theoretical construct of incremental costing. Thus, in determining the level of contribution which private line services make towards covering unallocable common fixed costs, Bell relies on judgment—not neoclassical theory. The level of contribution is described as "the largest contribution which is prudent or reasonably practicable, taking into account market conditions, rate relationships, and other relevant ratemaking factors" (Bell Expt., par. 39).

129. With these departures of Bell's LRIC from neoclassical theory in mind, we note a considerable difference in holding that "the vast weight of economic theory is clearly on the side of marginal or incremental costs . . ." (Bell Expt., par. 87), and saying that the vast weight of economic theory is clearly on the side of Bell's selective and judgmental application of incremental costing techniques. Accordingly, Bell's comment that the LRIC methodology "optimizes" contributions from the competitive services with "benefits" flowing through to the users of the basic services whose rates are thereby lower than they would otherwise be (Bell, P.F., par. 46), cannot draw support from neoclassical theory.

130. Even assuming, arguendo, that Bell presented acceptable explanations for its departures from neoclassical theory, there are still a number of questionable areas which would require further justification. One such area is the inability to provide the Commission and its staff with any acceptable means of verifying results. Bell claims that its "retrospective accountability analysis" serves this purpose by providing historical information to the Commission. Bell's retrospective accountability analysis involves assigning to a service category all directly attributable embedded costs on an incremental basis (i.e., those costs which would cease to occur under the hypothetical condition of discontinuance of service). The analysis is similar to FDC Method 7, except that Bell's retrospective accountability analysis does not redistribute the remaining unattributable costs (the "tenth category") to all services, as does Method 7.

131. Dr. Baumol testified that LRIC forecasts and retrospective accountability analysis do not come up with directly comparable figures. As he states, "[t]here is no way in which they could" (T. 10307). The purpose of this study is to provide some ability to monitor the differences between the attributed costs of a service and the revenues provided by that service—before and after a change in rates (T. 10308). Therefore, observation of the results for any time series during which there is no rate change would be of little significance for the purpose of accountability. Second, there would be little significance in any spread between revenues and attributable costs, because it must be remembered that no portion of common and fixed costs are allocated to the service being analyzed. In this regard, we note that one of the advantages of FDC is that it attempts to provide revenue and cost figures for individual services which can be compared for the purpose of evaluating the performance of the service over time, in relation to other services and to the firm as a whole.[73]

132. We note also the problems of forecasting in reality as opposed to forecasting in economic theory. Dr. Melody stated during oral testimony (T. 8731), that the application of marginal cost forecasting is hampered by all the constraints which history places on the ongoing firm. These include the existence of large amounts of ing investment decisions based on inherited plant. The need to depart from theory in making everyday business decisions dictates why, for example, it is uneconomical to immediately replace all older, low capacity high cost facilities with newer, high capacity lower cost facilities.

133. Other questions remain concerning the reliability of forecast costs in general due to the influence of exogenous factors, such as the results of future labor negotiations, inflation, the health of the total economy, oil embargos, and the like. These factors must be anticipated by the forecaster, and too often the subjective perceptions of the forecaster influence the results. Any unanticipated changes in these factors would cause shifts in the position of the long-run curve. The Commission, of course, could not hold a carrier accountable for such shifts. For example, Mr. Eastmond testified (T. 11579) that Bell preferred the use of expense to investment ratios for estimating certain future expenses, rather than actually projecting current trends for expenses into the future. To

[71] It is noted that the revenue shortfall from pricing at LRIC occurs either from making the assumption that economies of scale do exist or from a failure to consider inherited costs when the firm is a "going concern," or both.

[72] Examples of these costs include executive salaries, general advertising, some sales and marketing costs, printing, consultant fees, as well as plant items used in common by two or more services (such as poles, service equipment and vehicles), which are not attributable to any specific service.

[73] We find merit in Dr. Wein's often quoted phrase: "[a]t best, therefore, a FDC analysis provides a signal, a somewhat cloudy one to be sure, that rate levels of various services are out of line with the standard that each service should earn enough to cover its fully distributed costs plus a fair return on its rate base." (CCB, Exh. 50, p. 107, Docket 16258). We agree that FDC results are not precisely accurate.

have performed the latter would "be anticipating future inflation, and Bell feels that improvement in productivity would offset the inflationary trends." This testimony was given by Mr. Eastmond in 1972. The assumption was made that inflation for the 1971–1974 period would be near that of the 1958–1968 period. In retrospect, the period from 1971–1974 was characterized by the most serious inflation since World War II. Other economists also were unable to forecast inflation during this period. Consequently, it is our conclusion that present forecasting techniques are not yet refined enough to provide reliable information to this Commission for carrying out its statutory mission.

134. Major inputs to Bell's long-run analysis are its market studies. The RD was critical of Bell's market studies. It concluded, in part, that "until Bell can show that it can provide market estimates which are consistently accurate, it is doubtful that the Commission can adopt a regulatory policy that relies exclusively upon such [incremental analysis] even if such a policy were otherwise desirable" (RD, Appendix B, par. 39). Bell maintains (Bell Expt., p. 160–1) that such a conclusion is unwarranted and unsupported by the record. Bell claims that its LRIC analysis does not depend wholly or rely exclusively on such market study results. While it appears that the statistical method of customer selection is technically satisfactory, the fact still remains that observations which comprise the survey are judgments of Bell Account Managers. We have no means of knowing what biases, if any, may exist in the estimates of the Account Managers or what non-sampling errors may have been introduced (T. 10065–67, 10089, 10091). Bell introduced testimony that the method employed is superior to direct customer surveys and that there was insufficient data for econometric analysis (Bell Exh. 17). We find this of little value. There is no proof that accuracy is improved by use of one method over another. The only recourse left to us is to review the actual versus forecast results, more than five years after the fact. Such review shows that portions of the forecasts vary in degrees of accuracy. However, the bottom line interstate Telpak revenues were overstated by more than ten percent. In fact, the expected level of interstate Telpak revenues was not realized until after 1973 (Monthly Report No. 4, December, 1971–74). We thus agree with the Recommended Decision (RD, Appendix B, pars. 37–39) that these errors are sufficient to merit skepticism.

135. As part of its incremental costing approach, Bell employs a "burden test" allegedly to determine whether cross-subsidization exists between services. The results of Bell's burden test, however, also depend upon a number of judgmental inputs.[75] Dr. Baumol provided a description of how the concept of the burden tests works (T. 10276): "[I]magine that a service is discontinued. Several things occur: costs that otherwise have been incurred disappear, revenues which would have otherwise been derived disappear, other services now obtain revenues which they otherwise would not have obtained. Costs which those services would not otherwise have incurred now are incurred. You take all of these into account and see if you come out ahead or behind to determine if there has been a burden." The determination of cross-elasticities between Bell's interstate services (and between Bell's services and those of other carriers) is critical to the results of the burden test. The record provides evidence that Bell is unable to measure cross-elasticities with reasonable accuracy[76] and the effect of underestimating cross-elasticities may result in a competitive service passing the burden test at a rate level that, in fact, would be non-compensatory (T. 12571). Bell also asserted that including the cross-elastic effects in the burden test necessarily makes the test harder to pass (T. 12187; 12517; 12571–2). Yet judgment influences results in this instance as well since, if it is determined that the diverted use to substitute services causes costs greater than the new revenues obtained by the substitute services or if other communication services are considered by Bell to be complements rather than substitutes, then including measures of cross-elasticity does not make the test harder to pass. Moreover, the decision as to which plant is designated as fungible or non-fungible will affect the burden test, because the more plant designated as non-fungible, the easier it will be for a service to pass the test (T. 10276).

136. Problems arise, in theory, from implementing a capacity cost concept, since it is not consistent with the theoretical notion of long-run which allows the planner to overcome constraints arising from inherited plant or large unit investment. Thus, there is validity in characterizing Bell's LRIC concept as being an "additive" concept (i.e., using capacity unit investment costs versus the development of a long-run total cost curve under differing assumptions). The record is also unclear as to what the correct plant fill factors should be. This measurement is important, because the higher the estimated fill factor, the lower the resulting average incremental cost. As Dr. Baumol indicated, there would be difficulty in deriving fill factors (for use in the burden test) for the system as configured under the alternative assumption of not having provided a service (T. 10323).

137. In summary, we find that Bell's modification of marginalist or neoclassical economic theory so as to incorporate the constraints imposed under a system of revenue requirements regulation significantly changes the assumptions made under theory. The long-run cost concept is primarily a planning concept—a guide to corporate planners for making the decision of what plant to set up in order to produce at minimum cost the expected level of output. Once investment decisions have been made and funds are tied up in fixed-capital equipment, the firm operates under short-run conditions. The existence of the large pool of embedded investment affords the Bell System little investment flexibility of the type envisioned under the theoretical long-run. Moreover, Bell's process is heavily dependent upon judgmental decisions which cannot be verified or tested by the Commission. The ability of the Commission to review, correct and change rates later based on another uncertain forecast, is not sufficient to meet our statutory responsibilities. In a regulatory environment, the risks of revenue shortfalls should not by design be borne by monopoly users.[77] Furthermore, we find that Bell's approach is violative of the objectives of fair and equitable treatment of all users, and cannot be reconciled with the objective of ensuring fair market rules.

XI. Evaluation of FDC

A. General

139. Accounting data and both unit and total costs developed from such accounting data, have historically provided the basis for the bulk of management's production decisions. Of course, decisions involving the evaluation of management's performance or the comparison of a project's actual and expected results have traditionally utilized accounting information. Dynamic decision making also has shown a similar dependence. Included here are decisions of both a current or "real time" nature, and those concerning

[75] It is a simple but sometimes overlooked point that the burden test does not measure whether a service is or has been a burden. It is not a test of actual events rather an estimated test as to what one might expect if all the estimates for future incremental costs are correct (T. 2102). The burden test, of course, cannot be faulted for what it was not designed to do, but in light of its name and this Commission's need to perceive the existence of cross-subsidy on the basis acceptable actual data, it is important to make this distinction.

[76] Several questions concerning the validity of the development of Bell of elasticities for WATS were raised in the recent Commission decision in Docket 19989 (*WATS*, 59 FCC2d 671 (1976)).

[77] DOD has proposed the use of long-run average costs (LRAC) as the appropriate reference point for determining compensatory rates which are not a burden on other services (DOD P.F., p. 25). DOD maintains that if all resource costs are included, LRAC should equal LRIC. We reject LRAC for many of the reasons that led us to reject LRIC. For example, it must be based on subjective forecasts of future events. Also, it differs from theory insofar as average costs are not defined for a multi-product firm (Docket 18128, T. 10301; Bell Exh. 20, p. A–5), and as described at DOD P.F., p. 25, it is not a true long-run concept. DOD itself admits that "it is extremely difficult to determine the LRAC for an individual service in a multi-service organization." (DOD P.F., p. 28). It is our finding that LRAC would be too unreliable for practical use.

future events based on projections and forecasts. Moreover, forecast data itself often consists of extrapolated historical conditions. Where pricing of an existing product is required, accountants have designed costing systems to generate unit costs for the most complex conditions. Indeed, major areas of accounting theory, such as process, job order, and standard costing, deal with the provision of the information needed for dynamic pricing decisions.

140. The realization that prices in private industry must be set before all costs were determined (i.e., historically recorded) was not an original thought of economists. Accountants and financial analysts have "looked backward" only when the decision involved necessitated that they do so. (They do not wear "historical blinders.") Although many accounting reports such as the balance sheet and income statement are intended as surveys of the results of operations and management's decision making other[78] accounting information provides part of the basis for these decisions.

141. The most widely used cost accounting methods and associated statements are designed to report the full costs of operations for the particular economic unit of interest. However, such "adjusted reports" as variable costing income statements and information provided by many managerial accounting techniques use less than full cost information, when needed for specialized decisional conditions.[79] Accountants recognize the value of such information on an intermittent basis. However, the expectation that either all recorded costs will eventually be covered by revenues or that these costs will accrue to the firm's shareholders remains.

142. Other professions also hold that all costs must be covered by revenues. MCI noted, for example, that "all responsible economist writers on the subject of determining the fully allocated costs of products or services in multi-product or multi-service firms readily acknowledge that, while the task is not free of difficulty, it must be done" (MCI R. E., p. 70). MCI pointed out that Nobel Laureat Paul Samuelson in his well-known text, Economics (1st ed., pp. 510–11), wrote:

> [Y]ou will turn to the cost experts and probably ask for the unit cost of producing each product in question * * *. There will be plenty of headaches in aiming at any sort of figure. For example, how shall the administrative and plant overhead costs be allocated between different products? Or if a given process simultaneously creates joint products like meat and hides, how shall the costs be allocated between them? Or if a building will last for many years, how much should be charged against current operations?
>
> Headaches, or no headaches, it is the duty of the accountants to come out with some sort of answer as to unit costs. (MCI R. E., 70, 71).

Similarly, MCI noted that Corwin Edwards in discussing the Robinson-Patman Act in The Price Discrimination Law (1959) (p. 586) said:

> When costs are relevant, the language of the statute circumscribes the discretion of the [Federal Trade] Commission and the courts as to the types of cost that can be considered and as to the permissible methods of analysis * * *. The purpose of this language was explained by the sponsors of the Act in the debate in Congress. Concerned lest a respondent might take certain business at prices based on the out-of-pocket costs of an additional increment of activity, those who drafted the bill sought to preclude any defense of such a price concession on the basis of a comparison of this incremental cost with a cost for other business computed to include all the overhead charges. Overhead costs were regarded as properly allocable on an equal basis to all business done.
>
> Many of the respondents in price discrimination cases were engaged in the sale of a considerable number of commodities, each bearing its own prices. When the price differences applicable to one of these commodities were challenged, a cost defense required a segregation of the cost pertaining to that particular commodity. (MCI R.E., p. 71)

143. As we have otherwise noted, Bell, despite its reliance on marginal costing for purposes of this proceeding likewise recognizes that full recorded costs must be covered. Indeed, its basic service philosophy may be viewed simply as a special, implicit approach to the distribution of full recorded costs. As noted above, elements of its arguments related to competitive services stress the efficiency of less-than-full cost pricing, but the substance of Bell's basic service philosophy is based on a full cost recovery constraint. For example, Bell disavows marginal cost pricing for all its services and, indeed, opposes strict use of this concept even for the pricing of competitive services. It is important to note that given a full cost recovery constraint, decisions regarding how much each service will contribute are equivalent to a division among such services of the full costs of operation. Whether such decisions are made through cost allocation procedures such as Methods 1 through 7 or through the basic service philosophy that Bell has proposed, the objective is still the same: all costs will be recovered (Bell Expt., pp. 25, 27, 30). In practice, Bell defers to the "discipline of full costs" both in its overall and individual service pricing designs. First, let us examine full costs as they relate to Bell's overall pricing philosophy. For the aggregate of its services, Bell's deference to the constraint of covering full recorded costs is illustrated by its statement on an FDC ceiling for MTS rates as suggested by other parties (see, CCB Exh. 7, Docket 18128 and FCC Staff Exh. 52, Docket 16258). In discussing the proposed MTS ceiling, Bell notes:

> In addition to the fundamental, theoretical, and conceptual flaws in any such use of fully distributed costs, there are *formidable practical objections* to these proposals by the Bureau witnesses. It is clear that if a carrier is to meet the essential objective of earning its overall allowed rate of return, a necessary corollary of the proposal to place an FDC ceiling on MTS is that the carrier must seek to establish rates for other categories of service, including competitive private line services, which will yield revenues for each such service equal to the allowed overall rate of return applied to the FDC investment for such service. In other words, FDC would then become the standard of propriety for the rate level for each service category, and it would be not only a *ceiling for MTS*, but also a *floor* for each of the other services, including the *competitive* services (Bell P.F., p. 51) (emphasis added).

It is manifest that Bell would not urge that limitations on monopoly services prices constitute both a ceiling on monopoly service rates and also a floor on competitive services charges unless it felt that recovery of full recorded costs was a binding priority or constraint on its price structure alternatives. This was confirmed at oral argument:

> Commissioner ROBINSON. * * * Should we put the rate of return constraint on the monopoly service and say none of the monopoly services can earn more than the system as a whole?
>
> Mr. PERLBERG. If you do that then you are effectively putting a Fully Distributed Costs floor on the so-called non-monopoly services.
>
> Commissioner ROBINSON. Now how can that be? If you tell us they do not constitute a burden on the system, that presupposes that monopoly rates do not have to be higher by reason of the competitive services.
>
> If they do not have to be higher, then why should not we put a rate of return constraint on the monopoly services to make sure they are not earning more than they need to by virtue of these competitive services?
>
> Mr. PERLBERG. It depends on how you determine that constraint.
>
> If you determine that constraint effectively by a Fully Distributed Costs study and basically have two pots, one dividing it between the monopoly services and the competitive services, then effectively you are making a Fully Distributed Costs study.
>
> Commissioner ROBINSON. No, it is not a floor. It is a ceiling. The ceiling is on the monopoly return or on the monopoly services, and then you can charge for the competitive services whatever you want, whatever is not burdensome for you.
>
> You can go down to Short-Run Incremental Costs or anything else.
>
> Mr. PERLBERG. But that still effectively puts the Fully Distributed Costs floor *because you still have the background of a total, overall revenue requirement for the firm.* (T. 15604–15605) (Emphasis added.)

144. Let us now turn to the second situation noted above—that of Bell's individual service pricing. It is manifest that Bell is not a true "marginal cost pricer" with regard to setting individual service rates. If no ceiling were imposed on monopoly service rates, Bell could

[78] We take notice of such works as Hendrikson, Accounting Theory (Richard D. Irwin, 1970), Chs. 1–4, Neuner, Cost Accounting (Richard D. Irwin, 1973), Chs. 1–13, 16–24, Garrison, Managerial Accounting (Business Publications, Inc., 1976), Chs. 7–19, and Pyle and White, Fundamental Accounting Principles (Richard D. Irwin, 1975) Chs. 22–25, in assessing the historical and current relationships between accounting and managerial decision making.

[79] See Copeland and Dascher, Managerial Accounting, (1974), Chs 3–14; Drebin, Managerial Accounting (1972) Chs. 2–12.

look to these services for recovery of the bulk of their "residual costs." These residual costs would include all costs not recovered by its marginal cost based rates for competitive services. However, Bell recognized that even its monopoly customers have certain price limitations on their demand for services. Thus, in deference to these and other "relevant ratemaking factors," Bell disavowed any allegiance to true marginal cost pricing for competitive services:

> The RD inaccurately implies that Bell advocates setting prices equal to marginal costs for competitive services, even though Bureau witness Wein admitted that Bell witnesses were not advocating marginal cost pricing. In fact, Bell does not advocate setting prices for competitive services equal to marginal costs, but advocates setting rates for these services above LRIC so as to achieve the largest practicable contribution from these services to permit the basic MTS to be provided at rates as low as practicable (Bell Expt., p. 14) (Citations omitted.)

145. Hence, it may be seen that Bell is neither an overall nor an individual service advocate of the strict use of marginal costing for price determination. Furthermore, as has been demonstrated earlier, it cannot be inferred that there is anything particularly "nonarbitrary" in the obscure and judgmental pricing approach it does employ. On balance, Bell does adhere to the "discipline of full recorded costs recovery," albeit its unique approach to recovery of full costs differs from the classical design of cost accounting systems (under these systems the aliquot cost share for each service would be proportional).

146. Other parties besides Bell find the RD's adherence to full costing for all services somewhat onerous, and argue that the FDC methods are replete with "arbitrariness." These parties agree with the use of the "contributional logic" Bell proposes to apply to certain selected services.[80] For example, Bell noted that "various economic witnesses for the other parties testified regarding the invalidity and arbitrary nature of FDC allocations * * * These witnesses included * * * Dr. John W. Coughlan, a certified public accountant experienced in cost analysis procedures, including those for regulated industries (Docket 16258, NAB Exh. 3, pp. 1–18; T. 21200–05, 21215–17, 21345)" (Bell P.F., p. 148). Dr. Coughlan used a meat packing plant illustration where the basic carcass and most of the cost of preliminary work on it constituted "common" or "joint costs" (Docket 16258, NAB Exh. 3, p. 11). In discussing common costs Dr. Coughlan appeared to support Bell's contentions concerning "contribution:"

> It is by now commonplace in cost accounting that all allocations of the common costs among the various joint and by-products are arbitrary. It is by now widely accepted by cost accountants that the basic profit maximization criterion is that total revenues for all the products put together must exceed total costs by as much as possible. In deciding whether a particular joint or by-product is waste or scrap and therefore not worth further processing, cost accountants now generally compare the revenues to be derived from further processing of that product with the special processing costs: *Provided*, That such further revenues exceed such special processing costs they generally conclude that profit maximization requires continued processing of that product since the product at least covers its special processing costs and makes some contribution toward covering the common costs and earning a profit on the overall product line (Docket 16258, NAB Exh. 3, p. 12).

147. In the transcript cited by Bell, however, Dr. Coughlan also appeared to support Bell's ultimate deference to the "discipline of full recorded costs." On the one hand, Dr. Coughlan recommended that program transmission rates should not be charged "what the market will bear," but only a contribution. On the other hand, he agreed that "somebody has to pick up the tab:"

> Q. On page 12 of your testimony, Dr. Coughlan, in the first full sentence, you state that it is now widely accepted by cost accountants that the "basic profit maximization criterion" is that total revenues must exceed total costs by as much as possible.
>
> Would you apply that basic profit maximization criterion to the program services' rate levels?
>
> A. * * * I don't disagree with your point at all. (T. 21205).
>
> Q. But it is not your position that the Bell System should seek to obtain the maximum profit consideration from the program transmission service?
>
> A. Well, I suppose perhaps in the interests of the stockholders, the Bell System should try to obtain the maximum consideration, but as a regulatory prescription, I wasn't necessarily advocating that point at all. (T. 2120).
>
> PRESIDING EXAMINER. * * * I take it that you would *not advocate that Bell charge whatever the market will bear*, in terms of rates for program transmission service.
>
> The WITNESS. That is correct, sir.
>
> PRESIDING EXAMINER. All right. Now then, they should charge, in your opinion, something less than that.
>
> What are the criteria which you say militate that they charge less?
>
> The WITNESS. Well, let me put it this way, Mr. Examiner, that in providing a *valuable public service*, as broadcasting presumably does, if the Commission feels that is a very valuable public service, that the objective then ought not to be to squeeze the last dollar of profit out of that category of service * * *.
>
> PRESIDING EXAMINER. Well, do you think the airlines provide a valuable public service?
>
> The WITNESS. I would think they do, sir.
>
> The PRESIDING EXAMINER. And the railroads? And the public truckers? And steamship companies?
>
> The WITNESS. I would hope that they all provide a valuable public service.
>
> PRESIDING EXAMINER. Well, do you believe that they do?
>
> The WITNESS. Yes, sir.
>
> PRESIDING EXAMINER. I mean, are they in a similar public service category, as you have used the term?
>
> The WITNESS. Yes, sir.
>
> PRESIDING EXAMINER. And educational activities?
>
> The WITNESS. Yes, sir.
>
> PRESIDING EXAMINER. Well, then, would you expect also that the *same rules should militate in favor of lower rates*, that is, lower than the maximum which might be achieved for those entities and activities?
>
> The WITNESS. Well, Mr. Examiner, I just said that it might make sense for the Commission to do so, and you asked me if I *thought it would make sense in the case of broadcasters*, and I certainly agree with that, and there might be some of those other categories you mentioned, where it would certainly make sense to demand less than the very last dollar of profit that could be had for them, and I get the impression, for example, that the Commission tries to protect the MTT class of service in this same context.
>
> So I am agreeing that the Commission might well do exactly what you have said, sir.
>
> PRESIDING EXAMINER. Well, if the Commission takes care of all these special categories that we have enumerated, *somebody has to pick up the tab* which represents the difference between what is recovered and what is permitted as an overall revenue requirement by the regulatory agencies (T. 21207–09) (emphasis added.)
>
> The WITNESS. Yes, sir.
>
> By Mr. RASMUSSEN.
>
> Q. Dr. Coughlan, you would agree that *some service has to bear the fully allocated and the embedded costs*, wouldn't you?
>
> A. Well, that seems like a reasonable proposition, yes, sir (T. 21212) (emphasis added).

148. In summary, it appears that most of the parties concur that full recorded costs must be covered by Bell's various services, although they disagree regarding particular cost distributions among these services.[81] The RD favors proportional distribution, while Bell, NAB, and other parties follow a more "selective" approach.

149. We find recovery of full recorded costs to be consistent with the public interest as we have discussed above. Further, since we find no merit or basis which warrants the special treatment sought by a number of parties, we rule that a proportionate distribution of all recorded costs best furthers the underlying objectives of the Act. In the discussion below, we will consider the relative merits of the full cost methodologies in general in light of such objectives.

150. The RD addressed several of Bell's objections to FDC as a ratemaking standard (RD, par. 147). (For the most part Bell is in agreement with the RD that FDC methods are appropriate for accountability purposes, albeit each expresses different preferences regarding the particular FDC method to be employed.) To Bell's objection that full costs are historically derived (rather than estimated from forecast data), the

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[80] As discussed above, Bell's approach may theoretically be of benefit to monopoly service users. This would occur if competitive service rates exceed marginal costs, and if the less than full cost level of these rates prevented the loss of competitive service customers and their contributions to common costs. Assuming arguendo that these conditions existed, they still would not, of themselves, constitute sufficient support for the Commission's adoption of Bell's basic service philosophy, because of the need to consider all of our objectives and responsibilities.

[81] A notable exception is the Airline parties "Accommodation Theory," discussed above, under which certain shortfalls may purportedly pass directly to Bell stockholders. (See Airlines BSE, pp. 46–52).

RD states that FDC could be derived for a future period using projected data if these were found preferable for ratemaking. However, the RD maintained that forecast data [82] has been unreliable in the past, as evidenced by the DDS, TAT–5 and TAT–6 cost estimates (RD, par. 148). Pending improvements in forecasting techniques and data developments, the RD urged that historical data be used to provide the basis for cost estimates and rate level support. Regarding questions raised about the economic significance of average costs for a multiproduct firm, the RD noted that there is both theoretical support and extensive evidence of the use of average costs in decision making (RD, par. 149). To the criticism that FDC does not provide an infallible or unquestionable rationale for allocating common and joint costs among the various services on an economically sound basis, the RD maintained that such costs are inherently arbitrary (RD, par. 150). That is, all costing methods of record must contend with this difficulty not just FDC approaches. The fact that plausible alternatives exist does not, of itself, cast doubt on the RD's FDC (Method 1) approach. The RD alleged that, in general, FDC Methods are more explicit and unbiased, and result in more equitable distributions of common and joint costs than the Bell-proposed, marginal cost based (LRIC) alternative.

151. With respect to FDC's purported lack of economic significance, the RD notes that its suggested relative use allocation base finds considerable professional support, when applied in such circumstances as peak period distribution of costs (RD, par. 151). To the Bell argument that FDC fails to recognize the benefits of economies of scale and demand characteristics, the RD maintained that FDC intrinsically distributes scale benefits (to the extent they may be assumed to exist) in proportion to present relatives usage of facilities. Furthermore, the RD found that FDC methods can easily accommodate demand information to the extent that such information is available and technically sound (RD, pars. 152–153). The RD concluded its reply to these Bell criticisms by maintaining that Bell itself used FDC analysis for its precompetitive era tariff filings for other purposes. The RD noted that although Bell is currently advocating competitive service departures from full costing, it still retains the full cost approach for its interstate services in the aggregate. That is, Bell's basic service philosophy is based on a full cost design, even though it contains a marginal costing component for its competitive services. The RD also maintained that FDC studies can provide an ongoing, periodic point of reference for evaluation of the efficiency of resource allocations and for monitoring rate levels. Unlike marginal cost studies, the RD noted that FDC analyses have a supportive base in the data already available in the Uniform System of Accounts, and can best provide the measure of cost responsibility needed for accountability purposes.

152. Bell responded to the RD by emphasizing that its major objection to fully distributed costing was not its historical nature, which was emphasized by the RD, but FDC's failure to reveal *significant data* concerning future pricing alternatives (Bell Expt., p. 84). Bell noted that "not only must relevant cost data be prospective, but the record shows that *proper analysis* must appraise the effect that the rate under consideration would have on total operating costs * * *. The record shows that future costs are espoused by Bell because they are the *only* costs which are relevant for ratemaking purposes * * *" (Bell Expt., p. 84–85) (emphasis added). Bell alleged that FDC is inherently arbitrary and lacks a foundation in economic theory, and it must, therefore, be precluded from use as a ratemaking methodology. Finally, Bell included failure to recognize changes in cost resulting from changes in volume, and the absence of demand and cross-elasticities in its formulation as important deficiencies of FDC (Bell Expt., pp. 4–5).

153. Bell takes exception to the RD assertion that *both* LRIC and FDC involve arbitrary allocation decisions. As noted earlier, the RD stated that use of LRIC based prices for competitive services leaves a large residual of unattributable costs (including historical costs) which burden monopoly users, whereas FDC distributes these costs proportionately among the services (RD, par. 150). Bell replies that "there are *many* possible bases of [FDC] allocation which can lead to widely disparate results * * *" (Bell Expt., p. 89) (emphasis added). Furthermore, Bell alleged that the magnitude of such unattributable costs which must be borne by MTS users would be increased by use of full costing (Bell BSE, p. 13–16).

154. Bell does not directly address the need for a uniform costing methodology for all services that is implicit in the RD's arguments. To the contrary, Bell claims that its special treatment of competitive services results in efficiency and other benefits. Bell does not, for example, address the obvious question of why it does not make overall (aggregate) use of its long-run incremental cost philosophy. Nor does Bell state the reasons why monopoly users cannot be considered the "marginal customers." Bell acknowledges that it has not advocated strict use of marginal cost pricing for its competitive services, and that if its "interstate rates were [all] to be set merely at incremental costs, the resulting total revenues would fall short of meeting overall revenue requirements" (Bell Expt., pp. 52–53). "Strict marginal cost pricing insures that *every unit* consumed yields the purchaser benefits at least as great as the cost of the social recourses needed to produce the unit * * *" (Bell Expt., p. 55) (emphasis added). Implementation of this marginal theory by Bell would have efficiency overtones and would also imply it relies on a "social optimum" [83] objective. However, "*neither* this concept nor pricing at marginal cost are advocated by Bell" (Bell Expt., p. 55) (emphasis added). These incongruities in Bell's logic are important, since they leave serious doubts as to whether Bell's pricing philosophy can be any more economically efficient than other methods of ratemaking. This topic is discussed below.

155. The major assumption made in distinguishing between competitive and monopoly services for pricing purposes under Bell's basic service philosophy is that competitive customers would be lost without special pricing treatment. The result of this customer loss would be idle facilities and the loss of these customer's revenue contributions above incremental costs. However, let us assume, *arguendo*, that idle facilities once used by lost competitive customers would quickly become fully utilized through the growth of monopoly services, given the magnitude of these services and their historical expansion. The "per unit" marginal philosophy cited in reference to Bell's arguments earlier would then apply equally well to marginal units of such services. In such a situation the RD would be correct in its contention that the "arbitrariness inherent in *all* procedures for allocating such [residual] costs [is] both of less consequence and more properly treated in the FDC approach than in the LRIC approach" (RD, par. 150). That is, if the potential loss of a particular service's customers were not an overriding concern, then logically all customers should be treated alike. This logic would apply to the distribution of residual costs, and it is acknowledged that FDC results in a proportionate and more equitable spreading of such costs than marginal costing. Bell does not address this situation.

156. Also of significance is the fact that Bell does not trace its advocation of a marginal costing approach to a "social optimum" objective or to the fulfillment of the Commission's public interest responsibility. Bell's arguments rest on the aforementioned loss of competitive customers with the assumed result being idle facilities. Even if one agrees with

[82] Forecast data is discussed in Sections X and XIII.

[83] "Optimality" or "social optimum" as used in the context of neoclassical economics connotes the existence of the highest levels of social welfare. Bell uses the term "optimum" to characterize the contribution Bell claims to obtain from private line users when it sets rates "in due regard for other ratemaking factors" (Bell Expt., p. 59). Bell considers this contribution to be the "maximum" that it can achieve. This is a subjective judgment since it depends on Bell's estimate of the importance of "ther ratemaking factors." Bell's "optimum" or "maximum" may not correspond to the numerically maximum contribution that can be achieved when rates are set in strict accordance with demand and supply functions.

Bell's assumption, only in the economic sense might the public interest possibly coincide with that of the Bell System. However, Bell acknowledges that it is not pursuing the optimal conditions of the lofty world of theoretical marginal costing (where LRIC provides a non-arbitrary allocation of *all* costs in the aggregate, and where heretofore unattainable levels of social welfare are reached). One cannot, therefore, ascribe any of the appealing results of theoretical economics to Bell's approach. Moreover, Bell has failed to treat all its customers equally under its pricing philosophy. It has down-played the contributions of the MTS and WATS services to its overall growth and the sustenance of technological advance derived from such services. The "arbitrariness"of FDC that Bell so frequently cites serves to describe its own pricing approaches as well.[84]

157. As noted earlier Bell supports fully distributed costs for certain purposes but not others. This extends to its recommendation that FDC be part of a "sound regulatory framework" for assessing the reasonableness of interstate service rates (Bell BSE, pp. 47–57). Bell is "fully cognizant that the Commission needs appropriate benchmarks upon which to evaluate the reasonableness of the rate levels for the various interstate services" (Bell BSE, p. 47). However, Bell does not support a "rigid, mechanistic formula" which would produce "vast inefficiencies" and "greatly increased cost burdens" for all communications users. Thus, Bell believes FDC should be used as a "point of reference" or "signal" for the purpose of rate adjustments.

158. Bell supports reporting FDC results under both Method 2 (on a separations/relative use basis) and Method 7 (on a historical cost causation basis), so that the "Commission will be able to apply its judgment to the *range* of return levels indicated * * *" (Bell BSE, p. 53) (emphasis added). Bell, as we do, recognizes that ratemaking decisions require "the balancing of a number of factors relating to costs, demand, and other pertinent ratemaking considerations" (Bell BSE, p. 53). Thus, Bell, citing legal rather than economic support, suggests that a "zone of reasonableness" for rates and rate levels can be established which the Commission can employ in making an assessment of lawfulness. "The Commission cannot be wedded to a *single* criterion * * *" (Bell BSE, p. 54) (emphasis added). Bell in its own assessment of costing methodologies, in relation to our stated objectives, recognized the interplay of the legal and economic considerations we noted above. Hence, Bell appears willing to utilize full costing in overall methodological proposals in deference to the legally oriented accountability objective. It is here that both the RD and Bell appear to be on common ground. In passing, we note Bell's use of FDC Method 7 principles in performing its retrospective accountability analysis. An examination of both this analysis and Bell's reasons for support of Methods 2 and 7, in preference to Method 1, is left for the discussion below.

159. The Commission agrees with Bell (Bell BSE, pp. 52–57) that a "zone of reasonableness" can be established for the evaluation of rates and rate levels based on the results of the FDC methods of record and other factors. Indeed, we have relied on this nature of logic in making our findings below in Section XII. Further, we are in substantial agreement with Bell that assessment of the reasonableness of rate levels and relationships should not be wholly tied to a single methodolgy. However, for the reasons stated herein, we hold that FDC methods should be the *standard* of ratemaking, rather than merely a "benchmark" as Bell advocates. A proper FDC method or methods should establish rates which might then be adjusted commensurate with "other relevant ratemaking factors" properly documented and supported. We hold that tariff filings should reflect their overall impact and effects, and should be based on data employed in a consistent manner between services and over time. Bell must exhibit methodological consistency and supply comparable supportive materials for future rate filings of all the various Bell services in accordance with the guidelines established herein. To hold otherwise would be inconsistent with our accountability and equity objectives. We nevertheless recognize that there may be special circumstances which warrant a departure from our full cost standard. This is discussed below in Section XIII.

B. FDC Methods of Record

160. There were seven methods addressed in the record that overtly distribute the full recorded costs of operations. (As noted above, Bell's basic service philosophy is also a method of implicitly distributing full costs). Bell described the basic differences of the seven methods thusly:

> The procedures under Method I followed the basic methodology of the 1964 seven-way cost study, except that in the FDC studies subsequent to the 1964 study the allocations of costs for interexchange circuit plant were not based on an inventory of specific facility assignments to individual services. As agreed in meetings with the Commission Staff, the allocations for such plant (except for video and certain wideband services) were based instead on the embedded cost of types of facilities available for use by the various services, according to the length-of-haul characteristics of the individual services. The general approach of Method 1 corresponded to principles underlying the Separations Manual * * *.
>
> Method 2 involved several modifications of the allocation procedures followed in Method 1 with respect to the treatment of minor investment, certain expense, and miscellaneous revenue items * * *. Revised allocations methods were used for plant under construction, exchange plant costs of WATS access lines, general expenses, general department expenses, traffic engineering expenses, sales expenses, operating rents, and miscellaneous operating revenues. Such revised allocation procedures were also utilized in Methods 3 through 6, and in part for Method 7.
>
> *Methods 3 through 7* were approaches to the allocation of the embedded costs associated with the interexchange circuit plant on the *basis of the historical cost responsibility* of services. The measurement of historical cost responsibility involves determination of the extent to which increases in total embedded costs resulted from the provision of a particular service over the period of years such service was offered. *Methods 3 through 7, in their objective, were significantly different from the concepts underlying Methods 1 and 2*, which *are based on averaging techniques that essentially disregard historical cost causation*, particularly with respect to the incurrence of costs associated with the interexchange circuit plant.
>
> In Method 3 the costs for line haul and carrier terminal facilities were assigned to various non-MTS services on the basis of an estimate of the overall average of added costs for such facilities incurred per added circuit mile over a period from 1964. The approach of Method 5 was similar to Method 3, except that the effect of length-of-haul (mileage band) characteristics was reflected and additional refinements were made by including data on Associated Company (as well as Long Lines) plant. In Method 4 the costs associated with the older types of circuit facilities were allocated on the basis of an analysis of the estimated circuit requirements for the various services that existed at the time the circuit plant was originally constructed. Method 6 was a refinement of Method 4 in that it utilized the capacity costs of coaxial and radio systems as the basis of allocations to the non-MTS services of the costs for these facilities. Method 6 was thus designed to estimate the embedded costs of the additional plant that had been constructed to serve the additional facility requirements imposed as a result of providing these services.
>
> Method 7 represented an approach to the allocation of embedded costs which involved the initial assignment of directly attributable costs among the services and the segregation of certain costs of general applicability in an unassigned category. Initially, those historic costs directly attributable to the individual services were assigned to the respective service categories. The costs not so attributed, as indicated below, constituted the unassigned category. * * * In arriving at the results shown under Method 7 in the 1969 and 1971 FDC studies, this unassigned category of costs was allocated to the service categories according to the investment and expenses that had been directly attributed to the services. The costs in the unassigned category determined under the Method 7 procedures included: (a) the difference in interexchange investment for coaxial and radio facilities between total investment and capacity investment, and the related expenses and taxes; (b) all investment, and related expenses and taxes, for motor vehicles, other work equipment, and furniture; (c) testing expenses associated with commonly used plant; (d) certain commercial (e.g., sales and advertising) expenses; and (e) all general and general department expenses (Bell P.F., pp. 130–133). (Citations omitted.) (Emphasis added.)

161. As discussed above, Methods 1 and 2 follow the general approach corresponding to Separations Manual principles. The underlying allocative basis of these principles can be traced to the "relative" use concept. Like any other basis of allocation, relative use is not free

[84] See Section X, *infra*.

from controversy or distortions in certain instances. However, analyses based on relative use do indicate demand patterns and facility assignments which provide valuable evaluative information. We will review certain objections raised by the parties against Method 1 and the relative use allocative base below as well as the attractiveness of such costing procedures.

162. The RD used Method 1 as the basis of the FDC studies it ordered Bell to conduct for all services (RD, pars. 216–219). Bell, as noted previously, is opposed to use of any FDC method for ratemaking purposes, although it does suggest use of certain FDC data as a point of reference for Commission decisions (Bell BSE, pp. 50–53). Bell does not consider FDC Method 1 appropriate, however, even for these purposes. In opposing use of Method 1, Bell objects primarily on the grounds that Method 1's relative use concept results in assignment of older facilities to newer and growing services (e.g., under Method 1, pre-1960's open wire, voice frequency cable, and K carrier facilities are assigned to TELPAK). (Bell P.F., pp. 134–36, Bell BSE, p. 41) Bell also states that Method 1 may be distorted by disproportionate growth factors that may develop between services, and may result in the generation of improper "signals" or incentives for management decision making. Most of these infirmities are described in the context of Bell's suggested historical cost causation basis of allocation and its particular emphasis on Method 7. From this perspective, Bell feels, for example, that Method 1 has little utility for "tracking" cost trends or for use as a "benchmark" of cost responsibility:

> Method 1 results in significantly distorted cost figures because it allocates a disproportionately large segment of the high cost older interexchange facilities to the private line services, although the construction of these facilities clearly antedated the initiation or principal growth of the private line services. (Bell BSE, p. 41) (Citations omitted.)
>
> * * * * *
>
> In an FDC study apportioning all the common costs between MTS and the private line services on the separations methods (under the so-called "relative use" or "relative output" standard), the portions of the overall rate base assigned to MTS would be affected by the relative rates of growth of the two types of services. Thus, there will be changes in the indicated FDC rate of return for MTS, not as a consequence of any change in the conditions of furnishing that service, but rather as a consequence of changes in the supply of other services. Hence if an FDC rate level standard were imposed, the Bell System, in deciding how far to promote the growth of the private line services, would need to take into account the effect of this growth on the assignment of costs to the MTS component of its overall rate base. This could interfere with management decisions on private line rates designed to achieve an optimum contribution to the MTS users and could result in higher, not lower, rates to MTS users. (Bell, P.F., p. 136) (Citations omitted.)

163. Bell noted certain specific characteristics of Method 1's allocative approach which it feels are "clearly infirmities." An example, Method 1's treatment of plant under construction, was referenced during oral argument by Mr. Perlberg:

> Now, you would think that you would construct a new plant to meet the growth requirements of services * * *. [The] television and the audio/radio services experienced negative growth for a considerable period of time.
>
> MTS and WATS are growing substantially. Now, if you are going to look at fully allocated costs, and if you are looking at historical cost causation, you would say, well, MTS and WATS should have the most plant under construction.
>
> You know, why do you construct plant? It is to anticipate your growth requirements, but these are the results under Method 1.
>
> Method 1 winds up irrationally allocating more plant under construction to television and audio/radio than to MTS and WATS.
>
> The Commission in the WATS case said WATS was the most rapidly growing of all the interstate services, and yet under some of the irrational procedures that ignore causation WATS gets the least proportionate amount of plant under construction. (T. 15622)

164. The Network Parties agree with Bell that Method 1 does not appropriately take cost causation responsibility into consideration. Similarly, they agree with the allegation that all FDC studies fail to account for future costs and use of facilities presently in place. Excepting Methods 6 and 7, the Network parties maintain that the FDC methods fail to give recognition to the capacity of plant in place, and in making an allocative determination do not consider what use may have been planned for the facilities in question. These methods therefore may result in present users of one service being charged with costs incurred to meet other services' *future* needs (Network Parties pp. 62–66). Referencing our decision in the *Private Line Cases*, the Networks, like Bell, point out that improper "signals" for management decision making will be generated if management must act in observance of Methods 1–5 procedures:

> If an approach such as Method 6 or 7 were not used, fairness would dictate that the carrier construct only for immediate requirements, an approach that, realistically, would make no sense operationally or from an economic viewpoint. *But the fact that it makes sense to construct for the future does not mean that current users should bear the full annual cost of such construction.* Indeed, this Commission has held that they should not * * *. (Emphasis in original.)

165. Finally, the Networks assert that "several of the [FDC] studies (particularly Methods 1 and 2) fail to measure 'actual' usage * * *" (Network Parties Br., p. 63). However, the Networks feel that Methods 6 and 7 achieve some success in correcting the following "obvious" (from their standpoint) misallocations of cost (Network Parties Br., p. 66):

> Whereas the 1967 FDC Method 1 study shows a high video interexchange investment (based on the so-called "separations" procedure), a special study conducted by AT&T in 1968 shows *actual* video usage to be much less; yet the subsequent FDC Method 1 studies—designed for jurisdictional purposes fail to take account of these special AT&T studies and continue to show the same large video interexchange investment as in 1967;
>
> Similarily, whereas the 1967 FDC Method 1 study shows a large investment in video local channels, the same 1968 AT&T special study of television shows *actual* local channel investment to be much less; yet again, the later FDC Method 1 studies continue to show the same high local channel investment. (Network Parties Br., p. 66) (Emphasis added.)

166. As indicated, Method 7 was the FDC approach that Bell found most compatible with its own ratemaking concepts. Bell, for example, employed certain Method 7 costs in conducting its retrospective accountability analysis. Bell also noted that "whereas the LRIC and burden studies were prospective in their orientation, it was recognized that it would be appropriate to provide historical information that would be of assistance to the Commission in determining how these prospective analyses have in fact worked out" (Bell P.F., p. 108).

167. Bell's retrospective analyses involved "a unifrom, periodic analysis of realized revenues and incurred costs directy attributable to the service categories" (Bell P.F., p. 108). Bell maintained that these directly attributable, historical costs "may well include a substantial proportion of common costs, since it is generally agreed that it is possible to assign a large portion of the common costs on an incremental basis" (Bell P.F., p. 109). "The assignment of operating expenses and net investment to the service categories followed procedures for determining directly attributable embedded costs developed in connection with Method 7 * * *" (Bell P.F., p. 111). Bell only included the directly attributable costs developed in Method 7 for its retrospective accountability analysis. The unassigned category of costs was *not allocated* among the services. Bell felt its adapted use of Method 7 determined costs "provided the most sensitive method for *tracking* the revenue-cost relationship applicable to a given service" (Bell P.F., p. 111) (emphasis added).

168. Bell also found Method 7 attractive in making its recommendations for "assessing the reasonableness of the rate levels for the interstate service categories" (Bell BSE, p. 47). Bell suggested that "the Commission might wish to employ historical data using allocative techniques as part of its rate evaluation process * * *. Pending formulation of revised FDC procedures, the FDC methodology to be utilized in reporting to the Commission should consist of Method 2 (as representative of a "separations" approach) and Method 7 (as representative of historical cost causation for each service category)" (Bell BSE, p. 48). Bell, from its own perspective or vantage point, suggests that Method 7 be combined with a separations (relative use) approach for rate evaluation purposes. Bell also appears to believe that revisions to FDC procedures are in order.

169. In supporting Method 7, Bell said that it believed "that the Commission should have before it an FDC Method

that is based on the principle of historical cost responsibility" (Bell BSE, p. 52). Bell felt that Method 1 could not be used to give evidence of this responsibility:

> We are recommending adoption of Method 7 because of the usefulness of its cost finding procedures for other pertinent ratemaking purposes. Under Method 7 the historic costs directly attributable to the individual services are assigned to those services, and the residue of unattributable costs is then allocated on the basis of the investment and expenses that have been directly attributed. The results obtained under Method 7, before the allocation of the unattributable residue, are useful for determining accountability on a retrospective basis and as one of the standards for the compensativeness of rate levels. Method 1, on the other hand, cannot be used for these purposes. (Bell BSE, pp. 52, 53) (citations omitted).

170. We find that FDC Methods based on historical cost causation are attractive for ratemaking and especially for "tracking" purposes. Where the procedures for determining causation are consistent between the planning (prospective) and evaluative (retrospective) periods, we feel that causational based methods can provide the basis for a program of "continuing surveillance." Based on the evidence before us, however, we find that, at best, Method 7's procedures must be made more consistent with a true historical causation allocative base, must be less susceptible to managerial interpretation and manipulation, and generally must be clarified and delineated to the Commission's satisfaction. These alterations and clarifications should be made in accordance with our discussion of Method 7, below.

171. The causational features of Method 7 appear ostensibly to incorporate some of the attractive characteristics of marginal costing. However, certain infirmities of Method 7 have been illustrated in the record that preclude its immediate use for these purposes. We have noted herein that theoretical LRIC would involve assignment of all expected facilities and costs according to projected service usage of input factors that management foresees on its "planning horizon." In this decision making mode no factors would be unassignable from a causational standpoint, although, functionally speaking, it is true that some plant and other factors would be used in common. (Likewise, on this "horizon," one could speculate that certain additional increments of plant would be needed for additional units of service, but such speculations would be irrelevant to the decision making process.) As we have discussed, this ability of marginal costing to intrinsically allocate common and other costs is attractive from an accountability standpoint. Method 7 shows promise of incorporating this feature of projected analyses into an FDC framework. However, it would appear illogical to characterize any method as having historic causational aspects if such method, in making an initial assignment of plant, did not do so in accord with its expected uses. Method 7 is deficient in this respect.

172. The RD, apparently observing the general logic of historical causation, concluded that Method 7 must involve projections. The RD noted that "since Method 1 is generally based on actual operating results, it does not have the uncertainties associated with forecasts of the near and distant future necessarily required by FDC Methods 3 through 7 and eliminates the questions of possible biases affecting such forecasts" (RD, Appendix C, par. 87) (emphasis added). Bell, however, maintains, in opposition to the conclusions of the RD, that Methods 3 through 7 "make use of actual data from past periods to measure historical cost responsibility, and to that extent are based more on 'actual operating results' than Method 1" (Bell Expt., p. 241). Bell insists that "the recommended decision is wrong. Method 7, they said, involves projections. All of these methods and all of the FDC Methods 1, 2, 6 and 7, they all involve historical costs and an allocation of total historical costs" (T. 15623).

173. If Method 7 does not involve projections of intended uses of facilities (and, perhaps, other features of historic causation such as fixed assignments of plant by service which are made at some point in time for later comparison, review, and possibly updating when compared to actual results), this method is really only masquerading as being based on historical causation. There is evidence in the record that Bell's actual assignment procedure is one of merely looking back from the present time to a past year and then making "Method 7 determinations" of directly attributable plant and costs "after the fact." An approach of this nature is totally unacceptable from the Commission's standpoint since it is violative of our accountability equity, and fair competition objectives. It is not based on current use (which can be immediately substantiated) or on currently projected use (which can be documented for later review). Furthermore, such assignments would, in part, reflect dedications of plant in accord with management's objectives (e.g., the "arbitrary" assignment of the least cost facilities and their associated revenue requirements to competitive services leaving the "residuals" to be covered by MTS customers). These "dedications" could, no doubt, conveniently change to reflect shifting company criteria in complete opposition to the aforementioned objectives and responsibilities of the Commission.

174. Initial questioning of Bell at oral argument regarding Method 7 indicated that this method did not, indeed, hold closely to the logic of historical causation. It was there shown that Method 7's basis of allocation was "current usage" determined by Bell on an "after the fact" basis:

> Mr. PERLBERG. * * * Method 7 says, look, we had certain directly attributed costs. This, in relationship to your question, Commissioner Robinson, we were able to attribute to the various services over 80 percent, 82, 83, and so on.
>
> Commisisoner ROBINSON. What is the basis of the direct assignment?
>
> *Is this original causation?* I mean, some plant changes over time, presumably usage changes, some which might have been used predominantly for MTS might be used subsequently for private line services.
>
> Mr. PERLBERG. If it is switching used by private line service, it would be attributable to that private line service, *what you are doing right now.*
>
> Commissioner ROBINSON. Okay, so it is *not historical but it is current usage.* (T. 15623-24) (Emphasis added).

175. Bell also indicated that Method 7 plant assignments, prior to their reexamination by the Commission, do not exhibit the fixed nature that they must for Commission accountability purposes. Bell revealed that Method 7 was similar in certain respects to "relative use" methods which, of course, do not involve fixed plant assignments.

> Commissioner ROBINSON. What I am asking is if the books are changed when a plant is put in and allocated to a particular service, but then its *pattern of use changes,* say, after 10 years—then *are the books changed to reflect* current——
>
> Mr. PERLBERG. If it is *unique* to a particular service *and is used currently by that service, it is assigned to that service* under the directly attributable costs method.
>
> We do treat the circuit plant which is sometimes subject to change on a daily or monthly basis, and that circuit plant is assigned according to the length of [haul] characteristics of the particular service.
>
> That is the *same whether you use Method 1, 2, 6, or 7.* There is no difference in that. *All* these methods, incidentally, are the so-called *relative use methods.* We have the same number of circuit miles in 1, 2, 6, and 7. (T. 15624) (emphasis added)

176. Additional questioning at oral argument confirmed the variability of plant assignment infirmity of Method 7. Management appeared to have unwarranted "assignment flexibility" under Method 7, as it is currently employed, so as to be able to manipulate an individual service's dollar share and assignment of total plant. This could be accomplished, for example, by taking readings of current usage at selected points in time, or by management questioning itself concerning assignments in a certain preconceived fashion:

> Commisioner ROBINSON. It does not follow that if I have a piece of switching gear, and I know that *when I buy that it is basically going to be used, say, 50 percent for one service and 50 percent for another*—it does not automatically follow that that would be directly attributable to those two services on a *50–50 basis.*
>
> Mr. PERLBERG. *You have to ask the other question,* would I buy it in that size if I did not have that other service?
>
> But if you are ordering that piece of equipment specifically for serving two services, and it would be a *different size if you did not have that other service,* then it *would be indirectly attributable costs.*
>
> Commissioner ROBINSON. Then the whole thing would *fall under the common costs?*
>
> Mr. PERLBERG. No.
>
> Comisioner ROBINSON. I say if you cannot make that decision, it is a *meaningless question.* You have a piece of equipment that is designed to handle so much traffic, and let's say you just never asked the question, what kind of equipment you would get if you had only one of the two services.

Mr. PERLBERG. Basically, you are able to attribute that under Method 7 to what we call directly attributable costs.

Commissioner ROBINSON. The *second question*, if that *ratio changes over time*, does *that get adjusted?*

Mr. PERLBERG. *Yes*

Comissioner ROBINSON. It becomes 75/25 percent?

Mr. PERLBERG. These analyses, we are now making them every year * * *. (T. 15626, 15627) (Emphasis added.)

177. Any FDC method or methods used for accountability purposes must also have a clearly defined allocative base in addition to the features mentioned heretofore. Since Bell maintains that "all of these methods 1, 2, 6 and 7 are relative use if you are going to use a broad term," it seems clear that what is meant by "relative use" and other allocative bases must be precisely delineated before surveillance procedures can be initiated. Furthermore, there must be clarification of the evaluative steps that will be involved in surveillance, along with techniques to be used for updating assignments if projected results are found to be grossly out of balance with actual results. Such requirements for exacting specifications of FDC methodology is clearly demanded by our objective of clarification of market rules.

178. We find that the need to update plant assignments and to provide indications of current usage under a program of continuing surveillance appears to require continued carrier submissions of Method 1 results. These Method 1 results will reflect current demand patterns which may be grossly at variance with historical assignments. Of special concern, of course, would be multi-use plant asigned, on a projected basis, to a particular service. Method 1 should, however, be reviewed to determine whether it might employ more appropriate "comparable use units" for the Commission's purposes. Refinements to the method should ameliorate its peculiar infirmities such as those discussed above regarding plant under construction and actual usage of facilities compared to relative usage.

179. For purposes of findings concerning the rate levels and rate relationships at issue before us, we find data submitted under Methods 1 and 7 to be sufficient to provide a "zone of reasonableness" which, when combined with other ratemaking factors, allows us to make a determination of lawfulness. For the reasons discused above, however, we find that Bell's services future rate levels and relationships (and changes thereto) must be supported by Method 7 data. Method 1 data, also will be required. Elaboration of guidelines for revisions of such procedures which will align Methods 7 and 1 with the objectives and responsibilities emanating from the Act is discussed in Section XIII.

XII. THE LAWFULNESS OF BELL'S RATE LEVELS

A. SECTION 201(b)

180. In light of the foregoing, we now decide whether the return levels for Bell's major interstate categories of service at issue herein have been and are just and reasonable within the meaning of section 201(b) of the Communications Act, excepting TELPAK (which is discussed in the context of section 202(a) below) and WATS (which is being refiled on November 8, 1976).

181. The RD concluded that the return levels for Bell's competitive services are unlawful insofar as they are below the level of its minimum overall cost of capital on a FDC Method 1 basis (RD, par. 204). Further, the RD held that MTS rates should be designed so that it yields earnings of no more than the lesser of the maximum currently allowed Bell rate of return, or the overall rate of return actually being realized. Private line rates should be designed to yield no less than the minimum allowable overall rate of return (RD, par. 217). Additionally, the RD concluded that it is unjust and unreasonable to require users of Bell's MTS and WATS services to contribute revenues in excess of the overall allowed return level so that the company may earn its total revenue requirement (RD, par. 183). This, according to the RD, defines cross-subsidization.

182. Bell and several user group parties except to the RD's reliance on FDC Method 1 as the sole basis for determining the justness and reasonableness of the return levels at issue herein. These parties argue that the Commission may properly utilize long-run incremental costs, or a variant thereof, to determine the lawfulness of return levels for Bell's competitive services under section 201(b).

183. We have found above that a strict marginal costing approach to pricing cannot be practically implemented under real-world telecommunications industry conditions. We have also found that Bell's LRIC analysis is neither theoretically acceptable nor commensurate with our statutory mandate to ensure just, reasonable and non-discriminatory rates. We must accordingly conclude that LRIC cannot be used to determine whether the return levels for Bell's major interstate categories of service are just and reasonable within the meaning of section 201(b).

184. The relative characteristics and merits of FDC Methods 1 and 7 were also outlined earlier (see Section XI). It was recognized that although not ideal, these two methods can provide a valuable guide for determining the justness and reasonableness of present and past return levels and relationships at issue herein. The results of analysis of return on investment in accordance with FDC Methods 1 and 7 provide a "zone of reasonableness" which enables us to evaluate the lawfulness of Bell's return levels. Although not necessarily perfect, these methodologies together are sufficient to identify cross-subsidization and provide carrier accountability. We find this approach consistent with long-standing Commission policy which recognizes the central role of costs in determining the lawfulness of rates, but which, where appropriate, also recognizes the role of other non-cost factors.[85] Accordingly, pending application of our guideline methodology employing Method 7 (discussed *infra.* in Section XIII), we will rely on FDC Methods 1 and 7 to delineate the bonds from which we may determine the justness and reasonableness and therefore the lawfulness of Bell's rate levels.[86]

185. Bell's most recent data in the record shows for the twelve-month period ending September 30, 1975 that an 8.5 percent return was earned on its total interstate investment.[87] During the same period the share of investment allocated to MTS earned 8.7 percent on Method 1 and 7.5 percent on Method 7. When compared to Bell's total interstate return on investment, it cannot be said that MTS customers are paying rates that are so excessive that they are patently unjust and unreasonable. On a Method 1 basis the MTS rate level is only slightly in excess of the overall level of return. Under Method 7 the MTS return is a whole percentage point less than the system-wide return. We recognize that in light of the relatively large percentage of revenues MTS generates vis-a-vis the other services, a small excessive MTS return could cross-subsidize competitive services. However, the record herein does not indicate that such cross-subsidization in fact exists. Accordingly, we conclude that based on the latest available figures Bell's MTS return level appears lawful under section 201(b) of the Act.[88]

186. With regard to the lawfulness of MTS rate levels for prior periods, we note that Method 7 studies were not available before 1969. The original Seven-Way Cost Study showed a 10.0 percent return on investment allocated to MTS for the twelve-month period ending August 1964.[89] The overall return on Bell's interstate investment was 7.5 percent. In light of this disparity there is substantial question as to whether the MTS rate level during that period was just and reasonable. However, by 1967 the MTS level of return decreased under Method 1 to 8.0 percent compared to an overall return of 7.5 percent,[90] and, by 1969 when Method 7 results first became available, MTS displayed a range of levels, relative to the system-wide average, comparable to those existing today. In that period MTS earned 8.4 percent under Method 1 and 7.1 percent under Method 7, com-

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[85] *See* Private Line Rate Cases, 34 FCC 217 (1963); 34 FCC 244 (1964).

[86] The phrases, "return level," "rate of return," and "return" are used interchangeably with respect to a service category. They refer to the percentage return on investment allocated to the service. *See*, also fn. 1, *supra*.

[87] Bell BSE, Appendix A.

[88] We are, nevertheless, presently considering the exceptions to the Initial Decision of the Administrative Law Judge in Phase II of Docket No. 19129, FCC 76-44 (released August 2, 1976). This proceeding will determine, among other issues, the appropriateness of rate base investment items, allowable expenses and MTS rate structure.

[89] Docket 16258, FCC Staff Exh. 1, p. 4.

[90] Docket 18128, CCB Exh. 11, Attachment A, p. 1.

pared to a 7.8 percent overall return.[91] Accordingly, we conclude that between 1964 and 1969 MTS return levels appear to have been unreasonably high. However, since 1969, the difference between the MTS return level computed under Method 1 and the system-wide average has further narrowed. Likewise, the MTS level of return under Method 7 has consistently remained below the overall level. Thus, since 1969, at least, MTS has earned a level of return that has been just and reasonable, hence lawful, within the meaning of section 201(b) of the Act. Nevertheless, these results may have been affected by the necessity to offset residuals for services not recovering their full costs.

187. The return levels indicated for WATS present a different picture. For the year ending September 30, 1975, WATS showed an 11.6 percent return on investment allocated to it under Method 1 and 16.1 percent under Method 7.[92] Compared to Bell's 8.5 percent overall level of return, the WATS rate level, nearly double that of the system, is clearly excessive. (This level of return indicates the presence of cross-subsidization: the high level of return on WATS offsets low levels of return on other services which are earning less than full costs.) It also appears that the WATS return level has been unlawfully high during prior periods under investigation herein. For example, the original Seven-Way Cost Study showed a 13.4 percent return on investment ollocated to WATS for the year ending August 1964, in contrast to 7.5 percent for the system.[93] In 1967 WATS was earning 11.9 percent compared to the system-wide average of 7.5 percent.[94] For 1969 (when Method 7 results first became available) the WATS return level was 10.4 percent under Method 1 and 18.1 percent under Method 7 compared to a 7.8 percent overall return.[95] Similarly, the 1971 results indicated 9.4 percent and 16.7 percent respectively under Methods 1 and 7 compared to a 7.8 percent overall level of return.[96]

188. Despite the foregoing, we do not require any specific actions be taken respecting WATS' return levels at this time, in view of our recent decision in Docket 19989, 59 FCC 2d 671 (1976). In the *WATS* proceeding we concluded, inter alia, that the existing WATS tariff was illegal insofar as Bell did not attempt to justify its rates on the basis of costs. Indeed, Bell did not provide any cost support for WATS rates. Instead, Bell attempted to show an "alignment" between WATS rates and those of MTS.[97] As a result of the WATS decision, Bell is to file a new tariff together with rate support cost justification by November 8, 1976.[98] Accordingly it does not appear prudent, in the public interest, to require changes in WATS rate levels at this time.[99]

189. With respect to Bell's other services, (excepting TELPAK which is discussed below) we note that for the year ending September 30, 1975, the return levels measured by Method 1 range from —3.5 percent for the Private Line Telegraph Service to 5.5 percent for Private Line Telephone. Likewise Method 7 results range from —0.6 percent, also for Private Line Telegraph, to 7.2 percent for Private Line Telephone.[100] Compared to the overall system level of return, 8.5 percent, we find the present return levels for Bell's Private Line Telegraph, Private Line Telephone, Audio/Radio, Television, and "Other" service classifications to be deficient since the rates for these services do not cover all relevant costs of furnishing service. This is true whether investment and expenses are allocated to each service according to Method 1 or Method 7. It thus appears that the low levels of return on these services are maintained through cross-subsidization. This we hold unlawful in the absence of express statutory authorization or compelling policy considerations. Accordingly, we conclude that the rate levels associated with these services are unjust and unreasonable, and therefore, unlawful, within the meaning of section 201(b) of the Act.

190. Past levels of return for these services have generally been unlawfully low, although in some years the level of return for some services could be considered to have approached the zone of reasonableness. In 1971, for example, Television Program Transmission Service (Video) earned 4.9 percent and 8.3 percent under Methods 1 and 7, respectively; at the time the overall level of return was 7.8 percent.[101] Similarly, Video service, as well as Private Line Telegraph and the "Other" service classification, showed adequate earnings levels in 1967 and 1969.[102] The fact still remains, however, that the remaining competitive services, including Private Line Telephone and Audio, did not earn a reasonable level of return on their allocated investment during these same years. More importantly, none of these competitive services are presently priced to earn levels of return that are just and reasonable and, therefore, not unlawfully low. Accordingly, our solution in this proceeding is designed to achieve return levels for these services whereby the earnings for each competitive service can sustain that service's viability without relying on cross-subsidization.

191. In summary, we find that while the application of present FDC Methods 1 and 7 does not constitute the perfect solution for determining the justness and reasonableness of future return levels, the record supports concurrent use of these methodologies as a valuable guide for ascertaining the lawfulness, within a zone of reasonableness, for present and past rate levels, as discussed above. We emphasize that we find that the existence of levels of return that are unjustly and unreasonably high or too low, indicate a return level relationship which embodies cross-subsidization. In the absence of proper justification we hold this cross-subsidization unlawful within the meaning of section 201(b); it must be eliminated. Moreover, in view of the low levels of return earned on private line services which indicate that they have not been recovering the cost of providing service, we conclude that the loss of these services would not burden MTS. Bell could employ its investment in these services for MTS and earn its authorized return.

B. SECTION 202(A) AND THE LAWFULNESS OF TELPAK

192. It remains to be resolved whether the rate levels for Bell's major interstate categories of service at issue herein are lawful under Section 202(a) of the Act. Consistent with our *Telpak* decision,[103] the RD recognized that competitive necessity may justify what would otherwise be unlawfully discriminatory rates (RD, par. 91). Also, relying on the Telpak Sharing proceeding,[104] the RD stated that the Commission has held, with court approval, that discriminatory pricing based on competitive necessity is permissible only if the carrier meets each of the following criteria:

(1) That those benefiting from the discriminatory pricing have an alternative of satisfying their communications requirements from a substitute source of supply and that they will shift to the substitute source unless the discrimination is maintained;

(2) That the discriminatory rate or preference is just sufficient to retain the business which would otherwise be lost;

(3) That the discrimination benefits the users of the carrier's services who are discriminated against, i.e., charges to other users are lower because of the discriminatory rate than they would be without such rates.

The RD states that although Telpak C and D have been found in compliance

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[91] Docket 18128, CCB Exh. 12, Attachment A, p. 1.

[92] Bell BSE, Appendix A.

[93] Docket 16258, FCC Staff Exh. 1, p. 4.

[94] Docket 18128, CCB Exh. 11, Attachment A, p. 1.

[95] Docket 18128, CCB Exh. 12, Attachment A, p. 1.

[96] Docket 18128, CCB Exh. 23, p. 5.

[97] The question as to whether Outward WATS and MTS are similar services is also extant and Bell is obligated to justify Outward WATS as a distince service (59 FCC 2d at 683).

[98] In accordance with Docket No. 19989 the WATS tariff revisions were to be filed on 60 days' notice, to be effective on January 7, 1977. In a September 16, 1976 letter Bell states that this effective date would entail the additional cost of reading customer meters midmonth and abnormal billing for a partial month (7 days). It suggests filing the revisions on 84 days' notice, to be effective February 1, 1977, which would facilitate the normal first of the month meter reading and billing cycle. Because the Bell suggestion would avoid unnecessary cost and disruptions in customer billing cycles, we shall permit the filing schedule as proposed by Bell. We reserve the right, of course, upon consideration of the revisions filed, to take action as may be appropriate including suspension or rejection of such revisions.

[99] We note that it is not clear whether WATS rates should be raised or lowered in order to achieve a proper level of return.

[100] Bell BSE, Appendix A.

[101] Docket 18128, CCB Exh. 23, p. 11.

[102] Docket 18128, CCB Exh. 11, Attachment A, p. 1; CCB Exh. 12, Attachment A, p. 1.

with criterion one,[105] it remains to be determined herein whether and to what extent Telpak C and D bulk rates conform to criteria two and three (RD, par. 92).

193. The RD applies the three above criteria to each of Bell's private line services to determine whether competitive necessity justifies the pricing of each such service at an earnings level less than the fully distributed costs, as measured under Method 1, of each service (RD, par. 187–188). Thus the RD determines that none of the private line services, including private line telephone, audio, video, Telpak, and private line telegraph, satisfy the first of the three criteria. The RD holds that neither private microwave facilities nor services provided by other communication carriers constitute a sufficient competitive threat to Bell to justify blanket, nationwide discriminatory pricing for any private line service. Additionally, the RD finds that none of the private line services satisfy the second and third of the above enumerated criteria (RD, pars. 189–203). Accordingly, it is concluded, in general, that as a result of the failure to meet the Telpak Sharing criteria, Bell's pricing of private line services below an earnings level corresponding to Bell's overall minimum cost of capital is in violation of section 202(a) of the Act, as well as Section 201(b) (RD, par. 204).

194. With particular reference to Bell's Telpak bulk offering, the RD states that although the Commission's 1964 holding in the *Telpak* decision found that the Telpak bulk offering satisfied the first of the three above criteria, serious doubt exists as to whether the Commission's *Telpak* decision is correct under current conditions. Reviewing the competitive threat to Bell's Telpak offering posed by private microwave systems, Western Union's private line offerings and those of the specialized carriers, the RD holds that these alternative sources of supply for Bell's Telpak customers are not sufficient to justify the blanket form of discriminatory pricing Bell maintains with respect to nationwide Telpak service (RD, pars. 197–198). Furthermore, the RD finds that rates for Telpak have not been set at a level that is just sufficient for Bell to retain business that would otherwise be lost in the absence of discriminatory pricing. Therefore, criterion two has not been met. Finally, it is stated that Bell has not shown, to the satisfaction of the third criterion, that the price discrimination maintained with respect to Telpak has benefited other users of Bell's services in the form of lower rates (RD, par. 199). As a result of the foregoing, the RD concludes that the rate differentials between Telpak and non-Telpak services constitute an undue discrimination or preference under section 202(a) of the Act. (Additionally, the Telpak tariff, as presently constituted, is found to be unjust and unreasonable within the meaning of section 201(b).) Therefore, the RD concludes that the Telpak tariff is unlawful and must be eliminated (RD, pars. 205–206).

195. Several parties have raised objections concerning the RD's discussion of the three criteria and the proper application of them in this proceeding. In general, these objections can be classified into three categories:

(1) Those concerning the validity of the three above criteria, in particular the second criterion requiring that the discriminatory rate or preference be just sufficient to retain business which would otherwise be lost, and the Commission's and court's approval thereof;[106]

(2) The RD's application of the three criteria to all private line services to determine whether pricing below the Method 1 FDC level can be justified by competitive necessity even though it is argued that only private line telephone and Telpak have been found, in the Telpak decision, to be "like" services within the purview of section 202(a);[107]

(3) Exceptions concerning the RD's findings that none of Bell's private line services, and in particular the Telpak offering, has met any of the three criteria.[108]

We turn now to a discussion of these objections:

(1) THE VALIDITY OF THE COMPETITIVE NECESSITY CRITERIA

196. In our Tentative Decision in the Telpak investigation, we concluded that Telpak and other private line services were like services and that while the need to meet competition from private microwave systems might justify the Telpak C and D classifications, there was insufficient evidence to determine whether the then existing Telpak rates were compensatory, i.e., whether the rates benefited other users of the carrier's services.[109] It is clear that only two standards were expressed in Telpak to justify pricing differentials between like services: (1) An existing need to meet competition and (2) a benefit to other users. These correspond to the first and third criteria enumerated above. In our Final Decision in the Telpak proceeding we confirmed the validity of these two tests and we allowed Bell the opportunity to show that the Telpak rates were compensatory.[110] As explained above, this is now an issue herein.

197. Five years later in the *Telpak* Sharing proceeding, the Recommended Decision of the Chief of the Common Carrier Bureau cited our Telpak decision as supporting a three criteria test which is applied in the RD herein.[111] The requirement that the discriminatory rate be just sufficient to retain business which would otherwise be lost was added to the two criteria expressed in Telpak to justify discriminatory pricing on an other than cost basis. In our Final Decision in Telpak Sharing we approved the three criteria test as being consistent with our holding in the original Telpak investigation, case law, and prior orders in the proceeding.[112] More recently, we applied the three criteria test in our Interim Decision in the "Hi-Lo" proceeding.[113]

198. Several parties except to the RD's conclusion that the three criteria test has met with Commission and court approval. Although we do not necessarily find that such approval is lacking, we hold that the application of the second criteria, requiring a showing that the discriminatory rates are just sufficient to retain business which would otherwise be lost, imposes an all but impossible burden on the carrier, at least under present circumstances. Accordingly, we will not apply this criterion in the present case and will reserve judgment on the applicability of the second criteria to other situations. Nevertheless, we hold that the two standards articulated in the original Telpak case, namely a showing of competitive necessity and of benefit to other users, control the determination of the lawfulness of Telpak rates herein.

(2) THE RD'S APPLICATION OF THE THREE CRITERIA TO ALL PRIVATE LINE SERVICES

199. As indicated, the RD applied the three criteria to all private line services to determine whether there is justification to price below an FDC Method 1 level. We believe, for the reasons discussed below, that these standards should apply only to a service which is found to be "like" another service and which is offered at a price differential purportedly to meet competition. This is consistent with our decision in the original Telpak proceedings.[114] Where charges for services are at issue, section 202(a) proscribes only unjust or unreasonable discriminations, involving substantially similar services. Cf., *Atchison, T. & S.F. Ry. Co.* v. *U.S.*, F. Supp. 359 (1963)

200 Before continuing, we make certain observations. First, we do not wish to imply that only services found to be "like" can be priced to meet competition. Consistent with our decision herein, rates for any private line service can be established that would place the carrier

[105] 38 FCC 370 (1964), 37 FCC 1111 (1964); aff'd sub nom., *American Trucking Association* v. *FCC*, 377 F. 2d 121 (1966) cert. denied, 386 U.S. 943 (1967).

[106] 23 FCC 2d 606 (1970); rev'd on other grounds sub nom., *AT&T* v. *FCC*, 449 F. 2d 439 (2nd Cir. 1971).

[107] 38 FCC 370, 395 (1964).

[108] Parties raising this objection include the Airline parties, Bell, DOD, ARINC, the Ad Hoc Committee, and AIA.

[109] Parties excepting to the RD's broad application of the three criteria include the Airline parties, Bell, AIA, and the AP.

[110] The objecting parties here included the Airline parties, Bell, DOD, ARINC, AIA, the Ad Hoc Committee and the Network parties.

[109] 38 FCC 370, 377, 395 (1964).

[110] 37 FCC 1111, 1118, (1964), aff'd sub nom., *American Trucking Ass'n.* v. *FCC*, 377 F. 2d 121 (D.C. Cir. 1966), cert. denied, 386 U.S. 943 (1967).

[111] 23 FCC 2d 639, 648 (1969).

[112] 23 FCC 2d 606, 613 (1970), rev'd on other grounds sub nom., *AT&T* v. *FCC*, 449 F. 2d 439 (2nd Cir. 1971).

[113] 55 FCC 2d 224, 242 (1975).

[114] 38 FCC 370 (1964), 37 FCC 1111 (1964), aff'd sub nom., *American Trucking Ass'n.* v. *FCC*, 377 F. 2d 121 (D.C. Cir. 1966), cert. denied, 386 U.S. 943 (1967).

in an appropriate competitive position. We reiterate that it is our objective to provide the carrier with pricing flexibility within a framework of accountability and full and fair competition. In investigating the lawfulness of a rate differential between two or more services, it is only when the services are found to be "like," that the differential must be justified under section 202(a) of the Act. Second,it is not entirely clear, as some parties contend, that Telpak and other private line services have generally encompassed only voice-grade channels. Telpak C and D might be considered to be like other services offered by Bell. *American Trucking Ass'n.* v. *FCC*, 377 F. 2d 121, 131–132 (1976). In fact, we found in our Tentative Decision in the Telpak case that "* * * various private line services, on the one hand, and the Telpak 'derived channels,' on the other, are like communications services" (emphasis supplied).[115] Finally, we emphasize that our decision herein does not imply that violation of section 202(a) can never occur except with respect to differing charges for like services. Various other arbitrary and unreasonable actions and classifications on the part of carriers which do not necessarily involve rate level discrimination with respect to like services fall within the proscription of section 202(a). See e.g., *Chastain* v. *AT&T*, 43 FCC 2d 1079 (1973); "Hi-Lo" Decision, 58 FCC 2d 362 (1976).

201. In this proceeding, however, we are concerned with price level differentials between like communications services. We find that the two competitive necessity criteria we have heretofore found pertinent, should be applied only to Bell's Telpak offering to determine violation of section 202(a). Although other private line services face varying degrees of competition and although some or all of these other services can be considered "like" Telpak service, it was in fact Bell's introduction of Telpak which initially gave rise to the discrimination, and it is the continuation of Telpak which perpetuates it. Accordingly, we believe that section 202(a) does not require application of the competitive necessity test to all private line services.[116] We hold that a discrimination is not unjust nor unreasonable if the like service which is priced to meet competition can satisfy the competitive necessity test, or is otherwise justified with relation to the cost of providing service, or on the basis of other policy considerations.

(3) THE RD FINDINGS THAT BELL'S PRIVATE LINE SERVICES DO NOT MEET THE COMPETITIVE NECESSITY CRITERIA

(a) The Need to Meet Competition:

202. We indicated above that to justify a discrimination under section 202(a), the competitive necessity test is to be applied only to Bell's Telpak offering and that this test, under the circumstances herein, consists of two criteria: whether there is a need to meet competition and whether the established rates benefit other users. Our task here is to decide whether the pricing differentials between Telpak and like services are justified by the need to prevent Telpak users from shifting to substitute sources of supply. Additionally, it remains to be determined whether the rate level discrimination between Telpak and like private line services benefits users of Bell's other services.

203. The RD questioned the applicability of our holding in the *Telpak* decision that Bell has met the first competitive necessity criterion in light of the current competitive marketplace. The RD concluded that bulk Telpak service, to the extent it is differentiated from broadband service, lacks sufficient comparability to private microwave service to find private microwave a competitive substitute for Telpak (RD, par. 197). Additionally, the RD stated that specialized carriers do not pose a sufficient competitive threat to Bell to justify nationwide discriminatory Telpak pricing. The RD based its conclusion on the fact that specialized carriers are presently excluded from the Bell-Western Union agreement which enables a customer to obtain nationwide Telpak service from either Bell or Western Union, and obtain a rate as if only one carrier provided all the service. Furthermore, in the opinion of the RD, the specialized carriers cover such a limited geographical area that they cannot be considered a serious threat to nationwide Telpak service (RD, par. 198).

204. We are in substantial agreement with the RD's conclusions. There are significant differences between Telpak and private microwave which precludes a finding that on a nationwide basis private microwave is a viable alternative to Telpak. Private microwave construction requires a substantial capital investment with long-term resource commitment which is not necessary when a customer orders Telpak service. Thus, private microwave service cannot be easily terminated or readily extended like Telpak. Once private microwave facilities are in place, the bulk communications users incur substantial fixed costs, whether the facilities are utilized or not. Finally, although interconnection of private systems with carrier systems has been liberalized, certain restrictions remain on such interconnection. It thus appears that the permanent, more restricted nature of private microwave facilities constitutes an important consideration influencing the viability of Telpak vis-a-vis private microwave, even assuming the latter may be cost competitive over given routes.

205. In our Telpak Sharing decision we found that despite testimony from shared Telpak users as to their intentions to consider private microwave if Telpak sharing provisions were eliminated, the evidence therein suggested that nonsharing factors, such as user control, cost, greater flexibility, and the existence of rights-of-way, possibly played a determinative role in the users choice of whether to employ private microwave. We therefore found that it was not shown that shared private microwave offered a competitive alternative for certain user groups.[117] We find that the instant proceeding presents analogous circumstances. Consequently, we are unable to find that the Telpak offering as presently structured, constitutes a proper response to the extent of competition posed by private microwave. We nevertheless believe that a properly structured bulk rate offering, which would compete with private microwave or other alternatives along the routes where such competition exists and along the quality dimensions that make such other alternatives competitive, is justified. However, it is clear from the record herein, that the nationwide rate differential existing between Telpak and like private line service cannot be supported by alleged cost comparability between Telpak and hypothetical private microwave systems.

206. Further, we question the validity of the cost studies and statements made on the record herein that private microwave is cost effective when compared to Telpak. First, the cost studies are of questionable vintage and necessarily do not account for recent increases in building materials, construction and land costs. Second, we do not find persuasive the self-serving statements of Telpak users that they would abandon Bell if the rates they paid were increased. Despite the alleged cost effectiveness of private microwave and continuing increases in Telpak rates, such a wide scale shift has not occurred. This strengthens our conclusion that noncost factors play a significant role in a customer's decision to leave Bell in favor of constructing their own private microwave systems.

207. Finally, we agree that the specialized carriers do not present a sufficient competitive threat along their few routes to justify nationwide discriminatory pricing on the basis of competitive

[115] 38 FCC 370, 378–379 (1964).

[116] We recognize that apart from the problem of rate differentials for like services, it could be argued that section 202(a) would be violated, if Bell used LRIC to price its private line services only and not MTS or WATS. In essence, a class of customers, i.e., of private line service, would receive an advantage denied another class of customers, i.e., the MTS and WATS users. However, in light of our findings herein, with respect to the justness and reasonableness of the various costing methodologies, we do not find it necessary to decide whether such advantage would be undue or unreasonable under section 202(a). Additionally, we found herein cross-subsidization existing between WATS and the non-Telpak competitive services. As the RD recognized, in the absence of express Congressional approval such cross-subsidization can constitute undue or unreasonable preference or disadvantage within the meaning of Section 202(a) (RD pars. 176, 186). Inasmuch as we have found the rate levels giving use to such discrimination unlawful under section 201(b), we need not address whether a 202(a) violation is justified by competitive necessity or otherwise.

[117] 23 FCC 2d 606, 618–620.

necessity. While growth in specialized carriers and satellites might justify such a competitive response in the future, this uncertain probability is not sufficient to justify the present Telpak offering. Bell's witness, Charles Miller, stated herein that Telpak rates are designed "to be competitive with future situations." (T. 842.) Such future contingencies are not enough to justify such a broad competitive response whether the alternative to Telpak under consideration is private microwave, specialized carrier or satellite. On appeal of our Telpak Sharing proceeding, the court rejected AT&T's contention that a mere probability of a shift to a substitute source justifies the discriminatory provision. The court held that such a criterion "is far too vague in relation to Section 202(a) of the Act." *"AT&T v. FCC,"* 449 F. 2d 439, 449–450 (2nd Cir. 1971). The court approved the Commission's standard requiring "a showing that those eligible to share Telpak would in fact shift to private microwave if the existing discrimination were not maintained" (emphasis in original) 449 F. 2d at 449. Clearly, the evidence herein cannot support a finding that present Telpak users would in fact shift to private microwave if the existing rate discrimination were not maintained. That such a shift would occur under the facts shown herein is nothing more than conjecture. Even if such a shift were to occur it could never justify the blanket nationwide discrimination inherent in the Telpak rates. Accordingly, we conclude that under current circumstances the Telpak discrimination is not justified by competitive necessity.

208. In sum the rate level differential existing between Telpak and other private line services constitutes an unlawful discrimination between like services under Section 202(a). We do recognize, however, the benefit to industrial, transportation and government users from a bulk communications offering. Accordingly, we are ordering Bell to eliminate its present bulk offering. Bell may file within the eight month period outlined below a new appropriately responsive bulk offering consistent with our guidelines herein, which can be supported on the basis of competitive necessity, costs, of other relevant factors.

(b) COMPENSATIVENESS AND SECTION 201(b)

209. We have found the discrimination existing with respect to Telpak and like private line services unlawful since Telpak as presently constituted is not justified by competitive necessity. Accordingly, we need not decide whether the Telpak rates are compensatory or whether they are lawful within the meaning of Section 201(b) of the Act. We note that Telpak for the twelve months ending September 30, 1975 allegedly earned 8.4 percent under Method 1 and 12.6 percent under Method 7.[118] Compared to the overall company return of 8.5 percent, these earnings appear to be within the zone of reasonableness. However, we question whether Telpak's return level can be substantially higher than that of private line services since Telpak has the same cost characteristics as such services and Telpak rates are lower. We recognize that demand factors might explain this discrepancy insofar as we have found that Telpak attracts customers who may not have substitute sources of supply. For such customers, Telpak is not justified by competitive necessity. Thus, Telpak's earnings level, as contrasted with that of other private line services, may result from an artificial and unwarranted service category structure.

[118] Bell BSE, Appendix A

C. PRESCRIPTION

210. In light of the foregoing findings, the remaining issue is whether the Commission should prescribe rate levels for various service classifications pursuant to section 205. For the reasons discussed above we believe it necessary to prescribe guidelines to govern the filing of future tariffs, rather than prescribe specific rate levels. We also require adjustment of rate levels and rate level relationships so as to eliminate the infirmities we have found.

211. Under the RD, Bell is ordered to file new rates designed to achieve return levels for its private line services equal to Bell's minimum overall cost of capital, on investment allocated under fully distributed cost Method 1. Similarly, the RD required Bell to make revisions in its MTS and WATS rates so the earnings level for each of these services would be no more than the maximum overall return permitted by the Commission, under Method 1 (RD, pars. 211, 127).

212. Section 205(a) of the Communications Act gives us authority to prescribe charges, classifications, regulations, and practices of communications common carriers.[119] Any such prescription can only be made after full opportunity for hearing and upon a finding that the action taken is just and reasonable as supported by evidence of record.[120] Several parties, in particular the Airlines and the Network parties, argue that the RD's recommendation of fully distributed cost Method 1 as the appropriate and sole standard for establishing rate levels for Bell's interstate categories of service, is a prescription which violates the above standards and is therefore unlawful. It is claimed that there is insubstantial evidence to make the findings of justness and reasonableness required for a section 205(a) prescription. It is further argued that there has not been a "full opportunity for hearing" on the various FDC methodologies. Thus, the parties state that FDC Method 1 cannot be the basis for determining the lawfulness of future rate levels.

213. Insofar as we are not relying on FDC Method 1, we do not find it necessary to discuss the parties arguments as they apply to the recommended order. However, we believe that the questions they raise are relevant to the validity of the guidelines we adopt.

214. The Network parties rely extensively on *Nader v. FCC*, 520 F. 2d 182 (D.C. Cir. 1975), to show that the adoption of FDC Method 1 for ratemaking purposes would be a prescription under section 205(a) of the Act. Nader was an appeal from our Decision in Phase I of Docket No. 19129 establishing an 8.5 percent overall rate of return for Bell and subsequent orders accepting Bell's rate increases designed to achieve that rate of return.[121] On appeal, MCI argued that such action constituted an unlawful prescription within the meaning of section 205(a).[122] Summarizing, the court held that the Commission's order, limiting prospectively Bell's rate of return to 8.5 percent, was a prescription under section 205.[123] The court concluded that although section 205 does not expressly authorize the Commission to prescribe rates of return, as opposed to individual rates, such authority is encompassed within the broad grant of regulatory power under section 4(i) of the Act, 47 U.S.C. 154(i) (1970).[124]

215. We would agree with the conclusion that our guidelines herein amount to a prescription. However, it is clear that the parties to this proceeding had ample notice that the Commission's prescription of a particular costing methodology was at issue herein. While we have phrased the prescription issue in terms of specific rate levels, there can be no doubt that the same embraces the prescription of a particular costing methodology.[125] It is evident that the parties have held a similar view. Several parties have proposed, during the hearing stage and in exception to the RD, various methodologies to be adopted by the Commission as alternatives to LRIC and FDC Method 1.[126] Furthermore, we read Nader to show that the prescription of our guidelines is valid pursuant to the authority vested in us by sections 4(i) and 205(a) of the Act.[127]

216. Finally, the parties have had a full opportunity to be heard including oral argument, and the action taken is just and reasonable as supported by the record. Our guidelines are predicated on FDC Method 7, modified to accommodate statutory needs and objectives, which we previously indicated emanate from our legislative mandate and prior decisions. As noted, these objectives have been recognized and discussed, in substantial part, by the parties to this proceeding. The parties had ample opportunity in this lengthy record to present their views on these matters. Thus, there is substan-

[119] 47 U.S.C. 205(a) (1970).

[120] See *Nader v. FCC*, 520 F. 2d 182 (D.C. Cir. 1975); *AT&T v. FCC*, 487 F. 2d 864 (2d Cir. 1973); *AT&T v. FCC*, 449 F. 2d 439 (D.C. Cir. 1971).

[121] 38 FCC 2d 213 (1972); 38 FCC 2d 492 (1972); 38 FCC 2d 984 (1973); 42 FCC 2d 293 (1973).

[122] 520 F. 2d at 199–200.

[123] Id. at 201.

[124] 520 F. 2d at 204.

[125] See Section III, supra, and 21 FCC 2d 495 (1970).

tial support for the finding that these objectives constitute just and reasonable criteria which may be incorporated into our proposed costing methodology.[128]

217. The relative merits of FDC Method 7 have also been explored extensively herein. For example, several parties support FDC Method 7, or the historical cost allocation procedures embodied therein, as part of alternatives to Bell's LRIC methodology.[129] The Network parties advocated Method 7 as the most rational of the full cost approaches.[130] Even Bell extols the virtues of FDC Method 7 vis-a-vis Method 1.[131] In particular, Bell states:

> Method 7 has a lot of merit because it faces up to the problem of directly attributable costs and unallocable common costs, and it gives you a means of tracking, and that it gives you another test for the compensativeness of rate levels.[132]

The Department of Defense urges us to adopt FDC Method 7 if we decide that a full-cost standard is appropriate.[133] Finally, the concept behind FDC Method 7 is inherent in Bell's "retrospective accountability" analysis.[134] Thus, it is clear that the parties have had adequate opportunity to air their views on historical cost causation and to test the views of others within a hearing framework. Likewise, there is substantial evidence to support our finding that historical causation is a just and reasonable method for allocating costs to the various categories of Bell's interstate services.

218. In conclusion, our guidelines are lawful as a prescription within the meaning of section 205(a) of the Act. The parties have had an opportunity to be heard with respect to the concepts embodied within our guidelines and the record supports our findings that such concepts are just and reasonable.

XIII: Guidelines for a "Proper Methodology"

A. General

219. We have previously discussed the methodologies of record and their appropriateness for determining the lawfulness of rate levels and relationships vis-a-vis applicable objectives and responsibilities. For such determinations, we have concluded that only a methodology designed to cover the full recorded costs of operations constitutes a proper standard. Nevertheless, we have found merit in marginal costing and we will consider such full cost departures under guidelines specified herein. Otherwise, we have found Bell's use of disparate and incongruous ratemaking concepts among its various services to be unlawful under the provisions of sections 201 through 205 of the Act. We have found that Bell's "basic service philosophy" of ratemaking constitutes an unlawful ratemaking concept. As discussed earlier, this or any other philosophy that results in disproportionate cost burdens among services would generally violate our objectives and responsibilities.

220. A corollary to our ruling on the use of disparate ratemaking concepts concerns the breadth of supportive materials required for tariff filings. We hold that revisions to any existing service rate level or rate relationship to other service's rates must be supported by a showing of the overall impact of such revisions. This showing is to include proper estimates of cost function changes and cross-elasticity data, the subsequent rate structure, and the rate base and revenue requirements (and changes in these factors) for each of the various Bell services. Data must herein be presented in a manner consistent with our guidelines concerning such matters as the proper ratemaking methodology and distribution of facilities among services. Recognition of the overall impact of such changes is consistent with our requirements below concerning establishment and updating of an assignment of all facilities, and use of a full recorded costs, historical causation basis of ratemaking.

221. For rates filed subsequent to this proceeding, we find that even with revisions to Methods 1 and 7, and our primary reliance on Method 7 procedures, we will nevertheless require an array of cost, demand and other information to make a determination of lawfulness. We find the Method 7 (employing revised procedures) will adequately mirror cost causation responsibility, while Method 1 (likewise employing revised procedures) will indicate the pattern of current demand and usage. We have also included below provision for the incorporation of prospective data into our evaluative processes. This information, taken together with public interest considerations and the relevant objectives and responsibilities, will encompass the basis of our decision making.

222. In the interest of providing a perspective for the specific guidelines discussed below, we have determined certain appropriate attributes of an overall ratemaking methodology. Heretofore, we have discussed the need for each service to cover its full recorded costs. Additionally, we discussed the attractiveness of determining these costs on historical causation basis (properly updated) in regard to the avoidance of cross-subsidization and for the provision of the foundation of a program of continuing surveillance. Inextricably interwoven with the cross-subsidization, cost allocation, and ratemaking issues, however, is the substantial magnitude of Bell's facilities and facility related costs. Indeed, determination of plant responsibility impacts directly on realization of Commission objectives and responsibilities. It is for this reason that our first guideline provides for the assignment of all existing facilities to Bell's various services. Additionally, we have indicated how new facilities and retirements should be treated in conjunction with the development of an initial assignment of facilities or "datum." It is shown that the datum can be adjusted to reflect evolving demand patterns and other considerations. We find that the development of a datum will allow the fulfillment of such basic considerations as accountability and clarification of market rules.

223. Other guidelines deal with permissible departures from rates determined on a full recorded costs, historical causation basis. We recognize that carrier pricing flexibility may be warranted in situations where less-than-full cost based rates will permit beneficial cost efficiencies and demand adjustments over time. Clearly, the Bell System respondents (if only for competitive services) and other parties support certain full cost departures (the offering of "discount" rates) (Bell, P.F., pp. 27–55), albeit they do not ostensibly consider such discounted rates as being derived from a full recorded costs standard.[135] The RD also considers discount rates to be plausible under certain circumstances, but holds that FDC methods should constitute the basic underlying support of primary (undiscounted) prices (see RD, pars. 162–164). We will thus entertain requests for waivers in connection with particular tariff filings which would permit full cost departures for a "reasonable time certain," provided that the carrier can make a clear and definitive showing of benefits to be realized by the body of Bell service users, and that such departures are consistent with the public interest (e.g., the objectives and responsibilities discussed in Section VIII). We further require that within such a reasonable time certain, the rates charged users benefiting from such discounts will be required to cover all recorded costs, including residuals.

224. Finally, we have delineated below guidelines concerning acceptable forecasting techniques, needed technical revisions to Method 1 and Method 7, and the future use of these methods in our evaluative processes. We have directed the carrier to incorporate our guidelines into its rates and rate relationships through the timely filing of revised tariffs. On balance, the guidelines themselves, our objectives and responsibilities, and the discussion and findings above constitute the scope of our decisional process. This process has deliberately not been defined in an all-encompassing, exacting and mechanical fashion. It is definitive, however, with respect to minimum materials required to support rate levels and departures from datum-based, full costs. Further, carriers may seek a waiver and support same with such additional materials as they consider proper. We recognize the dynamic, evolutionary

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[128] These proposals include the Airline Parties' "Accommodation Theory;" Bell's recommendations in its Brief in Support of Exceptions, pp. 47–57; and DOD's Long Run Average Cost Technique.

[127] 520 F. 2d at 203–204.

[128] See discussion, supra, and the record cites at Section VIII.

[129] Bell Brief in Support of Exceptions, pp. 53, 56. Historical causation also lies at the heart of the Airlines "Accommodation Theory." Airline parties OSE, pp. 46–52; T. 15708–15711; Airline Rebuttal Exh. 1.

[130] T. 15730.

[131] T. 15621–29. See also T. 9655, 9738–39.

[132] T. 15628–29.

[133] DOD BSE, p. 13.

[134] See Bell Exhs. 18, 25.

[135] See Section IX.

nature of telecommunications, and do not wish to foreclose unforeseen developments by constructing overly rigid requirements.

B. PLANT ASSIGNMENTS

225. An assignment of existing facilities and plant under construction is consistent with our intended use of a historical causation, FDC methodology as our primary means of determining the justness and reasonableness of rate levels and relationships. In the interest of fair competition, it is also necessary for existing and potential competitors of Bell to be able to estimate Bell's facility costs in order to gauge their own cost effectiveness and market incentives. As long as Bell can construct many plausible facility assignments in response to competition, an individual service's costs will remain essentially "fluid" (i.e., open to management discretion) and unclarified. Under such circumstances, it is likely that the benefits of competition for all users, Bell, and entrant firms will be at least partially unrealized. Most importantly, the Commission itself, of course, cannot hope to achieve its accountability objective under conditions of "fluid facility assignment."

226. Firm facility assignments are also necessary to assure equity among users. A basic outgrowth of this objective is the idea that all customers of the firm should share in both the benefits and detriments that accrue from the firm's established market position. More than the other objectives, however, equity implies proportionate facility assignments. For example, where economies of scale exist, it cannot be determined that one customer group or another is responsible for such economies. It is the entirety of the customers which sustains the necessary level of output yielding increasing returns to scale when such returns, in fact, exist. In fairness, all customers should derive proportional benefits in such a situation. Such a philosophy extends to advantages the firm may offer such as an established and effective research and development program, management expertise, technological innovations, personnel training programs, ownership of strategically located properties, goodwill, an ongoing and positive relationship with the financial community, long standing and advantageous contractual agreements, accumulated knowledge and other such aspects of the firm's operations. Likewise, as we have previously noted, an existing firm's operation may also involve less attractive features. For example, if inertia, outmoded technologies, bureaucratic inefficiencies or ineffective management and poor past investment decisions impair operations, all customers must also share such disadvantages. This concept is especially critical to the assignment of the costs of facilities to the various services. As noted above, the loading of the costs of older (generally less efficient) facilities onto monopoly services through the use of disparate pricing methodologies is unreasonable. In accepting the concept of historical causation, we must assure ourselves that the practices used in the actual cost allocation procedure allow fulfillment of our mandate under the Act to ensure just, reasonable and nondiscriminatory rates.

227. The method to be used for the allocation of facilities costs, to the maximum extent possible, must be one of assigning such facilities on the basis of historical causation to all services. Of course, the carrier must provide evidence of causation for facilities currently in place that goes beyond mere initial usage. Projected usage is important here. This initial assignment will establish shares of directly attributable plant. Common plant will then be assigned to the pertinent services pro rata according to each service's share of the total directly attributed plant. (For the purposes of these guidelines "pertinent services" simply refers to a group of two or more services which may use a particular facility.) This process will constitute a "datum" which will provide the basis for future actions. As explained below, it is contemplated that Bell will undertake a diligent and thorough historical analysis of its interstate plant with the objective of matching facility cost assignments as closely as possible to the uses for which such facilities were placed.[136] As new facilities are completed, those portions which are directly attributable shall be assigned to the respective services. Newly completed common facilities shall be assigned to the pertinent service categories on the basis of the projected circuit use accounted for by each service. We believe that such a procedure most closely parallels the concept of historic cost causation.

228. Retirements of facilities and the removal of their associated costs from the "datum" plant shares shall, as closely as possible, correspond to the assignment of such facilities to the various services. Those facility retirements which cannot be directly associated with individual services shall be handled as common, and retired from all pertinent services based on each service's "datum" share (i.e., the portion of total plant allocated to each service).

229. The Commission recognizes that conditions may change and that modifications in the shares of plant may be necessary. Market demand shifts, restructuring or modification of existing services, the introduction of new services or the elimination of existing services are examples of such changes. We do not seek a system so rigid that the carrier's ability to adapt to such changes is unduly impaired. In line with this objective, reassignments of facilities will be approved upon a proper showing. The Commission itself will periodically compare Method 1—relative use based assignments of plant—to historical causation assignments for evidence of gross imbalances. However, carriers and other parties may submit other evidence, such as actual use, in support of proposed assignment revisions. Thus, in the final analysis, the Commission will determine the validity of plant assignments after each periodic evaluation.[137]

230. In establishing the initial allocation based on cost causation, it is suggested that the carrier consider beginning with the 1964 Seven-Way Cost Study assignments and then work forward to the current time. This would avoid the problem of constructing data series for older vintages of plant which find somewhat limited use in the rendition of services today. The effects of any infirmities that may have existed in that study would be minimized due to the large growth of plant since that time. Concomitantly, it would account for most of the telephone plant in service today, due to the fact that plant in service now is over three times that in service at the time of the Seven-Way Cost Study, and that substantial retirements of pre-1964 plant have occurred in the intervening periods. Further, such an approach would aid in the development of exact procedures for the handling of a discontinued service (such as the sale of TWX). We expect full documentation of the assignment study and rationalization of the selection of the starting point if it is any other than that suggested herein.

231. In general, the Commission views the use of this approach as a dynamic, continuous process. The establishment of the current, updated book cost "datum" described above should facilitate and expedite proceedings before us. The datum's periodic updating will aid in our continuing surveillance and go far toward meeting our objective of accountability. We expect that showings in support of changes of the allocation to be supported by material as required under Sections 1.363 and 61.38 of our Rules. Such showing should include rate effects on the service in quesiton as well as any effects on related service offerings. To the fullest extent possible, the disposition of both fungible and non-fungible plant must be demonstrated, particularly in the case of a discontinued service.

C. DEPARTURES FROM FULL RECORDED COSTS

232. We have recognized that there are instances in which historical data may not form the complete basis for projections of future costs or demand. Indeed, it may be appropriate to depart from rates based on historical costs under exceptional circumstances in order to reach certain operating efficiencies or demand levels at which economies of operations may be realized. When a firm has achieved these more efficient conditions, historical trends might again serve as the basic supportive data for a service's rates. Under our guideline ratemaking methodology, the carrier would submit a historic cost causation based FDC analysis for tariff justification. This analysis would be complemented by relative use FDC information for comparative

[136] Specific facilities are actually to be assigned to specific services, to this extent, paralleling the Seven-Way Cost Study procedures.

[137] The actual period to be employed for reevaluation of plant assignments will be determined by the Chief of the Common Carrier Bureau.

purposes. Despite the projected elements involved in the causational analysis and the fact that it is to be complemented by current relative use data, we recognize that required supportive materials retain an intrinsic "weighting" caused by embedded facilities. For this reason, we may find it reasonable to grant waivers to afford the carrier the flexibility to alter current rates based on forecasts of demand and costs as embodied in a forward looking, cost causation based analysis. This will be permitted provided that the carrier can make a clear and definitive showing that all shortfalls in meeting revenue requirements based on historical full recorded costs will be made up within a reasonable time certain, and that the departure will benefit the body of Bell's users. This requirement should not prove burdensome if the carrier will, in fact, realize the economies projected. As part of the showing, we expect the carrier to develop techniques which employ our guidelines in a prospective manner, with refined forecasting methodologies.

D. OTHER GUIDELINES

233. The Bell System has employed certain forecast data in developing its LRIC rates for private line services. We have discussed the infirmities of its forecasting techniques and methodology within the context of theoretical marginal costing. Bell, as noted herein, maintains that it makes no use of projected analyses in constructing its historical causation (Method 7) individual service costs. We find that projected uses of plant should be a part of the logic of historical cost causation. Therefore, Bell should incorporate such data into these analyses for our review. However, since we have no evidence in the record concerning proper forecasting techniques, we direct Bell to develop proper techniques in conjunction with the Common Carrier Bureau staff. In any event, we place Bell on notice that although the datum will partially contain prospective cost causation estimates, any variance from such projections will ultimately have to be reconciled, including the recovery of deviations in forecast accuracy.

234. Our primary FDC Methodology for the determination of the justness and reasonableness of rate levels and the rate relationships will be based on the logic of historical cost causation. However, in our FDC Methods discussion above (Section XI), we find that Bell's Method 7 procedures do not faithfully adhere to the principles of historical causation. We therefore, direct the Bureau staff (in consultation with the carriers) to correct such infirmities in Method 7 as we have discussed above. These deal with such problems as Method 7's failure to incorporate projected uses of plant into its allocative process, its incorporation of management "dedications" of common plant to certain services into its plant assignment procedures, and its ability to be manipulated by unwarranted reassignments of previously distributed facilities. Similarly, we direct that Method 1 be revised in accordance with our earlier discussion so that it too can be incorporated into our evaluative processes. Method 1 would be used in conjunction with a Method 7 analysis to indicate the results of a distribution of costs on a relative use basis. In particular, such results might indicate the need for a reassignment of plant to reflect varying growth rates of Bell's services and other demand factors.

235. We direct that the revision of Method 1 and Method 7 procedures be completed in accordance with our findings and conclusions herein, and reported to the Commission within three months from the effective date of this Decision. Furthermore, we require Bell to file rates based on the reconstructed Method 7 analysis (supplemented by revised Method 1 data) for all of its services within eight months of this Decision. Additionally, we will require like analysis to be submitted upon the filing of later tariff revisions in a manner which will disclose the effects of such revisions on the rates of all services. We also require these analyses to be submitted within a year after the completion of major construction programs and at such other times as we deem appropriate.

XIV. Exceptions to Recommended Decision

236. We have stated herein the bases for our decision and the extent to which we are in agreement or find it necessary to modify or elaborate on the findings and conclusions of the Recommended Decision. To the extent that the exceptions to the RD are in accord with our findings and conclusions herein, they are granted; otherwise they are denied. We shall issue in the near future a supplement to this document in which we shall dispose of each of the individual 1000 or more filed exceptions. In arriving at our decision we have given consideration to the exceptions, briefs in support thereof and argument made thereon. However, because of the large number of exceptions submitted, we deem it important that the exceptions comply with § 1.277(a) of our rules and regulations. In particular, in ruling on individual exceptions we will not hesitate to reject exceptions which contain argumentative matters and lengthy discussions of law, which do not provide reference to the record upon which the exception is based, or which do not otherwise comply with § 1.277(a).

XV Conclusions

237. Our conclusions herein are pursuant to sections 1, 4, 201–205, 210, 214, and 396 of the Act: The ascertainment of what constitutes the actual cost of providing a category or subcategory of service is essential to the performance of our regulatory functions. More specifically, in order to determine whether rate levels and rate level relationships are just, reasonable or not unduly discriminatory the actual full costs of providing service must be known and certain, irrespective of whether rates are in direct relationship to costs or depart therefrom. In the latter case the ascertainment of actual full costs still provides the relevant standard to aid in the determination of lawfulness of rates. (In the absence of such knowledge the Commission is unable to identify with certainty the presence of interservice cross-subsidization.) The major concern of the Commission in this proceeding as to past, present and future rate levels is to find the most appropriate basis or methodology to measure the costs actually and equitably attributable to providing service.

238. For the past and present rate levels and relationships at issue in this proceeding we employ a zone of reasonableness defined by FDC Methods 1 and 7 [138] to indicate lawfulness. On the record before us we hold these methods aceptable. However, future rate levels and relationships are to be established in accordance with the guidelines established herein as set forth in section XIII, supra. Rates filed in accordance with such guidelines will best fulfill our statutory mandate. Method 7 costs will form the primary basis for justification of all tariff filings, in conjunction with Method 1 data which will provide us with a comparative benchmark of present relative use. Upon a proper showing, as described previously, we will consider waivers to depart from the prescribed methodology.

239. With regard to the carriers' past and present rate levels and rate relationships our conclusions are in accordance with that stated in Section XII.

XVI. Order

240. Accordingly, in view of our findings and conclusions herein and pursuant to sections 4, 201–205 and 403 of the Act: *It is ordered*, That revised rate levels for the major categories of interstate service at issue herein shall be filed within eight (8) months from the effective date hereof and in accordance with costing guidelines and methodologies specified in Section XIII, supra.

241. *It is further ordered*, That in accordance with Section XIII hereof, Bell and Western Union shall consult with the staff of the Common Carrier Bureau to revise FDC Methods 1 and 7 procedures and forecasting techniques, the results of same to be reported to the Commission within three (3) months from the effective date hereof;

242. *It is further ordered*, That within eight (8) months from the effective date hereof, Bell shall terminate its existing TELPAK offering, but may file a replacement bulk offering consistent with our findings and guidelines herein.

243. *It is further ordered*, That all extant accounting orders herein are hereby TERMINATED; and

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[138] We conclude that the LRIC and marginal costing methodologies of record are inadequate to allow us to perform our statutory functions for the reasons setforth in Sections IX–XI.

244. *It is further ordered*, That these proceedings are terminated.

FEDERAL COMMUNICATIONS COMMISSION,[139]
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-29658 Filed 10-7-76;8:45 am]

[Report No. 826]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

OCTOBER 4, 1976.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's rules and regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see 309(c) of the Communications Act), applications filed under Part 68, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by which ever date is earlier (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See § 1.227(b)(3) and 21.30(b) of the Commission's rules.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

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[139] Additional views of Chairman Richard E. Wiley, dissenting statement of Commissioner Benjamin L. Hooks, and statement of Commissioner Abbott Washburn, concurring in part and dissenting in part, filed as part of the original document.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

22891-CD-P/ML-76, Edward C. Smith d.b.a. AnsweRite Professional Telephone Service (KQZ713). C.P. to relocate facilities operating on 152.24 MHz to be located at Westminster Towers, 70 W. Lucerne Street, Orlando, Florida.

22892-CD-MP-76, Empire Paging Corporation (KEC933). Modification of C.P. to change antenna system and relocate facilities operating on 454.150 MHz at Loc. No. 3 to be located at Westchester Community College, Valhalla, New York.

22893-CD-P-76, Stockbridge and Sherwood Telephone Company (KWH347) C.P. to change antenna system operating on 152.84 MHz located on State Hwy. No. 55, South of Village Limits, Sherwood, Wisconsin.

22894-CD-P-(2)-76, Charlotte Message Center, Inc. (KIQ513). C.P. to change antenna system and replace transmitter operating on 152.21 MHz and for additional facilities to operate on 454.100 MHz located on US Hwy. No. 17, 1 mile East of Center of city, Punta Gorda, Florida.

22895-CD-P-76, Charlotte Message Center, Inc. (New) C.P. for a new 1-way station to operate on 152.24 MHz to be located on US Hwy. No. 17, 1 mile East of Center of city, Punta Gorda, Florida.

22896-CD-P-76, Telepage, Inc. (KLF605) C.P. to relocate control facilities operating on 158.61 MHz at Loc. No. 2 to be located at 1609-B Broadway, Bellingham, Washington.

22897-CD-P-(14)-76, Hawaiian Telephone Company (KLF527). C. P. to change antenna system and for additional facilities to operate on 152.84 MHz to be located at: Loc. No. 1: Aiea Switching Center, 98-333 Kaamilo St., Aisa, Hawaii; Loc. No. 2: Puuloa Switching Center, Nimitz and Main St., Honolulu, Hawaii; Loc. No. 3: Moanalua Yard, 1021 Kikowaena Place, Honolulu, Hawaii; Loc. No. 4: 1177 Bishop St., Honolulu, Hawaii; Loc. No. 5: Ilikai Bldg., 1777 Ala Moana Blvd., Honolulu, Hawaii; Loc. No. 6: Kaimuki Switching Center, 1103 9th Avenue, Honolulu, Hawaii, Loc. No. 7: Koko Head, 9 miles SE. of Honolulu, Hawaii; Loc. No. 8: Puu Papaa Radio Station, 2.2 miles NW. of Kailua, Puu Papaa, Hawaii; Loc. No. 9: Kahuku Radio Station, 2.3 miles NW. of Kahuku, Hawaii; Loc. No. 10: Waialua Center Office, 66-489A Waialua Beach Rd., Haleiwa, Hawaii; Loc. No. 11: Wahiawa Center Office, 252 Koa St., Wahiawa, Hawaii; Loc. No. 12: Nanakuli Center Office, 89-210 Farrington Hwy., Nanakuli, Hawaii; Loc. No. 13: Makaha 84-1130 Kaulawaha Rd., Makaha, Hawaii; Loc. No. 14: Corner of Makakilo Dr. & Nohohale St., Makakilo, Hawaii.

22898-CD-R-76, Clifton Telephone Company (KLB579). Renewal of license expiring December 10, 1976. Term: December 10, 1976 to July 1, 1978.

22899-CD-P-76, Anserfone of St. Lucie County, Inc. (KIG838). C.P. to change antenna system operating on 454.100 MHz located at 200 South 7th Street, Fort Pierce, Florida.

22901-CD-P-76, Radiotelephone Company of Indiana, Inc. (KUC846). C.P. to change antenna system and relocate facilities operating on 152.24 MHz to be located at 1 Indiana Square, Indianapolis, Indiana.

22902-CD-TC-76, Fidelity Telephone Company. Consent to Transfer of Control from Katherine K. Davis, Transferor to Katherine K. Davis, et al., Transferees. Station: KDN401, Sullivan, Missouri.

22904-CD-P-76, Beep Communication Systems, Inc. (KEC739). C.P. to change antenna system and relocate facilities operating on 152.12 MHz to be located at 2.5 miles SW. of Coram, New York.

22905-CD-MP-76, Empire Paging Corporation (KGI778). Modification of CP to replace transmitter, change antenna system and relocate facilities operating on 454.275 MHz to be located at 1 Fairchild Avenue, Plainview, New York, Loc. No. 4.

22906-CD-AP-76, Stanger's Telephone Answering Service, Inc. Consent to Assignment of CP from Stangers Telephone Answering Service, Inc., Assignor to Digital Paging Systems of Toledo, Inc., Assignee. Station: KWU348, Toledo, Ohio.

CORRECTIONS

22824-CD-P-(2)-76, Aircall. Correct to add call sign (KIY395). All other particulars to remain as reported on PN No. 825 dated September 27, 1976.

MAJOR AMENDMENT

21845-CD-P-(6)-76, R.C.S., Inc., San Luis Obispo, California (KMD689). Amend repeater frequency 2129.2 MHz to read 2110.8 MHz at Loc. No. 1. Change control frequency 2179.2 MHz to 2160.8 MHz at Loc. No. 2, control frequency 2110.8 MHz to 2129.2 MHz at Loc. No. 3, and control frequency 2160.8 MHz to 2179.2 MHz at Loc. No. 4. All other particulars to remain as reported on PN No. 803 dated April 26, 1976.

APPLICATIONS ACCEPTED FOR FILING

RURAL RADIO SERVICE

60464-CR-P-76, Continental Telephone Company of the West (New). C.P. for a new rural subscriber station to operate on 158.04 MHz to be located at 4 Corners No. 6 Mine, 12 miles West and 1 mile North of Green River, Utah.

60465-CR-P/L-76, The Mountain States Telephone and Telegraph Company (New). C.P. for a new rural subscriber station to operate on 157.77 MHz to be located 48.8 Km (30.3 miles) South of Bitter Creek, Wyoming.

60466-CR-P/L-76, Puerto Rico Communications (New). C.P. and License for new Rural Subscriber Fixed facilities to operate on 459.375, 459.400, 459.425, 459.450, 459.475, 459.500, 459.525, 459.550 MHz at 32 sites as follows:

60466-CR-P/L-76, Same, except located at Bo. Turabo Arriba Carr. 172 Km. 1.6, Caguas, Puerto Rico.

60467-CR-P/L-76, Same, except located at Bo Tomas de Castro Carr. 788 Km. 6.1, Caguas, Puerto Rico.

60468-CR-P/L-76, Same, except located at Bo. Santa Olaya Carr. 829 Km. 5.5, Bayamon, Puerto Rico.

60469-CR-P/L-76, Same, except located at Bo. Tomas de Castro I, Carr. 788 Km. 3.5, Caguas, Puerto Rico.

60470-CR-P/L-76, Same, except located at Bo. Pulguilla, Carr. 723 Km. 3.4, Albonito, Puerto Rico.

60471-CR-P/L-76, Same, except located at Bo. Beatriz, Carr. 1 Km. 49.6, Caguas, Puerto Rico.

60472-CR-P/L-76, Same, except located at Bo. San Salvador, Carr. 765 Km. 8.1, Caguas, Puerto Rico.

60473-CR-P/L-76, Same, except located at Bo. Mulita Albelo, Ramal 781 Km. 2.6, Aguas Buenas, Puerto Rico.

60474-CR-P/L-76, Same, except located at Bo. Tomas de Castro, Carr. 788 Km. 1.8, Caguas, Puerto Rico.

60475-CR-P/L-76, Same, except located at Bo. Tomas de Castro II, Carr. 789, Caguas, Puerto Rico.

60476-CR-P/L-76, Same, except located at Bo. Borinquen, Las Parcelas, Caguas, Puerto Rico.

60477-CR-P/L-76, Same, except located at Bo. Bayamoncito, Carr. 156 Km., 43.6, Aguas Buenas, Puerto Rico.

RURAL RADIO

60478–CR–P/L–76, Same except, Bo. Sumidero Carr. 173 Km. 6.2, Aguas Buenas, Puerto Rico.

60479–CR–P/L–76, Same except, Bo. Sonadora Carr. 792 Km. 4.5, Aguas Buenas, Puerto Rico.

60480–CR–P/L–76, Same except, Bo. Juan Asencio Carr. 781 Km. 2, Aguas Buenas, Puerto Rico.

60481–CR–P/L–76, Same except, Bo. Certenejas Carr. 172 Km. 3.0, Caguas, Puerto Rico.

60482–CR–P/L–76, Same except, Bo. Mulita Tiza Carr. 790 Km. 2.1, Aguas Buenas, Puerto Rico.

60483–CR–P/L–76, Same except, Bo. Mula Carr. 156 Km. 46.5, Aguas Burnas, Puerto Rico.

60484–CR–P/L–76, Same except, Bo. Canabon Carr. 784 Km. 1.1, Caguas, Puerto Rico.

60485–CR–P/L–76, Same except, Bo. Bayamoncito Carr. 156 Km. 42.6, Aguas Buenas, Puerto Rico.

60486–CR–P/L–76, Same except, Bo. Guaraguao Carr. 174 Km. 10.7, Bayamon, Puerto Rico.

60487–CR–P/L–76, Same except, Bo. Higuillar Carr. 695 Km. 4.3, Dorado, Puerto Rico.

60488–CR–P/L–76, Same except, Bo. Sierra Rabanal Carr. 722 Km. 2.8, Aibonito, Puerto Rico.

60489–CR–P/L–76, Same except Bo. Nuevo, Carr. 816 Km. 5.8, Bayamon, Puerto Rico.

60490–CR–P/L–76, Same except Bo. Llanos Adentro, Carr. 725 Km. 2.7, Aibonito, Puerto Rico.

60491–CR–P/L–76, Same except Bo. Tomas de Castro II, Carr. 789 Km. 3.3, Caguas, Puerto Rico.

60492–CR–P/L–76, Same except Bo. Borinquen, Carr. 763 Km. 6.1, Caguas, Puerto Rico.

60493–CR–P/L–76, Same except Bo. Amoldadero, Carr. 727 Km. 2.3, Aibonito, Puerto Rico.

60494–CR–P/L–76, Same except Bo. Beatriz, Carr. 1 Km. 46.6, Caguas, Puerto Rico.

60495–CR–P/L–76, Same except Bo. Borinquen, Carr. 763 Km. 0.7, Caguas, Puerto Rico.

60496–CR–P/L–76, Same except Bo. Beatriz, Carr. 1 Km. 45.5, Caguas, Puerto Rico.

60497–CR–P/L–76, Same except Bo. Juan Asencio, Carr. 781 Km. 0.2, Aguas Buenas, Puerto Rico.

POINT TO POINT MICROWAVE RADIO SERVICE

8161–CF–P–76, Pacific Northwest Bell Telephone Company (KOC65), 819 SW. Oak Street, Portland, Oregon, Lat. 45°31'22" N., Long. 122°40'42" W. C.P. to add frequencies 6004.5V and 11645.0V MHz toward Oregon City, Oregon.

8162–CF–P–76, Same (KOS29), 4.3 miles ENE. of Oregon City, Oregon. Lat. 45°22'56" N., Long. 122°31'13" W. C.P. to add frequencies 6256.5H 10715.0V MHz toward Portland, Oregon and 6197.2V 6286.2H MHz toward Silverton, Oregon.

8163–CF–P–76, Same (KOS28), 2.8 miles SSE. of Silverton, Oregon. Lat. 44°57'48" N., Long. 122°45'12" W. C.P. to add frequencies 5945.2H 6034.2V MHz toward Oregon City, Oregon and 11525.0V 11605.0V MHz toward Prospect Hill, Oregon.

8164–CF–P–76, Same (KPC61), Prospect Hill, 3 miles East of Independence, Oregon. Lat. 44°51'15" N., Long. 123°7'20" W. C.P. to add frequencies 11075.0V 11155.0V MHz toward Silverton, Oregon.

8165–CF–P–76, Same (KON66), Marys Peak, Oregon. Lat. 44°30'28" N., Long. 123°34' 19" W. C.P. to add frequency 11605.0H MHz toward Old Blue, Oregon; and replace transmitters on frequency Old Blue, Oregon.

8166–CF–P–76, Same (KPU82), 401 Jackson Street, Corvallis, Oregon. Lat. 44°33'59" N., Long. 123°15'38" W. C.P. to add frequency 11155.0H MHz toward Old Blue, Oregon; replace transmitter on frequency 10995.0H MHz toward Old Blue, Oregon.

8168–CF–P–76, American Telephone and Telegraph Company (KPW24), 4.4 miles SSE. of Delta, Utah. Lat. 39°17'18" N., Long. 112°31'44" W. C.P. to change polarization vertical to horizontal on frequencies 3770, 3850, 3930, 4010, 4090, 4170, 3750, 3830, 3910, 3990 and 4070 MHz toward Clear Lake, Utah.

8169–CF–P–76, Same (KPX94), 3.9 miles ESE. of Leamington, Utah. Lat. 39°30'47" N., Long. 112°12'25" W. C.P. to change polarization vertical to horizontal on frequencies 3930, 3810, 3890, 3970, 4050, 4130, 3710, 3790, 3870, 3950 and 4030 MHz toward Delta, Utah.

8197–CF–P–76, The Mountain States Telephone and Telegraph Company (WJM55) Midwest, 7.1 miles NE. of Edgerton, Wyoming Lat. 43°29'42" N., Long. 106°36'52" W. C.P. to add a new point communication on freqeuncy 2171.6V MHz toward Kaycee Jct., Wyoming on azimuth 303.1 degrees.

8198–CF–P–76, Same (New), 1.2 miles East of Kaycee, Wyoming Lat. 43°42'46" N., Long. 106°36'52" W. C.P. for a new station on frequency 2121.6V MHz toward Midwest, Wyoming on azimuth 122.8 degrees.

POINT TO POINT MICROWAVE SERVICES

8199–CF–P–76, The Mountain States Telephone and Telegraph Company (KOS52), 120 East Pennington St., Tucson, Arizona. Lat. 32°13'26" N., Long. 110°58'8" W. C.P. to add frequencies 11285.0V and 11605.0V MHz toward Mt. Lemmon and replace antenna on frequency 11445.0V MHz toward Mr. Lemmon, Arizona.

8200–CF–P–76, Same (KPN80), Mt. Lemmon 18.4 miles NNE. of Tucson, Arizona. Lat. 32°26'21" N., Long. 110°47'14" W. C.P. to add frequencies 10835.0V 11155.0V MHz toward Tucson and 10875.0V 11115.0V MHz toward San Manuel; replace antenna on frequency 10755.0H MHz toward Tucson, Arizona.

8201–CF–P–76, Same (KOQ75), North Avenue G, San Manuel, Arizona Lat. 32°36'9" N., Long. 110°37'55" W. C.P. correct coordinates and increase structure height; and add frequencies 11325.0V 11565.0V MHz toward Mt. Lemmon on azimuth 28.9 degrees; add a new point of communication 11285.0V 11365.0V MHz toward Hayden passive reflector on azimuth 344.1 degrees and from passive reflector toward Hayden, Arizona on azimuth 246.5 degrees.

8202–CF–P–76, Same (WAY33), 236 4th Street, Hayden, Arizona Lat. 33°01'12" N., Long. 110° 46'58" W. C.P. to increase structure height; to change frequencies 6360.5H 11115.0V to 10835.0V 10915.0V MHz toward Hayden passive reflector 2 and from passive reflector toward Pinal Peak, Arizona; to add a new point communication on frequencies 10835.0V 10915.0V MHz toward Hayden passive reflector 1 on azimuth 66.4 degrees and from passive reflector San Manuel, Arizona on azimuth 164.0 degrees.

8203–CF–P–76, Same (KPN86), 8.2 miles SSW. of Globe, Arizona Lat. 33°16'52" N., Long. 110°49'14" W. C.P. to change frequencies 6108.3H 11565.0V to 11565.0V 11285.0V MHz toward Hayden passive reflector 2 and from passive reflector to Hayden; to add frequencies 11665.0V 11425.0V MHz toward Globe, Arizona; replace transmitters and increase output power on frequencies 11505.0V MHz toward Globe and 11445.0H 11685.0V MHz toward Phoenix, Arizona; replace antenna on frequencies 5989.7V 11445.0H MHz toward Phoenix, Arizona.

8204–CF–P–76, Same (KPN87), 150 East Cedar Street, Globe, Arizona Lat. 33°23'48" N., Long. 110°47'10" W. C.P. to add frequencies 10735.0V 10815.0V MHz toward Pinal Peak, Arizona.

8205–CF–P–76, Same (KOV63), 228 West Adams Street, Globe, Arizona. Lat. 33°23'-48" N., Long. 110°4'10" W. C.P. replace transmitters on frequencies 10755.0V 10995.0V MHz toward Pinal Peak, Arizona; and replace antenna on frequencies 6241.7V 10755.0V MHz toward Pinal Peak, Arizona.

APPLICATIONS ACCEPTED FOR FILING

POINT TO POINT MICROWAVE RADIO SERVICE

8182–CF–P–76, Eastern Microwave, Inc. (New), St. Rte. 130—1 mile NW. of Greensburg, Pennsylvania. Lat. 40°18'52" N., Long. 79°34'01" W. Construction permit for new station—11665.0V 11345.0V and 11505.0V MHz toward Connellsville, Pennsylvania on azimuth 191.1 degrees.

8183–CF–P–76, Eastern Microwave, Inc. (New), 2.2 miles West of State Rte. 711 and State Rte. 119, Connellsville, Pennsylvania. Lat. 40°01'10" N., Long. 79°38'32" W. Construction permit for new station—10975.-0H MHz toward Uniontown, Pennsylvania on azimuth 222.9 degrees.

8167–CF–P–76, Mid-Kansas, Inc. (KAK 36), NE. Edge of Clay Center, Kansas. Lat. 39°23'20" N., Long. 97°06'45" W. Construction permit to add 5974.8H MHz toward Concordia, Kansas on azimuth 292.4 degrees.

8187–CF–P–76, United Video, Inc. (WKS 23), Marble City, Oklahoma. Lat. 35°36'23" N., Long. 94°52'07" W. Construction permit to add 6034.2V and 6152.8V MHz toward Van Buren, Arkansas and 6034.2H and 6152.8H MHz toward Poteau, Oklahoma on azimuths 111.1 and 163.8 degrees, respectively.

8172–CF–P–76, United States Transmission Systems, Inc. (WAH 497), 5.0 miles North of Westchester, Pennsylvania. Lat. 40°02'-50" N., Long. 75°31'11" W. Construction permit to add 6286.2H MHz toward Oxford, Pennsylvania on azimuth 230.3 degrees.

8173–CF–P–76, United States Transmission Systems, Inc. (WAH 498), 1.0 mile North of Oxford, Pennsylvania. Lat. 39°48'06" N., Long. 75°58'10" W. Construction permit to add 6004.5H MHz toward Westchester and Delta, both in Pennsylvania on azimuths 50.1 and 259.4 degrees.

8174–CF–P–76, United States Transmission Systems, Inc. (WAH 500), Jarretsville, AKE South, Jacksonville, Maryland. Lat. 39°30'-54" N., Long. 76°33'35" W. Construction permit to add 6004.5H MHz toward Delta, Pennsylvania and Ellicott City, Maryland on azimuth 34.0 and 229.5 degrees, respectively.

8176–CF–P–76, United States Transmission Systems, Inc. (WAH 501), 11910 Carrol Mill Rd., Ellicott City, Maryland. Lat. 39°16'00" N., Long. 76°55'56" W. Construction permit to add 6286.2H MHz toward Jacksonville, Maryland and 6286.2V MHz toward Rockville, Maryland on azimuths 49.2 and 226.2 degrees, respectively.

8177–CF–P–76, United States Transmission Systems, Inc. (WBA 729), 1.3 mile North of Rockville, Maryland. Lat. 39°06'10" N., Long. 77°09'16" W. Construction permit to add 6004.5V MHz toward Ellicott City, Maryland on azimuth 46.5 degrees.

POINT TO POINT MICROWAVE RADIO SERVICE

Corrections

7979-CF-P/L-76, The Western Union Telegraph Co. (KNK 55), 125 12th St., Oakland, California. This entry appearing in Public Notice of September 20, 1976 is corrected to show 3790V and 4030V MHz toward San Francisco, California on azimuth 236.6 degrees and to exclude 3870V and 4110V MHz toward Pleasanton, California on azimuth 118.0 degrees. All other particulars remain the same.

7980-CF-P/L-76, The Western Union Telegraph Co. (NKN 54) San Francisco, No. 1, Central Towers Building, San Francisco, California. This entry appearing in Public Notice of September 20, 1976 is corrected to show 3910V MHz toward Oakland, California. All other particulars remain the same.

[FR Doc.76-29660 Filed 10-7-76;8:45 am]

[Report No. I-277]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

OCTOBER 4, 1976.

The Applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's rules, regulations, or its policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

503-DSE-P-76, Caddo-Bossier Cablevision, Inc., Shreveport, Louisiana. For authority to construct, own and operate a domestic communications satellite Receive-Only earth station at this location. Lat. 32°26'-58" Long. 93°47'36". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

Amendment: Caddo-Bossier Cablevision, Inc., Shreveport, Louisiana. For authority to amend its application to carry Station WTGC-TV, Atlanta, Georgia.

Correction: Report No. I-274, Western Tele-Communications, Inc., Lookout Mtn., Colo-radio. Coordinates should have read Lat. 39°43'43" Long. 105°15'01".

[FR Doc.76-29659 Filed 10-7-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 165]

ASSIGNMENT OF HEARINGS

OCTOBER 5, 1976.

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.

Correction

MC 111729 (Sub-No. 571), Purolator Courier Corp. now assigned October 18, 1976, at Kansas City, Missouri, instead of Omaha, Nebraska, and will be held in Room 609, Federal Office Building, 911 Walnut Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-29699 Filed 10-7-76;8:45 am]

[Notice No. 164]

ASSIGNMENT OF HEARINGS

OCTOBER 5, 1976.

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 114737 (Sub 7), O & A Tex-Pack Express, Inc., now being assigned December 6, 1976 (2 weeks), at Santa Fe, New Mexico, in a hearing room to be later designated.

MC 56640 (Sub 35), Delta Lines, Inc., now being assigned November 8, 1976 (2 weeks), at San Francisco, California, in a hearing room to be later designated.

MC-F 12678, Jenkins Truck Line, Inc.—Control—Larry L. Fenner Transport, Inc. and MC 120298 (Sub 2), Larry L. Fenner Transport, Inc. now being assigned December 1, 1976 (1 day) at Chicago, Illinois, in a hearing room to be later designated.

MC 51146 (Sub 464), Schneider Transport, Inc. now being assigned November 30, 1976 (1 day) at Chicago, Illinois, in a hearing room to be later designated.

MC-F 12971, United Van Lines, Inc., H. Goldman, Inc., Daniels Transportation Co., Safeway System, Inc., George B. Holamn & Co., Inc., Sisser Bros., Inc., Stevens Van Lines, Inc., O. J. Glenn & Son, Inc., and Fisher's Moving & Storage Co.—Investigation of Pooling now being assigned December 6, 1976 (1 day) at St. Louis, Missouri, in a hearing room to be later designated.

MC 115331 (Sub 401), Trucl Transport, Inc. now being assigned December 7, 1976 (1 day) at St. Louis, Missouri in a hearing room to be later designated.

MC 110563 (Sub 180), Coldway Food Express, Inc. now being assigned December 8, 1976 (3 days) at St. Louis, Missouri, in a hearing room to be later designated.

MC 115904 (Sub-No. 45), Grover Trucking Co., now being assigned January 11, 1977 (2 days), at Denver, Colorado, in a hearing room to be later designated.

MC 142162, Bralen Trucking Co., Inc., now being assigned January 13, 1977, (2 days), at Denver, Colorado, in a hearing room to be later designated.

MC 115931 (Sub-No. 41), Bee Line Transportation, Inc., now being assigned January 17, 1977, (1 week), at Billings, Montana, in a hearing room to be later designated.

MC 141253, Cornucopia, Inc., now being assigned January 24, 1977 (1 week), at Boise, Idaho, in a hearing room to be later designated.

MC 2900 (Sub 292), Ryder Truck Lines, Inc., now being assigned December 1, 1976 (1 day), at Little Rock, Arkansas, in a hearing room to be later designated.

MC 129615 (Sub-No. 17), American International Driveaway, now assigned November 2, 1976, has been postponed to December 7, 1976 (9 days) at Chicago, Illinois, in a hearing room to be later designated.

MC-C 8688, Auto Driveaway v. American International Driveaway, now being assigned December 7, 1976 (9 days) at Chicago, Illinois; in a hearing room to be later designated.

AB 19 (Sub 24), Baltimore and Ohio Railroad Company Abandonment Portion Elk Branch Between Hartland and Clendenin, In Clay and Kanawha Counties, West Virginia, now assigned November 11, 1976, at Clay, West Virginia, is now being advanced to November 9, 1976 (2 days) at Clay, West Virginia, and will be held in the Clay County Courthouse, Circuit Court Room.

MC-C 9028, The O.K. Trucking Co. v. Overnite Transportation Co., now being assigned December 8, 1976 (1 day), at Frankfort, Kentucky, in a hearing room to be later designated.

MC 2229 (Sub 192), Red Ball Motor Freight, Inc., now being assigned December 6, 1976 (2 weeks), at Atlanta, Georgia, in a hearing room to be later designated.

MC-C 9081, Miami Transfer Co., Inc.—Investigation and Revocation of Certificate of Registration, now being assigned December 1, 1976 (2 days) at Tallahassee, Florida, in a hearing room to be later designated.

MC 121597 (Sub 5), Chickasaw Motor Line, Inc., now being assigned January 10, 1977 (2 weeks), at Nashville, Tennessee, in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-29700 Filed 10-7-76;8:45 am]

[Rule 19; Ex Parte No. 241; 26th Rev. Exemption No. 10]

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. ET AL.

Exemption Under Mandatory Car Service Rules

It appearing, That the railroads named herein own numerous 40-ft. plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register,[1] I.C.C.-R.E.R. No. 400 issued by W. J. Trezise, or successive issues thereof, as having

mechanical designation "XM", with inside length 44-ft. 6 in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

The Atchinson, Topeka and Santa Fe Railway Co.
Reporting Marks: ATSF
Atlanta and Saint Andrews Bay Railway Co.
Reporting Marks: ASAB
The Baltimore and Ohio Railway Co.
Reporting Marks: BO
Bangor and Aroostook Railroad Co.[1]
Reporting Marks: BAR
The Chesapeake and Ohio Railway Co.
Reporting Marks: CO-PM
Chicago, Rock Island and Pacific Railroad Co.
Reporting Marks: RI-ROCK
Chicago, West Pullman & Southern Railroad Co.
Reporting Marks: CWP
The Denver and Rio Grande Western Railroad Co.
Reporting Marks: DRGW
Detroit and Mackinac Railway Co.
Reporting Marks: D&M-DM
Elgin, Joliet and Eastern Railway Co.
Reporting Marks: EJE
Illinois Terminal Railroad Co.
Reporting Marks: ITC
Louisville and Nashville Railroad Co.
Reporting Marks: CIL-L&N-MON-NC
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC
Missouri-Kansas-Texas Railroad Co.
Reporting Marks: MKT
Missouri Pacific Railroad Co.
Reporting Marks: CEI-MI-MP-TP
Southern Railway Co.
Reporting Marks: CG-NS-SA-SOU
St. Louis-San Francisco Railway Co.
Reporting Marks: SLSF
Union Pacific Railroad Co.
Reporting Marks: UP
Western Maryland Railway Co.
Reporting Marks: WM

Effective 12:01 am, October 1, 1976 and continuing in effect until further order of this Commission.

Issued at Washington, DC, September 23, 1976.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.76-29693 Filed 10-7-76;8:45 am]

[Rule 19; Ex Parte No. 241; 26th Rev. Exemption No. 10-A]

MANDATORY CAR SERVICE RULES

Exemption

Upon further consideration of Twenty-sixth Revised Exemption No. 10 issued September 23, 1976.

It is ordered, That, under authority vested in me by Car Service Rule 19, Twenty-sixth Revised Exemption No. 10 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, vacated and set aside.

This amendment shall become effective 12:01 am, October 7, 1976.

Issued at Washington, D.C., September 29, 1976.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.76-29692 Filed 10-7-76;8:45 am]

[Notice No. 132]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 4, 1976.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

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.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 28088 (Sub-No. 21TA), filed September 27, 1976. Applicant: NORTH & SOUTH LINES, INC., 2710 South Main St., Harrisonburg, Va. 22801. Applicant's representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat and meat products* (except in bulk, in tank vehicles), from Evington, Va., to airports and ports in Virginia, Maryland, Pennsylvania, New Jersey and New York, restricted to shipments moving in international commerce and having a subsequent movement by air or water, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Harman Enterprises, Inc., dba Cavalier Export Co., Rt. 1, Box 27, Evington, Va. 24550. Send protests to: Danny R. Beeler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, Va. 24011.

No. MC 88368 (Sub-No. 30TA), filed September 20, 1976. Applicant: CARTWRIGHT VAN LINES, INC., 11901 Cartwright Ave., Grandview, Mo. 64030. Applicant's representative: David A. Welte, 209 W. 47th St., Kansas City, Mo. 64112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *New furniture;* (a) between warehouses in Kansas City, Mo., Denver, Colo.; Omaha, Nebr., and Seattle, Wash., and any combination thereof; (b) between Kansas City, Mo., on the one hand, and, on the other, points in Missouri, Kansas, Oklahoma, Arkansas, points on and south of Highway No. 30 in Nebraska, from Grand Island West, points on and east of Highway No. 71 in Colorado, and points on and south of Highway No. 34 in Iowa East from Osceola; (c) between Omaha, Nebr., on the one hand, and, on the other, points in Nebraska, Iowa, Minnesota, North Dakota, South Dakota, points on and north of Highway No. 34 in Colorado East from Loveland, points on and east of Highway No. 25 in Wyoming, and points in and north of Highway No. 36 in Kansas; (d) between Denver, Colo., on the one hand, and, on the other, points in Colorado, New Mexico, Utah, Wyoming, Billings, Mont., points on and west of Highway No. 83 in Nebraska, North Dakota and South Dakota, and points on and north or west of Highway No. 80 and 87 in Texas to the junction of 80 and 87 at Big Springs, Tex.; and (e) between Seattle, Wash., on the one hand, and, on the other, points in Washington, Oregon, Alaska, and points in California on and north of Highway No. 299, and points on and west of Highway No. 93 in Idaho and Montana; (2) *Food service equipment*, between the commercial zone of Kansas City, Mo., on the one hand, and, on the other, points in the United States; and (3) *Kitchen and bath cabinets*, between Des Moines, Iowa on the one hand, and, on the other, points west of the Mississippi River, for 180 days. Supporting shippers: Francisco Cabinet Corp., 1525 Illinois, Des Moines, Iowa. Beebe & Runyan Furniture Co., 105 S. 9th St., Omaha, Nebr. 68102. Metcraft, Inc., 1203 Main, Grandview, Mo. 64040. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 107403 (Sub-No. 985TA), filed September 27, 1976. Applicant: MATLACK, INC., Ten West Valtimore Ave., Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soybean products*, in bulk, in tank vehicles, from Cairo, Ill., to points in Alabama, Arkansas, Georgia, Indiana,

[1] Deleted: Bensomer and Lake Erie Railroad Co.

Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee and Wisconsin, for 180 days. Supporting shipper: Bunge Corporation, 300 Southwest Blvd., Kansas City, Kans. 66103. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 113959 (Sub-No. 8TA), filed Septemebr 27, 1976. Applicant: LEMMON TRANSPORT COMPANY, INC., P.O. Box 580, Marion, Va. 24354. Applicant's representative: Daryl J. Henry (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda*, in bulk, in tank vehicles, from the plantsite and storage facilities of Olin Corporation, at or near Charleston, Tenn., to points in South Carolina, under a continuing contract with Olin Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Olin Corporation, 120 Long Ridge Road, Stamford, Conn. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, Va. 24011.

No. MC 115496 (Sub-No. 44TA), filed September 24, 1976. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Highway 23 South, Cochran, Ga. 31014. Applicant's representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plywood*, from the plantsites of Champion International Corp., at or near Waycross, Ga., to points in South Carolina; (2) *Plywood, paneling, and composition board*, from the plantsites of Champion International Corp., at or near Orangeburg, S.C., to points in Georgia; (3) *Plywood, paneling, and composition board*, from the plantsites of Champion International Corp., at Charleston, S.C., to points in Georgia; and (4) *Composition hardboard*, from the plantsites of Champion International Corp., at or near Catawba, S.C., to points in Georgia. Restrictions: (1) Restricted against the transportation of commodities in bulk and (2) Restricted to traffic orginating at the plantsites of Champion International Corp., for 180 days. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, Ohio 45020. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., NW, Room 546 Atlanta, Ga. 30309.

No. MC 117765 (Sub-No. 213TA), filed September 27, 1976. Applicant: HAHN TRUCK LINE, INC., 5315 N.W. 5th St., P.O. Box 75218, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Perlite*, in containers or bags, from the plantsite of Persolite Products, at or near Florence, Colo., to points in Oklahoma, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Perlite of Oklahoma, 3304 Alexander Lane, Bethany, Okla. 73008. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 NW Third St., Oklahoma City, Okla. 73102.

No. MC 120981 (Sub-No. 21TA), filed September 23, 1976. Applicant: BESTWAY EXPRESS, INC., 905 Visco Drive, Nashville, Tenn. 37201. Applicant's representative: George M. Catlett, 703-706 McClure Bldg., Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Pikeville, Ky., and Huntington, W. Va., from Pikeville, Ky.; over U.S. 119 to Williamson, W. Va., thence over U.S. 52 to Huntington, W. Va., and return over the same route, serving all intermediate points; (2) between Prestonsburg, Ky., and Ashland, Ky.; from Prestonsburg, Ky., over U.S. 23 to Ashland, Ky., and return over the same route, serving all intermediate points; (3) between Saylersville, Ky., and the junction of U.S. 460 and U.S. 23 near Paintsville, Ky.; from Saylersville, Ky., over U.S. 460 to the junction of U.S. 23 near Paintsville, Ky., and return over the same route, serving all intermediate points; (4) between Lexington, Ky., and Saylersville, Ky.; from Lexington, Ky., over U.S. 60 to Winchester, Ky., thence over Kentucky Highway 15 to Clay City, Ky., thence over Mountain Parkway to Saylersville, Ky., and return over the same route, serving no intermediate points; (5) between Lexington, Ky., and Charleston, W. Va., from Lexington, Ky., over U.S. 60 to Charleston, W. Va., and return over the same route, serving all intermediate points east of Owingsville, Ky., and its commercial zone.

(6) Between Lexington, Ky., and Clay City, Ky.; from Lexington, Ky., over Interstate Highway 64 to junction of Mountain Parkway, thence over Mountain Parkway to Clay City, Ky., and return over the same route, serving no intermediate points, and serving Clay City, Ky., for joinder only, as an alternate route for operating convenience only; (7) between Lexington, Ky., and Charleston, W. Va.; from Lexington, Ky., over Interstate Highway 64 to Charleston, W. Va., and return over the same route, serving the junctions of Kentucky Highway 1, Kentucky Highway 2, Kentucky Highway 5, and Kentucky Highway 32, for joinder only, as an alternate route for operating convenience only; (8) between the junction of Interstate Highway 64 and Kentucky Highway 32 and Morehead, Ky., from the junction of Interstate Highway 64, and Kentucky Highway 32 over Kentucky Highway 32 to Morehead, Ky., and return over the same route, serving all intermediate points; (9) between the junction of Interstate Highway 64 and Kentucky Highway 2 and Olive Hill, Ky., from the junction of Interstate Highway 64 and Kentucky Highway 2 over Kentucky Highway 2 to Olive Hill, Ky., and return over the same route, serving all intermediate points; (10) between the junction of Interstate Highway 64 and Kentucky Highway 1 and Grayson, Ky., from the junction of Interstate Highway 64 and Kentucky Highway 1 over Kentucky Highway 1 to Grayson, Ky., and return over the same route, serving all intermediate points; (11) between the junction of Interstate Highway 64 and Kentucky Highway 5 and Ashland, Ky., from the junction of Interstate Highway 64, and Kentucky Highway 5 over Kentucky Highway 5 to Ashland, Ky., and return over the same route, serving all intermediate points.

(12) Between Saylersville, Ky., and Pikeville, Ky., from Saylersville over Kentucky Highway 114 to Prestonsburg, Ky., thence over Highway 460 to Pikeville, Ky., and return over the same route, serving all intermediate points, restricted against transportation of traffic originating at, destined to, or interchanged at Huntington, W. Va., and points in its commercial zone, moving between Huntington and points in its commercial zone, on the one hand, and, on the other, points on those routes described in (1), (2), (3) and (12) above, points on Highway 60 between and including Olive Hill, Ky., and Huntington, W. Va., and points in their commercial zone, or all points on those routes described in (1), (2), (3) and (12) above, and on U.S. Highway 60 between and including Olive Hill, Ky., and Huntington, W. Va. Authority is sought to serve the commercial zones of all points and places set forth in routes (1) through (12) above. Applicant intends to tack its existing authority with MC 120981 and subs thereunder. Applicant also intends to interline at Baton Rouge, La.; Jackson, Miss.; Nashville, Tenn., Lexington, Ky., and Huntington and Charleston, W. Va., for 180 days. Supporting shippers: There are approximately 72 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, DC or copies thereof which may be examined at the field office named below. Send protests to: Joe J. Tate, District Supervisor, Intersttate Commerce Commission, Bureau of Operations, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 123048 (Sub-No. 345TA), filed September 24, 1976. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st St., PO Box A, Racine, Wis. 53401. Applicant's representative: Carl S. Pope (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors), each weighing 15,000 pounds or less, and *attachments, parts and accessories* therefor when moving in

mixed loads therewith, from the facilities of Ford Motor Company, at Troy, Mich., to points in Indiana, Lower Peninsula of Michigan, and Ohio, points in that part of Illinois east of U.S. Highway 51 and north of U.S. Highway 50, points in that part of Kentucky east of U.S. Highway 127, points in New York west of a line beginning at the New York-Pennsylvania state line and extending along U.S. Highway 219 to Hamburg, N.Y., and thence along U.S. Highway 62 to Niagara, N.Y., and those points in Pennsylvania and West Virginia located west of U.S. Highway 219. Restriction: The authority granted herein is restricted to the transportation of traffic from the facilities of Ford Motor Company, at or near Troy, Mich., and destined to points in the states named above. Restriction: Restricted to the transportation of traffic having a prior movement by water, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ford Motor Company, Ford Tractor Operations, 2500 E. Maple, Troy, Mich. 48084. Send protests to: John E. Ryden, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 123885 (Sub-No. 23TA), filed September 24, 1976. Applicant: C & R TRANSFER CO., PO Box 1010, Rapid City, S. Dak. 57701. Applicant's representative: James W. Olson, 821 Columbus, Rapid City, S. Dak. 57701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile home truss rafters*, from Sioux Falls, S. Dak., to Blue Earth, Minn., and Tekamah, Nebr., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sunrise Manufacturing, 1105 North Cliff, Sioux Falls, S. Dak. 57101. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 124813 (Sub-No. 156TA), filed September 27, 1976. Applicant: UMTHUN TRUCKING CO., 910 South Jackson St., PO Box 166, Eagle Grove, Iowa 50533. Applicant's representative: James M. Hodge, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Limestone*, in bulk, from the facilities of American Cyanamid, at or near Alden, Iowa, to Burlington, Ind., and Hamilton, Mich., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Cyanamid Company, PO Box 400, Princeton, N.J. 08540. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Oprations, Interstate Commerce Commission, 518 Federal Bldg., Des. Moines, Iowa 50309.

No. MC 133816 (Sub-No. 10TA), filed September 27, 1976. Applicant: K & K WHOLESALE CO., P.O. Box 222, Lowell, Oreg. 97452. Applicant's representative: Howard E. Speer, 835 East Park St., Eugene, Oreg. 97401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building stone and landscape boulders*, from points in Mono County, Calif., to points in Thurston County and King County, Wash., for 180 days. Supporting shipper: Featherrock, Inc., 2890 Empire Ave., Burbank, Calif. 91510. Send protests to: A. E. Odoms, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 140262 (Sub-No. 1TA), filed September 22, 1976. Applicant: VIKING TRANSPORT, INC., 1384 East F St., Oakdale, Calif. 95361. Applicant's representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, Calif. 94108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shredded destined scrap tinplate and cans*, in bulk, in high-cube capacity, side-dumping dump vehicles, from Antelope, Calif., to Weed Heights, Nev., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Anaconda Company, PO Box 1000, Weed Heights, Nev. 89443. Send protests to: Claud W. Reeves, District Supervisor, 211 Main, Suite 500, San Francisco, Calif. 94105.

No. MC 140421 (Sub-No. 10TA), filed September 27, 1976. Applicant: ACTION MOTOR EXPRESS, INC., PO Box 29102, 8303 Old Gentilly Road, New Orleans, La. 70189. Applicant's representative: Sandra H. Roberson (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plywood and lumber*, from the plantsite of U.S. Plywood, New Orleans, La., to points in Mississippi *and return loads*, from the plantsite of Delta Pine Plywood Co., at Beaumont, Miss., to points in Louisiana east of the Mississippi River, and points in the commercial zones of New Orleans and Baton Rouge, La., under a continuing contract with U.S. Plywood and Delta Pine Plywood Company, for 180 days. Supporting shippers: U.S. Plywood, PO Box 29447, New Orleans, La. 70189; Delta Pine Plywood Company, Box 247, Beaumont, Miss. 39423. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 701 Loyola Ave., 9038 U.S. Postal Service Bldg., New Orleans, La. 70113.

No. MC 141133 (Sub-No. 1TA), filed September 27, 1976. Applicant: STANLEY A. KNAPPENBERGER, 217 New St., Walnutport, Pa. 18088. Applicant's representative: Marshall Kragen, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, D.C. 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metals, scrap iron, scrap steel and crushed automobiles*, between points in Berks, Bradford, Bucks, Carbon, Columbia, Dauphin, Lackawanna, Lehigh, Luzerne, Mifflin, Monroe, Montour, Northampton, Northumberland, Pike, Schuykill, Susquehanna, Wayne, and Wyoming Counties, Pa., on the one hand, and, on the other, Auburn and Long Island City, N.Y., and Burlington, Florence, Jersey City, Phillipsburg, Newark, and Sayreville, N.J., under a continuing contract with Wallace I. Putkowski Co., for 180 days. Supporting shipper: Wallace I. Putkowski Co., RD No. 1, Lehoghton, Pa. 18235. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 142356 (Sub-No. 1TA), filed September 24, 1976. Applicant: J. S. BRYANT TRUCKING COMPANY, INC., Route 3, P.O. Box 214C, Lynchburg, Va. 24504. Applicant's representative: Michael L. Rigsby, 200 West Gract St., Suite 415, Richmond, Va. 23220. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap iron and shredded scrap steel*, between Kernersville, Statesville and Winston-Salem, N.C., on the one hand, and, on the other, Lynchburg, Radford and Roanoke, Va., under a continuing contract with Brenner Iron & Metal Company and L. Gordon Iron & Metal Company, for 180 days. Supporting shippers: Brenner Iron & Metal Company, 3415 Gleen Ave., Winston-Salem, N.C. 27015. L. Gordon Iron & Metal Company, Salisbury Road, Statesville, N.C. 28677. Send protests to: Danny R. Beeler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, Va. 24011.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-29691 Filed 10-7-76;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

OCTOBER 5, 1976.

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 October 26, 1976.

FSA No. 43247—*Pipeline Rates—Petroleum Products from and to the Southwest.* Filed by Kaneb Pipe Line Co. (KPL), (No. 3), for interested carriers. Rates on petroleum products, as described in the application, from points in Kansas and Oklahoma, to Milford, Iowa.

Grounds for relief—Carrier competition.

Tariff—Kaneb Pipe Line Co. tariff 1–G, I.C.C. No. 11. Rates are published to become effective on November 1, 1976.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–29698 Filed 10–7–76;8:45 am]

[Notice No. 43]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 8, 1976.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212a(b) in connection with transfer application under section 212a(b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC–76594. By application filed September 30, 1976, SOUTHWAY TRUCKING, INC., 777 Kenyon Drive, Sumter, South Carolina, 29150, seeks temporary authority to transfer the operating rights of I. S. Johnson, Jr., 416 S. Main Street, PO Box 334, Sumter, South Carolina, 29150, under section 210a(b). The transfer to Southway Trucking, Inc., of the operating rights of I. S. Johnson, Jr., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–29689 Filed 10–7–76;8:45 am]

[Notice No. 44]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 8, 1976.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212a(b) in connection with transfer application under section 212a (b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC–76757. By application filed August 30, 1976, E. W. Belcher Trucking, Inc., 201 Dallas Drive, Denton, TX, 76201, seeks temporary authority to transfer the operating rights of John Grant Everett, d.b.a. E & P Truck Service, Route 2, McCrory, Arkansas, under section 210a(b). The transfer to E. W. Belcher Trucking Inc., of the operating rights of John Grant Everett, dba E & P Truck Service, is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–29690 Filed 10–7–76;845 am]

[Rule 19; Ex Parte No. 241; 23d Rev. Exemption No. 12]

ATLANTIC AND WESTERN RAILWAY ET AL.

Exemption Under Mandatory Car Service

It appearing, that the railroads named herein own numerous plain boxcars; that under present conditions there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, that pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.–R.E.R. No. 400, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlantic and Western Railway
Reporting Marks: ATW
Chicago & Illinois Midland Railway Co.
Reporting Marks: CIM
Fonda, Johnstown and Gloversville Railroad Co.
Reporting Marks: FJG
Hartford and Slocomb Railroad Co.
Reporting Marks: HS
Louisiana Midland Railway Co.
Reporting Marks: LOAM
Manufacturers Railway Co.
Reporting Marks: MRS
Maryland and Pennsylvania Railroad Co.
Reporting Marks: MPA
[1] Minneapolis, Northfield and Southern Railway
Reporting Marks: MNS
New Hope and Ivyland Railroad Co.
Reporting Marks: NHIR
Pickens Railroad Co.
Reporting Marks: PICK
Roscoe, Snyder and Pacific Railway Co.
Reporting Marks: RSP
Wellsville, Addison & Galeton Railroad Co.
Reporting Marks: WAG

Effective October 1, 1976, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., September 23, 1976.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 76–29694 Filed 10–7–76; 8:45 am]

[Rule 19; Ex Parte No. 241, Exemption No. 129]

ATLANTA AND SAINT ANDREWS BAY RAILWAY CO. ET AL.

Exemption Under Mandatory Car Service Rules

It appearing that the railroads named herein own numerous 40-ft. plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, that, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.–R.E.R. No. 400 issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", with inside length 44-ft. 6 in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

The Atchison, Topeka and Santa Fe Railway Co.
Reporting Marks: ATSF
Atlanta and Saint Andrews Bay Railway Co.
Reporting Marks: ASAB
The Baltimore and Ohio Railway Co.
Reporting Marks: BO
The Chesapeake and Ohio Railway Co.
Reporting Marks: CO–PM
Chicago, Rock Island and Pacific Railroad Co.
Reporting Marks: RI–ROCK
Chicago, West Pullman & Southern Railroad Co.
Reporting Marks: CWP
The Denver and Rio Grande Western Railroad Co.
Reporting Marks: DRGW
Detroit and Mackinac Railway Co.
Reporting Marks: D&M–DM
Elgin, Joliet and Eastern Railway Co.
Reporting Marks: EJE
Illinois Terminal Railroad Co.
Reporting Marks: ITC
Louisville and Nashville Railroad Co.
Reporting Marks: CIL–L&N–MON–NC
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC
Missouri-Kansas-Texas Railroad Co.
Reporting Marks: MKT
Missouri Pacific Railroad Co.
Reporting Marks: CEI–MI–MP–TP
Southern Railway Co.
Reporting Marks: CG–NS–SA–SOU
St. Louis-San Francisco Railway Co.
Reporting Marks: SLSF
Union Pacific Railroad Co.
Reporting Marks: UP
Western Maryland Railway Co.
Reporting Marks: WM

Effective 12:01 am, October 7, 1976 and continuing in effect until further order of this Commission.

Issued at Washington, D.C., September 29, 1976.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.76–29695 Filed 10–7–76;8:45 am]

[Rev. S. O. Order No. 994; I.C.C. Order No. 173–A]

GREEN MOUNTAIN RAILROAD CORP.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 173 (Green Mountain Railroad

Corporation) and good cause appearing therefore:

It is ordered, I.C.C. Order No. 173 be, and it is hereby, vacated and set aside.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association and that it be filed with the Director, Office of the FEDERAL REGISTER.

Issued at Washington, D.C., September 27, 1976.

INTERSTATE COMMERCE COMMISSION,
LEWIS R. TEEPLE,
Agent.

[FR Doc.76-29696 Filed 10-7-76;8:45 am]

[I.C.C. Order No. 176 Under Revised Service Order No. 994]

NORFOLK AND WESTERN RAILWAY CO.

Rerouting and Diversion of Traffic

In the opinion of Lewis R. Teeple, Agent, the Norfolk and Western Railway Co. is unable to transport traffic over its line between Ottumwa and South Ottumwa, Iowa, because of bridge damage.

It is ordered, That: (a) The Norfolk and Western Railway Co., being unable to transport traffic over its line between Ottumwa and South Ottumwa, Iowa, because of bridge damage, that carrier and its connections are hereby authorized to reroute or divert such traffic via any available route to expedite the movement. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railoads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the division of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 10:00 am, September 23, 1976.

(g) *Expiration date.* This order shall expire at 11:59 pm, October 31, 1976, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the FEDERAL REGISTER.

Issued at Washington, DC, September 23, 1976.

INTERSTATE COMMERCE COMMISSION,
LEWIS R. TEEPLE,
Agent.

[FR Doc.76-29697 Filed 10-7-76;8:45 am]

federal register

FRIDAY, OCTOBER 8, 1976



PART II:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

GRANTS

Simplification of Procurement Standards

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 74—ADMINISTRATION OF GRANTS

Simplification of Standards for Procurements Under Grants and Other Amendments

The Department of Health, Education, and Welfare (HEW) hereby amends 45 CFR Part 74 as set forth below.

Part 74 of Title 45 of the CFR constitutes HEW's Department-wide grants administration regulation. It was published primarily to implement Office of Management and Budget (OMB) Circular No. A–102, "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments". Circular No. A–102 has since been replaced, with only minor change, by Federal Management Circular (FMC) 74–7 (34 CFR Part 256). Two other FMC's affecting grants are also implemented by 45 CFR Part 74: FMC's 73–8 and 74–4 (34 CFR Parts 254 and 255).

The general purpose of these amendments is to reflect amendments to FMC 74–7 that have been promulgated since the original issuance of Part 74 on September 19, 1973, at 38 FR 26274.

Summary of principal amendments. The principal effects of these amendments are as follows:

1. Heretofore, certain standards pertaining to a procurement made by a grantee under a grant applied only if the aggregate amount of the procurement exceeded $2,500. The figure is raised to $10,000. This amendment is pursuant to FMC 74–7 Supplement 1, issued on June 20, 1975, at 40 FR 26031.

2. The definition of State and local governments is extended to include Federally recognized Indian tribal governments. This amendment is pursuant to FMC 74–7 Supplement 2, issued on November 3, 1975 at 40 FR 51038.

3. A reduction is made in the number of reasons for which the Department may place restrictions on grantees which will limit public access to the grantee's records or to records of their subgrantees or contractors. This amendment reflects a change from OMB Circular No. A–102 made when that circular was replaced by FMC 74–7.

Applicability. This part, by its own terms, applies to HEW grants to State and local governments. However, pursuant to § 74.4(a)(2) much of this part, including some of the provisions affected by these amendments, has been made applicable, by individual HEW granting agencies, to grants to other types of grantees as well.

Timing. These amendments shall apply to new, continuation, or renewal grants which begin on or after the effective date of the amendments. In addition, the recipient of a currently active grant may, at its option, apply to that grant any or all of the pertinent amendments as of their effective date.

Effective date. As these amendments either conform the regulation to existing Government-wide policy or make minor technical changes only, notice of proposed rulemaking procedures and delay in effective date are unnecessary. These amendments shall therefore become effective on the date of their publication in the FEDERAL REGISTER: *Provided, however,* That with respect to programs administered by the Office of Education and the National Institute of Education, these amendments shall become effective upon adoption or implementation in regulations issued by, respectively, the Commissioner of Education and the Director of the National Institute of Education, with the approval of the Secretary of Health, Education, and Welfare.

Dated: October 1, 1976.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

45 CFR Part 74 is amended as follows:

1. The authority statement following the table of sections is amended by deleting all the words following "5 USC 301."

§ 74.3 [Amended]

2. Section 74.3 is amended as follows:

(a) By inserting the following definition before the definition for "Grant":

The term "Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

(b) By revising the definition for "Grant" to read as follows:

"Grant" means money, or property provided in lieu of money, paid or furnished by the Federal Government to an eligible recipient under programs that provide financial assistance. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance which provides services instead of money or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include a fellowship or other award of a fixed amount of funds which the recipient is not required to account for on an actual cost basis.

(c) By revising the definition for "local government" to read as follows:

The term "local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interstate government entity, or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

(d) By inserting the following definition after the definition for "State":

The terms "State and local governments" and "State or local government(s)" include Federally recognized Indian tribal governments as well as States and local governments.

(e) By revising the definition of "Subgrant" to read as follows:

"Subgrant" means money, or property provided in lieu of money, paid or furnished by a grantee to an eligible recipient as financial assistance under a grant. The term also includes such financial assistance paid or furnished under a Federal grant by the recipient of such a subgrant, and so on. The term includes financial assistance when provided by contract, but does not include procurements; nor does it include any form of assistance which is excluded from the definition of "grant" in this section.

(f) By revising the definition for "Subgrantee" to read as follows:

"Subgrantee" means the organization or person to which a subgrant is made and which is accountable to the party awarding the subgrant for the use of the funds provided.

3. Section 74.20 is amended by revising the introductory paragraph to read as follows:

§ 74.20 Length of retention period.

HEW will not impose record retention requirements over and above those established by the grantee except that financial records, supporting documents, statistical records, and all other records pertinent to an HEW grant shall be retained for a period of three years. This requirement applies to the pertinent records and documents of grantees, subgrantees, and recipients under grants or subgrants of negotiated contracts (or subcontracts) exceeding $10,000. The requirement is qualified as follows:

* * * * *

4. Section 74.23 is amended by revising Paragraph (b) to read as follows:

§ 74.23 Access to records.

* * * * *

(b) In the case of a subgrant (or negotiated contract or subcontract exceeding $10,000) under a HEW grant, the grantee, HEW, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the subgrantee (or contractor or subcontractor) which the grantee, HEW, the Comptroller General of the United States, or any of their duly authorized representatives determine are pertinent to the specific HEW grant, for the purpose of making audit, examination, and transcripts.

5. Section 74.24 is amended by deleting Paragraph (d) and revising paragraphs (b) and (c) to read as follows:

§ 74.24 Restrictions on public access.

* * * * *

(b) To comply with an executive order or statute which specifically requires the records to be kept secret; or

(c) To protect commercial or financial information obtained from a person or firm on a privileged or confidential basis.

6. Subpart P is revised to read as follows:

Subpart P—Procurement Standards

§ 74.150 Scope of subpart.

(a) This subpart provides standards for use by grantees in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct charge by HEW grants. These standards are furnished to insure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive Orders. No additional procurement standards will be imposed by HEW upon grantees unless specifically required by Federal law or Executive Orders.

(b) Except where indicated otherwise in § 74.159, the requirements of this subpart are applicable only to procurements, and not to subgrants or other forms of financial assistance provided by grantees to third parties.

§ 74.151 General.

(a) Grantees may use their own procurement policies provided that procurements whose cost is borne in whole or in part as a direct charge by HEW grants adhere to the standards set forth in this subpart.

(b) The standards contained in this subpart do not relieve the grantee of the responsibilities arising under its contracts. The grantee is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements that are subject to this subpart. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.152 Code of conduct.

The grantee shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in awarding and administering procurements that are subject to this subpart. The grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State or local law, rules or regulations, or if the grantee is not a State or local government to the extent that the grantee determines that it has the legal and practical capacity for enforcement, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the grantee's officers, employees, or agents, or by contractors or their agents.

§ 74.153 Free competition.

All procurement transactions of the grantee regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

§ 74.154 Procedural requirements.

The grantee shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall be reviewed by appropriate grantee officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, 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.

(c) Positive efforts shall be made by the 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 under Federal grants.

(d) The type of procuring instruments used (i.e., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.), shall be appropriate for the particular procurement and for promoting the purposes of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(e) If the grantee is a State or local government, formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to § 74.155 is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by State or local law or regulations. When formal advertising is employed by the State or local government:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State or local government grantee, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State or local government grantee.

(3) Any or all bids may be rejected when it is in the State or local government grantee's interest to do so, and such rejections are in accordance with applicable State or local law, rules, and regulations.

§74.155 Negotiated procurements by State or local governments.

(a) Procurements may be negotiated by State or local government grantees if it is not practicable or feasible to use formal advertising. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising;

(2) The material or service to be procured is available from only one person or firm; all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the granting agency for prior approval if such approval is required by the granting agency;

(3) The aggregate amount involved does not exceed $10,000;

(4) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(5) The material or services are to be procured and used outside the limits of the United States and its possessions;

(6) No acceptable bids have been received after formal advertising;

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial initial investment for manufacture;

(8) Negotiation is otherwise authorized by applicable Federal, State, or local law, rules or regulations.

(b) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

§ 74.156 Contractor responsibility.

Contracts shall be made by grantees only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

§ 74.157 Records for negotiated procurements by State or local governments.

The procurement records or files of State or local government grantees for negotiated purchases in amounts in excess of $10,000 shall include the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated. Justification for the use of negotiation in lieu of advertising may be provided on a class basis or on an individual contract basis.

§ 74.158 Contract administration system.

A system for contract administration shall be maintained by the grantee to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow up of all purchases.

§ 74.159 Contract and subgrant provisions.

(a) *General.* The grantee shall include provisions to define a sound and complete agreement in all contracts and subgrants which it awards when the contract or subgrant costs are to be borne as a direct charge in whole or in part by an HEW grant.

(b) *Contracts under HEW grants.* (1) If the grantee is a State or local government, its contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(2) All contracts awarded by State or local government grantees in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement in excess of $100,000 awarded by grantees or subgrantees, the bonding requirements set forth in Subpart C of this part shall be observed.

(4) All negotiated contracts and subcontracts (except those of $10,000 or less) awarded under grants or subgrants shall include provisions giving access to, and requiring retention of, the contractor's records in accordance with §§ 74.20, 74.21, and 74.23(b).

(5) When required by the HEW grant program enabling legislation, all construction contracts awarded by grantees and subgrantees in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). The grantee shall report all suspected or reported violations to the granting agency.

(6) Where applicable, all construction contracts exceeding $2,000 awarded by grantees and subgrantees, and all other contracts awarded by them which exceed $2,500 and which involve the employment of mechanics and 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 implemented by Department of Labor regulations (29 CFR Part 5).

(c) *Contracts and subgrants under HEW grants.* (1) Provisions for compliance with Executive Order No. 11246, entitled, "Equal Employment Opportunity," as supplemented in Department of Labor regulations (41 CFR Part 60) shall be included in all contracts and subgrants awarded by grantees or subgrantees to which they are applicable.

(2) All contracts and subgrants in excess of $2,000 for construction or repair awarded by grantees or subgrantees shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as implemented in Department of Labor regulations (29 CFR Part 3). The grantee shall report all suspected or reported violations to the granting agency.

(3) All research or development agreements, whether contracts or subgrants, awarded by grantees or subgrantees shall contain a notice to the effect that rights to inventions conceived or first actually reduced to practice in the course of or under the agreement shall be governed by the Department's Patent Regulations (Parts 6 and 8 of this title), implementing terms and conditions of the HEW grant, and any pertinent regulations or other requirements consistent therewith issued by the grantee. The grantee or subgrantee shall assure that the performer of the research or development work either is given all necessary information regarding these matters, or is advised as to the source of such information. This subparagraph shall also apply to nonresearch and nondevelopment awards in fields of science or technology in which there has been little significant experience outside of work funded by the Federal Government.

(4) Contracts and subgrants in excess of $100,000 awarded by grantees or subgrantees shall contain a provision which requires the recipient to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 as amended (42 U.S.C. 1857b. et seq.). Suspected violations shall be reported by the grantee in writing to the regional office of the United States Environmental Protection Agency, with a copy to the granting agency

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federal register

FRIDAY, OCTOBER 8, 1976



PART III:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

■

PRIVACY ACT OF 1974

Interim Rule and Amendment to Notice of Systems of Records

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-350]

PART 16—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Interim Rule

Notice is hereby given that the Department of Housing and Urban Development, (hereinafter referred to as the "Department"), is adopting an interim rule amending Part 16 of Subtitle A of Title 24 of the Code of Federal Regulations in order to allow departmental Privacy Officers to deny access to records contained in Privacy Act Records Systems whenever a Privacy Act "specific exemption", provided for at 5 U.S.C. 552a (k), is applicable.

Section 16.6 of the Department's Privacy Act Regulations sets forth the grounds upon which departmental Privacy Officers may deny access to records contained in HUD Privacy Act Records Systems. This section presently allows Privacy Officers to deny access based upon a determination that the record is subject to a "general exemption" described in § 16.14, but fails to provide a basis for denial when a "specific exemption" is applicable under § 16.15.

The public interest dictates that this amendment be made effective immediately, because publication as a proposed rule could require the Department to disclose materials, which if disclosed could seriously interfere with the Department's ability to perform its functions properly. Furthermore, the Department has previously afforded the public an opportunity to comment on its exercise of "specific exemptions" by publishing these as part of the Department's Notice of Systems of Records (40 FR 39738 et seq., 40 FR 47345). The Secretary has, therefore, determined that comment and public procedure prior to adoption of this Amendment is unnecessary and good cause exists for making this Amendment effective October 8, 1976. However, interested persons are encouraged to submit written comments, views or data regarding this Interim Rule promulgated hereby to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Communications should be identified by the above docket number and title. All submissions received on or before Monday, November 8, 1976, will be considered before an adoption of a final rule. A copy of this communication will be available for public inspection during regular business hours at the above address.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the address set forth in the preceding paragraph.

Therefore, Part 16 of Subtitle A of Title 24 of the Code of Federal Regulations is amended, as follows:

Section 16.6(a)(1) is revised to read, as follows:

§ 16.6 Initial denial of access.

(a) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(1) The record is subject to an exemption under § 16.14, § 16.15 or to an exemption determined by another agency noticing the systems of records;

* * * * *

(5 U.S.C. 552a, 88 Stat. 1896, P.L. 93-579; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535 (d), P.L. 89-174).)

Effective date. This amendment shall be effective October 8, 1976.

(It is hereby certified that the economic and inflationary impacts of this proposed rule have been carefully evaluated in accordance with OMB Circular A-107.)

JOHN B. RHINELANDER,
Under Secretary of Housing and Urban Development.

[FR Doc.76-29457 Filed 10-7-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-76-506]

PRIVACY ACT OF 1974

Proposed and Final Amendments of Notice of Systems Records

On August 28, 1975, in accordance with the Privacy Act of 1974, the Department of Housing and Urban Development (hereinafter referred to as "the Department" or "HUD"), published its proposed Notice of Systems of Records (40 FR 39738 et seq.). The notice was adopted on October 8, 1975, at 40 FR 47435.

On April 22, 1976, the Department published at 41 FR 16850 certain Proposed Amendments of its Systems of Records Notices pursuant to the Privacy Act of 1974, Pub. L. 93-579. By correction published at 41 FR 18901 on May 7, 1976, the period in which interested persons were given the opportunity to comment on the Proposed Amendments was extended through May 30, 1976. No comments were received.

The Proposed Amendments which are adopted by the Department herein included: (1) The addition of a General Routine Use applicable to all the Department's Privacy Act Records Systems that makes available to a Member of Congress or staff, acting upon the Member's behalf, Privacy Act records requested at the request of the individual who is the subject of the Record, and (2) the addition of a routine use applicable only to Systems HUD/DEPT-34 (Pay and Leave Records of Employees) for disclosure of information concerning pay, leave, benefits, retirement deductions and other information to the Civil Service Commission to the extent necessary for the Commission to carry out its Government-wide personnel functions. In addition to adopting the above amendments, the Department proposes:

1. Amendment of the Statement of Routine Uses for the systems of records designated HUD/DEPT-34 (Pay and Leave Records of Employees) by adding a routine use for disclosure to State and local taxing authorities concerning compensation to employees for personal services.

Interested persons may submit written data, views, or arguments in regard to this proposed routine use to the Rules Docket Clerk, Office of the Secretary, 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 on or before Monday, November 8, 1976. All written comments received through said date will be considered by the Department in determining whether publication of this proposed routine use would be in the public interest.

2. Addition of a specific exemption, applicable to System HUD/DEPT-15 (Equal Opportunity Housing Complaints), by adding a specific exemption which will allow the Departemnt to withhold records compiled and maintained for the purpose of enforcing Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968. The premature disclosure to the subject individuals or their representatives of investigatory materials compiled in advance of conciliation contained in this System would interfere with the ability of the Department to perform its functions properly in connection with enforcement of these laws. Interested persons may submit written data, views, or arguments in regard to this proposed specific exemption to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 on or before Monday, November 8, 1976. All written comments received through said date will be considered by the Department in determining whether publication of this proposed specific exemption would be in the public interest.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth in the preceding paragraph.

Therefore, the Department of Housing and Urban Development adopts and proposes the following changes:

1. The Department adopts the following General Use:

Routine Use—Disclosure Pursuant to Congressional Inquiry. Disclosures may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

2. HUD Privacy Act System of Records HUD/DEPT-34 is amended to read as follows:

HUD/DEPT-34

System name: Pay and Leave Records of Employees.

System location: Department Central Office:

Categories of individuals covered by the system: HUD employees.

Categories of records in the system: Name, Social Security number and employee number, grade, step and salary; organization, retirement or FICA data as applicable; Federal, state and local tax deductions; regular and optional Government life insurance deduction(s), health insurance deduction and plan or code; cash award data; jury duty data; military leave data; pay differentials; union dues deductions; allotments, by type and amount; financial institution code and employee account number; leave status and data of all types (including annual, compensatory, jury duty, maternity, military, retirement disability, sick, transferred, and without pay); time and attendance records, including number of regular, overtime holiday, Sunday and other hours worked; pay period number and ending dates; cost of living allowances; mailing address; co-owner; and/or beneficiary of bonds, marital status and number of dependents; and "Notification of Personnel Action".

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See Routine Uses paragraphs in prefatory statement. Other routine uses: transmittal of data to U.S. Treasury to effect issuance of paycheck to employees and distribution, of pay according to employee directions for savings bonds, allotments, financial institutions and other authorized purposes. Annual reporting of W-2 statements to Internal Revenue Service and the individual. To the Civil Service Commission concerning pay, benefits, retirement deductions, and other information necessary for the Commission to carry on its Government-wide personnel functions.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage: Manual, machine-readable and magnetic media.

Retrievability: Name of employee; Social Security Number.

Safeguards: Physical, technical, and administrative security is maintained with all storage equipment and/or rooms locked when not in use. Admittance, when open, is restricted to authorized personnel only. All payroll personnel and computer operators and programmers are instructed and cautioned on the confidentiality of the records.

Retention and disposal: Retained on site until after GAO audit, then disposed of, or transferred to Federal Records Storage Center in accordance with fiscal records program approval by GAO, as appropriate, or General Record Schedules of GSA.

System manager(s) and address:

Director, Office of Organization and Management Information, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410.

Notification procedure: For inquiry about existence of records, contact the Privacy Officer at the appropriate location, in accordance with procedures in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Officer at the appropriate location. A list of all locations is given in Appendix A.

Record access procedures: The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Officer at the appropriate location. A list of all locations is given in Appendix A.

Contesting record procedures: The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to appeals of initial denials, the HUD Departmental Privacy Officer, Office of Organization and Management

Information, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Record source categories: Subject individuals, supervisors, timekeepers, official personnel records, and IRS.

3. The Department proposes to amend the routine uses of system HUD/DEPT–34 to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See Routine Uses paragraphs in prefatory statement. Other routine uses: transmittal of data to U.S. Treasury to effect issuance of paycheck to employees and distribution, of pay according to employee directions for savings bonds, allotments, financial institutions and other authorized purposes. Annual reporting of W–2 statements to Internal Revenue Services and the individual and taxing authorities of States, the District of Columbia, territories, possessions, and local governments, except Social Security numbers will be reported only to such authorities that have satisfied the requirements set forth in Section 7(a)(2)(B) of the Privacy Act of 1974. To the Civil Service Commission concerning pay, benefits, retirement deductions, and other information necessary for the Commission to carry on its Government-wide personnel functions.

4. The Department proposes to amend system HUD/DEPT–15, by adding a specific exemption, to read, as follows:

Systems exempted from certain provisions of the Act: Pursuant to 5 U.S.C. 552a(k)(2), all investigatory material, including conciliation files, in records contained in this System which meet the criteria of these sub-sections is exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f)) of the agency regulations in order for the Department's Fair Housing and Equal Opportunity and legal staffs to perform their functions properly.

* * * * *

(It is hereby certified that the economic and inflationary impacts of this proposed rule have been carefully evaluated in accordance with OMB Circular A–107.)

Issued at Washington, D.C., September 30, 1976.

JOHN B. RHINELANDER,
Under Secretary of Housing and Urban Development.

[FR Doc.76–29471 Filed 10–7–76;8:45 am]

federal register

FRIDAY, OCTOBER 8, 1976



PART IV:

COMMODITY FUTURES TRADING COMMISSION

■

COMMODITY OPTIONS

Interim Rules and Amendments

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

COMMODITY OPTIONS

Interim Rules

The Commodity Futures Trading Commission ("Commission") is considering adopting regulations under the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 1 et seq., relating to commodity options. The regulations are to be adopted in two stages. The first stage involves adoption of the interim regulations that accompany this notice as a new Part 32 of the Commission's regulations. The interim regulations are to become effective November 22, 1976, and will remain in effect thereafter, except to the extent amended by the second stage of the regulations. However, as indicated below, the Commission encourages comments on the proposed interim regulations in order to determine whether they should be modified prior to their adoption. The Commission anticipates the second stage of regulations will become effective in approximately 90 days.[1]

Under the two-stage procedure, the Commission plans to adopt comprehensive regulations for a limited, rigidly-controlled three-year (or shorter) test program that ultimately will require commodity options to be purchased and sold on or through the facilities of Commission-designated boards of trade in the United States or Commission-recognized foreign commodities exchange systems which satisfy stringent self-regulation requirements. The test program will be designed to determine the nature and extent of the impact of commodity option trading on the underlying futures and cash markets, the economic utility of commodity option trading and the capability of the exchanges to conduct adequate market surveillance and to assure orderly markets. The Commission believes that the test program will enable the Commission to obtain sufficient data on which to base a permanent regulatory program concerning commodity options or, if necessary, to determine to prohibit trading in commodity options in the United States. The details of the test program will be provided at the time that the second stage of the regulations is proposed.

The principal authority of the Commission to regulate commodity option transactions is contained in Section 4c of the Act.[2] Section 4c(a)(B) of the Act prohibits the offer and sale of certain commodity options—generally those relating to agricultural commodities.[3] Under Section 4c(b) of the Act, however, it is unlawful to offer or sell an option involving any other commodity regulated under the Act contrary to such rules and regulations as the Commission may prescribe.[4] Section 4c(b) provides in pertinent part as follows:

> No person shall offer to enter into, enter into, or confirm the execution of, any transaction subject to the provisions of subsection (a) of this section involving any commodity regulated under [the Act], but not specifically set forth in section 2(a) of [the Act] prior to the enactment of the Commodity Futures Trading Commission Act of 1974, which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. * * *[5]

Thus, the Commission is empowered under section 4c(b), to determine if and under what circumstances commodity option trading will be permitted. For example, the Commission could (a) prohibit all commodity option trading, (b) permit all commodity option trading "under such terms and conditions as the Commission shall prescribe," or (c) permit some forms of trading, subject to Commission rules and regulations, and prohibit others.

Prior Proposals

On October 22, 1975, the Commission announced that it was considering the adoption of rules to regulate—or perhaps forbid—transactions in commodity options, including the promulgation of a temporary rule pending the adoption of a definitive regulatory program. See 40 FR 49360 (October 22, 1975).[6]

On February 20, 1976, the Commission proposed comprehensive regulations governing off-exchange commodity option transactions, including the so-called "dealer options". See 41 FR 7774 (February 20, 1976). The Commission has determined that, by the time of implementation of its second stage of regulations, only designated boards of trade and recognized foreign commodities exchange systems offering commodity options will be permitted, thereby, in effect, banning dealer options. Thus, the Commission has determined not to adopt the previously proposed regulations.[7]

In its release on the proposed regulations, the Commission invited interested persons to submit comments and to participate in oral hearings which were held in Washington, D.C., on March 8, 1976. The Commission also noted in its release that it was considering delaying the adoption of comprehensive regulations until it had an opportunity to study the recommendations of its Advisory Committee on the Definition and Regulation of Market Instruments. That Advisory Committee was assigned the responsibility, among other things, to submit a report and recommendations to the Commission on appropriate regulations or restrictions concerning commodity op-

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[1] The basic thrust of the Commission's proposals and the time within which they are to be implemented were announced at a public meeting of the Commission held in Washington, D.C. on September 13, 1976.

[2] 7 U.S.C 6c (Supp. IV, 1974). The Commission also has general rule-making authority under section 8a of the Act, 7 U.S.C. 12a (Supp. IV, 1974). The Commission points out also that section 2(a)(1) of the Act, 7 U.S.C. 2 (Supp. IV, 1974), provides that the Commission shall have "exclusive jurisdiction" with respect to "accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option' * * *), and transactions involving contracts of sale of a commodity for future delivery * * *." The interim rules announced today are effectuated pursuant to this authority as well as that contained in sections 4c and 8a of the Act.

[3] 7 U.S.C. 6c(a)(B) (Supp. IV, 1974). So that all regulations concerning commodity options will be in one place, for convience, the Commission has incorporated the prohibition contained in section 4c(a)(B) as § 32.2(a) of the proposed interim regulations. Section 4c(a)(B) expressly forbids option transactions relating to those commodities which were regulated under the Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (Pub. L. No. 93-463, October 23, 1974), thereby continuing the Act's prohibition with respect to those commodities. Those previously-regulated commodities were: "* * * wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, onions, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice * * *." Section 2(a)(1) of the Act.

[4] Section 4c(b) governs options involving the newly-regulated commodities, namely "all other goods and articles [except onions] * * * and all services, rights and interests in which contracts for future delivery are presently or in the future dealt in * * *." Section 2(a)(1) of the Act.

[5] 7 U.S.C. 6c(b) (Supp. IV, 1974). Section 4c(b) also provides that, if possible, rules were to be adopted within one year after the effective date of the section. However, the Commission advised Congress, in accordance with the provisions of section 4c(b), that it would be unable to meet the one-year time period ending April 21, 1976, within which to have comprehensive commodity option regulations in effect and that additional time would be required to carry out the Congressional mandate contained in section 4c(b). See 41 FR 16685 (April 21, 1976).

[6] Previously, on June 24, 1975, the Commission had adopted a broad antifraud rule applicable to commodity option transactions. See 40 Fed. Reg. 26505 (June 24, 1975). That rule, 17 C.F.R. § 30.01, will be redesignated as § 32.9 of the proposed interim regulations.

[7] Those proposed rules basically would have made it unlawful for any commodity option dealer, as defined in the rules, to offer to enter into, enter into or confirm the execution of any transaction subject to the proposed rules unless the dealer met certain financial requirements and registered with the Commission as a commodity option dealer. Registration as a commodity option dealer would have entailed the filing of detailed information in the form of an application. Both financial data and information about business practices were required. Also, the proposed rules required a dealer, in connection with offers to enter into commodity option transactions, to inform each prospective purchaser that the dealer had filed an application in connection with its registration with the Commission containing information about the dealer, the dealer's business and its financial condition and that copies of such filings were available for public inspection at all offices of the dealer and at the Commission's offices in Washington, D.C.

tions.[8] At the time of its proposal concerning off-exchange commodity option transactions, the Commission stated:

> [A]lthough the proposed regulations relate to transactions which are not entered into on a contract market, the Commission is affirmatively considering permitting commodity option transactions to be traded on or subject to the rules of a contract market which have been approved by the Commission as adequate to effectuate the purposes of the Act. . . . Ultimately the Commission may adopt regulations which restrict commodity option transactions to trading on contract markets.[9]

The Commission, after carefully considering the comments received on its prior proposals, the presentations made at its oral hearing, and the report and recommendations of its Advisory Committee, has determined in large measure to do just that—to implement a test program for commodity option transactions, the effect of which will be to restrict commodity option transactions, other than certain specified "trade option" transactions, to domestic boards of trade or foreign commodities exchange systems designated or recognized by the Commission. As explained in more detail below, the proposed interim regulations have been primarily designed to provide adequate customer protections in the offer and sale of commodity options. However, in order to avoid any undue hardships on affected persons, the implementation of this regulatory program will be phased in gradually so that commodity option transactions lawfully entered into prior to the effective date of the proposed interim regulations will not be affected, and, during the period in which only the interim regulations are in effect, commodity option transactions will be permitted to be entered into in accordance with the terms of the interim regulations. Nevertheless, the Commission wishes to emphasize that, when the second stage of the Commision's regulations becomes effective, it will no longer be permissible to offer or to sell commodity options or to enter into commodity option transactions in the United States except in accordance with those regulations, i.e., only on or through designated domestic boards of trade or recognized foreign commodities exchange systems.

At the outset the Commission wishes to stress certain points concerning the proposed interim regulations and how they will interact with the second stage regulations which the Commission will shortly propose:

1. Section 32.2(b) of the proposed interim regulations provides that commodity option transactions involving commodity futures contracts traded on or subject to the rules of Commission-designated contract markets or involving the prices of such contracts are prohibited except under such terms and conditions as the Commission shall prescribe. The Commission believes that, under the Act, particularly sections 4c (a)(C) and 4h, it is unlawful to trade options involving domestically traded futures contracts or the prices of such contracts otherwise than by or through a member of a contract market and subject to the rules thereof. However, since the Commission has been advised that such commodity option transactions are being offered and entered into in the United States, in order to avoid any question with respect to this issue, the Commission has decided to set forth an express codification of the Commission's view in proposed § 32.2(b). The Commission recognizes that the effect of proposed § 32.2(b) would also be to prohibit commodity option transactions effected even on or subject to the rules of contract markets, since the Commission has not yet prescribed the terms and conditions under which such trading will be permitted. Such terms and conditions will be the subject of the second stage of regulations to be proposed by the Commission. Trading in commodity options involving domestically traded futures contracts on any contract market will not be permitted until there are comprehensive regulations in effect and the contract market has complied with such regulations. Thus, the Commission's proposed interim regulations prohibit all commodity option transactions involving domestically traded futures contracts or prices of such contracts, including those traded on or subject to the rules of a contract market.

2. The interim regulations are designed to regulate those commodity option transactions which are not otherwise prohibited (i.e., not otherwise set forth in proposed § 32.2). At the present time, the Commission is aware that so-called "London options"[10] are being offered in the United States, as well as the so-called "dealer options" on physical commodities. Briefly, the interim regulations will have the following effect on these types of commodity option transactions:

A. Under proposed § 32.3(a), on and after January 17, 1977 (approximately 105 days from the date of publication of this notice), it will be unlawful for any person to accept funds or other property from an option customer as payment of the purchase price of a commodity option unless the person is registered as a futures commission merchant under the Act. Until such time, of course, persons may continue to accept funds or other property without being so registered.

B. Under proposed § 32.3(b), on and after January 17, 1977, it will be unlawful for a person to solicit or accept orders for commodity options or for an individual to be associated with any such person, unless registered as a futures commission merchant or an associated person of such futures commission merchant, respectively, under the Act.

The Commission wishes to emphasize that the Commission fully intends to implement these regulations and that the registration process [See (A) and (B) above] takes time. Therefore, as explained in more detail below, the Commission suggests that affected persons file their registration applications as soon as possible and not defer filing until the effective date of the regulations.

The Commission points out that, upon adoption of proposed § 32.3 (a) and (b), writers of commodity options or other persons assuming financial responsibility for commodity options may offer or sell commodity options in the United States only through registered futures commission merchants and their registered associated persons. In this connection, the Commission wishes to advise affected persons that regulation § 1.19—which prohibits a futures commission merchant from issuing or otherwise assuming financial responsibility for a commodity option transaction—will not be repealed by the proposed interim regulations.[11] Consequently, it will continue to be unlawful for a futures commission merchant to assume financial responsibility, whether by contract or by operation of law, for a commodity option transaction. The Commission will consider the repeal of § 1.19 in connection with the proposed second stage of its regulations. If repealed, futures commission merchants would then be permitted to issue or otherwise assume financial responsibility for commodity option transactions in accordance with the terms of those regulations.

C. Immediately upon the effective date of the interim regulations, under proposed § 32.6 any person which receives funds or property from an option customer as payment of the purchase price for a commodity option must segregate from its assets, and treat as belonging to the option customer, all such funds and property received, including any amounts characterized as sales commissions or similar fees. The funds and property must be segregated (i) in the United States and (ii) until the option expires or, if the customer exercises the option, until the customer's rights under the option have been satisfied. As noted above, on and after January 17, 1977, only registered futures commission merchants may receive funds or property from option customers in connection with a commodity option transaction. Thus, writers and other persons who assume financial responsibility for commodity options may receive such funds and property from an option customer only until January 17, 1977, but must segregate and treat those assets as provided in proposed § 32.6. After January 17,

[8] See 40 FR 32866 (August 5, 1975). The Advisory Committee's report, which was transmitted to the Commission on July 6, 1976, is published as a special supplement numbered 26 to the CCH Commodity Futures Law Reporter (July 15, 1976).

[9] 41 FR 7774 (February 20, 1976).

[10] London commodity exchange options cleared through the International Commodities Clearing House and commodity options written by or through the individual members of the London Metals Exchange.

[11] Because the repeal of § 1.19 would necessitate substantial revisions of regulation § 1.17 (in order to assure the financial responsibility of futures commission merchants), the Commission did not feel that these revisions could be made without additional study and therefore determined not to propose the repeal of § 1.19 as part of the proposed interim regulations. See 17 C.F.R. §§ 1.17 and 1.19.

1977, such persons may not receive the funds or property except from a futures commission merchant which accepted them from the option customer and then only after the segregation requirements have been satisfied by the futures commission merchant. The Commission is aware that proposed § 32.6 may, in certain cases, require "double segregation." For example, in the case of the sale of London options, a person receiving the funds from an option customer in the United States as payment for the option may not remit those funds to London in order to obtain or maintain the option position with a London broker. The Commission believes that the proposed segregation requirements are an essential customer protection to be afforded commodity option customers in the United States. The Commission recognizes, however, that its proposed segregation requirements may impose a financial hardship on some affected persons, and as noted in more detail below, requests specific comments on these requirements, particularly alternatives which could provide substantially equivalent customer protections.

D. Upon the effective date of the proposed interim regulations, § 1.17 of the regulations will be amended to provide that a futures commission merchant engaged in commodity option transactions must have an adjusted working capital which at a minimum equals $50,000. As indicated above, the Commission anticipates that when the second stage of its regulations becomes effective, there will be additional, substantial amendments to § 1.17 in order to assure the financial responsibility of futures commission merchants engaged in commodity option transactions.

E. Under proposed § 32.5, upon the effective date of the interim regulations, persons soliciting or accepting orders for commodity option transactions must make summary disclosure to option customers, prior to the entry into the commodity option transaction, of various aspects of the transaction, including information regarding all fees and charges to be paid by the option customer in the transaction, such as premiums, mark-ups on premiums, and sales commissions. The Commission anticipates that the second stage of its regulations regarding commodity options will impose additional, more detailed, disclosure requirements on such persons.

A section-by-section explanation and the text of the Commission's interim regulations are set forth below:

Definitions

Section 32.1 of the proposed rules defines certain terms used in the rules. For convenience, the terms "commodity option transaction" and "commodity option" are each defined in § 32.1(a) to mean any such transaction or agreement in interstate commerce which the Commission is authorized to regulate under sections 2(a)(1) and 4c(b) of the Act.[13]

[13] See text accompanying notes 2, 3 and 4 supra.

Section 32.1(b) defines "interstate commerce" to have the same meaning as set forth in sections 2(a) and 2(b) of the Act.[13] Section 32.1(c) defines "option customer" as any person who, directly or indirectly, purchases or otherwise acquires for value any interest in a commodity option,[14] but does not include a person required to register as a futures commission merchant in accordance with the proposed rules. Futures commission merchants were excluded from the definition of "option customer" to avoid the implication that futures commission merchants are "option customers" of their principals—who may be option writers—when acting in an agency capacity in commodity option transactions. If the definition of option customer were construed to include futures commission merchants, then in accordance with the provisions of proposed § 32.3(a),[15] a writer of an option, for example, who markets such options through a futures commission merchant, would technically be required to register as a futures commission merchant at the time he received from an option customer—the futures commission merchant—either money, securities or property as payment of the purchase price in connection with the commodity option transaction. As a result of the retention of § 1.19 of the regulations, the Commission does not intend that option writers be required to register as futures commission merchants under the interim regulations. Accordingly, it has excluded futures commission merchants from the definition of option customer.

Proposed § 32.1(d) defines "purchase price" to mean the total actual cost paid or to be paid, directly or indirectly, by an option customer for entering into and maintaining an interest in a commodity option transaction, by whatever name called. Subsumed within the definition of purchase price are the premium, mark-ups on the premium, as well as the costs, fees, and other charges comprising the purchase price. Proposed § 32.1(e) defines "striking price" to mean the price at which an option customer may purchase or sell the commodity or the contract of sale of a commodity for future delivery which is the subject of a commodity option transaction.

Prohibited Transactions

As indicated above, in order to have commodity option requirements self-contained in one set of regulations, proposed § 32.2(a) of the interim regulations incorporates the existing statutory prohibition on the offer or sale of commodity options involving previously regulated commodities. And, as previously explained, proposed § 32.2(b) expressly prohibits the offer or sale of commodity options involving domestically traded futures contracts.

[13] 7 U.S.C. 2, 4 (Supp. IV, 1974).

[14] As set forth in § 32.1(a) the terms commodity option and commodity option transaction are used interchangeably in the proposed rules.

[15] The provisions of this section are explained in more detail below.

Unlawful Commodity Option Transactions

Proposed § 32.3(a) provides that on and after January 17, 1977, it shall be unlawful for any person to accept any money, securities, or property (or to extend credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction unless such person is registered as a futures commission merchant under the Act.[16] Proposed § 32.3(b) provides that on and after January 17, 1977, it shall be unlawful for any person to solicit or accept orders (other than in a clerical capacity) for the purchase or sale of any commodity option, or to supervise any person or persons so engaged, unless such person is (1) registered as a futures commission merchant under the Act, or (2) if such person is an individual, registered as an associated person of a specified futures commission merchant under the Act. In addition, it shall be unlawful for any futures commission merchant to permit an individual to become or remain associated with such futures commission merchant in specifically enumerated capacities if such futures commission merchant knew or should have known that such individual was not registered as an associated person.

The Commission wishes to stress that the registration requirements apply to all persons who accept orders for commodity options, irrespective of whether the order is accepted directly from an option customer. Thus, if a futures commission merchant utilizes the services of another firm in order to arrange for the execution of the order of an options customer, the other firm is also required to register as a futures commission merchant.

The Commission realizes that the term futures commission merchant in section 2(a)(1) of the Act is not defined to include persons engaged in commodity option activities, and it is not intended to require that persons registering as futures commission merchants in accordance with the provisions of the interim regulations be required to solicit or accept orders for the purchase or sale of any commodity for future delivery on or subject to the rules of a contract market. Rather, the Commission has determined, pursuant to its plenary power to regulate commodity option transactions in sections 2(a)(1) and 4c(b) of the Act, to entrust option activities only to futures commission merchants and associated persons of specified futures commission merchants, inasmuch as these are categories of registrants with which the Commission and the public are already familiar. This will allow the Commission to regulate commodity option activities

[16] The Commission proposes to amend § 1.3(p) of its regulations, 17 CFR 1.3(p), defining the term "futures commission merchant", to add a new subsection (2) which would include within the definition of the term "futures commission merchant," any person required to register as a futures commission merchant by virtue of the interim regulations.

in a less complicated fashion. For example, the proposed interim regulations would automatically pick up the standards for registration and denial of registration contained in the Act and the Commission's interpretation thereof; they would automatically make applicable the reparation procedures under the Act; and they would allow for the incorporation of financial standards and related requirements in the context of revisions to § 1.17 of the regulations.

The Commission is also mindful of the fact that it proposes to exclude associations, partnerships, corporations, trusts and any other entities from the category of persons who may register as associated persons in order to comply with the provisions of section 32.3(b). The Commission believes that entities engaged in soliciting or accepting orders for the purchase or sale of commodity options should be registered as futures commission merchants, and that the associated person category of registrant in the commodity options area should be limited to individuals employed by such entities, irrespective or whether they may presently be classified as associated persons or agents of futures commission merchants under Section 4k of the Act, 7 U.S.C. 6k (Supp. IV, 1974).

It should be noted that the anticipated effective date of these rules is November 22, 1976. The registration provisions, however, do not go into effect until 60 days thereafter. This is to allow persons sufficient time to submit, and for the Commission to process, applications for registration. Processing of applications normally take approximately 60 days. Therefore, as indicated above, the Commission urges persons wishing to register as futures commission merchants or associated persons to submit their applications promptly. A person who defers filing an application until the effective date of the regulations runs the risk that the application may not be processed on a timely basis; a person who does not file an application until after the effective date increases the risk that the application will not be processed by the time the registration requirements go into effect. The Commission intends to expedite the processing of such applications, and a prompt filing will enable the Commission to do so on a timely basis.

Section 32.3(c) provides that persons required to register as futures commission merchants or as associated persons in accordance with §§ 32.3 (a) and (b), which furnish the services specified in that portion of section 2(a)(1) of the Act defining the term "commodity trading advisor", shall not be included in the term "commodity trading advisor", if, at the time such services are furnished, such person is registered as a futures commission merchant or as an associated person under the Act and the furnishing of such services is solely incidental to the conduct of such person's activities requiring such registration. The Commission has previously expressed the view that generally persons who are offering commodity options to the public should register with the Commission as commodity trading advisors.[17] In CFTC Staff Interpretative Letters Numbered 76–13 and 76–13a,[18] the Commission's Office of General Counsel stated that the Commission's view applied to futures commission merchants. In view of the fact that persons soliciting or accepting orders for commodity options are to be required to register either as futures commission merchants or associated persons under the proposed interim regulations, the Commission has determined that, once such persons are in fact registered, the registration of such persons as commodity trading advisors would serve no additional public interest. Accordingly, while the Commission believes that the staff interpretation is a correct interpretation of existing law, compliance with that interpretation will not be necessary upon the adoption of the interim regulations, and, pending such adoption, the Commission has determined that it will not take any enforcement action against any futures commission merchant, based solely on its failure to register as a commodity trading advisor in compliance with such interpretation from and after the date of the publication of this notice.

Those persons which are already registered as futures commission merchants or associated persons under the Act, and which would be required to register as such by virtue of these proposed rules, need not re-register in those categories, but should immediately notify the Commission in writing, specifying the date such person commenced or intends to commence engaging in activities otherwise requiring registration under these proposed rules. This provision is set forth in proposed § 32.3(d).

Exemptions

The Commission previously indicated that no public interest would be served by regulatory provisions governing commercial commodity option transactions with certain users, producers or consumers, and previously proposed a "trade option" exemption for such persons.[19] The Commission has again considered this issue in light of the comments received on its prior proposal, as well as the recommendations from its Advisory Committee on Market Instruments, and has concluded that there is no substantial public interest to be served by requiring the registration of certain producers, processors, commercial users, or merchants who engage exclusively in commercial-type transactions. The Commission believes that its antifraud rule governing commodity option transactions achieves the full regulatory objective in such cases. Accordingly, except for the provision of its antifraud rule (§ 32.9) and otherwise prohibited transactions (§ 32.2), the Commission has determined to exempt from the operation of these rules the offer of commodity option transactions by a person who has a reasonable basis to believe that the option is being offered to a purchaser referred to in proposed § 32.4(a) and that the purchaser is being offered or acquires such option for purposes related to its business. Of course, to the extent that a person offers or sells commodity option transactions to persons other than, or in addition to such purchasers, compliance with these rules would be required.

The Commission intends to monitor the effect the trade option exemption contained in § 32.4(a) has in the marketplace to ascertain whether it is necessary or appropriate. The Commission wishes to re-emphasize that the exemptive provisions expressly do not exclude any person from the proscriptions in the Commission's general antifraud rule governing commodity option transactions presently in effect, which is to be redesignated as § 32.9 of the proposed rules. The existing antifraud rule applies, and will continue to apply, to all offers and sales of commodity option transactions subject to Commission regulation whether or not these transactions are subject to or exempt from the provisions of any of the Commission's rules affecting commodity options.

Additionally, proposed § 32.4(b) provides that the Commission may, by order, upon written request or upon its own motion, exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of these rules, other than those of §§ 32.2 (prohibited transactions), 32.8 (unlawful transactions) and 32.9 (antifraud rule), if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption. At the present time, the Commission contemplates no additional exemptions but has inserted this provision in the proposed regulations to permit maximum Commission flexibility. Since the ultimate purpose of the Commission's regulations will be to implement a rigidly controlled option test program, exemptions would be considered only in the most extraordinary of circumstances.

Disclosure

Proposed § 32.5 sets forth the disclosure which a person soliciting a commodity option transaction must provide to an option customer not less than 24 hours prior to the entry into the commodity option transaction. Commodity option customers are required to be provided with a summary disclosure statement setting forth (1) the actual amount of the purchase price and the method by which the premium is established, including a separate listing of the premium, mark-ups on the premium, costs, fees and other charges comprising the purchase price; (2) a statement of (i) the services to be provided for the separate elements comprising the purchase price, (ii) the striking price and the method by which the striking price is established, (iii) the total quantity or quality of the commodity which may be purchased or sold upon exercise of the commodity option or which underlies the contract of sale for future delivery which may be purchased or sold upon exercise

[17] See 40 FR 49361, n. 11 (October 22, 1975).

[18] CCH Commodity Futures L. Rep ¶20,174 (Interpretative letter 76–13a has not yet been published in this service).

[19] See 41 FR 7776 (February 20, 1976).

of the commodity option, and (iv) any and all additional costs which may be incurred by the option customer if the option is exercised, including storage costs, interest charges, commissions (whether denominated as sales commissions or otherwise), and all similar fees and charges; (3) the price level that the underlying commodity or the underlying contract of sale for future delivery must reach during the life of the option for the option customer to realize a profit in the commodity option transaction, together with an explanation of the effect of applicable foreign currency fluctuations; (4) a bold-faced statement on the first page of the disclosure statement setting forth certain, specific cautions regarding commodity option transactions; and (6) a statement of certain risks to be considered by the customer before entering into the commodity option transaction. The Commission wishes to emphasize that this disclosure should be clear, intelligible and understandable to any person reading it. This disclosure statement is required to be furnished to option customers in advance of purchase so as to familiarize them with certain aspects of the option transaction. The Commission is aware that a significant number of commodity option transactions currently are being offered and sold through the use of high-pressure sales tactics to persons who are relatively unfamiliar with the commodities markets generally, and with commodity options in particular. The Commission is also aware that at the present time even when disclosure is made to option customers, it is often inaccurate or misleading, either in content, presentation, or both. Given the interim nature of the proposed rules, the disclosure statement required to be furnished by § 32.5 is by no means intended to convey the impression that the items contained therein are the only things which need be disclosed to prospective customers, and the Commission would encourage persons soliciting prospective option customers to provide them with sufficient information to evaluate the transaction more fully and the futures commission merchant and/or associated person through whom such customers are dealing, as well as their financial conditions. In this connection, as noted above, when the Commission proposes the second stage of its regulations, it expects to require additional, more detailed information to be disclosed to prospective option customers.

The Commission understands that if an option customer purchases an option on a contract of sale of a commodity for future delivery which is traded on a foreign commodity exchange, the solicitor of such option would not always be able to provide the option customer with certain "price" information until the trade is executed. In that event proposed § 32.5 (b) provides that to the extent the actual price information called for by paragraphs (a) (1), (2) and (3) of § 32.5 is not known at the time the disclosure statement is to be delivered to the prospective option customer, a good faith estimate of such information should be provided as part of the disclosure statement, and upon execution of the commodity option transaction for the option customer, the person required to deliver the disclosure statement shall immediately provide all actual price information in writing to the option customer.

Segregation

The Commission has provided in proposed § 32.6 that any person which accepts money, securities or property from an option customer as payment of the purchase price in connection with a commodity option transaction shall segregate such money, securities and property in the United States and shall treat and deal with such assets as belonging to such option customer until expiration of the term of the option or, if the option customer exercises the option, until all rights of the option customer under the commodity option have been fulfilled. The Commission wishes to emphasize that § 32.6 requires that assets must be segregated in the United States, so that such assets will not be subject to the attachment or other laws or requirements of any other nation. The Commission views these requirements as essential to protect at least the basic investment of commodity option customers as well as to assure, to the extent feasible, the financial integrity of option transactions. In the Commission's view, these segregation requirements are a cardinal tenet of commodities regulation, and will help to prevent fraud. Absent segregation, these assets could be used by a person in its general operations. In addition, absent segregation, these assets might be subject to the claims of general creditors of the person accepting them. As noted above, the Commission is aware that the segregation requirements could result in "double segregation," particularly where futures commission merchants or other persons are engaged in the offer and sale of London options. The Commission is further cognizant of the fact that this segregation requirement may impose a financial strain upon the vast percentage of persons presently engaged in the offer and sale of commodity options. Accordingly, the Commission encourages interested persons, particularly those engaged in the offer and sale of London commodity options, to submit comments on the Commission's segregation proposals and to suggest alterations which will provide adequate customer protections. In submitting any alterations, commentators should be aware that, in the Commission's view, what is of paramount importance in its fundamental customer protection aspects. In submitting any alternative proposals, commentators should be aware that, in the Commission's view, what is of paramount importance is that option customers be assured, at the very least, that the assets which they put up to purchase the option will be safe during the term of the option and be available to be refunded to option customers in the event that an option customer exercises the option but is unable to obtain satisfaction of the obligations owing to him because of the insolvency of the futures commission merchant or its principals.

The provisions of § 32.6 are patterned essentially after the requirements for segregation of customer funds in section 4d(2) of the Act and regulation §§ 1.20 (a) (customers' money, securities, and property to be segregated and separately accounted for), 1.25 (investment of customers' funds), 1.26(a) (deposit of obligations purchased with customers' funds), 1.27(a) (record of investments), 1.28 (appraisal of obligations purchased with customers' funds), 1.29 (increment or interest resulting from investment of customers' funds), and 1.32 (segregated accounts; daily computation and records).[20]

The Commission had originally intended to permit futures commission merchants to exclude sales commissions from the assets required to be segregated. Because of the difficulty of defining "premium" and "commissions", this might have permitted unscrupulous persons to characterize the major portion of the purchase price as a "sales commission" and thereby tend to encourage attempts to evade the segregation requirements. The alternative would have been to impose a maximum percentage on the amount of permissible sales commissions, but the Commission believes that it should not engage in this practice. Accordingly, the Commission has decided that it is in the public interest that futures commission merchants segregate all assets received from customers as payment of the purchase price in connection with a commodity option transaction and treat such assets as belonging to option customers. The Commission specifically requests comments on whether it should permit some portion of the purchase price not to be segregated, and if so, how that portion could be determined.

The Commission is further aware that its segregation requirements may have to be modified in its second stage regulations to take into account option trading on boards of trade designated by the Commission and on recognized foreign commodities exchange systems.

Books and Record Keeping

Proposed § 32.7 (a) and (b) require persons receiving the purchase price for a commodity option from an option customer to maintain full, complete and systematic records of all such transactions. Among other things, such persons are required to keep: all orders, signature cards, books of record, journals, ledgers, cancelled checks, copies of all statements of purchase, exercise or lapse, and reports, letters, disclosure statements required by proposed § 32.5, solicitation or advertising material, and all other literature or written advice distributed to option customers or prospective option customers; the true name and address of each commodity option customer or prospective commodity option customer solicited; and the true name and address of each maker, underwriter, issuer or other person who

[20] 17 CFR §§ 1.20(a), 1.25, 1.26(a), 1.27(a), 1.28, 1.29 and 1.32.

assumes or purports to assume any financial responsibility for the fulfillment of any commodity option transaction engaged in by such person. Under proposed § 32.7(c), persons accepting orders from persons other than an option customer (for example, a corresponding futures commission merchant of a futures commission merchant dealing directly with an option customer) must keep similar records to the extent necessary to reflect their participation in the transactions.

In addition, under proposed § 32.7(d) each person which accepts an order for a commodity option, whether from an option customer or any other person, must prepare a written record of that order, including an account identification and order number and must record the date and time the order is accepted, is transmitted for execution, and, if the order is executed, the date and time of execution. And each such person which accepts the purchase price of the commodity option from the option customer must, upon receipt of confirmation that the order was executed, notify the option customer of the date that the order was executed.

Under proposed § 32.7(e), all the records required to be maintained must be kept for the period specified in regulation § 1.31,[21] which is five years, and must be open to inspection at all times during such time by any authorized representative of the Commission of the United States Department of Justice.

The Commission believes that the records and bookkeeping requirements are important so as to enable the Commission to examine the records of all aspects of commodity option transactions offered and sold to option customers, and to assure that persons maintain proper internal control of their financial operations.

UNLAWFUL REPRESENTATIONS

Proposed § 32.8 makes it unlawful for any futures commission merchant or associated person engaging in commodity option transactions to claim that the Commission, by declaring a registration effective or otherwise, has approved either the registrant or any commodity option transaction to be engaged in by the registrant. While the Commission will seek to prevent the dissemination of false or misleading information by registrants, it cannot conduct an investigation in every instance to determine the accuracy or adequacy of the information contained in an application for registration or in the disclosure statement required by proposed § 32.5 of the interim regulations. Consequently, registration with the Commission cannot, and does not, indicate Commission approval of the registrant or of the transactions in which it may engage. This rule does not preclude a futures commission merchant or associated person from stating that it is registered, if that is true, and if such statement is not misleading under the circumstances in which the statement is made.

[21] 17 CFR 1.31.

ANTIFRAUD

Proposed § 32.9, the Commission's antifraud rule governing commodity option transactions, has been included as a part of the proposed interim rules so that all the rules affecting commodity option transactions will be in one place in the Code of Federal Regulations. This section is the same rule that is presently in effect, contained in 17 CFR 30.01, modified to incorporate certain of the definitions set forth in the proposed interim rules. The proposed redesignation of § 30.1 as § 32.9 is technical only; it will have no substantive effect on fraudulent activity prior to, on, or after the effective date of § 32.9.[22]

The Commission wishes to advise affected persons that, upon adoption of the proposed interim regulations, it would view any attempt to evade their requirements—such as an attempt to avoid the segregation requirements by soliciting options customers in this country and suggesting to the customers that they deal directly with a foreign affiliate of the registrant or other person located outside the United States—as a violation of the antifraud provision.

OPTION TRANSACTIONS ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THE PROPOSED INTERIM REGULATIONS

Proposed § 32.10 makes clear that the proposed rules are to have prospective effect only and do not apply to commodity option transactions lawfully entered into prior to the effective date of the rules. However, to the extent stated above, §§ 32.2 and 32.9 are codifications of the prohibitions of existing law, so that nothing contained in § 32.10 should be construed to imply that the transactions referred to in § 32.2 or 32.9 could have been or may be lawfully entered into prior to the effective date of the interim regulations.

AMENDMENTS TO § 1.17

The Commission proposes to amend § 1.17 to require that any futures commission merchant engaging in commodity option transactions referred to in Part 32 of the proposed regulations would be required to have and to maintain at all times adjusted working capital equal to or in excess of whichever of the following is greater: (1) $50,000 or (2) the sum of the safety factors described in § 1.17 with respect to both proprietary and customers' accounts plus five percent of the applicant's aggregate indebtedness. A futures commission merchant who is exempt from the financial requirements of § 1.17(a) would also be required to maintain minimum adjusted working capital of at least $50,000, computed in accordance with the bylaws, rules, regulations or resolutions of the contract market which serve as the basis for such exemption.

[22] Judicial interpretations of § 31.01 would, of course, continue to be applicable to new section 32.9. See *CFTC v. J. S. Love & Associates Options, Ltd.*, CCH Com. Fut. L. Rep. ¶20,198 (S.D.N.Y. Aug. 12, 1976).

The Commission believes that the $50,000 adjusted working capital requirement for futures commission merchants engaged in options activity is necessary to provide a cushion against losses which could arise as a result of any number of factors, such as dishonesty, incompetence, insufficient or inadequate segregation.

The Commission also proposes to amend § 1.17 to add a new paragraph (c)(9) defining the term "customer" to include an "option customer" as defined in the proposed rules. This is necessary to make § 1.17 applicable to commodity option transactions.

* * * * *

In consideration of the foregoing, the Commission, pursuant to its authority contained in sections 2(a)(1), 4c(a), 4c(b) and 8a of the Act, 7 U.S.C. 2, 6c(a), 6c(b) and 12a (Supp. IV, 1974), hereby proposes to amend Chapter 1 of Title 17 of the Code of Federal Regulations effective November 22, 1976, by amending §§ 1.3(p) and 1.17, by deleting § 30.01 and by adding a new Part 32 as follows:[23]

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.3(p) is amended by adding a "(1)" after the word "means" and before the word "individuals", by deleting the period and adding the word "and" after the word "therefrom" and by adding the following:

§ 1.3 Definitions

* * * * *

(p) * * *

(2) shall include any person required to register as a futures commission merchant under the Act by virtue of Part 32 of this chapter.

2. Section 1.17 is amended to revise paragraphs (a) and (b) and to add paragraph (c)(9) as follows:

§ 1.17 Minimum financial requirements.

(a) Except as provided in paragraphs (b)(1) and (b)(2) of this section, no person applying for registration as a futures commission merchant shall be so registered unless he has adjusted working

[23] In proposing the regulations hereinafter set forth, the Commission has, in accordance with section 15 of the Act, 7 U.S.C. 19 (Supp. IV, 1974) taken into consideration the public interest to be protected by the antitrust laws. While it recognizes that the financial, segregation and other criteria imposed as prerequisites to allowing a person to enter into or continue in the commodity options business, may result in some lessening of competition, the Commission believes that the proposed rules are a necessary minimum for effectuating the purposes and policies of the Act which require that the Commission assure the financial solvency of option transactions and prevent fraud or manipulation. The Commission has determined that minimum financial and other requirements are essential to public protection under the Act. Accordingly, the Commission believes that, in imposing the minimum financial requirements and the other requirements of the proposed regulations, it has taken the least anticompetitive means of achieving the objectives, policies and purposes of the Act.

capital equal to or in excess of whichever of the following is greater: (1) $10,000 or (2) the sum of the safety factors hereinafter prescribed in this section with respect to both proprietary accounts and customers' accounts plus 5 percent of the applicant's aggregate indebtedness; and each person registered as a futures commission merchant shall at all times continue to meet such financial requirements.

(b) (1) Except as provided in paragraph (b) (2) of this section, no person registered as a futures commission merchant shall engage in commodity option transactions referred to in Part 32 of this chapter unless he has adjusted working capital equal to or in excess of whichever of the following is greater: (1) $50,000 or (2) the sum of the safety factors hereinafter prescribed in this section with respect to both proprietary accounts and customers' accounts plus 5 percent of the applicant's aggregate indebtedness; and each such person registered as a futures commission merchant shall at all times continue to meet such financial requirements.

(2) The requirements of paragraphs (a) and (b) (1) of this section shall not be applicable if the applicant for registration or registrant is a member of a contract market and conforms to minimum financial standards and related reporting requirements set by such contact market in its bylaws, rules, regulations or resolutions approved by the Commission, *Provided, however,* That such a futures commission merchant who engages in option transactions referred to in Part 32 of this chapter shall at all times maintain a minimum capital of $50,000 computed in accordance with the applicable bylaws, rules, regulations, or resolutions of such contract market which have been approved by the Commission.

(c) * * * (9) The term "customer" shall include an "option customer" as defined in Part 32 of this Chapter.

* * * * *

PART 30—FRAUD IN CONNECTION WITH COMMODITY TRANSACTIONS

§ 30.01 [Removed]

1. Section 30.01 is removed.

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

2. Part 32 is added to read as follows:

Sec.
32.1 Definitions.
32.2 Prohibited transactions.
32.3 Unlawful commodity option transactions.
32.4 Exemptions.
32.5 Disclosure.
32.6 Segregation.
32.7 Books and recordkeeping.
32.8 Unlawful representations.
32.9 Fraud in connection with commodity option transactions.
32.10 Option transactions entered into prior to the effective date of this Part.

AUTHORITY: Secs. 2(a)(1), 4c(a), 4c(b), 8a, Commodity Futures Act (7 U.S.C. 2, 6c (b) and 12a (Supp. IV, 1974)).

§ 32.1 Definitions.

As used in this Part—

(a) "Commodity option transaction" and "commodity option" each means any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty" involving any commodity regulated under the Act other than wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, onions, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products and frozen concentrated orange juice;

(b) "Interstate commerce" shall be construed and have the same meaning as set forth in sections 2(a) and 2(b) of the Act;

(c) "Option customer" means any person who, directly or indirectly, purchases or otherwise acquires for value any interest in a commodity option, but shall not include a person required to register as a futures commission merchant in accordance with this part;

(d) "Purchase price" means the total actual cost paid or to be paid, directly or indirectly, by an option customer for entering into and maintaining an interest in a commodity option transaction, by whatever name called; and

(e) "Striking price" means the price at which an option customer may purchase or sell commodity or the contract of sale of a commodity for future delivery which is the subject of a commodity option transaction.

§ 32.2 Prohibited transactions.

No person may offer to enter into, confirm the execution of, or maintain a position in, any transaction in interstate commerce involving—

(a) Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, onions, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products and frozen concentrated orange juice, or

(b) Any contract of sale of any commodity for future delivery traded on or subject to the rules of any contract market or involving the prices of such contracts, except under such terms and conditions as the Commission shall prescribe;

if the transaction is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty".

§ 32.3 Unlawful commodity option transactions.

(a) On and after Januar y17, 1977, it shall be unlawful for any person to accept any money, securities, or property (or to extend credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction unless such person is registered as a futures commission merchant under the Act and such registration shall not have expired, been suspended (and the period of suspension has not expired) or revoked.

(b) On and after January 17, 1977, it shall be unlawful for—

(1) Any person to solicit or accept orders (other than in a clerical capacity) for the purchase or sale of any commodity option, or to supervise any person or persons so engaged, unless such person is—

(i) Registered as a futures commission merchant under the Act, or

(ii) If such person is an individual, registered as an associated person of a specified futures commission merchant under the Act;

and such registration shall not have expired, been suspended (and the period of suspension has not expired) or revoked; and

(2) Any futures commission merchant to permit an individual to become or remain associated with such futures commission merchant as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity involving such solicitation, acceptance or supervision if such futures commission merchant knew or should have known that such individual was not registered as an associated person or that such registration has expired, been suspended (and the period of suspension has not expired) or revoked;

(c) A person required to register as a futures commission merchant or as an associated person in accordance with this Part which furnishes the services specified in that portion of section 2(a) (1) of the Act defining the term "commodity trading advisor" shall not be included in the term commodity trading advisor if:

(1) At the time such services are furnished, such person is registered as a futures commission merchant or as an associated person under the Act, and such registration shall not have expired, been suspended (and the period of suspension has not expired) or revoked; and

(2) The furnishing of such services is solely incidental to the conduct of such person's activities requiring such registration.

(d) A person registered as a futures commission merchant or an associated person under the Act, who is required to register as such by virtue of this Part, need not re-register as such but shall immediately notify the Commission in writing, specifying the date such person commenced or intends to commence engaging in activities otherwise requiring registration under this part.

§ 32.4 Exemptions.

(a) Except for the provisions of §§ 32.2 and 32.9, which shall in any event apply to all commodity option transactions, the provisions of this Part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(b) The Commission may, by order, upon written request or upon its own motion, exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of this Part, other than §§ 32.2, 32.8 and 32.9, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

§ 32.5 Disclosure.

(a) Prior to the entry into any commodity option transaction, each prospective option customer shall be furnished with a summary disclosure statement by the person soliciting the order therefor not less than 24 hours prior to the entry into the commodity option transaction. Expect as provided in paragraph (b) of this section, the disclosure statement shall contain the following:

(1) The actual amount of the purchase price and the elements comprising the purchase price, including a separate listing of the premium, markups on the premium, costs, fees and other charges, as well as the method by which the premium is established.

(2) A statement of:

(i) The services to be provided for the separate elements comprising the purchase price,

(ii) The striking price, and the method by which the striking price is established,

(iii) The total quantity and quality of the commodity which may be purchased or sold upon exercise of the commodity option or which underlies the contract of sale for future delivery which may be purchased or sold upon exercise of the commodity option, and

(iv) Any and all additional costs which may be incurred by the option customer if the option is exercised, including, but not limited to, the amount of storage, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges;

(3) The price level which the underlying commodity or the underlying contract of sale for future delivery must reach during the life of the option in order that the option customer realize a profit in the commodity option transaction, together with a clear explanation of the effect of any foreign currency fluctuations if the option is to be executed on or through the facilities of a foreign board of trade;

(4) The following boldface statement on the first page of the disclosure statement:

Because of the volatile nature of the commodities markets, the purchase of commodity options are not suitable for many members of the public. A person should not purchase a commodity option unless he is prepared to sustain a total loss of the purchase price of the commodity option. Such transactions should be entered into only by persons who are aware of the potential for loss and who understand the nature and extent of their rights and obligations. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission nor has the Commission passed upon the accuracy or adequacy of this statement. Any representation to the contrary is a violation of the Commodity Exchange Act and the regulations; thereunder; and

(5) Statements to the effect that:

(i) Specific market movements of the commodity or contract of sale of a commodity for future delivery underlying the option cannot be accurately predicted, and

(ii) Generally, an option customer will be unable to sell his option in any market to recover any of the purchase price, but rather may only liquidate by exercising the option before the expiration date of the option or by entering into an offsetting transaction.

(b) To the extent that any of the actual price information required to be disclosed by the relevant portions of paragraphs (a) (1), (2) and (3) of this section is not known at the time the disclosure statement is to be delivered to the option customer, the person required to deliver the disclosure statement shall deliver as part of the disclosure statement, at the time specified, all the other information required by paragraph (a) of this section, as well as a good faith estimate of such price information, and shall provide all actual price information in writing to the option customer immediately upon the execution of the commodity option transaction for the option customer.

§ 32.6 Segregation.

(a) Any person which accepts money, securities or property from an option customer as payment of the purchase price in connection with a commodity option transaction shall treat and deal with such money, securities and property as belonging to such option customer until expiration of the term of the option or, if the option customer exercises the option, until all rights of the option customer under the commodity option have been fulfilled. Such money, securities and property (1) shall be separately accounted for and segregated as belonging to such option customer, (2) shall be kept in the United States, and (3) shall not be commingled with the money, securities or property of any other person, including the money, securities or property received by a futures commission merchant to margin, guarantee or secure the trades or contracts of commodity customers (as defined in § 1.3(k) of this chapter) or with the money accruing to such commodity customers as the result of such trades or contracts: *Provided, however*, That the money, securities or property treated as belonging to an option customer may for convenience be commingled with the money, securities or property treated as belonging to any other option customer and deposited in the same account or accounts with any bank or trust company in the United States. Such money, securities and property, when so deposited with any bank or trust company, shall be deposited under an account name which will clearly show that it contains money, securities or property, segregated as required by this Part. Each person depositing such money, securities or property shall obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such bank or trust company that it was informed that the money, securities and property therein are being treated as belonging to option customers and are being held in accordance with the provisions of this Part. Such bank or trust company shall allow inspection of such accounts at any reasonable time by representatives of the Commission.

(b) No money, securities or property deposited in accordance with paragraph (a) of this section shall be held, disposed of, used or treated as belonging to the depositing person or any person other than the option customers of such person: *Provided, however*, That such money may be invested in obligations of the United States, and in obligations fully guaranteed as to principal and interest by the United States. Such investments shall be made through an account or accounts used for the deposit of money, securities or property received from option customers and proceeds from any sale of such obligations shall be redeposited in such account or accounts. Each person which invests money belonging to option customers in obligations as described in this paragraph (b), shall separately account for such obligations and segregate such obligations as belonging to such option customers. Such obligations may only be deposited with a bank or trust company in the United States and shall be deposited under an account name which will clearly show that it contains obligations treated as belonging to option customers, segregated as required by this Part. Each person depositing such obligations shall obtain and retain in its files an acknowledgment from such bank or trust company that it was informed that the obligations are treated as belonging to option customers and are being held in accordance with the provisions of this Part. Such acknowledgment shall be retained for the period provided in § 1.31 of this chapter. Such bank or trust company shall allow inspection of the obligations at any reasonable time by representatives of the Commission.

(c) Each person which invests money treated as belonging to option customers as permitted hereunder shall keep a record showing the following: (1) The date on which such investments were

made, (2) the name of the person through which such investments were made, (3) the amount of money so invested, (4) a description of the obligations in which such investments were made, (5) the identity of the depositories or other places where such obligations are segregated, (6) the date on which such investments were liquidated or otherwise disposed of and the amount of money received on such disposition, if any, and (7) the name of the person to or through which such investments were disposed of.

(d) Persons which invest money in obligations described in paragraph (b) of this section shall include such obligations in segregated accounts at values which at no time shall be greater than current market value, determined as of the close of the market on the last preceding market day.

(e) The deposit and/or investment of money as provided in paragraphs (a) or (b) of this section shall not operate to prevent the person so depositing and/or investing such money from receiving and retaining as its own any increment or interest resulting therefrom.

(f) The amount of money, securities and property which is and which must be in a segregated account in order to comply with the requirements of this part shall be computed by each person required to segregate such money, securities and property as of the close of each business day. A record of such computation shall be made and kept, together with all supporting data in accordance with the provisions of § 1.31 of this chapter. Such computation shall be made prior to the opening of business on the next business day.

§ 32.7 Books and record keeping.

(a) Each person which accepts any money, securities or property (or extends credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to such transactions. Such records shall at least include all orders (filled, unfilled or cancelled), signature cards, books of record, journals, ledgers, cancelled checks, copies of all statements of purchase, exercise or lapse, and reports, letters, disclosure statements required by § 32.5 of this Part, solicitation or advertising material, circulars, memoranda, publications, writings, and all other literature or written advice distributed to option customers or prospective option customers. Upon the request of an authorized representative of the Commission, such person shall furnish the true name and address of each commodity option customer or prospective commodity option customer solicited.

(b) Each person referred to in paragraph (a) of this section shall also keep a record in permanent form which shall show the true name and address of each maker, underwriter, issuer or other person who assumes or purports to assume any financial responsibility for the fulfillment of any commodity option transaction solicited or accepted by such person.

(c) Each person which accepts an order for a commodity option transaction from a person other than an option customer, shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to the transaction. Such records shall at least include the items set forth in paragraph (b) of this section and, to the extent necessary to reflect such person's participation in the transaction, shall include all items set forth in paragraph (a) of this section.

(d) Each person which accepts an order for a commodity option shall immediately upon receipt thereof prepare a written record of such order, including an account identification and order number, and shall record thereon by time-stamp or other device, the date and time, to the nearest minute, that (1) the order is accepted, (2) the order is transmitted for execution, and (3) the order is executed. Each such person which accepts any money, securities, or property (or extends credit in lieu thereof) from an option customer as payment of the purchase price in connection with the commodity option transaction shall, upon confirmation that the order was executed, notify the option customer of the date that the order was executed.

(e) All records, memoranda and other documents required to be maintained by paragraphs (a) through (c), and to be prepared by paragraph (d), of this section shall be retained for the period specified in § 1.31 of this chapter, and each person required to maintain such records will be required to produce the same for inspection and furnish true and correct copies thereof and information and reports as to the contents or meaning thereof, when and as requested by any authorized representative of the Commission or the United States Department of Justice.

§ 32.8 Unlawful representations.

It shall be unlawful for any person required to be registered with the Commission in accordance with this Part expressly or impliedly to represent that the Commission, by declaring effective the registration of such person or otherwise, has directly or indirectly approved such person, or any commodity option transaction solicited or accepted by such person.

§ 32.9 Fraud in connection with commodity option transactions.

It shall be unlawful for any person directly or indirectly—

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever;

in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

§ 32.10 Option transactions entered into prior to the effective date of this part.

Nothing contained in this part shall be construed to apply to any commodity option transaction lawfully entered into prior to the effective date of this part.

Interested persons are invited to submit written comments on the proposed rules to the Commission: 2033 K Street NW., Washington, D.C. 20581, Attn: Secretariat. All submissions received prior to November 8, 1976 will be considered by the Commission in determining whether to revise or modify the proposed rules prior to their adoption or thereafter. Issued in Washington, D.C. on October 4, 1976.

By the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.76-29601 Filed 10-7-76;8:45 am]

federal register

FRIDAY, OCTOBER 8, 1976



PART V:

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

■

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Procedures for Federal Financial Assistance Under Sections 505 and 511

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No.76-01]

PART 258—REGULATIONS GOVERNING APPLICATIONS UNDER SECTION 505 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Establishment of Part

• The purpose of these regulations is to set forth procedures for application by railroads for Federal financial assistance under section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "Act"), concerning the purchase of redeemable preference shares. •

On October 1, 1976, Congress passed S. 3131, the Rail Transportation Improvement Act ("RTIA"), which is pending enactment as of the date of publication of these regulations. If and when the President signs the RTIA and it becomes law, we will undertake to revise these regulations as quickly as possible to bring them into conformance with the provisions of the RTIA pertaining to sections 505 and 511 of the Act. In keeping with our policy to initiate the programs covered by these final regulations, we have determined that these regulations should be published immediately in the current form.

Title V of the Act directs the Secretary of Transportation (the "Secretary") to study the rail transportation system and capital needs of the Class I railroads and creates two programs to provide financial assistance to the railroads. The Secretary has delegated his powers and duties under Title V, except those contained in section 506(c), to the Administrator of the Federal Railroad Administration (the "Administrator").

Proposed regulations governing the procedures to be used in applying for financial assistance under sections 505 (a)(1) and 511 of the Act were published in the FEDERAL REGISTER on June 1, 1976 (41 FR 22222). A public meeting to discuss these proposed regulations was held on June 11, 1976. In addition, interested parties were invited to submit on or before July 1, 1976, their written comments on the proposed regulations.

Numerous persons, organizations, and governmental entities either participated at the public meeting or filed comments in response to the proposed regulations, and each comment was given due consideration by the Federal Railroad Administration ("FRA"). As a result of these comments, numerous changes have been made in the regulations. In addition, the regulations have been expanded to permit the filing of applications for facilities rehabilitation and improvement financing under section 505(a)(2) of the Act. These changes and the reasons therefor are discussed below. Since the information requirements for applications under sections 505 and 511 are identical in many respects, comments which are applicable to both sets of regulations are addressed herein. Comments applicable only to the section 511 regulations are discussed in the preamble to those regulations.

These regulations establish procedures for applying for assistance under section 505 of the Act. In order to provide policy and program guidance to potential applicants with respect to the manner in which FRA will evaluate the applications and make the determinations of public benefits and costs, FRA will make available to potential applicants, at a later date, a statement of policy that is more detailed than this preamble. Submission of applications need not await the policy statement.

APPLICATIONS FOR FACILITIES REHABILITATION AND IMPROVEMENT FINANCING UNDER SECTION 505(a)(2)

Section 505(a)(2) of the Act provides that the Secretary shall not act finally on any application for facilities rehabilitation and improvement financing until the date of publication of the final standards and designations under section 503 of the Act. However, in order to facilitate the consideration of such applications, the current regulations have been expanded to permit them to be filed prior to the publication of the final standards and designations. In particular, the statutory requirements listed in section 505 (b)(1) of the Act, which were not contained in the proposed regulations, have been incorporated in §§ 258.7(a)(4) and 258.9k of the regulations.

PUBLIC COMMENTS AND REVISIONS TO THE REGULATIONS

The public comments related to the following general areas: (A) The priorities for determining which projects provide the greatest public benefits; (B) consideration of the availability of section 511 guarantees in evaluating section 505 applications; (C) the cost of the financing to the railroads; (D) definitions; (E) preapplication and application procedures; (F) form and content of applications; and (G) the eligibility of small business concerns to secure financing. Each of these areas is discussed below.

A. PRIORITIES FOR DETERMINING WHICH PROJECTS PROVIDE THE GREATEST PUBLIC BENEFITS

Under section 505(b)(2) the Administrator may approve applications if he "determines that the requested financial assistance is in the public interest." In making such a determination, the Administrator is required to consider "the public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify such public costs." The preamble to the proposed regulations set forth a priority schedule that would ensure the improvement of essential freight service.

While some commenters agreed with this priority schedule, others stated that section 505 was intended primarily to assist rail carriers in curing their deferred maintenance and to improve the efficiency of their fixed plant and was not intended to facilitate consolidation or coordination of rail facilities or to facilitate competition. It was also stated that encouragement of mergers and consolidations is a repudiation of the free enterprise system, and that a shrinkage of facilities will not lead to a revitalization of the railroads.

We do not disagree that the primary purpose of financial assistance under section 505 to is to rehabilitate and improve deteriorated rail facilities. In approving applications for assistance, however, the Administrator must weigh the public benefits against the public costs. The public benefits associated with each project will vary according to many factors. Projects that address the dual problems of excess rail capacity and deteriorated rail facilities will normally produce greater public benefits than those that address only deterioration and do little to relieve the continuing financial burden of excess operating, maintenance and investment costs. Consolidation and coordination projects, particularly those located in corridors of excess capacity identified pursuant to section 503 of the Act, will be prime candidates for funding under section 505.

FRA recognizes that final implementation of mergers, even under expedited procedures, may well extend beyond the period in which section 505 assistance is available. We believe, however, that federal assistance can effectively be used to eliminate redundancy in the rail system by giving a high priority to applications that emphasize unification or coordination projects involving two or more railroads that achieve a partial system rationalization short of mergers, such as: (1) The elimination of duplicative or overlapping operations and facilities; (2) the reduction of switching operations; (3) utilization of the shortest, or most efficient and economical routes; (4) the exchange of trackage rights; and (5) the combining of trackage and of terminal or other facilities. Priority will also be given to acquisition, rehabilitation, and improvement projects on high density mainlines that would not be incompatible with any subsequent restructuring efforts, including merger or consolidation proposals which have been proposed to the Interstate Commerce Commission under sections 5 (2) or (3) of the Interstate Commerce Act ("IC Act") or to the Administrator under section 5(3) of the IC Act. In assessing the eligibility of projects involving track rehabilitation, the Administrator will consider the classifications and designations made pursuant to section 503 of the Act.

While some commenters expressed opposition to facilitation of competition as a priority, others supported it and asked that it be broadened to include intermodal competition. By stimulating service improvements and efficient operations, competition produces substantial public benefits and is therefore a necessary consideration in determining the public interest. Intermodal competition must be part of this consideration. Congress recognized this in its declaration in section 101(b)(2) of the Act that it is a policy of the Act to—

Foster competition among all carriers by railroad and other modes of transportation, to promote more adequate and efficient

transportation service, and to increase the attractiveness of investing in railroads and rail-service-related enterprises.

That policy statement recognizes the interrelationship between competition, service, and economic viability. By applying Federal financial assistance to those types of projects which make the applicant more competitive, service improvements by all modes in the affected market should be stimulated, with each mode performing effectively those services for which it is inherently suited.

While intermodal competition is indeed an important transportation issue, the focus of the Act is on the more serious problem of reduced competition due to deterioration in railroad plant and service. In certain cases the continuation of competitive rail service in major markets may be threatened by such deterioration. Therefore, consistent with the Secretary of Transportation's statement on National Transportation Policy in support of at least two competing rail lines between major industrial points, cities and seaports, it is appropriate to afford priority to projects which support that objective.

A lesser priority is general in nature and includes projects that would increase the ability of applicants to provide rail transportation services at safe and adequate levels, result in lower costs of services, improve economic efficiency and productivity, and address specific safety, environmental, energy and defense problems. The final report to be issued under section 503 of the Act will be a primary guide in determining which projects will be funded.

B. Consideration of the Availability of Section 511 Guarantees in Evaluating Section 505 Applications

As previously noted, section 505(b)(2) requires the Administrator, in determining whether a project is in the public interest, to consider the "availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed." The preamble to the proposed regulations indicated that in determining whether funds are available from other sources at a reasonable cost the Administrator will—

compare the anticipated rate of return on the project itself to the cost of any available capital and will evaluate the overall financial strength of the applicant in order to assess the applicant's ability to afford available capital. The Administrator will consider such factors as the timing of the anticipated flows of costs and benefits from the project compared to the schedule for repayment of other financing means as well as any terms governing repayment of capital from sources other than section 505. Other sources of funds that applicants should explore include public or private placement of funded or unfunded debt, bank loans or loans from shippers and manufacturers, advances from parent companies, sales of assets, and equity financing. An additional factor the Administrator will review in deciding whether other funds are available at a reasonable cost is *whether a project could be financed if a guarantee or commitment to guarantee were extended under section 511 or if sections 505 and 511 were used in combination. Applicants must therefore examine thoroughly the possibility of financing their project in whole or in part with the assistance of a section 511 guarantee and must demonstrate that financing available in the private capital markets either cannot be obtained at a reasonable rate of interest or is otherwise inappropriate for the project.* (Emphasis added.)

Some comments supported the consideration of the practicality of using section 511 financing as a condition precedent to approving a section 505 application. Others objected to the coupling of the two sections, contending that the coupling will result in a frustration of the Congressional intent that rehabilitation funding be provided at a low cost.

The underscored language above does not require, nor will we require, an applicant to apply for assistance under section 511 before applying for assistance under section 505. However, each applicant will be required to demonstrate that the cost of financing all or part of a project under section 511 is not reasonable under principles of prudent financial management in light of the railroad's projected rate of return for the project to be financed.

The objectors fail to recognize that Congress intended that funding under both section 505 and section 511 be used for rehabilitation and improvement. If the revitalization of the rail system is to be achieved, maximum efficient use must be made of the total Federal funding authorization at the lowest cost to the taxpayer. As stated in the preamble to the proposed regulations:

[e]xtending obligation guarantees whenever possible will maximize public benefits first by providing financial assistance for railroad projects at the lowest cost to the public and second by applying funds available under section 505 to projects that are in the public interest but cannot be financed at a reasonable rate of interest. Only through the appropriate use of assistance from both sections 505 and 511 can the assistance available to the railroads through Title V be maximized.

C. Cost of the Financing to the Railroads

Several commenters argued against the policy statement in the preamble to the proposed regulations that the Administrator will establish terms on the preference shares which will, by combining the schedules for dividend and redemption payments, result in a financial cost to the applicant equal to the cost of money to the government. The preamble to the proposed regulations stated that FRA may deviate from these terms when the public benefit from the project warrants a lower financial cost to the applicant. The commenters argued that this is inconsistent with the Congressional intent of providing low cost financing for rail rehabilitation and improvement.

We disagree with the commenters. The Act clearly provides the Administrator with discretion in setting the terms and conditions for preference share financing. Section 506(a)(3) provides that dividends, when added to the amount of mandatory redemption payments "shall return to the Fund *not less than* 150 percent of the aggregate par value thereof * * *." (Emphasis added.) In addition, section 505(b)(2) provides the Administrator with discretion to determine whether the project is in the public interest. As stated earlier, in determining the public interest, the Secretary is required to consider the public benefits in relation to the public costs of the financing. When sections 505 and 506 are considered together, the FRA policy, which we believe to be a correct interpretation of the Act, provides the Administrator with the ability to establish terms and conditions for repayment based on the benefits which the public derives from the project and the applicant's ability to repay. In essence, the FRA policy establishes the ceiling for repayment at "cost of money to government" while the legislation sets the floor at "150 percent of the aggregate par value."

FRA is aware of the critical financial problems affecting certain marginal railroads and fully intends to give careful consideration to financing projects at the lowest cost levels. However, in assessing the use of preference share financing for projects that fall within the priorities established by the Administrator, it must be recognized that there will be combinations of participating railroads in varying financial condition and projects varying in public benefit. Therefore, it is only prudent management of public funds to set a range within which financing terms can be established. When an applicant receives substantial economic benefits from projects financed under the Act, such projects should be financed without unnecessary costs to the taxpayers.

D. Definitions

A few comments were received on the adequacy of certain definitions. One commenter stated that the term "automatic data processing systems," used in sections 258.3(f)(2) and 260.3(f)(2) of the proposed regulations, should be defined to include "software or program packages." It is our view that automatic data processing systems may include the software necessary to the functioning of the system.

One commenter requested that the definition of "equipment" in sections 258.3(e) and 260.3(e) of the proposed regulations include freight cars which, though somewhat specialized, are in general use by the railroad industry. In particular, the commenter recommended the inclusion of DF boxcars and rapid-unloading covered hopper cars. It is our view that such cars are not limited to any specialized purpose and so fall within the definition as it is presently worded. TOFC–COFC flatcars are not included, however, since particular features of the car limit their purpose to the transportation of highway trailers. A potential applicant could request such a designation, since the Act permits the Administrator to designate other cars as equipment upon a written finding, with reasons therefor, that such designation is consistent with the purposes of the Act.

E. PREAPPLICATION AND APPLICATION PROCEDURES

Comments concerning the preapplication and application procedures urged generally that the requirements be simplified or that the time within which all the information had to be supplied be postponed until the applicant had some reasonable indication that the proposed project would be favorably considered. Another commenter suggested the setting of a specific time frame for decisions on projects. Additionally, the comments pointed to the need for confidentiality in the preapplication process.

It is possible that not all of the information specified in the regulations will be necessary for the consideration of each application. For this reason, provisions have been made (§ 258.11(a) and § 260.11(a)) for a preliminary conference prior to the submission of a formal application. A discussion of the information that must be submitted in support of a proposed project will be included as part of the preapplication conference. While applicants are not requested to prepare a draft application or other special information for the preapplication conference, they should be prepared to discuss information which management used in making its initial decision to seek financial assistance.

An estimate of the time period required for a decision can also be provided at the preapplication conference. In view of the varying degrees of complexity of projects to be considered and the length of time required for analysis of such projects, we do not believe it is practical to set a rigid time frame for decisions within the six month requirement set forth in section 505(b)(2) of the Act.

Provisions for maintaining confidentiality of information submitted in applications are included in the regulations in § 258.17 and § 260.17. The confidentiality of preapplication information will similarly be maintained to the extent permitted by law.

Comments from State officials requested that they receive notice of proposed projects and that the States be afforded an opportunity to comment on the proposals. We agree that a mechanism for informing States and other interested persons of applications is desirable. A notice of the filing of each application will therefore be published in the FEDERAL REGISTER and interested persons will be afforded an opportunity to comment (see § 258.9(l)).

There also was a suggestion that the Title V program be used to attract state and local public funds to the railroads. We agree that to the extent possible, total available funds, including those from States and private sources, should be used to finance projects. The initiative in identifying potential funds for a project, however, should be that of the applicant and not of the Administrator.

F. FORM AND CONTENT OF APPLICATION

Comments on the amount, content and format of the financing and operating information required for applications under sections 505 and 511 of the Act, showed that respondents were generally concerned with the volume of information requested, the possibility of submitting regularly published reports rather than drafting separate schedules of data when practicable, and changes of language where it was felt that clarity or simplification was needed.

A major effort has been made to simplify the information requirements contained in the proposed regulations in light of these comments. Where the information requested is available from other Federal agencies, for example, the requirement has been deleted. Approximately one-half of the exhibits required in the proposed regulations have been deleted from the final regulations.

Section 101(a)(5) states that the purpose of the Act be achieved, in part, through "auditing, accounting, reporting, and other requirements to protect Federal funds and to assure repayment of loans and financial responsibility." In most cases, considerable information will be required to evaluate the financial soundness of a project and to monitor the applicant's financial viability on a regular basis. There may be instances in which more information than is specified in the regulations is needed to complete the evaluation and monitoring functions. Under § 258.19 and § 260.19 of the regulations, the Administrator, upon good cause shown, may make any additional requirements he deems necessary. Information may also be requested under § 258.7(a)(10) and § 260.7(a)(14).

Other more specific requests and suggestions were:

(1) Sections 258.7(a)(8)(A) and 260.7(a)(12)(A) now require "* * * [a] statement of other Federal activities in the area of the project which are known or should be known to the applicant." It was suggested that the underscored language be included, and it has been.

(2) Concern was expressed that due to the difficulties inherent in forecasting, projections of financial data may prove meaningless. It is recognized in this regard that forecasts are only as good as the assumptions on which they are based. Nonetheless, in order that an evaluation of the applicant's ability to continue to provide necessary transportation services in the public interest can be made, it is essential that the best available information on the applicant's prospective financial condition be considered. Applicants will be expected to make every reasonable effort to provide reasonable forecasts based on the soundest assumptions possible.

(3) A request was made that the statement of economic impact of the project on the railroad's employees contained in § 258.7(a)(10) and § 260.7(a)(14) of the proposed regulations be deleted, and it has been. However, a statement of the status of labor negotiations required by section 516 of the Act is still required.

(4) It was suggested that the rate of return concept in § 258.7(a)(4)(C) and § 260.7(a)(7)(A) of the proposed regulations is uninformative and inappropriate for rehabilitation and safety projects. While FRA recognizes fully the difficulty of applying the rate of return concept to certain types of projects, the information is required to meet certain statutory requirements. The Act requires the rate of return to be considered in evaluating projects under section 505. With respect to projects under section 511, rate of return is useful in determining whether the funds will be "economically" utilized, as required in section 511(h)(4).

For approximately one year, the Department of Transportation has been examining the way in which railroads calculate rate of return on railroad investment projects as a basis for developing a standard methodology for use by the railroad industry. Final results of that study are not expected for some time. In the interim, FRA is developing an initial set of broad guidelines for the calculation of rate of return in connection with Title V applications. When the guidelines and later the final standard methodology become available, FRA will make them available to applicants for use in subsequent applications and recalculate in accordance with the guidelines or final methodology the rate of return included in applications already submitted by the applicant but not yet acted upon finally by FRA. In order that the submission of applications not be delayed while the guidelines or final methodology are being developed, applicants filing applications prior to the date of publication of the guidelines should perform rate of return calculations according to their internal and existing corporate methodology, setting forth the assumptions and bases for the calculations in accordance with § 258.7(a)(4)(E) and § 260.7(a)(7)(A) of the regulations.

G. ELIGIBILITY OF CLASS II RAILROADS AND SMALL BUSINESS CONCERNS TO SECURE FINANCING

The Small Business Administration and others requested that consideration be given to changes in the proposed rules to enable "maximum feasible eligibility and participation by small business concerns". Specifically, clarification was requested as to the eligibility of Class II railroads and non-rail businesses for section 505 assistance.

Eligibility under section 505 is specifically limited to "railroads". The term "railroad" is defined in section 102(7) of the Act and includes Class II railroads, but not small businesses per se. As previously stated, assistance under section 505 will be provided for those projects that best serve the public interest by increasing the ability of the rail system to provide adequate and efficient transportation services, rather than maintaining the status quo. Most commenters supported the use of the line classifications and designations under section 503 of the Act to evaluate applications under section 505 of the Act. Class II railroads will not be prejudiced thereby, as the necessary public interest determination will also include consideration of other factors, such as preservation of competition, safety,

energy conservation, and similar significant benefits.

In consideration of the foregoing, 49 CFR, Chapter II is amended by adding a new Part 258 to read as follows:

Sec.
258.1 Applicability.
258.3 Definitions.
258.5 Eligibility.
258.7 Form and content of application.
258.9 Required exhibits.
258.11 Preapplication and application procedure.
258.13 General instructions.
258.15 Record, audit, and examination.
258.17 Information requests.
258.19 Waivers and modifications.

AUTHORITY: Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94–210; the Department of Transportation Act, 49 U.S.C. 1651 et seq., Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

§ 258.1 Applicability.

This part prescribes the requirements and procedures governing applications by railroads for financial assistance pursuant to section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976. These requirements and procedures also govern applications for assistance for the purpose set forth in section 517 of that Act, improvement of intercity rail passenger service on lines owned by the applicant and located outside the Northeast Corridor, being the properties acquired by the National Railroad Passenger Corporation pursuant to Title VII of the Act and described in section 701(a)(4) of that Act.

§ 258.3 Definitions.

As used in this part—

(a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210, February 5, 1976).

(b) "Administrator" means the Federal Railroad Administrator, or his delegate.

(c) "Applicant" means any railroad that submits an application for financial assistance pursuant to this part.

(d) "Commission" means the Interstate Commerce Commission.

(e) "Equipment" means any type of new or rebuilt standard gauge locomotive, caboose, or general service railroad freight car the use of which is not limited to any specialized purpose by particular equipment, design, or other features, or any other type of car designated by the Administrator upon a written finding that such designation is consistent with the purposes of the Act. General service railroad freight car includes a boxcar, gondola, open-top or covered hopper car, and flatcar.

(f) "Facilities" means—

(1) track, roadbed, and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, elevated structures, stations, office buildings used for operating purposes only, repair shops, enginehouses, and public improvements used or usable for rail service operations;

(2) communication and power transmission systems, including electronic, microwave, wireless, communication, and automatic data processing systems, electrical transmission systems, powerplants, power transmission systems, powerplant machinery and equipment, structures, and facilities for the transmission of electricity for use by railroads;

(3) signals, including signals and interlockers;

(4) terminal or yard facilities, including trailer-on-flat-car and container-on-flat-car terminals, express or railroad terminal and switching facilities, and services to express companies and railroads and their shippers, including ferries, tugs, carfloats, and related shoreside facilities designed for the transportation of equipment by water; or

(5) shop or repair facilities or any other property used or capable of being used in rail freight transportation services or in connection with such services or for originating, terminating, improving, and expediting the movement of equipment.

(g) "Final Standards" means the Final Standards, Classification and Designation of Lines of Class I Railroads in the United States, to be published by January 30, 1977, pursuant to section 503(e) of the Act.

(h) "FRA" means Federal Railroad Administration.

(i) "Including" means including but not limited to.

(j) "Preliminary Standards" means the Preliminary Standards, Classification and Designation of Lines of Class I Railroads in the United States, published by the United States Department of Transportation on August 3, 1976, pursuant to section 503(b) of the Act.

(k) "Project" means the purpose for which the applicant seeks financial assistance under this part, including acquisition or maintenance of facilities or equipment, rehabilitation or improvement of facilities or equipment, and new construction of facilities.

(l) "Railroad" means a common carrier by railroad or express as defined in section 1(3) of Part I of the Interstate Commerce Act (49 U.S.C. 1(3)), and includes the National Railroad Passenger Corporation and the Alaska Railroad.

(m) "Railroad in reorganization" means a railroad being reorganized under section 77 of the Bankruptcy Act (11 U.S.C. 205).

(n) "Redeemable preference shares" means shares acquired by the Administrator under section 505(d) of the Act that conform to the requirements set forth in section 506 of the Act.

(o) "Trustee" means the trustee, or trustees if more than one trustee has been appointed, of a railroad in reorganization.

(p) "Trustee certificates" means certificates issued under section 77(c)(3) of the Bankruptcy Act (11 U.S.C. 205(c)(3)).

§ 258.5 Eligibility.

Any railroad may apply to the Administrator under section 505 for such financial assistance as the Administrator may approve.

§ 258.7 Form and content of application.

(a) Each application shall include, in the order indicated and identified by applicable section numbers and letters corresponding to those used in this part, the following information:

(1) Full and correct name and principal business address of the applicant;

(2) Date of applicant's incorporation, and name of the government, state, or territory under the laws of which it was incorporated or organized. If applicant is a trustee, the name and address of the reorganization court under the direction of which the applicant is acting, and the docket number of the proceeding;

(3) Name, title, and address of the person to whom correspondence regarding the application should be addressed;

(4) Detailed description of the amount and timing of financial assistance that is being sought and its purpose or purposes, including—

(i) A description of all facilities and the physical condition of such facilities included in or directly affected by the proposed project and a description of the project;

(ii) Each part or sub-part into which the project may reasonably be divided, and the priority and schedule of financial assistance needed for each part or subpart;

(iii) Total amount of financing required to complete the proposed project, in total and for each part or sub-part identified pursuant to paragraph (a)(4)(ii) of this section, and the amount and kind of Federal financial assistance required by applicant in order to complete the proposed project;

(iv) Total amount of financing being requested in the application, date or dates on which applicant desires to have the funds made available, and schedule according t which applicant desires to redeem preference shares purchased pursuant to this part and make dividend payments thereon;

(v) Estimated rate of return on the project calculated in accordance with the applicant's internal, corporate methodology, and where practicable, by determining the discount rate for which the present value of the stream of annual benefits associated with and over the life of the project equals the present value of the stream of annual costs associated with and over the life of the project. The detailed stream of annual project costs (including any increase in labor costs that will result from the labor protection arrangements required by section 516 of the Act) and annual project benefits used to calculate the rate of return and a statement of the assumptions and bases for calculations supporting each of the items of the detailed stream must be provided. At such time as FRA develops general guidelines and later a standard methodology for computing rate of return, FRA will recalculate the resulting discount rate in accordance with the guidelines or the standard methodology (if available) and will make the guidelines or standard

methodology available to railroads for use in subsequent applications under this Part;

(vi) Evaluation of the expected impact of the project on the applicant's ability to provide essential rail services; and

(vii) Statement of whether the project involves another railroad or other participant, through joint execution, coordination, or otherwise; if so, description of the relative participation of applicant and such other railroad or participant, including statement of financing arrangements of each participant, portion of the work to be performed by each, and contemplated level of usage of the equipment or facility by each participant when the work is completed, along with a statement by a responsible officer or official of the other railroad or participant that the information provided reflects their agreement on these matters;

(5) Full and complete statement, together with supporting evidence, of the public benefits to be realized from the project. Public benefits include providing essential freight or passenger services at safe and adequate levels, decreased costs of service (through joint use of tracks or coordination between carriers, mergers, consolidations, or other means), and improved economic efficiency and productivity;

(6) Statement as to how the project will contribute to or enhance the safe operation of the railroad, considering such factors as the occupational safety and health of employees and the improvement of physical or other conditions that have caused or may cause serious injury or loss of life to the public and to users of the railroad's services;

(7) Statement as to whether the project can be funded, in whole or in part, from any other public or private source, including shippers, affiliated companies, or through the guarantee or commitment to guarantee obligations under section 511 of the Act, and, if so, upon what terms. If the project cannot be funded in whole or in part by other sources, a statement as to the efforts which have been made to secure alternative funds, the reasons for the inability to secure alternative funds, and full details of all negotiations undertaken;

(8) Detailed statement as to whether the project will involve a major change in land use or will result in a major change in the intensity of railroad related activities on existing corridors or at other locations, and, if so, assessment of the impact of the project on the environment, including—

(i) Description of the environment in the area of the project before commencement of such project, together with statement of other Federal activities in the area which are known, or should be known, to the applicant;

(ii) Statement of population and growth characteristics of area and of any population and growth assumptions made by applicant in planning the project. Such statement should use the rates of growth in the projection compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture;

(iii) Statement of the project's relationship to proposed land use plans, policies, and controls of affected communities. Where the project is inconsistent with any such plans, policies, or controls, the statement should describe and explain the reasons for such inconsistency in detail;

(iv) Statement of the positive and negative effects of the project on the environment, including effects on air and water, soil quality, and noise level;

(v) Statement of relationship to any applicable Air Quality Implementation Plan under the Clean Air Act (42 U.S.C. 1857);

(vi) Description of any alternatives to the project that have been considered with respect to impact on the environment;

(vii) Discussion of problems and objections raised by other Federal, State or local agencies, and citizens with respect to impact of the project on the environment;

(viii) Statement of the relationship between local short-term uses of the environment by the project and the long-term effects on the environment; and

(ix) Statement of any irreversible or irretrievable commitments of resources, including impact on public parks, recreational areas, wildlife refuges, historic sites, and similar areas referenced in section 4(f) of the Department of Transportation Act;

(9) Statement of the status of negotiations between applicant and representatives of its employees for labor protection agreements required by section 516 of the Act; and

(10) Any other information which the Administrator may deem necessary concerning an application filed under this part.

(b) When applicant is a trustee and the form of proposed assistance is purchased by the Administrator of trustee certificates, the application shall provide all of the information required in paragraph (a) of this section, and in addition shall provide:

(1) Statement on behalf of the trustee, together with supporting evidence, that such certificates cannot otherwise be sold at a reasonable rate of interest;

(2) Full and complete statement, together with supporting evidence, demonstrating that the project can reasonably be expected to be maintained as a part of a financially self-sustaining railroad system; and

(3) Full and complete statement, together with supporting evidence, that the probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

§ 258.9 Required exhibits.

There shall be filed with and made a part of each application and copy thereof the following exhibits, except that exhibits filed with the Administrator pursuant to some other statutory provision or regulation which are in the same format as the following exhibits may be incorporated in and made part of the application filed under this Part by reference. While an application is pending, when actual data becomes available in place of the estimated or forecasted data required in exhibits under this Part, such actual data must be reported promptly to the Administrator in the form required in the appropriate exhibit.

(a) *Exhibit A.* (1) Copies of resolutions of stockholders or the board of directors, or duly authorized committee thereof, authenticated by a proper officer of applicant, designating by name and for that purpose the executive officer by whom the application is signed, verified, and filed on behalf of the applicant; and

(2) If applicant is a trustee, a certified copy of the order of the court having jurisdiction authorizing the filing of the application. All documents required by this exhibit must be certified by the appropriate officer of the applicant.

(b) *Exhibit B.* Opinion of counsel that he is familiar with the corporate powers of the applicant and that the applicant is authorized to make the application. Such opinion shall also cover whether the applicant is authorized to execute and deliver the redeemable preference shares and the priority of such shares. If the charter, articles of incorporation, or by-laws do not permit the execution or delivery of redeemable preference shares, the opinion shall so state and shall list the actions necessary to obtain authorization for such execution or delivery. Any amendments to the charter, articles of incorporation, or by-laws, and all resolutions of the board of directors, executive committee of the board of directors, or stockholders, that will be required to execute and deliver the redeemable preference shares shall be provided to the Administrator as soon as they are available.

(c) *Exhibit C.* Map of applicant's existing railroad with location of project indicated, if appropriate.

(d) *Exhibit D.* Statement showing to the latest available date but in any event to a date no less recent than the end of the third month preceding the date of filing of the application:

(1) Maximum number of locomotive units out of service during each quarter due to business conditions; maximum number of such units out of service during each quarter due to mechanical defects; and ratio of each to total ownership quarterly for each of the last three calendar years but not earlier than the quarter ending June, 1974, and the current calendar year; and

(2) Maximum number of general service freight cars out of service during each quarter due to business conditions; maximum number of such cars out of service during each quarter due to mechanical defects; and ratio of each to total number of general service freight cars owned by applicant quarterly for each of the last three calendar years but not earlier than the quarter ending June, 1974, and the current calendar year.

(e) *Exhibit E.* A copy of applicant's general balance sheet as of a date no less recent than the end of the third month preceding the date of filing of the application, in account form and detail as required in schedule 200 of the Commission's annual report R–1 or R–2, as appropriate, together with the following schedules (where changes in accounts from the end of the prior year to date of the application have not been significant, copies of the appropriate schedules in the prior year's R–1 or R–2 with marginal notations listing the changes may be submitted):

(1) Particulars of account 704, Loans and Notes Receivable, in form and detail as required in schedule 201 of annual report R–1 for the Class I railroads, and in similar form for the Class II railroads except that for Class II railroads loans and notes receivable that are each less than $25,000 may be combined into a single amount;

(2) Particulars of investments in affiliated companies and other investments in form and detail required in schedules 205 and 206 of annual report R–1, or schedules 1001 and 1002 of annual report R–2, as appropriate;

(3) Particulars of balances in accounts 741, Other Assets, and 743, Other Deferred Charges, in form and detail required in schedule 216 of annual report R–1 or schedule 1703 of annual report R–2, as appropriate;

(4) Particulars of loans and notes payable in form and detail required in schedule 223 of annual report R–1, or schedule 1701 of annual report R–2, as appropriate, as well as information as to bank loans, including the name of the bank, date and amount of the original loan, current balance, maturities, rate of interest, and security, if any;

(5) Particulars of long-term debt in form and detail required in schedules 218 and 219 of annual report R–1 or schedules 670, 695, 901, 902 and 1702 of annual report R–2, as appropriate, together with a brief statement concerning each mortgage, pledge, and other lien, indicating the property or securities encumbered, the mortgage limit per mile, if any, and particulars as to priority;

(6) Particulars of balance in account 784, Other Deferred Credits, in form and detail required in schedule 225 of annual report R–1 or schedule 1704 of annual report R–2, as appropriate; and

(7) Particulars as to capital stock in form and detail as required in schedules 228, 229, and 230 of annual report R–1 or schedule 690 in R–2, as appropriate.

(f) *Exhibit F.* A spread sheet showing comparative income statement data for each month of the year in which the application is filed in account form similar to that required in column (a) of schedule 300 of annual report R–1 or R–2 as appropriate. For those months preceding and ending upon the date of the balance sheet presented in Exhibit I, the income statement data shall be reported on an actual basis and so noted. For those months between the dates of the balance sheet and the filing of the application, the income statement data should be reported on an estimated basis and so noted. For those months between the date of the application and the end of the year, the income statement data should be presented on a forecasted basis and so noted.

(g) *Exhibit G.* A spread sheet showing forecasted income statement data for each of the four years subsequent to the year in which the application is filed both before and after giving effect to the proceeds of the assistance requested in the application, in account form and detail similar to that required in column (a) of schedule 300 of annual report R–1 or R–2, as appropriate, together with a statement setting forth the bases for such forecasts.

(h) *Exhibit H.* A spread sheet showing changes in financial position for the year in which the application is filed in account form and detail as required in schedule 309 of annual report R–1 or R–2 as appropriate, as follows:

(1) For that period ending on the date of the balance sheet in Exhibit E, based upon actual data; and

(2) For that period from the balance sheet date to the end of the year, based upon estimated and forecasted data.

(i) *Exhibit I.* A spread sheet showing forecasted changes in financial position for each of the four calendar years following the filing of the application, both before and after giving effect to any funds requested in the application and including a statement showing the bases for such estimates, in account form and detail as required in schedule 309 of the annual report R–1 for Class I railroads and in similar form and detail for Class II railroads.

(j) *Exhibit J.* With respect to equipment proposed to be rehabilitated, improved, maintained, or acquired in the application, a statement indicating number of units and in-service or out-of-service status and, as appropriate:

(1) For locomotives, service type, age, size, horsepower, name of builder, description of work, and unit cost of proposed work; and

(2) For freight cars or intermodal equipment, information as to service type (box, gondola, flat, etc.), age, capacity, description of work, and unit costs of proposed work. Such statement shall show the total cost of the project, types and quantities of work items, unit cost of each item, and distribution of such cost by primary accounts of the Commission's Uniform System of Accounts separated where applicable between material, labor, and other; the ownership of all equipment which is the subject of the project; and the dates on which work is to be commenced or completed. Direct labor, supervision, material costs, contingencies, and any applicable overhead expenses that are included in the total cost of the project should be shown separately and identified.

(k) *Exhibit K.* With respect to the maintenance, rehabilitation, improvement, acquisition, or construction of facilities proposed in the application, a statement showing, as appropriate:

(1) Track Class, as defined by the FRA Track Safety Standards in Part 213 of this chapter, and maximum allowable speed under which each line, or sub-part of a line, on which maintenance, rehabilitation, improvement, acquisition or construction is proposed has been and is being operated and the reasons therefor; the highest track class and maximum allowable speed at which each such line, or subpart of a line, will be designated when the proposed project is completed; and the track class, maximum allowable speed, and signal requirements necessary in the judgment of the railroad to provide safe, reliable and competitive rail services over each line, or subpart of the line, included in or directly affected by the project, together with applicant's recommendations as to:

(i) The most economical method of rehabilitating or improving the physical condition of each line, or subpart of each line, referred to above, to achieve and maintain such line to the track class and maximum allowable speed deemed necessary by the applicant;

(ii) The cost of rehabilitating or improving each line, or subpart of each line, specified above, to meet the minimum safety requirements as defined by the FRA in Part 213 of this chapter for the track class and maximum allowable speed deemed necessary by the applicant and the cost of installing, rehabilitating, improving, maintaining, and repairing, as necessary, block signal systems, interlockings, automatic train stop, train control, cab signal devices or other similar appliances, methods, and systems in accordance with the FRA requirements in Parts 233, 234 and 236 of this chapter; and

(iii) An economic analysis of the cost of installing, rehabilitating, and improving facilities described in subparagraph (ii) above.

(2) The identification number of each grade crossing on each line, or sub-part of a line, included in the project, as provided in the United States Department of Transportation/Association of American Railroads Crossing Inventory, and the safety standards, signal and other requirements necessary in the judgment of the railroad to prevent loss of life and serious accident or injury at such grade crossings.

(3) Dates on which project is proposed to be commenced and completed; and dates on which each part or sub-part into which the project may reasonably be divided is proposed to be commenced and completed.

(4) Types and quantities of work items, unit cost of each item, cost of project in total and by parts or sub-parts into which the project may be reasonably divided, and distribution of such costs by primary accounts of the Commission's Uniform System of Accounts, separated where applicable between material, labor and other. Direct labor, supervision, material costs, contingencies, and any applicable overhead expenses that are included in the costs of the project should be shown separately and identified.

(1) Exhibit L. A draft notice of filing, to be published by the Administrator in the FEDERAL REGISTER, which shall contain a brief summary of the project(s) proposed to be funded, including as applicable:

(1) The name and address of applicant;

(2) A brief description of the project(s) proposed to be funded, the total cost of such project(s), and the amount of Federal financial assistance sought;

(3) A brief description of the facilities to be acquired, rehabilitated or improved, including city or county and state location, termini, and approximate distance in miles;

(4) The justification for the project(s); and

(5) A final paragraph which shall read as follows:

Interested persons may submit written comments on the application to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, not later than 30 days after the date on which this notice is published in the FEDERAL REGISTER. Such submission shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

The comments will be taken into consideration by the Federal Railroad Administration in evaluating the application. However, formal acknowledgment of the comments will not be provided.

NOTE.—The account forms referred to in the exhibits are those of the Commission's Uniform System of Accounts for Railroad Companies in use on August 31, 1976. However, the information required in any of the exhibits shall give effect to any modification of the Commission's Uniform System of Accounts for Railroad Companies in effect on the date of filing the application.

§ 258.11 Preapplication and application procedure.

(a) When a railroad has developed plans for a project for which it may wish to seek assistance under this Part, a responsible official of the railroad may request a meeting with the Associate Administrator for Federal Assistance of the FRA to discuss those plans. Upon receipt of such request, the Associate Administrator will promptly schedule a meeting at which the railroad will present to representatives of the FRA the project and discuss with them information which must be submitted in the application and the type of terms and conditions and financing documents that will be utilized in connection with financial assistance provided under section 505. Applicants are not required to prepare a draft application or other special information for the preapplication conference; however, applicants should be prepared to discuss information which management has used in making its initial decision to seek assistance.

(b) The following procedure shall govern the execution and filing of the application:

(1) The original application shall bear the date of execution and be signed with ink by or on behalf of the applicant and shall bear the corporate seal in the case of an applicant which is a corporation. Execution shall be by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, or if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the application on behalf of the applicant shall also sign a certificate in form as follows:

---------- certifies
(Name of official)
that he is the ----------
(Title of official)
-------- of the ----------;
(Name of railroad)
that he is authorized on the part of said applicant to sign and file with the Administrator this application and exhibits attached thereto; that the consent of all parties whose consent is required, by law or by binding commitment of the applicant, in order to make this application has been given; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof relating to the ----------
(Name of railroad)
---------; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

(Name of official)

(Date)

(2) There shall be made a part of the original application the following certificate by the Chief Financial Officer of the applicant:

---------- certifies
(Name of officer)
that he is ----------
(Title of officer)
of ----------; that he
(Name of railroad applicant)
has supervision over the books of account and other financial records of the railroad applicant and has control over the manner in which they are kept; that such accounts are maintained in good faith in accordance with the effective accounting and other orders of the Interstate Commerce Commission; that such accounts are adequate to assure that proceeds from the financing being requested will be used solely and specifically for the purposes authorized; that he has examined the financial statements and supporting schedules included in this application and to the best of his knowledge and belief those statements accurately reflect the accounts as stated in the books of account; and that, other than the matters set forth in the exceptions attached to such statements, those financial statements and supporting schedules represent a true and complete statement of the financial position of the railroad applicant and that there are no undisclosed assets, liabilities, commitments to purchase property or securities, other commitments, litigation in the courts, contingent rental agreements, or other contingent transactions which might materially affect the financial position of the railroad applicant.

(Name of official)

(Date)

(3) The original application and supporting papers, and ten (10) copies thereof, shall be filed with the Associate Administrator for Federal Assistance of the Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed.

§ 258.13 General instructions.

(a) If the application is approved by the Administrator, the following documents must be deposited with the Administrator before the transaction is closed:

(1) Certified copies of resolutions of the board of directors and, where necessary, of the executive committee of the board of directors and the stockholders, and certified copies of the minutes of the meetings at which those resolutions were adopted, and any necessary amendments to the charter, articles of incorporation, or by-laws, authorizing the execution of a financing agreement with the Administrator and the issuance and delivery of such redeemable preference shares as are incident to the application thereof, in conformity with such terms as may be prescribed by the Administrator, and authorizing the designated officers to receive and give a receipt for the proceeds from the purchase of the redeemable preference shares;

(2) Certified statement by the applicant that it has complied with the provisions of sections 516 and 905 of the Act dealing respectively with employee protection and nondiscrimination; and

(3) In respect of assistance to a trustee, certified copies of the court orders and decrees authorizing him to execute and deliver the trustee certificates or redeemable preference shares.

(b) After the documents required in paragraph (a) of this section have been deposited with the Administrator, the Administrator will enter into an agreement with the applicant to provide financing at such times and in such amounts as the Administrator deems necessary to meet the reasonable cost of the project. Such agreement shall contain such terms and conditions as the Administrator deems necessary or appropriate to assure that the financing will be used only in the manner, and for the purposes, approved by the Administrator, including a requirement that funds received from the sale of redeemable preference shares be placed in and disbursed from a separate account.

§ 258.15 Record, audit, and examination.

(a) Each recipient of financial assistance under this Part, whether in the form of redeemable preference shares, trustee certificates, contracts, subcontracts, or other arrangements, shall keep such records as the Administrator and the Comptroller General shall prescribe, including records that fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance was given or used, the amount of that portion of

the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall have access for the purpose of audit and examination to any accounts, books, documents, papers, reports, files and records of such receipts which in the opinion of the Administrator or the Comptroller General may be related or pertinent to the redeemable preference shares, trustee certificates, contracts, or other arrangements referred to in paragraph (a) of this section. Representatives of the Administrator or the Comptroller General shall be afforded full facilities for verifying the transactions.

§ 258.17 Information requests.

If an applicant desires that any information submitted in an application or supplement thereto not be released by the Administrator upon request from a member of the public, the applicant must so state and must set forth any reasons why such information should not be released, including particulars as to any competitive harm which would probably result from release of such information. The Administrator will keep such information confidential as permited by law.

§ 258.19 Waiver and modification.

The Administrator, upon good cause shown, may waive or modify any requirement of this part not required by law, or make any additional requirements he deems necessary.

Effective date: This part becomes effective on October 8, 1976.

NOTE.—I certify that the inflationary impact of the regulations implementing section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 has been evaluated in accordance with Executive Order 11821 of November 21, 1974, and Department of Transportation Order 2050.4 of February 2, 1976.

Dated: October 6, 1976.

ASAPH H. HALL,
Administrator,
Federal Railroad Administration.

[FR Doc.76-29755 Filed 10-7-76;8:45 am]

[Docket No. 76-02]

PART 260—REGULATIONS GOVERNING SECTION 511 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Establishment of Part

• The purpose of these regulations is to set forth procedures for application by railroads for Federal financial assistance under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "Act"), concerning the guarantee of obligations. •

On October 1, 1976, Congress passed S. 3131, the Rail Transportation Improvement Act ("RTIA"), which is pending enactment as of the date of publication of these regulations. If and when the President signs the RTIA and it becomes law, we shall undertake to revise these regulations as quickly as possible to bring them into conformance with the provisions of the RTIA pertaining to sections 505 and 511 of the Act. In keeping with our policy to initiate the programs covered by these final regulations, we have determined that these regulations should be published immediately in the current form.

Title V of the Act creates two programs under which the Secretary of Transportation (the "Secretary") may provide financial assistance to railroads, one through the purchase of redeemable preference shares issued by railroads (section 505) and the other through the guarantee of obligations (section 511). The Secretary has delegated his powers and duties under Title V, except those powers contained in section 506(c), to the Administrator of the Federal Railroad Administration (the "Administrator").

The Administrator is publishing separately regulations concerning procedures to be used by railroads in applying for financial assistance under section 505 of the Act.

Proposed regulations governing the procedures to be used in applying for a commitment to guarantee and guarantee (hereinafter both a commitment and a guarantee are referred to jointly as a "guarantee") of obligations under section 511 of the Act, and the standards under section 511(i) governing the maintenance of facilities by recipients of guarantees of obligations were published in the FEDERAL REGISTER on June 1, 1976 (41 FR 22228). These proposed regulations also applied to applications under section 511 for guarantee of obligations of the Consolidated Rail Corporation ("ConRail") for electrification of high-density mainline routes, as provided in section 211(i) of the Regional Rail Reorganization Act of 1973, as amended ("RRRA"), and for guarantee of obligations to improve intercity rail passenger service on lines owned by the applicant and located outside the Northeast Corridor (defined in section 701(c) of the Act), as provided in section 517 of the Act. Applications for the purposes set forth in section 517 may also be filed under section 505 of the Act.

A public meeting to discuss these proposed regulations was held on June 11, 1976. In addition, interested parties were invited to submit on or before July 1, 1976, their written comments on the proposed regulations. Numerous persons, organizations, and governmental entities either participated at the meeting or filed comments in response to the proposed regulations, and each comment was given due consideration by the Federal Railroad Administration ("FRA"). As a result of these comments, several substantive changes are being made in the regulations, which are discussed after a summary of section 511.

SUMMARY OF SECTION 511

A. OBLIGATIONS THAT MAY BE GUARANTEED

Under section 511, the Administrator can guarantee the payment of the principal balance of, and any interest on, an obligation of an applicant prior to, on, or after the date of execution or disbursement of such obligation if the proceeds of such obligation shall be or have been used to acquire or to rehabilitate and improve facilities or equipment used in rail services. Section 511(a) provides for the Administrator to grant applications for such guarantees, in whole or in part, if he determines that the obligation is eligible for such guarantee.

Section 501(6) defines an obligation as a bond, note, conditional sale agreement, equipment trust certificate, security agreement, or other obligation issued or granted to finance or refinance equipment or facilities acquisition, construction, rehabilitation or improvement. Because this definition specifically mentions among eligible obligations those that are issued to finance or refinance construction, guarantees may be extended for such obligations.

"Applicant" is defined by section 501 (1) to mean any railroad or other person (including a governmental entity) which submits an application to the Administrator for the guarantee of an obligation under which the applicant is an obligor (the debtor under the obligation and any successor or assignee of such obligor who is approved by the Administrator). Under this definition of "applicant", State and local governments may apply for and receive guarantees.

B. PREREQUISITES TO GUARANTEES

Section 511(c), (e)(2), and (h) list the prerequisites to guarantees. Section 511 (c) provides that prior to making a guarantee of an obligation, the Administrator shall make a determination of the value of the facilities or equipment to be financed or refinanced by the obligation. If enacted, the RTIA would eliminate this requirement.]

Section 511(e)(2) provides that obligations may be guaranteed for the purpose of improving the Northeast Corridor if the proceeds shall be or have been used to acquire or rehabilitate and improve facilities or equipment in a manner that returns the most public benefits for the costs involved.

Section 511(h) lists as prerequisites to any guarantee six findings the Administrator must make in writing:

(1) That an obligation for equipment acquisition, rehabilitation, or improvement is secured by such equipment;

(2) That payment of the obligation is, by the terms of such obligation, required to be made within 25 years from the date of its execution;

(3) That the financing is justified by present and probable future demand for rail services to be rendered by the applicant and will serve to meet demonstrable rail service needs and to provide shippers with improved service;

(4) That the applicant has given reasonable assurances that the facilities or

equipment being acquired, rehabilitated, or improved with the proceeds of the obligation will be economically and efficiently utilized;

(5) That the probable value of any equipment or facilities to be improved, rehabilitated or acquired is sufficient to provide the United States with reasonable security and protection in the event of default by the obligor, in the case of repossession by the holder of the obligation, or in the case of possession or purchase by the Administrator; and

(6) That the transaction will result in an improvement in the ability of any affected railroad to transport freight or passengers. [If enacted, the RTIA would modify the findings required in paragraphs (1) and (5).]

C. SECTION 511(I) STANDARDS

Section 511(i) requires that recipients of guarantees shall, consistent with their capital resources, maintain their facilities in accordance with standards to be issued by the Administrator.

D. SECTION 511(J) CONDITIONS

Section 511(j) requires that before a guarantee of an obligation may be approved the obligor must agree in writing that so long as any principal or interest is due and payable on such obligation:

(1) There will not be any increase in discretionary dividend payments over the average ratio which such payments bore to earnings for the applicable fiscal period during the five years preceding such proposed increase without the prior approval of the Administrator;

(2) The obligor will not use any assets or revenues (except cash) related to or derived from railroad operations in non-rail enterprises without the prior approval of the Administrator; and

(3) The obligor will take all reasonable and practicable steps possible to improve the equitable distribution and efficient and expeditious use of all equipment and facilities to improve rail service in accordance with guidelines established by the Administrator.

Approval of an increase in dividend payments or use of assets and revenues related to or derived from railroad operations in non-rail enterprises under paragraph (1) and (2), respectively, may be granted if the Administrator makes a written finding, after a public hearing, that such increase in dividends or use of assets or revenues will not materially affect the ability of the obligor to comply with the requirements of section 511. [If enacted, the RTIA would modify the section 511(j) conditions.]

E. CHARGES TO BE ASSESSED AND RATE OF INTEREST

Section 511(l) provides that the Administrator shall charge each applicant an amount he deems reasonable for the investigation of any application, for appraisal of the value of the equipment or facilities involved, and for making determinations and findings necessary under this part. Such charges may not aggregate more than one-half of one percent of the principal amount of the obligation for which a guarantee is sought.

In addition, section 511(m) provides that the Administrator shall assess and collect from the obligor an annual premium charge on each obligation guaranteed in an amount not to exceed an annual rate of one percent on the unpaid principal balance of such obligation at the time payment is due. Payment is due initially when the obligation is guaranteed, and, thereafter, on the anniversary date of such guarantee.

Section 511(f) provides that the rate of interest (exclusive of premium charges and service fees) which shall be paid on the unpaid principal balance of each obligation guaranteed shall not exceed an annual percentage rate which the Administrator determines to be reasonable, taking into consideration the prevailing interest rates for similar obligations in the private market.

F. FINANCING AGREEMENT

If the Administrator approves an application under section 511, the section requires that he agree to guarantee an obligation under such terms and conditions and pursuant to such regulations as he deems appropriate, consistent with the purposes of Title V. Guarantees must be extended in accordance with the provisions of sections 511 through 513 of Title V and with such rules as the Administrator may deem necessary to protect the interest of the United States.

Section 511(d) permits the Administrator to approve any modification of any provision of a guarantee of an obligation, including the rate of interest, payment schedule of interest or principal, security, or any other term, if he finds in writing that such modification is equitable and in the overall best interests of the United States under Title V and that the holder of the obligation consents to such modification.

G. AMOUNT OF OBLIGATIONS WHICH MAY BE GUARANTEED

The aggregate unpaid principal amounts of obligations which the Administrator may guarantee may not excede $1 billion at any one time, of which not to exceed $150 million may be guaranteed to finance improvements in the Northeast Corridor. Section 606 of the Act provides that within the $1 billion of guarantee authority up to $200 million in obligations of ConRail may be guaranteed for the electrification of high-density mainline routes upon request by ConRail pursuant to section 211(i) of the RRRA, when such electrification will return operating and financial benefits to ConRail and will facilitate compatibility with existing or renewed electrification systems. Finally, the Administrator is authorized by section 517 to provide financial assistance, in the aggregate sum of up to $200 million, through the financial assistance provisions of and within the authorizations of Title V, either under section 505 or section 511, to any railroad for the purpose of improving intercity rail passenger service on any lines of such railroad which are located outside of the Northeast Corridor, as defined in 701(c) of the Act.

PUBLIC COMMENTS AND REVISIONS TO THE REGULATIONS

Comments that were applicable to requirements that are contained in both the regulations to section 505 and the regulations to section 511 are addressed in the preamble to the section 505 regulations. Those comments that are applicable only to section 511 and the regulations issued thereunder are discussed herein.

Many of the comments were critical of requirements in the regulations that are imposed by statute. For example, it was felt the dividend payout ratio restrictions will hamper an applicant's ability to raise equity capital on its own and there was an objection to the requirement of a public hearing before the Administrator can approve an increase in dividend payments or the use of assets or revenues derived from railroad operations in non-railroad enterprises. It was also suggested that an obligor, with the approval of the Secretary, be permitted to substitute or provide additional equipment, facilities, securities, or future earnings as security for section 511 guarantees. The Department has proposed amendments to Congress which would meet these concerns. However, absent the enactment of amendments to section 511, such as those contained in the RTIA, the statute cannot be construed nor can the regulations be changed to meet these concerns.

Other public comments received fell into the following general areas: (A) eligibility of a party other than a railroad; (B) eligibility of different types of transactions; (C) use of traffic density to determine project eligibility; (D) maturity period of the guarantee; (E) applicability of section 20a of the Interstate Commerce Act; (F) form and content of applications; and (G) terms and conditions of the financing documents.

A. *Eligibility of a party other than a* railroad. One commenter questioned whether a party other than a railroad may apply for a guarantee under section 511 if the obligation for which the guarantee is sought is incurred to finance the acquisition of railroad operating equipment. An applicant for purposes of section 511 can be any railroad or other person (including a governmental entity) which submits an application for the guarantee of an obligation under which the applicant is an obligor. The application must, of course, meet the other requirements of section 511 and the regulations.

While the definition of applicant for section 511 purposes is extremely broad, it should be noted that in order for the Administrator to guarantee an obligation under section 511, he must be able to make the findings under subsection (h) and the conditions of subsections (i) and (j) must be agreed to. The provisions of subsections (h), (i) and (j) effectively require that either the applicant be a railroad or that the railroad

directly affected by the obligation either join in the application or enter into side agreements with the applicant which allow the provisions of section 511 to be met.

B. *Eligibility of different types of transaction.* Commenters raised the questions of whether guarantees would be approved in connection with (1) leveraged leases or other leasing transactions, (2) bonds issued to reimburse the railroad for expenditures used to acquire, rehabilitate or improve facilities or equipment, (3) 100 percent loans for the purchase of new rolling stock, and (4) preference shares.

The first issue raised is whether leases will be guaranteed under section 511 and in particular leveraged leases. Section 511(a) permits the Administrator to guarantee "obligations" whose proceeds are used "to acquire or to rehabilitate and improve facilities or equipment" used in rail service. The term obligation is defined in section 501(6) broadly enough to include leases. Since railroads commonly utilize leases to acquire needed facilities or equipment, leases (other than leveraged leases) are construed as falling within the definition of the term "acquisition" and, therefore, will be eligible for guarantees. However, since most railroads are able to obtain necessary equipment without Federal guarantees and since the primary problem facing the rail industry is the need to consolidate and upgrade the railroads' physical plant, the Administrator will not guarantee equipment leases absent a strong showing of need for such a guarantee.

With respect to leveraged leases, the President's Economic Policy Board has concluded that it is improper for government assisted loans to be used as debt capital in leveraged leases, except for the MARAD shipbuilding program. The rationale for this decision is the very high cost of such arrangements to the government due to the revenues foregone as a result of tax sheltering.

A second issue raised was whether guarantees would be made of bonds issued to reimburse a railroad for expenditures used to acquire, rehabilitate or improve facilities or equipment. Section 511(a) does not authorize the guarantee of obligations unless the proceeds of such obligations have been or will be used to acquire or to rehabilitate and improve facilities or equipment; this would exclude guarantees to reimburse a railroad for previous expenditures where proceeds of the obligation to be guaranteed were not to be used to fund such expenditures directly. To qualify for a guarantee, any financing or refinancing must, of course, meet the other requirements of section 511.

Another commenter questioned whether guarantees would be available for 100 percent of the acquisition cost of new equipment. Such a guarantee could be made so long as the other provisions of section 511 were met.

Finally, one commenter questioned whether preference shares, either issued under section 505 or otherwise, would be eligible for guarantees. The Administrator will not guarantee preference shares purchased by the Administrator pursuant to section 505 since such guarantees would result in unnecessary depletion of the funding authorized under Title V. Other types of preference shares would qualify for guarantees under section 511 only if such shares were determined by the Administrator to be debt as opposed to equity obligations.

C. *Use of traffic density to determine project eligibility.* One commenter requested that traffic density not become a prime criterion for determining project eligibility for funding under section 511. Section 511(h)(3) requires that a finding be made that "the financing or refinancing is justified by the present and probable future demand for rail services * * *." Clearly, existing traffic density data is highly relevant to this finding, but it is not the sole criterion. Information as to "probable future demand" would also be an important consideration.

This commenter also suggested that the financing program should not exclude lines which are of particular significance to the transportation needs of less populated areas. The Department does not intend to administer the section 511 program to preclude financing for projects which have a high priority in a limited geographical area even though not a major factor in the National system. Sections 511(h)(3) and (6), which are discussed earlier, clearly indicate that one of the conditions for eligibility is the requirement that the transaction meet demonstrable rail service needs and enable the affected railroad to better transport freight or passengers. Relationship of the project to the national transportation system will be considered but is not a determining factor in the eligibility of a project for financing under section 511.

D. *Maturity period of the guarantee.* One commenter raised the question of how the 25 year maximum maturity time is to be measured. Section 511(h)(2) clearly provides that "payment of the obligation is required by its terms to be made within 25 years from the *date of its execution*" (emphasis added).

E. *Applicability of section 20a of the Interstate Commerce Act.* One commenter questioned whether securities issued under section 511 will be exempt from section 20a of the Interstate Commerce Act. While section 510 of the Act provides an exemption from section 20a of the Interstate Commerce Act in the case of preference shares issued under section 505, no such exemption is provided for obligations guaranteed under section 511.

F. *Form and content of applications.* One commenter requested that the term "affected railroad," which is used in several places in the proposed regulations, be clarified. The regulations have been amended to meet this concern.

Another commenter suggested that the term "affiliated entity" in § 260.7(a)(5) of the proposed regulations be defined so that it excludes officers of the railroad applicant or non-transportation affiliates of the railroad or the railroad's parent. While the Department is not concern with personal obligations to or claims against the United States by officers of the applicant, it is interested in knowing of obligations or claims relating to the non-transportation corporate entities of the applicant and the applicant's parent. Accordingly, § 260.7(a)(5) has been amended to indicate clearly that it applies only to affiliated corporate entities of both the applicant and the applicant's parent.

One commenter inquired whether a standardized valuation formula would be established for purposes of section 511 financing. The Department does not intend at this time to adopt a standardized valuation methodology but rather will apply the requirements of sections 511(c) and (h)(5) on a case-by-case basis.

Another commenter questioned the need for the information requested about the holder or prospective holder in § 260.7(a)(11) of the proposed regulations. The information requested is needed to insure that there has been a full arms length negotiation between the holder and the obligor and that the rate of interest on the obligation is reasonable.

Another commenter requested that section 511(i) be interpreted as imposing maintenance requirements with respect to only those facilities that are the subject of the obligation being guaranteed. The Department has so interpreted section 511(i) and the proposed regulations (§ 260.21) so reflected this interpretation. The Department does, however, continue to be concerned that an applicant maintain all its facilities and equipment.

One commenter suggested that in interpreting the provisions of section 511(j)(2) the Administrator look to property or enterprises owned by the obligor the earnings of which may accrue to the obligor as being rail or rail related enterprises. The Department feels that it would be more appropriate to apply the provisions of section 511(j)(2) on a case-by-case basis rather than establish an interpretation which might not be applicable to the variety of holding companies and investment practices which exist in the railroad industry.

Another commenter suggested that the requirement of section 511(i)(3) is vague and needs further interpretation. Section 511(j)(3) requires that the

> obligor will take all reasonable and practicable steps possible, in accordance with such guidelines as may be established by the Secretary, to improve the equitable distribution and efficient and expeditious use of all equipment and facilities in order to improve rail service.

As was indicated in the preamble to the proposed regulations, guidelines governing distribution and use of equipment and facilities will be negotiated and placed in the terms and conditions of the guarantee agreements. These terms and conditions must, of necessity, take into consideration the particular operations of each railroad applicant.

Another commenter suggested that the language in § 260.7(a)(6)(A) of the proposed regulations be changed from "all market analyses and studies that have been performed" to "a market analysis and study". We see no justification for such a change. In determining whether a demonstrable need for rail service will be met by the proposed financing, the Administrator should have access to all market analyses and studies which bear on this point.

G. *Terms and conditions of the financing documents.* One commenter questioned whether section 511 loan guarantee agreements will have penalties for prepayment or refinancing. This will, of course, be a matter which will have to be negotiated between the obligor and the lender.

Another commenter suggested that section 511(d) be construed to mean that the consent of the obligor as well as the consent of the holder of an obligation must be obtained prior to any modification of a guarantee of that obligation. This is a matter which is best left to be addressed in the financing documents.

Inflationary impact analysis. The Administrator has determined that the obligation guarantee program created by section 511 is not a major proposal under Executive Order 11821, November 27, 1974, or Department of Transportation Order 2050.4, February 2, 1976, requiring an inflationary impact evaluation.

In consideration of the foregoing, 49 CFR, Chapter II is amended by adding a new Part 260 to read as follows:

Subpart A—Procedures for Application for Commitment to Guarantee or Guarantee of Obligations

Sec.

260.1 Applicability.
260.3 Definitions.
260.5 Eligibility.
260.7 Form and content of application.
260.9 Required exhibits.
260.11 Preapplication and application procedure.
260.13 General instructions.
260.15 Information requests.
260.17 Records, audits, and examinations.
260.19 Waivers and modifications.

Subpart B—Standards for Maintenance of Facilities by Recipients of Obligation Guarantees

260.21 Applicability.
260.23 Definitions.
260.25 Standards.
260.27 Inspection and reporting.
260.29 Waiver.
260.31 Impact on other laws.
260.33 Penalties.

AUTHORITY: Railroad revitalization and Regulatory Reform Act of 1976, Pub. L. 94–210; The Department of Transportation Act, 49 U.S.C. 1651 et seq., Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

Subpart A—Procedures for Application for Commitment to Guarantee or Guarantee of Obligations

§ 260.1 Applicability.

This subpart prescribes the procedures governing applications for a commitment to guarantee or a guarantee of the payment of the principal balance of, and any interest on, an obligation of an applicant under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act"). Applications for a commitment to guarantee or a guarantee of obligations of the Consolidated Rail Corporation for electrification of high-density mainline routes must be filed in accordance with these procedures, as provided in section 211(i) of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 721(i)). These procedures also govern applications for a commitment to guarantee or guarantee of obligations incurred for the purpose set forth in section 517 of the Act, improvement of intercity rail passenger service on lines of the applicant located outside the Northeast Corridor, being the properties acquired by the National Railroad Passenger Corporation pursuant to Title VII of the Act and described in section 701(a)(4) of the Act.

§ 260.3 Definitions.

As used in this part—

(a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210, February 5, 1976).

(b) "Administrator" means the Federal Railroad Administrator, or his delegate.

(c) "Applicant" means any railroad, or other person (including a governmental entity) that submits an application to the Administrator for the guarantee of an obligation under which it is an obligor or for a commitment to guarantee such an obligation.

(d) "Commission" means the Interstate Commerce Commission.

(e) "Equipment" means any type of new or rebuilt standard gauge locomotive, caboose, or general service railroad freight car the use of which is not limited to any specialized purpose by particular equipment, design, or other features, or any other type of car designated by the Administrator upon a written finding that such designation is consistent with the purposes of the Act. General service railroad freight car includes a boxcar, gondola, opentop or covered hopper car, and flatcar.

(f) "Facilities" means—

(1) Track, roadbed, and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, elevated structures, stations, office buildings used for operating purposes only, repair shops, enginehouses, and public improvements used or usable for rail service operations;

(2) Communication and power transmission systems, including electronic, microwave, wireless, communication, and automatic data processing systems, electrical transmission systems, powerplants, power transmission systems, powerplant machinery and equipment, structures, and facilities for the transmission of electricity for use by railroads;

(3) Signals, including signals and interlockers;

(4) Terminal or yard facilities, including trailer-on-flat-car and container-on-flatcar terminals, express of railroad terminal and switching facilities, and services to express companies and railroads and their shippers, including ferries, tugs, carfloats, and related shoreside facilities designed for the transportation of equipment by water; or

(5) Shop or repair facilities or any other property used or capable of being used in rail freight transportation services or in connection with such services or for originating, terminating, improving, and expediting the movement of equipment.

(g) "FRA" means Federal Railroad Administration.

(h) "Including" means including but not limited to.

(i) "Holder" means the obligee or creditor under an obligation, except that when a bank or trust company is acting as agent or trustee for such an obligee or creditor pursuant to an agreement to which the obligor is a part, the term refers to such bank or trust company.

(j) "Obligation" means a bond, note, conditional sale agreement, equipment trust certificate, security agreement, or other obligation issued or granted to finance or refinance equipment or facilities acquisition, construction, rehabilitation, or improvement.

(k) "Obligor" means the debtor under an obligation, including the original obligor and any successor or assignee of such obligor who is approved by the Administrator.

(l) "Project" means the use of the proceeds of the obligation for which a guarantee or guarantee commitment is sought.

(m) "Railroad" means a common carrier by railroad or express as defined in section 1(3) of Part I of the Interstate Commerce Act (49 U.S.C. 1(3)), including the National Railroad Passenger Corporation and the Alaska Railroad.

(n) "Trustee" means the trustee, or trustees if more than one trustee has been appointed, of an applicant in bankruptcy.

§ 260.5 Eligibility.

Under section 511 the Administrator may guarantee and make commitments to guarantee the payment of the principal balance of, and any interest on, an obligation of any applicant prior to, on, or after the date of execution or the date of disbursement of such obligation, if the proceeds of such obligation shall be or have been used to acquire or to rehabilitate and improve facilities or equipment.

§ 260.7 Form and content of application.

(a) Each application shall include, in the order indicated and identified by applicable section numbers and letters corresponding to those used in this part, the following information:

(1) Full and correct name and principal business address of the applicant;

(2) Date of applicant's incorporation, or organization if not a corporation, and name of the government, state or territory under the laws of which it was incorporated or organized. If applicant is a trustee, the name and address of the reorganization court under the direction of which applicant is acting, and the docket number of the proceeding. If applicant is a partnership, association, or

other form of organization other than a corporation, a full description of the organization should be furnished;

(3) Name, title, and address of the person to whom correspondence regarding the application should be addressed;

(4) Certified copy of proposed or executed obligation agreement, including any related agreements or other documents, and detailed description of the obligation and of the series or issue of which the obligation is a part, including—

(i) Total amount of the obligation;

(ii) Detailed description of the project and its purpose or purposes, including—

(A) A description of all facilities or equipment and the physical condition of such facilities or equipment included in or directly affected by the proposed project and a description of the project;

(B) Each part or sub-part into which the project may reasonably be divided, the priority and schedule of expenditure for each part or sub-part;

(C) Estimated timing of the expenditure of the proceeds of the obligation; and

(D) Statement of whether the project involves another railroad or other participant, through joint execution, coordination, or otherwise; if so, description of the relative participation of applicant and such other railroad or participant, including statement or financing arrangements of each participant, portion of the work to be performed by each participant, and contemplated level of usage of the equipment or facility of each participant when the work is completed, along with a statement by a responsible officer or official of the other railroad or participant that the information provided reflects their agreement on these matters;

(iii) Effective date;

(iv) Schedule for repayment of principal;

(v) Description of the interest in facilities or equipment to be financed or refinanced by the obligation for which a guarantee is sought that would be pledged to the Administrator, and applicant's opinion of the value of this security interest and the basis for such opinion; and

(vi) Where the obligation for which a guarantee is sought is outstanding, actual effective rate of interest; or where the applicant has discussed with a potential holder the terms of an obligation to be issued, the proposed effective rate of interest;

(5) Statement, in summary form, showing financial obligations to or claims against the United States or obligations for which the United States is guarantor, if any, by applicant or any affiliated corporate entity of the applicant or the applicant's parent as of the date of the application, including:

(i) Status of any claims under litigation; and

(ii) Any other debits or credits existing between the applicant and the United States, showing the department or agency involved in such loans, claims and other debts;

(6) An anlysis that includes:

(i) Statement, together with supporting evidence including copies of all market analyses and studies that have been performed to determine present and future demand of rail services, that the financing is justified by present and future demand for rail services, will meet existing needs for such services, and will provide shippers with improved service;

(ii) Description of the impact of the financing upon the projected traffic to be originated, terminated, or carried by the obligor for at least the five years immediately following completion of the project; and

(iii) Description of any other benefit which would accrue to the applicant from the proceeds of the obligation;

(7) Statement, together with supporting evidence, that the facilities or equipment being acquired, rehabilitated or improved will be efficiently and economically utilized, including:

(i) Estimated rate of return on the project calculated in accordance with the applicant's internal, corporate methodology, and where practicable, by determining the discount rate for which the present value of the stream of annual benefits associated with and over the life of the project equals the present value of the stream of annual costs associated with and over the life of the project. The detailed stream of annual project costs (including any increase in labor costs that will result from the labor protection arrangements required by section 516 of the Act) and annual project benefits used to calculate the rate of return, and a statement of the assumptions and bases for calculations behind each of the items of the detailed streams must be provided. At such time as FRA develops general guidelines and later a standard methodology for computing rate of return, FRA will recalculate the resulting discount rate in accordance with the guidelines or the standard methodology (if available) and will make the guidelines or standard methodology available to potential applicants for use in subsequent applications under this part;

(ii) Explanation of the manner in which the project will increase the economical and efficient utilization of equipment and facilities; and

(iii) Documentation of any other improvements in service as a result of the project, including service reliability between origin and destination point pairs and reduction in time from load to load car cycle by car type;

(8) Statement, together with supporting evidence, that the transaction will improve the ability of any affected railroad to transport passengers or freight;

(9) Statement of applicant's maintenance program for its entire rail system and planned maintenance program for the equipment or facilities financed by the proceeds of the obligation;

(10) Certified statement that applicant will pay the Administrator whatever investigation fees the Administrator assesses with respect to investigation of the application, appraisal of the value of the equipment or facilities involved, and any necessary determinations or findings, up to a ceiling of one-half of one percent of the obligation for which a guarantee is sought;

(11) With respect to each existing holder or proposed prospective holder, a statement as to:

(i) Full and correct name and principal business address;

(ii) Reference to applicable provisions of law and the charter or other governing instruments conferring authority on the holder to accept the obligation;

(iii) Brief statement of the circumstances and negotiations leading to the agreement by the holder to take the proposed obligation;

(iv) Brief statement of the nature and extent of any affiliation or business relationship between the existing or prospective holder and any of its directors, partners, or principal executive officers, on the one hand, and, on the other, the applicant and any of its directors, partners, or principal executive officers, or any person or persons whose name is required to be furnished under paragraph (a)(11)(v) of this section; and

(v) Full and complete statement of all sums to be given by the holder in connection with the proposed obligation including:

(A) Name and address of each person to whom the payment has been made or will be made and nature of any affiliation, association, or prior business relationship between any person named in this paragraph and the holder or any of its directors, partners, or officers;

(B) Amount of the cash payment, or the nature and value of other consideration; and

(C) Any condition upon the obligation of the obligee to make such payment;

(12) Detailed statement as to whether the project will, directly or indirectly, cause a major change in land use or a major change in the intensity of railroad related activities on existing corridors or at other locations, and, if so, an assessment of the impact of such use on the environment, including—

(i) Description of the environment in the area of the project before commencement of the project, together with statement of other Federal activities in the area which are known or should be known to the applicant;

(ii) Statement of population and growth characteristics of the area and any population and growth assumptions made by applicant in planning the project. Such statement should use the rates of growth in the projection compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture;

(iii) Statement of the relationship of the project to proposed land use plans, policies, and controls of affected communities. Where such project is inconsistent with any such plans, policies, or controls, the statement should describe

and explain the reasons for such inconsistency in detail;

(iv) Statement of the positive and negative effects of the project on the environment, including effects on air and water, soil quality, and noise level;

(v) Statement of the relationship to any applicable Air Quality Implementation Plan under the Clean Air Act (42 U.S.C. 1857);

(vi) Description of any alternatives to the project that have been considered with respect to impact on the environment;

(vii) Discussion of problems and objections raised by other Federal, State or local agencies, and citizens with respect to impact of the project on the environment;

(viii) Statement of the relationship between local short-term uses of the environment by the project and the long-term effects on the environment; and

(ix) Statement of any irreversible or irretrievable commitments of natural resources, including impact on public parks, recreational areas, wildlife refuges, historic sites, and similar areas referenced in section 4(f) of the Department of Transportation Act;

(13) Statement of the status of negotiations between applicant and representatives of its employees of local protection agreements required by section 516 of the Act; and

(14) Any other information which the Administrator may deem necessary concerning an application filed under this part.

(b) When applicant is a trustee, the application shall provide all of the information required in paragraph (a) of this section, and in addition shall provide a full and complete statement, together with supporting evidence, demonstrating that applicant can reasonably be expected to become self-sustaining within a reasonable period of time.

§ 260.9 Required exhibits.

There shall be filed with and made a part of each application and copy thereof the following exhibits, except that exhibits filed with the Administrator pursuant to some other statutory provision or regulation which are in the same format as the following exhibits may be incorporated in and made part of the application filed under this part by reference. While the application is pending, when actual data become available in place of the estimated or forecasted data required in the exhibits under this Part, such actual data must be reported promptly to the Administrator in the form required in the appropriate exhibit.

(a) *Exhibit A.* (1) Copies of resolutions of stockholders or the board of directors, or duly authorized committee thereof, authenticated by a proper officer of applicant, designating by name and for that purpose the executive officer by whom the application is signed, verified, and filed on behalf of the applicant;

(2) If applicant is not a corporation, documentary evidence showing authorization of the obligation and designation of the individual signing, verifying, and filing the application on behalf of the applicant;

(3) If applicant is a trustee, certified copy of the order of the court having jurisdiction authorizing the filing of the application; and

(4) If applicant is a state or local public body or agency thereof, copy of resolution of the appropriate body together with a copy of the applicable laws and regulations permitting applicant to incur such obligation.

All documents required to be submitted in this exhibit shall be certified by the appropriate official of applicant.

(b) *Exhibit B.* Opinion of counsel that he is familiar with the corporate or other organizational powers of the applicant and that the applicant is authorized to make the application. Such opinion shall also cover applicant's authority to incur the obligation and to enter into an agreement with the Administrator for the commitment to guarantee or the guarantee of such obligation. If the charter, articles of incorporation, or by-laws do not permit the issuance of the proposed obligation, the opinion shall so state and shall list the actions necessary to obtain authorization for such issuance. Any amendments to the charter, articles of incorporation, or by-laws, and all resolutions of the board of directors, executive committee of the board of directors, or stockholders, that will be required for issuance the obligation shall be provided to the Administrator as soon as they are available.

(c) *Exhibit C.* Map of applicant's existing railroad with location of project indicated, if appropriate.

(d) *Exhibit D.* Statement showing to the latest available date but in any event to a date no less recent than the end of the third month preceding the date of filing of the application:

(1) Maximum number of locomotive units out of service during each quarter due to business conditions; maximum number of such units out of service during each quarter due to mechanical defects; and ratio of each to total ownership quarterly for each of the last three calendar years but not earlier than the quarter ending June, 1974, and the current calendar year; and

(2) Maximum number of general service freight cars out of service during each quarter due to business conditions; maximum number of such cars out of service during each quarter due to mechanical defects; and ratio of each to total number of general service freight cars owned by applicant quarterly for each of the last three calendar years but not earlier than the quarter ending June, 1974, and the current calendar year.

(e) *Exhibit E.* A copy of applicant's general balance sheet as of a date no less recent than the end of the third month preceding the date of filing of the application, in account form and detail as required in schedule 200 of the Commission's annual report R–1 or R–2, as appropriate, together with the following schedules (where changes in accounts from the end of the prior year to date of the application have not been significant, copies of the appropriate schedules in the prior year's R–1 or R–2 with marginal notations listing the changes may be submitted):

(1) Particulars of account 704, Loans and Notes Receivable, in form and detail as required in schedule 201 of annual report R–1 for the Class I railroads, and in similar form for the Class II railroads except that for Class II railroads loans and notes receivable that are each less than $25,000 may be combined into a single amount;

(2) Particulars of investments in affiliated companies and other investments in form and detail required in schedules 205 and 206 of annual report R–1, or schedules 1001 and 1002 of annual report R–2, as appropriate;

(3) Particulars of balances in accounts 741, Other Assets, and 743, Other Deferred Charges, in form and detail required in schedule 216 of annual report R–1 or schedule 1703 of annual report R–2, as appropriate;

(4) Particulars of loans and notes payable in form and detail required in schedule 223 of annual report R–1, or schedule 1701 of annual report R–2, as appropriate, as well as information as to bank loans, including the name of the bank, date and amount of the original loan, current balance, maturities, rate of interest, and security, if any;

(5) Particulars of long-term debt in form and detail required in schedules 218 and 219 of annual report R–1 or schedules 670, 695, 901, 902 and 1702 of annual report R–2, as appropriate, together with a brief statement concerning each mortgage, pledge, and other lien, indicating the property or securities encumbered, the mortgage limit per mile, if any, and particulars as to priority;

(6) Particulars of balance in account 784, Other Deferred Credits, in form and detail required in schedule 225 of annual report R–1 or schedule 1704 of annual report R–2, as appropriate; and

(7) Particulars as to capital stock in form and detail required in schedules 228, 229, and 230 of annual report R–1 or schedule 690 in annual report R–2, as appropriate.

(f) *Exhibit F.* A spread sheet showing comparative income statements data for each month of the year in which the application is filed in account form similar to that required in column (a) of schedule 300 of annual report R–1 or R–2 as appropriate. For those months preceding and ending upon the date of the balance sheet presented in Exhibit I, the income statement data shall be reported on an actual basis and so noted. For those months between the dates of the balance sheet and the filing of the application, the income statement data shall be reported on an estimated basis and so noted. For those months between the date of the application and the end of the year, the income statement data shall be presented on a forecasted basis and so noted.

(g) *Exhibit G.* A spread sheet showing forecasted income statement data for each of the four years subsequent to the year in which the application is filed

both before and after giving effect to the proceeds of the assistance requested in the application, in account form and detail similar to that required in column (a) of schedule 300 of annual report R–1 or R–2, as appropriate, together with a statement setting forth the bases for such forecasts.

(h) *Exhibit H.* A spread sheet showing changes in financial position for the year in which the application is filed in account form and detail as required in schedule 309 of annual report R–1 or R–2 as appropriate as follows:

(1) For that period ending on the date of the balance sheet in Exhibit E, based upon actual data; and

(2) For that period from the balance sheet date to the end of the year, based upon estimated and forecasted data.

(i) *Exhibit I.* A spread sheet showing forecasted changes in financial position for each of the four calendar years following the filing of the application, both before and after giving effect to any funds requested in the application and including a statement showing the bases for such estimates, in account form and detail as required in schedule 309 of the annual report R–1 for Class I railroads and in similar form and detail for Class II railroads.

(j) *Exhibit J.* With respect to equipment proposed to be rehabilitated, improved, maintained, or acquired in the application, a statement indicating number of units and in-service or out-of-service status and, as appropriate:

(1) For locomotives, service type, age, size, horsepower, name of builder, description of work, and unit cost of proposed work; and

(2) For freight cars or intermodal equipment, information as to service type (box, gondola, flat, etc.), age, capacity, description of work, and unit costs of proposed work.

Such statement shall show the total cost of the project, types and quantities of work items, unit cost of each item, and distribution of such cost by primary accounts of the Commission's Uniform System of Accounts separated where applicable between material, labor, and other; the ownership of all equipment which is the subject of the project; and the dates on which work is to be commenced or completed. Direct labor, supervision, material costs, contingencies, and any applicable overhead expenses that are included in the total cost of the project should be shown separately and identified.

(k) *Exhibit K.* With respect to the maintenance, rehabilitation, improvement, acquisition, or construction of facilities proposed in the application, a statement showing, as appropriate:

(1) Track Class, as defined by the FRA Track Safety Standards in Part 213 of this chapter, and maximum allowable speed under which each line on which maintenance, rehabilitation, improvement, acquisition or construction is proposed has been and is being operated and the reasons therefor, the track class, maximum allowable speed, and signal requirements necessary in the judgment of the railroad to provide safe, reliable and competitive rail services over such lines, and the highest track class and maximum allowable speed at which each such line will be designated when the proposed project is completed;

(2) Dates on which project is proposed to be commenced and completed; and dates on which any part or sub-part into which the project may reasonably be divided is proposed to be commenced and completed;

(3) Types and quantities of work items, unit cost of each item, cost of project in total and by parts or sub-parts into which the project may be reasonably divided, and distribution of such costs by primary accounts of the Commission's Uniform System of Accounts, separated where applicable between material, labor and other. Direct labor, supervision, material costs, contingencies, and any applicable overhead expenses that are included in the costs of the project should be shown separately and identified.

(l) *Exhibit L.* A draft notice of filing, to be published by the Administrator in the FEDERAL REGISTER, which shall contain a brief summary of the project(s) proposed to be funded, including as applicable:

(1) The name and address of applicant;

(2) A brief description of the project(s) proposed to be funded, the total cost of such project(s), and the amount of Federal financial assistance sought;

(3) A brief description of the facilities or equipment to be acquired, rehabilitated or improved, including where appropriate, city or county and state location, termini, and approximate distance in miles;

(4) The justification for the project(s); and

(5) A final paragraph which shall read as follows:

Interested persons may submit written comments on the application to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, not later than 30 days after the date on which this notice is published in the FEDERAL REGISTER. Such submission shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

The comments will be taken into consideration by the Federal Railroad Administration in evaluating the application. However, formal acknowledgment of the comments will not be provided.

NOTE.—The account forms referred to in the exhibits are those of the Commission's Uniform System of Accounts for Railroad Companies in use on October 1, 1976. However, the information required in any of the exhibits shall give effect to any modification of the Commission's Uniform System of Accounts for Railroad Companies in effect on the date of filing the application.

§ 260.11 Preapplication and application procedure.

(a) When a railroad or any other person has developed plans for a project for which it may wish to seek assistance under this part, a responsible official of the railroad or other person may request a meeting with the Associate Administrator for Federal Assistance of the FRA to discuss those plans. Upon receipt of such request, the Associate Administrator will promptly schedule a meeting at which the railroad or other person will present to representatives of the FRA the proposed project and discuss with them information which must be submitted in the application and the type of terms and conditions and financing documents that will be utilized in connection with financial assistance provided under section 511. Applicants are not required to prepare a draft application or other special information for the preappliction conference; however, applicants should be prepared to discuss information which management has used in making its initial decision to seek assistance.

(b) The following procedure shall govern the execution and filing of the application:

(1) The original application shall bear the date of execution, be signed with ink by or on behalf of the applicant, and shall bear the corporate seal in the case of an applicant which is a corporation. Execution shall be by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, or if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the application on behalf of the applicant shall also sign a certificate in form as follows:

_____ certifies that he is the
(Name of official)
_____ of the _____;
(Title of official) (Name of applicant)
that he is authorized on the part of the applicant to sign and file with the Administrator this application and exhibits attached thereto; that the consent of all parties whose consent is required, by law or by binding commitment of the applicant, in order to make this application has been given; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof relating to the aforesaid _____; that
(Name of applicant)
he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

_____
(Name of official)

_____
(Date)

(2) There shall be made a part of the original application the following certificate by the Chief Financial Officer or equivalent officer of the applicant:

_____ certifies that he is
(Name of officer)
_____ of
(Title of officer)
_____; that he
(Name of applicant)
has supervision over the books of accounts and other financial records of the affected applicant and has control over the manner in which they are kept; that such accounts are maintained in good faith in accordance with the effective accounting and other orders of

the Interstate Commerce Commission; that such accounts are adequate to assure that proceeds from the financing being requested will be used solely and specifically for the purposes authorized; that he has examined the financial statements and supporting schedules included in this application and to the best of his knowledge and belief those statements accurately reflect the accounts as stated in the books of account; and that, other than the matters set forth in the exceptions attached to such statements, those financial statements and supporting schedules represent a true and complete statement of the financial position of the applicant and that there are no undisclosed assets, liabilities, commitments to purchase property or securities, other commitments, litigation in the courts, contingent rental agreements, or other contingent transactions which might materially affect the financial position of the applicant.

(Name of official)

(Date)

(3) The original application and supporting papers, and ten copies thereof for the use of the Administrator, shall be filed with the Associate Administrator for Federal Assistance of the Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Each copy shall bear the dates and signatures that appear in the original and shall be compete in itself, but the signatures in the copies may be stamped or typed.

§ 260.13 General instructions.

(a) After a complete application and supporting exhibits have been filed with the Administrator, together with any other information the Administrator may request, the Administrator will—

(1) Place a notice of the filing of such application in the FEDERAL REGISTER and afford interested persons an opportunity to submit comments on such application; and

(2) Make a determination of the value of the facilities or equipment to be financed by the obligation, as required by section 511(c) of the Act.

(b) The Administrator will charge an applicant for expenses incurred in investigating an application, including appraisal of equipment or facilities to be secured and making the necessary determinations and findings. Such charges will be assessed and collected as expenses are incurred during the period in which the application is being reviewed.

(c) If the Administrator determines that an application is eligible for a guarantee or guarantee commitment, the following documents must be deposited with the Administrator before the transaction is closed:

(1) Certified copies of resolutions of the board of directors and, where necessary, of the executive committee of the board of directors and the stockholders, and certified copies of the minutes of the meetings at which those resolutions were adopted, and any necessary amendments to the charter, articles of incorporation, or by-laws, authorizing the obligation in conformity with such terms as may be prescribed by the Administrator, and authorizing the designated officers to receive, and give a receipt for, the proceeds from the obligation and to enter into the agreement for guarantee of the obligation;

(2) Certified statement that applicant will comply with the maintenance of facilities standards set forth in subpart B of this part;

(3) Certified statement by the applicant that, if a guarantee or commitment to guarantee an obligation is approved, granted or extended, as long as any principal or interest is owing on such obligation:

(i) There will be no increase in discretionary dividend payments by the applicant over the average ratio which such payments bore to the earnings of the applicant for the applicable fiscal period during the five years preceding such proposed increase, without prior written approval of the Administrator;

(ii) The applicant will not use assets or revenues (other than cash) related to or derived from railroad operations in non-railroad enterprises, without prior written approval from the Administrator; and

(iii) The applicant will take all reasonable and practicable steps possible, in accordance with such guidelines as may be established by the Administrator in the guarantee agreement, to improve the equitable distribution and efficient and expeditious use of all equipment and facilities in order to improve rail service; and

(4) Certified statement by the applicant that it has complied with the provisions of sections 516 and 905 of the Act dealing respectively with employee protection and nondiscrimination.

(d) If a guarantee or commitment to guarantee is extended, the Administrator will enter into an agreement with the applicant. That agreement shall contain the terms and conditions the Administrator deems appropriate to carry out the purposes of section 511 and to secure adequately the interests of the United States, including a maintenance schedule for the equipment or facilities financed by the guaranteed obligation. The agreement will require that the proceeds of the obligation be placed in and disbursed from an account separate from other funds of the recipient. The Administrator will also assess and collect from the obligor an annual premium charge which will not exceed one percent of the principal balance outstanding at the time the payment is due. Such charge will be payable when the guarantee is made and annually thereafter.

§ 260.15 Record, audit, and examination.

(a) Each recipient of financial assistance under this part, whether in the form of guarantee of obligations, contracts, subcontracts, or other arrangements, shall keep such records as the Administrator and the Comptroller General of the United States shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance was given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall have access for the purpose of audit and examination to any accounts, books, documents, papers, reports, files and records of such receipts which in the opinion of the Administrator or the Comptroller General may be related or pertinent to the guarantee of the obligation, or to contracts, or other arrangements referred to in this part. Representatives of the Administrator or the Comptroller General shall be afforded full facilities for verifying the transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such property of such person or entity shall, to the extent practicable, remain in the possession and custody of such person or entity.

§ 260.17 Information requests.

If an applicant desires that any information submitted in an application or supplement thereto not be released by the Administrator upon request from a member of the public, the applicant must so state and must set forth any reasons why such information should not be released, including particulars as to any competitive harm which would probably result from release of such information. The Administrator will keep such information confidential as permitted by law.

§ 260.19 Waivers and modifications.

The Administrator may, upon good cause shown, waive or modify any requirement of this part not required by law or make any additional requirements he deems necessary.

Subpart B—Standards for Maintenance of Facilities by Recipients of Obligation Guarantees

§ 260.21 Applicability.

This subpart prescribes standards governing the maintenance of facilities, as defined in subpart A of this part, that are being acquired, rehabilitated, improved, or construed with the proceeds of a guaranteed obligation, by the recipient of such guarantee for the period during which any portion of the principal or interest of such obligation remains unpaid.

§ 260.23 Definitions.

The terms defined in subpart A of this part shall have the same meaning for the purposes of this subpart that such terms are given in § 260.3 of this part.

§ 260.25 Standards.

(a) When the proceeds of an obligation guaranteed by the Administrator are used to acquire, rehabilitate, improve or construct track, roadbed, and related structures, the guarantee recipient shall, as long as any portion of the principal or interest of such obligation remains unpaid, maintain such facilities in at least the highest track Class, as defined by FRA Track Safety Standards in Part 213 of this chapter, as that Class in which the rehabilitated, improved, ac-

quired, or constructed track is to be operated upon completion of the project for which the obligation was guaranteed unless a waiver is granted in accordance with § 260.29.

(b) When the proceeds of an obligation guaranteed by the Administrator are used in facilities, including those mentioned in paragraph (a) of this section, the recipient shall, during the period in which any portion of the principal or interest in such obligation remains unpaid, maintain such facilities in a manner consistent with sound engineering and maintenance practices and in a condition that will permit the level of use that existed upon completion of the acquisition, rehabilitation, improvement or construction of such facilities unless a waiver is granted in accordance with § 260.29.

§ 260.27 Inspection.

(a) The facilities subject to the provisions of this subpart shall be inspected at such regular intervals as the Administrator deems necessary to assure compliance with the standards set forth in § 260.25. Each recipient shall permit representatives of the FRA to enter upon its property to inspect and examine such facilities at reasonable times and in a reasonable manner. Such representatives shall be permitted to use such testing devices as the Administrator deems necessary to insure that the maintenance standards imposed by this subpart are being followed.

(b) Each recipient shall submit to the Administrator annually financial records and other documents detailing the maintenance performed and the inspections conducted which demonstrate that the recipient has complied with the standards in § 260.25.

§ 260.29 Waiver.

Any recipient of a guarantee may petition the Administrator in writing for relief from any or all requirements imposed by this subpart. The Administrator may, for good cause shown, waive or modify any requirements of this part. Good cause may include, but is not limited to, insufficient capital resources of the recipient to comply with these maintenance standards or changes in the level of service required for any facility subject to this subpart.

§ 260.31 Impact on other laws.

Standards issued under this subpart shall not be construed to relieve the recipient of any obligation to comply with any other Federal, State, or local law or regulation.

§ 260.33 Penalties.

If the Administrator finds that a guarantee recipient has violated the requirements of this subpart, such recipient will be subject to civil action for injunction to cease activities which violate this subpart and for any other appropriate civil or criminal relief, including termination, suspension, and punitive damages.

Effective date: This part becomes effective on October 8, 1976.

Dated: October 6, 1976.

ASAPH H. HALL,
Administrator, Federal Railroad Administration.

[FR Doc.76-29756 Filed 10-7-76;8:45 am]

federal register

FRIDAY, OCTOBER 8, 1976



PART VI:

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination 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 Secertary 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, 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.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their date of publication in the FEDERAL REGISTER are listed with each State.

Alabama:		
AL76–1063		May 21, 1976.
Alaska:		
AK76–5095		Sept. 24, 1976.
California:		
CA76–5063;	CA76–5064	July 16, 1976.
District of Columbia:		
DC76–3226		July 30, 1976.
Indiana:		
IN76–2083		July 2, 1976.
Iowa:		
IA76–4092		May 21, 1976.
IA76–4099		June 18, 1976.
IA76–4145;	IA76–4146; IA 76–4147.	Sept. 10, 1976.
Kansas:		
KS76–4095;	KS76–4096; KS 4097; KS76–4098.	June 11, 1976.
KS76–4107;	KS76–4108	July 2, 1976.
Louisiana:		
LA76–4143		Aug. 20, 1976.
Michigan:		
MI76–2051		Apr. 16, 1976.
Missouri:		
MO76–4107;	MO76–4108	July 2, 1976.
Montana:		
MT76–5027		Apr. 9, 1976.
Nevada:		
NV76–5089;	NV76–5091	Sept. 24, 1976.
New Jersey:		
NJ76–3248;	NJ76–3249	Oct. 1, 1976.
New York:		
NY76–3240		Aug. 20, 1976.
Oklahoma:		
OK76–4135;	OK76–4136	July 30, 1976.
Pennsylvania:		
PA76–3175		May 21, 1976.
PA76–3176		June 18, 1976.
PA76–3177;	PA76–3178	June 11, 1976.
PA76–3182;	PA76–3182; PA 76–3185; PA76–3186; PA 76–3187; PA76–3204. PA 76—3205.	June 18, 1976.
PA76–3208		July 2, 1976.
PA76–3210		July 23, 1976.
PA76–3246;	PA76–3247	Sept. 17, 1976.
PA76–3251		Sept. 24, 1976.
Rhode Island:		
RI76–2037;	RI76–2038; RI 76–2039.	Mar. 19, 1976.
Tennessee:		
TN76–1071		June 11, 1976.
TN76–1081		Aug. 6, 1976.
Texas:		
TX76–4115		July 16, 1976.
TX76–4128		July 23, 1976.
TX76–4140		Aug. 6, 1976.
TX76–4151;	TX76–4152	Sept. 24, 1976.

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.

Alabama:		
AL76–1049	(AL76–1117)	Apr. 15, 1976.
AL76–5028	(AL76–5090)	Apr. 2, 1976.
Arkansas:		
AL76–5028	(AL76–5090)	Do.
Florida:		
AL76–5028	(AL76–5090)	Do.
Illinois:		
IL76–2009	(IL76–2123); IL 76–2010 (IL76–2124); IL 76–2011 (IL76–2125).	Feb. 6, 1976.
IL76–2063	(IL76–2129)	May 25, 1976.
IL76–2067	(IL76–2127)	May 21, 1976.
IL76–2072	(IL76–2126)	June 4, 1976.
Louisiana:		
AL76–5028	(AL76–5090)	Apr. 2, 1976.
Kentucky:		
AL76–5028	(AL76–5090)	Do.
KY76–1095	(KY76–1114)	Sept. 19, 1976.
Mississippi:		
AL76–5028	(AL–5090)	Apr. 2, 1976.
Missouri:		
AL76–5028	(AL76–5090)	Do.

Nebraska:	
NE76-4205 (NE76-4167)	June 11, 1976.
New York:	
NY76-3197 (NY76-3255)	June 25, 1976.
NY76-3203 (NY76-3256)	June 23, 1976.
NY76-3228 (NY76-3257)	Aug. 13, 1976.
North Dakota:	
ND76-5037 (ND76-5096)	Apr. 16, 1976.
South Carolina:	
SC75-1001 (SC76-1115)	Jan. 17, 1975.
Tennessee:	
AL76-5028 (AL76-5090)	April. 2, 1976.
TN76-1083 (TN76-1116)	Aug. 6, 1976.
Texas:	
TX76-4033 (TX76-4169)	Feb. 13, 1976.
TX76-4048 (TX76-4171)	Feb. 20, 1976.
TX76-4081 (TX76-4164); TX76-4082 (TX76-4166).	
TX76-4083 (TX76-4162)	May 7, 1976.
TX76-4084 (TX76-4168)	May 21, 1976.
TX76-4101 (TX76-4170)	June 18, 1976.
TX76-4116 (TX76-4163); TX76-4117 (TX76-4165).	July 16, 1976.
Virginia:	
AQ-2103 (VA76-3254)	Apr. 19, 1976.
Wisconsin:	
WI76-2115 (WI76-2119)	Oct. 10, 1975.

Signed at Washington, D.C., this 1st day of October 1976.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

MODIFICATION P. 1

DECISION NO. AK76-5095 - Mod. #1
(41 FR 42060 - September 24, 1976)
Statewide, Alaska

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters:					
Areas I,II AND III					
Piledrivermen	$15.17	.65	1.50		.10

MODIFICATION P. 2

DECISION # AL76-1063 - Mod. # 1
(41 FR - 21043 - May 21,1976)
Mobile County, Alabama

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians:					
Electricians	10.49	.30	1%+.25	.475	1/10%+.05
Cable splicers	10.74	.30	1%+.25	.475	1/10%+.05
Line Construction:					
Linemen	10.49	.30	1%+.25	.475	1/10%+.05
Cable splicers	10.74	.30	1%+.25	.475	1/10%+.05
Painters:					
Brush	9.26	.40	.25		.01
Industrial	9.51	.40	.25		.01
Hazardous	9.76	.40	.25		.01
Spraying bituminous coatings	10.26	.40	.25		.01
Roofers	8.32		.30	e	
Plumbers, steamfitters	10.40	.30	.45	d	.03
Omit:					
Footnotes "d", "e" and "f" as originally issued.					
Add:					
Roofers helpers	5.95		.30	e	
Footnotes:					
d. 8 Paid Holidays: A,C,D,E,F, Day after Thanksgiving Day, Christmas Eve, and Mardi Gras.					
e. 40 hours paid vacation after 1 year of employment, 2 paid holidays: A and C.					

DECISION NO. CA76-5063 - Mod. #4 (41 FR 29619 - July 16, 1976)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA I	AREA II				
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, 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:						
Power Equipment Operators (Except Piledriving and Steel Erection)						
Group 1	$8.70	$10.10	$1.35*	$2.00	.90	.24
Group 2	9.05	10.45	1.35*	2.00	.90	.24
Group 3	9.26	10.66	1.35*	2.00	.90	.24
Group 4	9.81	11.21	1.35*	2.00	.90	.24
Group 5	10.02	11.42	1.35*	2.00	.90	.24
Group 6	10.17	11.57	1.35*	2.00	.90	.24
Group 7	10.32	11.72	1.35*	2.00	.90	.24
Group 8	10.72	12.12	1.35*	2.00	.90	.24
Group 9	10.94	12.34	1.35*	2.00	.90	.24
Group 10	11.14	12.54	1.35*	2.00	.90	.24
Group 10-A	11.25	12.65	1.35*	2.00	.90	.24
Group 11	11.42	12.82	1.35*	2.00	.90	.24
Group 11-A	12.49	13.89	1.35*	2.00	.90	.24
Group 11-B	12.77	14.17	1.35*	2.00	.90	.24
Group 11-C	13.06	14.46	1.35*	2.00	.90	.24

DECISION NO. CA76-5063 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Piledriving)					
Group 1	$8.78	$1.35*	$2.00	.90	.24
Group 1(a)	9.11	1.35*	2.00	.90	.24
Group 1(b)	9.26	1.35*	2.00	.90	.24
Group 2	9.89	1.35*	2.00	.90	.24
Group 2(a)	10.10	1.35*	2.00	.90	.24
Group 3	10.40	1.35*	2.00	.90	.24
Group 3(a)	10.78	1.35*	2.00	.90	.24
Group 4	11.33	1.35*	2.00	.90	.24
Group 5	11.48	1.35*	2.00	.90	.24

*Includes $.23 per hour to Pensioned Health & Welfare Fund.

MODIFICATION P. 5

DECISION NO. CA76-5064 - Mod. #4
(41 FR 29637 - July 16, 1976)
Alameda, Alpine, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Fresno, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tehama, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA I	AREA II				
Change:						
Power Equipment Operators (Except Piledriving and Steel Erection)						
Group 1	$8.70	$10.10	$1.35*	$2.00	.90	.24
Group 2	9.05	10.45	1.35*	2.00	.90	.24
Group 3	9.26	10.66	1.35*	2.00	.90	.24
Group 4	9.81	11.21	1.35*	2.00	.90	.24
Group 5	10.02	11.42	1.35*	2.00	.90	.24
Group 6	10.17	11.57	1.35*	2.00	.90	.24
Group 7	10.32	11.72	1.35*	2.00	.90	.24
Group 8	10.72	12.12	1.35*	2.00	.90	.24
Group 9	10.94	12.34	1.35*	2.00	.90	.24
Group 10	11.14	12.54	1.35*	2.00	.90	.24
Group 10-A	11.25	12.65	1.35*	2.00	.90	.24
Group 11	11.42	12.82	1.35*	2.00	.90	.24
Group 11-A	12.49	13.89	1.35*	2.00	.90	.24
Group 11-B	12.77	14.17	1.35*	2.00	.90	.24
Group 11-C	13.06	14.46	1.35*	2.00	.90	.24

*Includes $.23 per hour to Pensioned Health & Welfare Fund.

MODIFICATION P. 6

DECISION NO. CO76-5087 - Mod. #1
(41 FR 42091-September 24, 1976)
Delta, Garfield, Gunnison, Mesa, Montrose and Pitkin Counties, Colorado

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters:					
Post Office basing points in the Cities of Leadville, Fort Collins, Glenwood Springs; Grand Junction, Gunnison and Montrose					
Zone I (0-30 miles from nearest basing point)	$8.34	.68	.75	.55	.06
Zone II (30-60 miles from nearest basing point)	8.59	.68	.75	.55	.06
Zone III (60 miles and over from nearest basing point)	8.84	.68	.75	.55	.06
Electricians:					
Electricians	10.60	.42	1%+.25		1½%
Cable Splicers	10.85	.42	1%+.25		1½%

MODIFICATION P. 7

DECISION #DC76-3226- Mod. # 4
(41 FR 32194 - July 30, 1976)
Washington, D. C.

Change:
Description of work to read:
Building Construction, Heavy Construction (including Washington Metropolitan Area Transit Authority - Rapid Rail System), Demolition and Sewer and Water Lines. (excluding all residential construction)

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.

MODIFICATION P. 8

DECISION NO. IN76-2083 - Mod. #4
(41 FR 27577 - July 2, 1976)
Lake, LaPorte, Porter, & St. Joseph Counties, Indiana

Change:
Electricians:
St. Joseph County

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.
$10.35	4.8%	5%		.2%

MODIFICATION P. 9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IA76-4092 - Mod. #3 (41 FR 21079 - May 21, 1976) Black Hawk County (City of Waterloo and Abutting Municipalities), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Boilermakers	$10.30	.85	1.00		.02
Sheet Metal Workers	10.02	.50	.20		.02
DECISION #IA76-4099 - Mod. # 3 (41 FR 24844 - June 18, 1976) Cerro Gordo County (City of Mason City), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Boilermakers	10.30	.85	1.00		.02
Electricians	10.15	.45	1%		1%

MODIFICATION P. 10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IA76-4145 - Mod. #1 (41 FR 38711 - Sept. 10, 1976) Clinton County (City of Clinton and Abutting Municipalities), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Plumbers & Steamfitters	$10.31	.60	.60		.10
DECISION #IA76-4146 - Mod. #1 (41 FR 38713 - Sept. 10, 1976) Des Moines County (City of Burlington and Abutting Municipalities and Burlington Ordnance Plant), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Roofers	8.28				
Sheet Metal Workers	9.00	.45	.40		.10
DECISION #IA76-4147 - Mod. #1 (41 FR 38716 - Sept. 10, 1976) Dubuque County (City of Dubuque and Abutting Municipalities), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Plasterers	$ 8.70				

DECISION #KS76-4095 - Mod. #1
(41 FR 23890 - June 11, 1976)
Shawnee County, Kansas

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians	$6.30	.45	1%+.20		.05
Painters:					
Brush, drywall, sanding and taping, roller	9.15	.40			.02
Painting of structures over 50'(all types); spray	9.65	.40			.02
Plumbers; Pipefitters	10.90	.40	.55		.02
Roofers:					
Roofers flat, slate and tile, dampproofers and waterproofers	9.36	.30	.60		
Roofers working in pitch, tar or creosote, coal	10.21	.30	.60		
Sheet metal workers	8.88	.35+3%	1.10	.78	.04
Soft floor layers	7.71	.40	.45	10%	.04

DECISION #KS76-4096 - Mod. #1
(41 FR 23893 - June 11, 1976)
Shawnee County, Kansas

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians:					
Electricians	$11.10	.45	1%+.55		.05
Cable splicers	12.21	.45	1%+.55		.05
Line Construction:					
Lineman	9.25	.45	1%		½%
Cable splicers	9.71	.45	1%		½%
Groundman, over 1 year	5.75	.45	1%		½%
Groundman, 1st year	4.36	.45	1%		½%
Powderman	7.67	.45	1%		½%
Line Truck and Equipment Operators:					
1st year	5.89	.45	1%		½%
2nd year	7.05	.45	1%		½%
Over 2 years' experience	7.67	.45	1%		½%
Painters:					
Brush, drywall, sanding and taping	9.15	.40			.02
Painting of structures over 50'(all types); spray	9.65	.40			.02
Pipefitters; Plumbers	10.90	.40	.55		.02
Roofers, flat, slate & tile damproofers and waterproofers	9.36	.30	.60		
Roofers working in pitch, tar or creosote, coal	10.21	.30	.60		
Sheet metal workers	8.88	.35+3%	1.10	.78	.04
Soft floor layers	7.71	.40	.45	10%	.04

MODIFICATION P. 13

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #KS76-4097 - Mod. #1 (41 FR 23896 - June 11, 1976) Sedgwick County, Kansas					
Change:					
Laborers (Building Construction):					
Group 1	$6.80	.50	.25		.05
Group 2	6.95	.50	.25		.05
Line Construction:					
Lineman	9.25	.45	1%		½%
Cable splicers	9.71	.45	1%		½%
Groundman, over 1 year	5.75	.45	1%		½%
Groundman, 1st year	4.36	.45	1%		½%
Powderman	7.67	.45	1%		½%
Line truck & equipment operators:					
1st year	5.89	.45	1%		½%
2nd year	7.05	.45	1%		½%
Over 2 years' experience	7.67	.45	1%		½%
Painters:					
Group 1	8.87	.10	.30		.01
Group 2	9.22	.10	.30		.01
Group 3	9.47	.10	.30		.01
Group 4	9.62	.10	.30		.01
Roofers:					
Roofers, Kettlemen	8.30	.28	.20		
Pitch	9.05	.28	.20		

MODIFICATION P. 14

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #KS76-4098 - Mod. #1 (41 FR 23899 - June 11, 1976) Leavenworth County, Kansas					
Change:					
Boilermakers	$10.30	.85	1.00		.02
Electricians:					
Zone 2	11.10	.45	1%+.55		.05
Lathers	10.60	.40			
Line Construction:					
Zone 1					
Lineman	9.25	.45	1%		½%
Cable splicers	9.71	.45	1%		½%
Groundman, over 1 year	5.75	.45	1%		½%
Groundman, 1st year	4.36	.45	1%		½%
Powderman	7.67	.45	1%		½%
Line Truck & Equipment Operators:					
1st year	5.89	.45	1%		½%
2nd year	7.05	.45	1%		½%
Over 2 years' experience	7.67	.45	1%		½%
Marble & tile setters	10.82	3.65%	3.25%		
Marble & tile setters' helpers	9.00				
Plasterers	11.15				
Pipefitters	11.37	.57	1.15		.11
Plumbers	11.64	.65	.80		.11
Roofers:					
Roofers	9.80	.45	.60		.04
Helpers:					
1st 6 mos.	5.88	.45	.60		.04
2nd 6 mos.	6.37	.45	.60		.04
3rd 6 mos.	6.86	.45	.60		.04
4th 6 mos.	7.35	.45	.60		.04
5th 6 mos.	7.84	.45	.60		.04
6th 6 mos.	8.33	.45	.60		.04
7th 6 mos.	8.82	.45	.60		.04
Sheet metal workers	11.355	.50	.50		.05
Terrazzo workers	10.48	3.65%	3.25%		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #LA76-4143 - Mod. #3					
(41 FR 35349 - August 20, 1976)					
Statewide Louisiana					
Change:					
Electricians:					
Electricians:					
Zone 1	$ 10.60	5%	6%		3/10%
Cable splicers:					
Zone 1	10.85	5%	6%		3/10%
Glaziers:					
Zone 1	8.05				
Plasterers:					
Zone 7	8.70			1.00	
Tile setters:					
Zone 2	7.64	.48	.30		.02
Change Modification #2 to Read Decision #LA76-4143					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #MI76-2051 - Mod. #2					
(41 FR 16396 - April 16, 1976)					
Bay, Genesee, Huron, Iosco,					
Lapeer, Saginaw, St. Clair,					
Sanilac, Shiawassee & Tuscola					
Counties, Michigan					
CHANGE:					
Carpenters:					
Remainder of Counties & the					
West 5 miles of Sanilac					
County:					
Carpenters & Piledrivermen	$9.84	.60	.50		.01
Soft Floor Layers	8.88	.60	.50		.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #MO76-4108 - Mod. #2 (41 FR 27624 - July 2, 1976) Franklin, Jefferson, Lincoln, St. Charles, and Warren Counties, and St. Louis City and County, Missouri					
Change:					
Ironworkers	$10.625	.55	.70		.05
Marble setters	10.39	.325	.50		
Marble setters helpers	10.08				
DECISION #MO76-4107 - Mod. #2 (41 FR 27621 - July 2, 1976) Franklin, Jefferson, Lincoln, St. Charles, and Warren and St. Louis City and County, Missouri					
Change:					
Ironworkers	$10.625	.55	.70		.05
Marble setters	10.39	.325	.50		
Marble setters' helpers	10.08				

DECISION NO. MT76-5027 - Mod. #1 (41 FR 15250 - April 9, 1976) Cascade, Deer Lodge, Gallatin, Glacier, Hill, Missoula, Silver-Bow and Valley Counties, Montana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Plumbers:					
Cascade, Glacier, Hill and Valley Counties	$10.60	.50	.85		1%
Remaining Counties	10.65	.50	.65		.10

DECISION #NV76-5089 - Mod. #1
(41 FR 42116 - September 24, 1976)
Washoe County, Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Roofers	$10.10	.45	.20		.02
Omit:					
Decision #PA76-3250 p. 16, 41 FR 42123, 9-24-76.					

DECISION #NV76-5091 - Mod. #1
(41 FR 42124 - September 24, 1976)
Clark County (excluding the Nevada Test Site), Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters:					
Brush; Roller	$11.55	.75	.35		.05
Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Tapers	11.90	.75	.35		.05

DECISION #NJ76-3248 - Mod. #1
(41 FR - October 1, 1976)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Drywall Tapers & Finishers:					
Zone 1	$10.60	$ 1.10	.50		.10
Line Construction:					
Zone 2					
Linemen, Cable Splicers, & Equipment Operators	12.80	6%	1% + .40		½ of 1%
Groundmen & Winch Operators	10.25	6%	1% + .40		½ of 1%

DECISION #NJ76-3249 - Mod. #1
(41 FR - October 1, 1976)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union & Warren Counties, New Jersey

Change:					
Drywall Tapers & Finishers	10.60	1.10	.50		.10
Electricians & Cable Splicers:					
Zone 3	12.39	6%	1% + .42		.02
Zone 8	12.24,	6%	1% + .42		.02
Zone 9	12.24	6%	1% + .50		
Zone 10	12.24	6% + .24	1% + .50		.02
Zone 11	12.40	6% + .24	1% + .50		.02
Zone 12	12.70	6%	1% + .42		.02
Painters:					
Zone 2					
Brush & Roller	9.40	.70	.70		
Spray	10.00	.70	.70		
Repaint Work	9.00	.70	.70		

DECISION #NJ76-3249 (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters: (cont'd)					
Zone 4					
Commercial & Industrial	$ 9.57	.90	$ 1.75	.50	
Sprayers, Tapers, Coverers, & Spacklers	9.80	.90	1.75	.50	
Paperhangers	10.00	.90	1.75	.50	
All extension ladder work, 36' high or over, scaffold work, structural steel, tanks, bridges, towers, smoke stacks, radio towers, television towers, flag poles (steel or wood), fire escapes from top to bottom, cable work, & hazardous work	10.46	.90	1.75	.50	
Sandblasting & Spraying	10.50	.90	1.75	.50	
Roofers:					
Zone 3	11.07	.80	1.00		
Sheet Metal Workers:					
Warren County	9.76	1.17	1.03		.05

DECISION NO. NY76-3240-Mod #1
(41 FR 35439-August 20, 1976)
Broome County, New York

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$11.30	.81	.35		.04
Boilermakers	11.50	.75	10%		.02
Carpenters, Building: Carpenters and Soft Floor Layers	8.96	.35	.50		
Millwrights and Piledrivermen	9.21	.35	.50		

Add: To the Footnotes the footnote "g" to read Paid Holidays: Labor Day and Memorial Day

DECISION NO.:OK76-4135 - Mod. #3
(41 FR 32175 - July 30, 1976)
Tulsa & Creek Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD TO COUNTIES: Craig, Ottawa, Rogers, Mayes, and Delaware Counties, Oklahoma.					
ADD:					
BRICKLAYERS-Stonemasons (Mayes Co)	$9.11	.30	.40		.04
CRAIG, DELAWARE & OTTAWA COUNTIES:					
GLAZIERS	8.05			.25	
DELAWARE & OTTAWA COUNTIES"					
Carpenters	8.12	.33	.30		
Millwrights-Piledrivermen	8.37	.33	.30		
CRAIG, OTTAWA & DELAWARE COUNTIES:					
PAINTERS:					
Brush, roller, tapers, paperhangers,	7.92		.30		
Spray, steamclean, sandblast, and pot tenders	8.295		.30		
DELAWATE COUNTY:					
TRUCK DRIVERS:					
Group I	7.55				
Group II	7.65				
Group III	7.75				
Group IV	7.70				
Group V	7.85				

TRUCK DRIVERS CLASSIFICATION DEFINITIONS

GROUP I - Pick-up 1½ tons, or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses.
GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards
GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, euclids, Mississippi wagons, semi-dumps, tourner pulls, or other heavy material moving equipment, tractor trailer drivers and similar equipment, such as tractors, ten wheelers
GROUP IV - Ready mix concrete trucks up to but not including 3 yards
GROUP V - Ready mix concrete trucks 3 yards and over

DECISION NO. OK76-4136 - Mod. #4
(41 FR 32177 - July 30, 1976)
Oklahoma, Cleveland, Caddo, Canadian, Grady, Kingfisher, Logan, Lincoln, McClain, Seminole and Pottawatomie Counties, Okla.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ZONE V - CARPENTERS:					
Carpenters	$6.75				
Millwrights-Piledrivermen	9.10	.30	.25		.04

DECISION #PA76-3175 - Mod. #5 (41 FR 21137 - May 21, 1976) Cumberland, Dauphin, Perry, Junita, New Cumberland Depot in York County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$12.15	.65	1.00		.02
Roofers:					
Composition	9.71	.60	.55		

DECISION #PA76-3176 - Mod. #4 (41 FR 24853 - June 18, 1976) Lebanon County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$12.15	.65	1.00		.02
Roofers:					
Annville, Cold Springs, East Hanover, North Annville, North Cornwall, North Londonderry, South Annville, South Londonderry, Union, West Cornwall Twps.:					
Composition	9.71	.60	.55		

DECISION #PA76-3177 - Mod. #2 (41 FR 23916 - June 11, 1976) Erie County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters & Soft Floor Layers	$10.10	.45	.30		.02
Laborers:					
Building & common, carpenter tenders, heaters & salamanders, power sweepers, power vacuum sweepers, pumps including 1-1/2", signal man concrete bucket, wrecking & demolition, window washing	8.10	.60	.50		.01
Bricklayer & mason tenders, electric operated conveyor, electric operated hoist, fork lift up to 9 ft., plumber & sewer laborers, scaffold builders, float grinder & sander	8.20	.60	.50		.01
Burners, concrete saw operator hod carriers, mortar mixers, plaster tankers, powered wheelbarrows & buggies	8.30	.60	.50		.01
Dual vibrator roller (walk behind type) Berfix cutting tool, blasters helpers, drill operator helper, jackhammer & air tool operators, mechanical tampers & air tampers, vibrator - air or otherwise	8.35	.60	.50		.01
Mixing mortar for more than 3 masons by hand	8.40	.60	.50		.01
Blasters, drill operators, gunite nozzle man & machine man	8.50	.60	.50		.01
Plaster mixing machine & pump	8.55	.60	.50		.01
Millwrights	10.25	.45	.30		.02

DECISION #PA76-3178 - Mod. #4 (41 FR 23919 - June 11, 1976) Berks County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$12.15	.65	1.00		.02

DECISION #PA76-3182 - Mod. #3 (41 FR 24860 - June 18, 1976) Northumberland County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$12.15	.65	1.00		.02
Electricians:					
Delaware, Lewis & Trubut Twps.	9.23	.40	1%+.35	.60	.02
Roofers:					
Coal, East Cameron, Jackson, Jordan, Little Mahony, Lower Augusta, Upper Mahony, Point Rockfeller, Shamokin, Upper Mahony, Washington, West Cameron, Zerbe					
Composition	9.71	.60	.55		

DECISION #PA76-3183 - Mod. #3 (41 FR 24862 - June 18, 1976) Lehigh County, Pennsylvania					
Change:					
Asbestos Workers	$10.31	.52	.50		.01
Boilermakers	12.15	.65	1.00		.02
Cement Masons	9.75	.40	.50		
Electricians	10.60	.35	1%+.4		.02
Plasterers	9.65	.40	.50		.01
Plumbers & Steamfitters	11.01	.67	1.45		.11
Roofers:					
Remainder of County					
Composition & Slate	10.93	.15	.50		
Composition & Slate Helpers	7.21	.15	.50		

DECISION #PA76-3185 - Mod. #4 (41 FR 24864 - June 18, 1976) Lycoming County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters					
Brush	8.65	.40	.30		.05
Tapers	8.91	.40	.30		.05
Hazardous	9.91	.40	.30		.05
Boilermakers	12.15	.65	1.00		.02

DECISION #PA76-3186 - Mod. #4 (41 FR 24866 - June 18, 1976) Lancaster County, Pennsylvania					
Change:					
Boilermakers	12.12	.65	1.00		.02

MODIFICATION P. 29

DECISION #PA76-3187 - Mod. #3 (41 FR 24868 - June 18, 1976) Northampton County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	$10.31	.52	.50		.01
Electricians:					
Allen, Hanover, Lehigh, Bath, Freemansburg, Hellertown and Bethlehem	10.60	.35	1%+.4		.02
Remainder of County	11.00	6%	1%+.25		.02
Bricklayers & Stonemasons	10.14	.50	.60		
Cement Masons	9.64	.50	.60		
Line Construction:					
Linemen & Cable Splicer	11.64	.30	1%		3/8 of 1%
Groundmen	6.98	.30	1%		3/8 of 1%
Winch Truck Op.	8.15	.30	1%		3/8 of 1%
Painters:					
Remainder of County					
Brush	8.05	.75	.50		
Structural Steel	8.80	.75	.50		
Spray	10.06	.75	.50		
Roofers:					
Composition, slate & tile	10.93	.15	.50		
Roofers Helpers	7.21	.15	.50		
Boilermakers	12.15	.65	1.00		.02

MODIFICATION P. 30

DECISION #PA76-3208 - Mod. #2 (41 FR 27535 - July 2, 1976) Bradford, Tioga & Union Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters					
Zone II					
Brush	$ 8.65	.40	.30		.05
Tapers	8.91	.40	.30		.05
Hazardous	9.91	.40	.30		.05
DECISION #PA76-3205 - Mod. #3 (41 FR 24872 - June 18, 1976) Sullivan County, Pennsylvania					
Change:					
Boilermakers	$12.15	.65	1.00		.02
Electricians					
Western part of County	9.23	.40	1%+.35	.60	.02
Painters:					
Eastern & Western part of County to read:					
Brush	8.65	.40	.30		.05
Taper	8.91	.40	.30		.05
Hazardous	9.91	.40	.30		.05
DECISION #PA76-3204 - Mod. # 4 (41 FR 24870 - June 18, 1976) Adams & York Counties, Pennsylvania					
Change:					
Boilermakers	$12.15	.65	1.00		.02
Cement masons	8.94	.35	.25		.01
Plasterers	8.60	.35	.25		.01

DECISION #PA76-3210 - Mod. #1 (41 FR 30486 - July 23, 1976) Columbia, Montour and Snyder Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$12.15	.65	1.00		.02
Electricians					
Zone 3	9.91	.45	1%+.31		1/4 of 1%
Glaziers					
Zone 1	8.89	.40	.30		.01
Roofers					
Zone 1	9.20	.75	.70		

DECISION #PA76-3246 - Mod. # 1 (41 FR - 40405 - 9/17/76) Lawrence & Mercer Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers:					
West brick buggy or similar (self-propelled), power wheelbarrows and buggies, walk behind forklift or similar, (self-propelled) wagon drill runners" helper, (including drill mounted on truck, track or similar), blaster's helper, all operators of compacting equipment, pipe layer, burner, jackhammerman, concrete buster	$8.155	.72	.60		

DECISION #PA76-3247 - Mod. # 1 (41 FR 40409 - September 17, 1976) Bucks, Chester, Delaware, Montgomery & Philadelphis Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$12.15	.65	1.00		.02
Electricians to read:					
Up to & including three stories (excluding Norristown in Montgomery County)	11.43				
Norristown in Montgomery Co.	9.90	3.4%	1%+2.6%		1.5%
Four stories garden type apartments, including commercial projects:					
Zone 1	12.12	6%	1%+.49		.24
Zone 2	10.60	.35	1%		.02
Zone 3	10.69	.53	1%		.03
Zone 4	10.37	9½%	1%+.7		¼ of 1%
Zone 5	11.71	4.4%	1%+3%		½ of 1%
Zone 6	11.55	4.4%	1%+2.6%		
Zone 7	12.15	5%	1%+.40		.10

DECISION #PA76-3251 - Mod. # 1
(41 FR 42143 - September 24, 1976)
Elk, Forest, McKean & Warren Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Omit:					
Landscape Laborers					
Wrecking Laborers	$6.80	8%	6.5%		3.5%
Low Burner	7.05	8%	6.5%		3.5%
Jackhammer Operator	7.05	8%	6.5%		3.5%
High Burner	7.85	8%	6.5%		3.5%
High Burner Helper	7.55	8%	6.5%		3.5%
Add:					
Under Laborers:					
Wrecking Laborers	7.80	8%	6.5%		3.5%
Low Burner	8.05	8%	6.5%		3.5%
Jackhammer Operator	8.05	8%	6.5%		3.5%
High Burner	8.85	8%	6.5%		3.5%
High Burner Helper	8.55	8%	6.5%		3.5%

DECISION NO. RI76-2037- Mod #3
(41 FR 11771- March 19, 1976)
Bristol, Kent, & Providence Counties, Rhode Island

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cement masons: Building					
Bristol & Kent Counties and Remainder of Providence County	$9.50	.90	.45		
Electricians: Bldg., hvy. & hwy.	9.40	.48	1%+1.15		.02
Plasterers: Bristol & Kent Counties, & Rem. of Prov. County	8.70	.90	.45		
Roofers: Helpers- Class B	8.25	.45	.25		
Sprinkler fitters	10.56	.60	.90		.01
Cement masons & finisher (heavy and highway)	8.00	.50	.35		

DECISION NO. RI76-2038- Mod #3
(41 FR 11777- March 19, 1976)
Newport County, Rhode Island

Change:					
Cement masons:					
Building	9.50	.90	.45		
Heavy and highway	8.00	.50	.35		
Electricians: Bldg., hvy. & hwy.					
Little Compton & Tiverton	9.40	4%	1%+.80	4%	½%
Remainder of County	9.70	.48	1%+1.15		.02
Painters:					
Little Compton, Adamsville, Sakonnet, & Tiverton:					
Brush	9.76	.72	1.05		.04
Structural steel & spray	11.88	.72	1.05		.04
Spray (other than steel) and sandblasting	10.76	.72	1.05		.04
Repaint and alterations	8.61	.72	1.05		.04
Sprinkler fitters	10.56	.60	.90		.01
Plasterers	8.70	.90	.45		

DECISION NO. RI76-2039- Mod #3
(41 FR 11781- March 19, 1976)
Washington County, Rhode Island

Change:					
Cement masons: Building					
Exeter, Narragansett, N.Kingstown, Could	9.50	.90	.45		
Cement masons: Heavy & highway	8.00	.50	.35		
Plasterers: Exeter, Narragansett, N.Kingston	8.70	.90	.45		
Sprinkler fitters	10.56	.60	.90		.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TN76-1071 - Mod. #2					
(41 FR 23927 - June 11, 1976)					
Hamilton County, Tennessee					
CHANGE:					
Carpenters:					
Carpenters, soft floor layers	$ 8.18	.40	.35		.03
Piledrivermen	8.305	.40	.35		.03
Millwrights	8.63	.40	.35		.03
Elevator constructors	9.095	.545	.35	4%+a+b	.02
Elevator constructors' helpers	70%JR	.545	.35	4%+a+b	.02
Elevator constructors' helpers (prob.)	50%JR				
Lathers	8.35				.01
Painters:					
Commercial	7.50		.25		
Industrial	7.75		.25		
Sandblasting	8.00		.25		
DECISION #TN76-1081 - Mod. #1					
(41 FR 33178 - August 6, 1976)					
Knox County, Tennessee					
CHANGE:					
Bricklayers and stonemasons	$ 9.45				
Cement masons	7.37				
Electricians and Line Construction:					
Electricians & linemen	8.45	.40	1%+.20		.5%
Cable splicers	8.85	.40	1%+.20		.5%
Marble masons	9.45				
Millwrights	8.57		.35		
Painters:					
Commercial	7.70		.35		.03
Industrial	8.05		.35		.03
Terrazzo workers & tile setters	9.45				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4115 - Mod. #2					
(41 FR 29652 - July 16, 1976)					
Gregg County, Texas					
Change:					
Bricklayers	$ 8.60		.35		.05
DECISION #TX76-4128 - Mod. #3					
(41 FR 30566 - July 23, 1976)					
Wichita County, Texas					
Change:					
Plumbers & pipefitters:					
Zone 1	9.15	.35	.55		.02
Zone 2	9.65	.35	.55		.02
Zone 3	9.95	.35	.55		.02
Zone 4	10.25	.35	.55		.02
Zone 5	10.55	.35	.55		.02
DECISION #TX76-4140 - Mod. #1					
(41 FR 33184 - August 6, 1976)					
Bexar County, Texas					
Change:					
Lathers	9.26				.01
Plasterers	9.26				.01
DECISION #TX76-4151 - Mod. #1					
(41 FR 42149 - September 24, 1976)					
Galveston & Harris Cos., Texas					
Change:					
Sheet metal workers:					
Harris County	9.80	.275	.525	.32	.06

MODIFICATION P. 37

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4152 - Mod. #1 (41 FR 42152 - September 24, 1976) Travis County, Texas					
Change:					
Marble setters	$ 7.95				
Terrazzo workers	7.95				
Tile setters	7.95				

SUPERSEDEAS DECISION

STATES: Alabama, Arkansas, Florida(west of the Aucilla River), Kentucky, Louisiana, Mississippi, Missouri, Tennessee and Texas

COUNTIES: Gulf of Mexico Area

DECISION NUMBER: AL76-5090

DATE: Date of Publication

Supersedes Decision AL76-5028 dated April 2, 1976 in 41 FR 14284

DESCRIPTION OF WORK: Dredging along the Gulf Coast area including the Mississippi River and tributaries to the Ohio River.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Derrick Operator	$4.26				
Dozer Operator	4.15				
Marsh Buggy Dragline Operator	5.50				
Marsh Buggy Dragline Oiler	3.25				
Hydraulic Dredging:					
First Cook	3.40				
Second Cook	3.20				
Cook Helper-Mess Boy	2.50				
Janitor-Cabin Boy	2.52				
Handyman	3.50				
Dredges Under 16":					
Leverman	4.00				
Dredge Tender Operator	3.925				
2nd Assistant Engineer	3.30				
Deckhand	3.00				
Oiler	3.00				
Welder	3.80				
Dredges 16" and Over:					
Leverman	4.85				
Dredge Tender Over 250 h. p.	4.58				
Dredge Tender Under 250 h. p.	4.04				
1st Assistant Engineer	4.94				
2nd Assistant Engineer	4.10				
3rd Assistant Engineer	3.80				
Deckhand	3.00				
Shoreman	3.00				
Truck Driver	3.12				
Oiler	3.30				
Welder	4.35				
Firemen	3.48				
Bucket Dredging:					
Leverman	4.50				
Oiler	3.00				
Handyman-Laborers	3.00				
Deckhand	2.81				
Cook	2.95				

SUPERSEDEAS DECISION

STATE: Alabama COUNTIES: Jefferson & Shelby
DECISION NUMBER: AL76-1117 DATE: Date of Publication
Supersedes Decision No.: AL76-1049 dated April 16, 1976 in 41-FR-16319
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	Education and/or Appr. Tr.
Asbestos workers	9.41	.40	.30		.05
Boilermakers	8.80	.60	1.00		.02
Bricklayers: pointers; caulkers; stonemasons	8.75	.25	.25		.05
Carpenters:					
Carpenters, soft floor layers	7.75	.40	.25		.06
Millwrights	9.15				.06
Piledrivermen	7.95	.40	.25		.06
Cement masons	7.33	.50			
Electricians:					
Electricians	9.60	.30	1%+.40		½%
Cable splicers	9.85	.30	1%+.40		½%
Elevator constructors	9.14	.495	.32	4%+a+b	.02
Elevator constructors' helpers	6.40	.495	.32	4%+a+b	.02
Elevator constructors' helpers (Prob.)	4.905				
Glaziers	7.73	.40	.40		.01
Ironworkers	8.50	.60	.815		.04
Lathers	6.90		.01		.01
Linemen:					
Linemen	8.38	.35	1%		½%
Groundmen under one year	3.97	.35	1%		½%
Groundmen one year and over	4.69	.35	1%		½%
Hole and ditch digging equipment, tractor with winch and derrick, truck with winch and derrick	7.12	.35	1%		½%
Tractor with towing machine truck with winch only	5.87	.35	1%		½%
Truck without winch	5.03	.35	1%		½%
Marble setters	8.20		.40		
Painters:					
Brush	7.80		.50		
Spray; Structural steel	8.30		.50		
Paperhangers	7.95		.50		
Plasterers	7.47	.50			
Plumbers; Pipefitters	10.25	.40	.65		.07
Roofers	7.50		.20		.10
Sheet metal workers	9.75	.65	.70		.05
Sprinkler fitters	10.10	.60	.90		.08
Terrazzo workers; Tile setters	8.20		.40		
Tile, Marble terrazzo helpers	5.95				

AL76-1117 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck Drivers:					
Up to but not including 1½ tons	5.75	.20			
1½ to but not including 3 tons	5.95	.20			
3 tons but not including 5 tons	6.20	.20			
5 tons and over including special equipment	6.35	.20			
Heavy Duty - off the road trucks	6.45	.20			
Welders, riggers, riveters - receive rate prescribed for craft performing operation to which welders, riggers, and riveters are incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day, F-Christmas Day.

FOOTNOTES:
a. 6 paid holidays: A through F.

b. Employer contributes 1% 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.

AL76-1117 - (Cont'd)

BUILDING CONSTRUCTION

LABORERS:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	5.55	.20	.30		.03
GROUP B	5.50	.20	.30		.03
GROUP C	5.45	.20	.30		.03
GROUP D	5.40	.20	.30		.03
GROUP E	5.80	.20	.30		.03
GROUP F	6.25	.20	.30		.03
GROUP G	6.15	.20	.30		.03
GROUP H	6.20	.20	.30		.03
GROUP I	6.10	.20	.30		.03
GROUP J	5.95	.20	.30		.03

GROUP A
Air or electric tool operator and asphalt rakers

GROUP B
Vibrator operators, chain saw, ops. of mechanical equipment which replaces (wheelbarrows or buggies), power mowers, mortar mixers, pipe layers, conc. & clay and muckers

GROUP C
Plasterers' tenders and hod carriers

GROUP D
Mason tenders, building laborers and wagon drill operators' helpers

GROUP E
Burners on demolition, wagon drill operators and tunnel laborers

GROUP F
Powderman

GROUP G
Caisson-driller

GROUP H
Tunnel miner

GROUP I
Pneumatic concrete gun operator and nozzleman

GROUP J
Chuck tender

AL76-1117 - (Cont'd)

BUILDING CONSTRUCTION

POWER EQUIPMENT OPERATORS:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	8.14	.30	.20		.10
GROUP B	7.91	.30	.20		.10
GROUP C	7.14	.30	.20		.10
GROUP D	8.84	.30	.20		.10
GROUP E	8.43	.30	.20		.10
GROUP F	7.27	.30	.20		.10

GROUP A
Asphalt plant, boom tractor, bulldozer, cableways, core driller, compressors (2 or more), crane-derrick-dragline, dinky locomotive, dredges, fork lift, front end loader, gradall, heavy duty mechanic, hoist (1 drum or more), mixers, push tractor, scrapers, shovels, trenching machine (and all similar equipment), winch trucks, motor graders, concrete pump, piledriver, rotary drill

GROUP B
Air compressor (over 125), asphalt spreaders, blade graders (pull type), boat operator, conveyor (2 or more up to 4), crawler tractor, distributors, (bituminous surface), farm tractors, finishing machine, pumps over 4 inches, rollers, welding machine (4 or more)

GROUP C
Air compressor (125 & under), oilers-firemen, conveyor (1) tended by oiler), pumps (under 4 inches), welding machines (3 or under), mechanic helpers

GROUP D
ON STEEL ERECTION: Crane, dragline, derrick, hoist, piledriver, winch truck, fork lift, tower cranes, climbing cranes, cherry picker, mechanics, locomotives, tug boat

GROUP E
Tractors, welding machine, gas or diesel driven welding machine (4 or more), air compressors over 125 (2 or less), power generating units (gas or diesel)

GROUP F
Gas or diesel driven welding machine (3 or less), mechanic helper, air compressor 125 and under (2 or less), oiler, fireman, small boat

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Dupage, Grundy, Kane, Kendall, Lake, McHenry and Will

DECISION NUMBER: IL76-2123

DATE: Date of Publication

Supersedes Decision No. IL76-2009 dated February 6, 1976, in 41 FR 5534

DESCRIPTION OF WORK: Building Construction (including Residential Construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.51	.81	.72		.12
BOILERMAKERS	10.55	.65	1.00	5%	.03
BRICKLAYERS and Stonemasons:					
Dupage County:					
North of Butterfield Road; Argonne Vicinity (National Accl. Lab.) AEC Plant	10.66	.70	.75		.05
South of Butterfield Road from East to West	10.66	.70	.75		.05
Kane, Kendall and McHenry Cos.	10.80	.50	.60		
Lake County	10.66	.70	.75		.05
Will and Grundy Counties	11.11	.70	.35		
MARBLE, TILE and TERRAZZO WORKERS:					
Dupage, Lake and Will Counties					
Marble Setters	10.52	.50		.60	
Terrazzo Workers	8.95	.30	.30		
Tile Setters	10.30	.306	.325		
Tile Setters' Helpers	8.10	d2.45	d3.40		
CARPENTERS:					
Carpenters, Soft Floor Layers, Millwrights and Piledrivermen					
Dupage and Lake Counties	10.55	.78	.88		.06
Kane, Kendall and McHenry Cos.	10.68	.45	.68		
Will County:					
Building	10.73	.70	.85		
Residential	10.71	.70	.85		
Grundy County	11.325	.45	.53		.04
CEMENT MASONS:					
Dupage County	10.90	.68	.70		.06
Kane, Kendall and McHenry Cos.	11.20	.50	.60		
Lake County	10.75	.65	.90		.03
Will and Grundy Counties	10.22	.50	1.00		.05

DECISION NO. IL76-2123

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Dupage County	$11.50	3%	7%	8%	.5%
McHenry County and Northern half of Kane County	12.15	5%	7%		.5% of 1%
Kendall County and Southern half of Kane County	11.82	5%	7%		1/2%
Lake County	11.64	.50	1%+.45		.029
Will and Grundy Counties:					
Building	12.47	.50	1%+.50		.2%
Residential	9.30	.50	1%+.20		.2%
ELEVATOR CONSTRUCTORS:					
Dupage, Lake and Will Counties					
Constructors	11.91	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				
GLAZIERS	9.57	.26	.59		.01
IRONWORKERS:					
Kane County; Kendall (Northern ½ County, including Bristol and Yorkville County; McHenry (S. E. ¼ of County, including Huntlye) County; and the remainder of Dupage County	12.20	.65	.525		.08
Will and Grundy Counties; Dupage (Argonne) County; and southern half of Kendall County	9.85	2.50	.325		
N. W. ½ of McHenry County	11.865	.65	.375		.10
Lake County; McHenry (Heborn, Woodstock and East thereof) County	11.25	1.09	1.13		.09
LATHERS:					
Dupage and Lake Counties	9.81	.58	.445		.015
Kane County and eastern ½ of McHenry County	10.80	.40	.40		.01
Will and Grundy Counties	11.20		.65		
Western ½ of McHenry County	9.84	.40	.35		
LEADBURNERS	9.25	.35		c	.01
PAINTERS:					
Dupage; Kane; Kendall; McHenry Counties					
Brush, Spray and Taper	8.94	.50	.70		.06
Lake County:					
Brush, Paparhangers and Tapers	9.15	.575	.45		.013

DECISION NO. IL76-2123

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Will and Grundy Counties:					
Residential and Commercial	$9.59	.52	.45		.04
PLASTERERS:					
Dupage Coun ty	9.595	.70	.75		
Kane, Kendall and McHenry Cos.	10.40	.50	.40		
Lake County	10.035	.65	.90		.01
Will and Grundy Counties	9.60	.60	.81		.045
PLUMBERS; PIPEFITTERS and STEAM-FITTERS:					
Dupage County: (Agronne-AEC Plant)					
Plumbers	11.42	.70	.60		.10
Pipefitters	11.50	.70	.85		.02
Dupage County: (Remainder of Co.)					
Plumbers and Pipefitters:					
Wheaton and N. Dupage County	11.50	.50	.78		.05
Naperville and S. Dupage Co.	11.65	.40	.70		.05
Kane County:					
Plumbers; Steamfitters and Pipefitters:					
Elgin and Vicinity	11.12	.45	.60	.60	.05
Aurora and Vicinity	11.87	.44	.29	.25	.02
Kendall (Cities of Oswego and Plano) County	11.87	.44	.29	.25	.02
Kendall (City of Yorkville) County; and Grundy (W. of Rt. #47) County	11.33	.55	.45		.09
Lake and McHenry Counties:					
Plumbers	11.29	.67	.73		.15
Steamfitters and Pipefitters	11.50	.70	.85		.02
Will (City limits of Joliet) County; and Grundy (E. of Rt. #47) County:					
Plumbers and Pipefitters	11.50	.70	.80		.07
Remainder of Will County:					
Plumbers	11.42	.70	.60		.10
Pipefitters	11.50	.70	.85		.02
ROOFERS:					
Dupage and Lake Counties:					
Composition and Waterproof	11.00	.96	.80		.02
Slate and Tile	11.09	.96	.80		.02

DECISION NO. IL76-2123

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS: (Cont'd)					
Kane; Kendall; McHenry (Southern part including Cities of McHenry, Woodstock and Crystal Lake) County	$11.56	.60	.35		.02
Will and Grundy Counties	10.64	.81	.60		.10
Remainder of McHenry Counties	10.00	.25			
SPRINKLER FITTERS:					
Dupage County	11.10	.75	.90		.15
Lake County:					
Within 20 mile radius of Chicago City Hall	11.10	.75	.90		.15
Kane; Will; Grundy, McHenry, Kendall and Remainder of Lake County	11.40	.60	.90		.08
SHEET METAL WORKERS:					
Dupage County	10.85	.40	.45	.20	
Kane; Kendall and McHenry Cos.	11.10	.35	.25	.92	.06
Lake County	11.45	.50	.59	.25	.05
Will and Grundy Counties	11.72	.35	.65		.07
TRUCK DRIVERS:					
2-3 Axle Trucks	8.30	d20.00	d24.00		
4 Axle Trucks	8.45	d20.00	d24.00		
5 Axle Trucks	8.65	d20.00	d24.00		
6 Axle Trucks	8.85	d20.00	d24.00		
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)
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 regular hourly rate to vacation pay credit for employee who has worked in business more than 3 years. Employer contributes 2% of regular rate to vacation pay credit for employee who has worked in business less than 5 years.
b. Six Paid Holidays: A through F
c. Nine Paid Holidays: A through F plus Washington's Birthday, Good Friday and Christmas Eve, providing the 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. Per week Per employee

DECISION NO IL76-2123

ILL-4-LAB-1

LABORERS: Kane, Kendall & McHenry	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1 Laborers	$7.80	.57	1.10		
CLASS 2 Power Vibrator	7.90	.57	1.10		
CLASS 3 Mortar Men, Torchmen (On Demolition Only)	7.95	.57	1.10		
CLASS 4 Power Tampers	8.00	.57	1.10		
CLASS 5 Chain Saw Men, Swinging Stage & Boatswain Chairs, Cement Gun Nozzlemen, Hod Carriers, Plasterer Tenders, Tunnelmen, Tree Surgeons (Toppers)	8.05	.57	1.10		
CLASS 6 Tile Layers & Bottom Men	8.15	.57	1.10		
CLASS 7 Caisson Laborers & Dynamiters	8.30	.57	1.10		

DECISION NO IL76-2123

ILL-9-LAB-1-2-3

LABORERS: DUPAGE, GRUNDY, LAKE, & WILL	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1 Common Laborers, Plasterer Laborers, Pumps for DeWatering & other Unclassified Laborers	$7.80	.57	1.10		
CLASS 2 Cement Gun Laborers	7.875	.57	1.10		
CLASS 3 Scaffold Laborers & Chimney Laborers over 40'	7.90	.57	1.10		
CLASS 4 Windlass & Cement Gun Nozzle Laborers - Gunnite	7.95	.57	1.10		
CLASS 5 Stone Handlers & Derrickmen	8.00	.57	1.10		
CLASS 6 Jackhammermen	8.025	.57	1.10		
CLASS 7 Concrete Vibrator, Plumbers' Laborer & Chain Saw Operator	8.05	.57	1.10		
CLASS 8 Firebrick & Boiler Setters' Laborers	8.125	.57	1.10		
CLASS 9 Chimney Laborers on Firebrick, Caisson Diggers & Well Point System Men	8.15	.57	1.10		
CLASS 10 Boiler Setter Plastic Laborers	8.25	.57	1.10		
CLASS 11 Jackhammer on Firebrick Only	8.375	.57	1.10		

DECISION NO. IL76-2123

ILL-12-PEO-1

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$11.25	.65	.85	.40	.05
CLASS II	9.95	.65	.85	.40	.05
CLASS III	8.80	.65	.85	.40	.05
CLASS IV	7.55	.65	.85	.40	.05

POWER EQUIPMENT OPERATORS:

CLASS I: Asphalt plant, asphalt spreader, auto-grad, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson rigs, central redi-mix plant, combination backhoe front end-loader machine, compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2¼ yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, locomotives (all), mechanic, motor patrol, pile drivers & skid rig, post-hole digger, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), pumpcretes, squeeze cretes - screw types pumps, Gysum bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoopes - tractor drawn, slip form paver, straddle buggies, tournapull, tractor with boom & side boom, trenching machines

CLASS II: Boilers, bulldozers, broom all power propelled, concrete mixer (2 bag & over), conveyor portable, forklift truck greaser engineer, highlift shovels or front endloaders under 2¼ yd., hoists, automatic, hoists, all elevators, hoists, tugger single drum, rollers, all, steam generators, stone crushers, tractors, all, winch trucks with "A" frame

CLASS III: Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air compressor - large over 150, corbination - small equipment opr., generators under & over 50 KW, heaters, mechanical, pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), pumps, well points, welding machines (2 through 5), winches, 4 small electric drill winches

CLASS IV: Oilers

SUPERSEDEAS DECISION

STATE: Illinois — COUNTIES: Ford, Iroquois & Kankakee
DECISION NUMBER: IL76-2124 — DATE: Date of Publication
Supersedes Decision IL76-2010, dated February 6, 1976, in 41 FR 5537.
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	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.51	.81	.72		.12
BOILERMAKERS:					
Kankakee County	10.55	.65	1.00	5%	.03
Ford & Iroquois Counties	10.95	.65	.95		.03
BRICKLAYERS, STONEMASONS, MARBLE SETTERS, TERRAZZO WORKERS, TILE SETTERS, POINTERS, CAULKERS & CLEANERS:					
Kankakee County:					
Bricklayers, Stonemasons, Marble Setters, Terrazzo Workers, Tile Setters, Pointers, Caulkers & Cleaners, Cement Masons	10.00	.80	.75		
South of Rboerts in Ford County:					
Bricklayers & Stonemasons	10.62	.35			.03
MarBle-Tile & Terrazzo Workers	10.85				
Remainder of Frod County:					
Bricklayers & Stonemasons	10.00	.80	.75		
Marble Setters	9.30	.45	.55		.07
Iroqouis County:					
Bricklayers & Stonemasons	10.00	.80	.75		
Marble-Tile & Terrazzo Workers	10.16	.50	.60		.01
CARPENTERS:					
Ford County:					
Carpenters & Soft Floor Layers	10.315	.35	.80		.08
Millwrights & Piledrivermen	10.815	.35	.80		.08
Iroquois & Kankakee Counties:					
Carpenters, Millwrights, Soft Floor Layers & Piledrivermen	10.50	.50	.70		.01
CEMENT MASONS:					
Ford County	10.125	.30	.25		.025
Iroquois County	10.00	.80	.75		
ELECTRICIANS:					
Twps. of Fountain Creek, Love Joy & Praitie Green in Iroquois County	10.87	.40	1%+.30		.25%
Area S. of Roberts Twps in Ford County, Twps of ArtEsia, Pigeon Grove & Loda in Iroquois County	10.60	.40	1%+.30		.3%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (cont'd)					
Kankakee County & Remainder of Ford & Iroquois Counties	$9.65	.40	1%+.30	5%	3/8of1%
ELEVATOR CONSTRUCTORS:					
Kankakee County:					
Constructors	11.91	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				
GLAZIERS:					
Piper City & North therof in Ford County & Area East of Cabery in Kankakee County	9.65			.65	
Remainder of Kankakee County	9.57	.26	.59		.01
Remainder of Ford County	9.985	.45	.30		
IRONWORKERS:					
Ford County	10.05	.50	1.00		.08
Iroqouis & Kankakee Counties	10.85	.65	.65		.05
LATHERS:					
For County	10.14	.35	.20		.01
LEADBURNERS	9.25	.35		c	.01
PAINTERS					
Ford County:					
Brush & Roller	9.45	.45			.06
Paperhanging	9.95	.45			.06
Structural Steel	9.95	.45			.06
Iroquois & Kankakee Counties:					
Brush & Roller	8.80	.45	.40		
Spray	10.30	.45	.40		
PLASTERERS:					
Ford County	10.365	.35			.025
Iroquois & Kankakee Counties	9.80	.80	.75		
PLUMBERS & STEAMFITTERS:					
Ford County	9.75	.35	.70		.08
ROOFERS:					
Ford County	9.90	.35	.30		.02
Iroquois County	9.35				
Kankakee County:					
Roofers	11.10			3%	
Helpers	4.50			3%	

DECISION NO. IL76-2124

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS:					
Ford County	$ 10.60	.45	.35		.12
Iroquois & Kankakee Counties	10.80	.35	.65		.07
SPRINKLER FITTERS	11.40	.60	.90		.08
TRUCK DRIVERS:					
Kankakee County & Remainder of Iroquois County:					
2-3 Axle Trucks	8.15	d21.50	d22.00		
4-Axle Trucks	8.35	d21.50	d22.00		
5-Axle Trucks	8.55	d21.50	d22.00		
6-Axle TRucks	8.70	d21.50	d22.00		
Northern ½ of Ford County:					
2-3 Axle Trucks	8.30	d20.50	d24.00		
4-Axle Trucks	8.45	d20.00	d24.00		
5-Axle Trucks	8.65	d20.00	d24.00		
6-Axle Trucks	8.8	d20.00	d24.00		
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
b. Six paid holidays: A through F
c. Nine Paid holidays: A through F plus Washington's Birthday, Good Friday & Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday , & the regular scheduled work days immediately preceding and following the holiday.
d. Per week - Per Employee

DECISION NO. IL76-2124

ILL-46-LAB-1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LABORERS:					
Unskilled	$8.60	.40	.42		.035
Semi-skilled	8.80	.40	.42		.035
Skilled	9.00	.40	.42		.035

UNSKILLED: Common Laborer; carpenter tenders; tool cribmen firemen or salamander tenders; flagmen, gravel bo men; dumpmen & spotters; form handlers; material patchers; landscapers; unloading explosives; laying of sod; planting of trees; asphalt plant laborers; wrecking laborers; writer of scale tickest; fire shop laborers; fireproofing laborers; janitors; wrecking-dismantling buildings; wallmen & housemovers; driving of stakes; sringlines for all machinery

SEMI-SKILLED: Handling of materials treated with oil, creosote, asphalt or any foreign material, track laborers; cement handlers; chloride handlers; the unloading and laborers w/steel workers 7 rebars; concrete workers (wet); tunnel helpers in free air; batch dumpers; mason & plasterer tenders & material wheelers kettlemen & tarmen; tank cleaners; plastic installers; scaffold workers; motorized buggies or motorized unit used for wet concrete or handling of building materials laborers w/dewatering systems; all sewer workers plus depth; rod & chainmen with land surveyors; vibrator operators; mortar mixer operator; cement silica, clay, fly ash, lime & plasters; handlers (bulk or bag); cofferdam workers plus depth; (on concrete paving) placing, cutting & trying or reinforcing; deck hand; dredge hand & shore laborers; bankmen on floating plant; asphalt workers w/machine; asphalt raker; grade checker

SKILLED: Dynamite man or blasters; caisson workers plus depth; gunnite; nozzle men leadman on sewer work; welders; cutters; burners; torchmen; chain saw operator; jackhammer & drill operators; layout man; steel form setters (street & highway); air tamping hammerman; signal man on crane, concrete saw operator; screenman on asphalt pavers; laborers tending masons w/hot materials are used: multiple concrete duct-leadmen; curb asphalt machine operator; ready-mix scalemen; portable or temporary plant; laborers handling masterplate or similar materials; laser beam operator; coring machine operator

DECISION NO. IL76-2124

ILL-1-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
FORD & IROQUOIS COUNTIES					
CLASS I	$10.25	.40	.50		.05
CLASS II	10.20	.40	.50		.05
CLASS III	10.00	.40	.50		.05
CLASS IV	7.00	.40	.50		.05

POWER EQUIPMENT OPERATORS:

CLASS I: Master Mechanic

CLASS II: Utility Operator

CLASS III: Power cranes, Draglines, Electric overhead cranes, Shovels, Gradall, Mechanics, Repair and Maintenance of all equipment, Tractor highlift shovel, Forklifts, Tournamixer, 2 drums machine or 2 cage hoist, Cableways, Tower machines, Motor Patrol, Boom tractor, Boom or winch truck, Truck Crane, Tournapull, Tractor operating scoops, Bulldozer, Push Tractor, Finishing machine on Asphalt, Large rollers & rollers on asphalt, Gravel Macadam & Brick surface, Ross carrier or similar machine, Asphalt Plant Engineer or Pug Mill, Two (2) air compressors, Hetherington paver operator, Farm tractor with ½ yard bucket and/or backhoe attachment, Trench machines cutting over 24," Dredging equipment, Central mix plant engineer, concrete spreader, Air compressors 200 cu. ft. or over, Standard or Dinkey locomotives, Scoopmobiles, Euclid loader, Soil cement machine, Mixers 14S capacity or less, Trench Machine cutting 24" & under, Backfiller, Elevating machine, Power Blade, Asphalt Plant Engineer, Well drilling Machines, Paint Machine,Pipe Cleaning Machine, Pipe wraaping machine, Pipe Bending Machine, Apsco paver, Boring Machine, w/o winch, Head equipment, Greasers, Barber Green Loaders, Formless paver, Farm Tractor with less than half-yard bucket and other attachments except backhoe, Well Point System

CLASS IV: Power Sub-Grader, Bull Float, Form Grader, Finishing machine, Pavement breaker, Rock Crushers, One drum machine, air compressor less than 20 cu. ft. capacity, Concrete pump, Gunnite machine, Air Tuggers, Truck crane drivers, House Elevators when used for temporary heat, Small rollers on earth, Engine tenders, Fireman on pain pots, Fireman, Wagon Drill, Flexaplane, Conveyor, 2 to 4 Water Pumps, Siphon & Pulsometer, Switchman, Fireman on Asphalt plants, Distrbutor operator on trucks, Tampers, Power Broom, Post Hole Digger, Self Propelled Concrete Saw, Striping Machine (Motor Driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser

DECISION NO. IL76-2124

ILL-12-PEO-1

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
KANKAKEE COUNTY					
CLASS I	$11.25	.65	.85	.40	.05
CLASS II	9.95	.65	.85	.40	.05
CLASS III	8.80	.65	.85	.40	.05
CLASS IV	7.55	.65	.85	.40	.05

POWER EQUIPMENT OPERATORS:

CLASS I: Asphalt plant, asphalt spreader, auto-grad, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson rigs, central redi-mix plant, combination backhoe front end-loader machine, compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2½ yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, locomotives (all), mechanic, motor patrol, pile drivers & skid rig, post-hole digger, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), pumpcretes, squeeze cretes - screw types pumps, Gysum bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoopes - tractor drawn, slip form paver, straddle buggies, tournapull, tractor with boom & side boom, trenching machines

CLASS II: Boilers, bulldozers, broom all power propelled, concrete mixer (2 bag & over), conveyor portable, forklift truck greaser engineer, highlift shovels or front endloaders under 2½ yd., hoists, automatic, hoists, all elevators, hoists, tugger single drum, rollers, all, steam generators, stone crushers, tractors, all, winch trucks with "A" frame

CLASS III: Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air compressor - large over 150, corbination - small equipment opr., generators under & over 50 KW, heaters, mechanical, pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), pumps, well points, welding machines (2 through 5), winches, 4 small electric drill winches

CLASS IV: Oilers

DECISION NO IL76-2124

ILL-82-TD-1-2-3

TRUCK DRIVERS- S.E. CORNER OF IROQUOIS CO., & S. ½ OF FORD CO.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.60	.55	a14.00		
GROUP II	10.00	.55	a14.00		
GROUP III	10.20	.55	a14.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks haluing 16 ton or more, drivers on oil distributores, water pulls, mechanics & wroking foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Bureau, LaSalle, Livingston, Marshall, Putnam and Woodford

DECISION NUMBER: IL76-2125

DATE: Date of Publication

Supersedes Decision No. IL76-2011 dated February 6, 1976, in 41 FR 5541

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	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.51	.81	.72		.12
BOILERMAKERS	10.96	.65	.95		.03
BRICKLAYERS and STONEMASONS:					
LaSalle County					
Peru and Vicinity	9.00		.50		
Streator and Vicinity	9.50	.20	.50		
Ottawa andVicinity	10.25	.40	.50		
Woodford and Marshall Counties	10.41	.50	.60		.10
Bureau and Putnma Counties	10.10	.35	.25		
Livingston County	9.55	.35	.25		
CARPENTERS:					
LasSalle, Marshall, Bureau Cos. The Northern half of Putnam County and Northwestern corner of Livingston County Carpenters; Piledrivermen and Soft Floor Layers	10.53	.45	.50		.03
Millwrights	10.78	.45	.50		.03
Remainder of Livingston County					
Carpenters; Soft Floor Layers	10.10	.40	.40		.05
Milllrights and Piledrivermen	10.60	.40	.40		.05
Woodford County					
Carpenters and Soft Floor Layers	10.21	.40	.40		.05
Millwrights and Piledrivermen	10.71	.40	.40		.05
CEMENT MASONS:					
LaSalle, Bureau, Putnam Counties and the Northern part of Livingston County	10.50		.70		
Southern part of Livingston County and that portion East of Roanoke in Woodford County	10.63	.40			
Marshall County and the Remainder of Woodford County	9.90	.60	.60		.05
ELECTRICIANS:					
Northern half and Central Southern part of LasSalle County Walnut; Ohio, LaMoille, Clarion, Bureau, Dover, Berlin and Westville Townships, in Bureau County	12.47	.50	1%+.50		.2%

DECISION NO. IL76-2125

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Vicinity of LaSalle - S. W. part of County; Remainder of Putnam County; Arispe, Concrod, Fairfield, Gold, Greenville, Hall, Indiantown, Leepertown, Macon, Manilus, Milo, Mineral, Neponset, Princeton, Silby, Wheatland and Waynet Townships, in Bureau County	$11.05	.40	1%+.30		.25%
Area West of Bell Plain and Roberts Townships in Marshall County; Area West of but not including Linn, Kansas, Palestone, Roanoke, Cazenovia and Metamora Townships in Woodford County	10.77	.40	1%+.50		1%
Livingston County; Vicinity of Streator - S. E. part of County South of Eden in LaSalle County; Nagnolia Township in Putnam County; Area East of Cazenovia and Metamora Townships, including Linn, Clayton, Minak, Roanoke, Green and Panola Townships in Woodford County; Remainder of Marshall County	10.60	.40	1%+.30		.3%
El Paso, Kansas and Palestone Townships S. E. corner of Woodford County	10.45	.40	1%+.40		.002
IRONWORKERS:					
LaSalle, Bureau, Putnam and the Remainder of Marshall County	11.69	.50	.375		.02
Woodford County; and the S. W. corner of Marshall County	10.475	.50	.675		.025
Livingston County	10.05	.50	1.00		.08
LATHERS:					
LaSalle, Bureau, Putnam and N. E. half of Marshall County	8.00		.20		.01
S. W. half of Marshall County	10.27	.40	.40		.01

DECISION NO. IL76-2125

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Vicinity of Ottawa, Streator and Marseilles in LaSalle Co.					
Brush	$8.30	.45	.15		
Spray	9.30	.45	.15		
Putnam County and the Vicinity of LaSalle, Mendota, Oglesby, Utica and Peru in LaSalle Co.					
Brush	7.65	.45	.15		
Spray	8.65	.45	.15		
Woodrofd and Marshall Counties:					
Brush	9.65	.45	.30		.03
Spray	10.15	.45	.30		.03
Bureau County					
Brush and Roller	8.72	.45	.65		.12
Spray	8.97	.45	.65		.12
PLASTERERS:					
Vicinity of LaSalle and Peru in LaSalle County	9.00		.50		
Vicinity of Ottawa, Earlville, Seneca and Marseilles - LaSalle County	8.20				
Vicinity of Streator; LaSalle County and Northern part of Livingston County	10.50		.70		
Portion East of Roanoke in Woodford County and the Southern part of Livingston County	11.15				.01
Marshall County and the Remainder of Woodford County	10.05	.60	.60		.01
Putnam and Bureau Counties	10.10	.35	.25		
PLUMBERS and STEAMFITTERS:					
LaSalle, Putnam and Bureau Cos.; and North of Pontiac in Livingston County	11.33	.55	.45		.09
Marshall and Woodford Counties	11.06	.40	.90		.15
City of Pontiac and South thereof Livingston County	9.80	.45	.95		.15
Illinois State Prison (Pontiac) in Livingston County	11.65	.35	.70		.08

DECISION NO. IL76-2125

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
LaSalle, Bureau, Putnam, Livingston and N. E. half of Marshall County	$10.38		.30		
Woodford County and S. E. half of Marshall County	10.35	.45	.40		.025
SHEET METAL WORKERS:					
Woodford County	10.32	.50	.55		.08
LaSalle, Bureau, Marshall, Putnam and Southern part of Livingston County	7.95	.38	.35		
Northern portion of Livingston County	11.72	.35	.65		.07
SPRINKLER FITTERS	11.40	.60	.90		.08
TRUCK DRIVERS:					
Remainder of Woodford and Livingston Counties					
2-3 Axle Trucks	8.30	a20.00	a24.00		
4 Axle Trucks	8.45	a20.00	a24.00		
5 Axle Trucks	8.65	a20.00	a24.00		
6 Acle Trucks	8 85	a20.00	a24.00		
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE:
a. Per week per employee

DECISION NO. IL76-2125

ILL-50-LAB-1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Unskilled	$8.60	.40	.42		.035
Semi-Skilled	8.80	.40	.42		.035
Skilled	9.00	.40	.42		.035

CLASSIFICATIONS:

UNSKILLED: Common Laborer; Carpenter Tenders; Tool Cribmen; Fireman or Salamander Tenders; Flagmen; Gravel Box Men; Dumpmen andSpotters; Form Handlers; Material Handlers; Fencing Laborers; Cleaning Lumber; Pit Men; Material Checkers; Dispatchers; Landscapers; Unloading exp-osives; Laying of sod; Planting of trees; Asphalt Plant Laborers; Wrecking Laborers; Writer or scale tickets; Fire shop Laborers; Fireproofing Laborers; Janitors; Wrecking-dismantling buildings; Wallmen and Housemovers; Driving of Stakes; Stringlines for all Machinery.

SEMI-SKILLED: Handling of Materials treated with oil, creosote, asphalt or any foreign material, Track Laborers; Cement Handlers; Chloride Handlers; the unloading and Laborers w/steel workers and rebars; Concrete Workers (wet); Tunnel Helpers in free air; Batch Dumpers; Mason and Plasterer Tenders and material wheelers; Kettlemen and Tarmen; Tank Cleaners; Plastic Installers; Scaffold Workers; Motorized buggies or motorized unit used for wet concrete or handling of building materials; Laborers w/dewatering systems; All sewer workers plus depth; Rod and Chainmen with land surveyors; Vibrator Operators; Mortar Mixer Operator; Cement Silica, Clay, Fly Ash, Lime and Plasters; Handlers (bulk or bag); Cofferdam Workers plus depth; (on concrete paving); Placing, Cutting and trying or Reinforcing; Deck Hand; Dredge hand or Shore Laborers; Bankmen on floating plant; Asphalt Workers w/machine; Asphalt Raker; Grade Checker

SKILLED:Dymanite Man or Blasters; Caisson Workers plus depth; Gunnite Nozzle Men; Leadman on sewer work; Welders; Cutters; Burners; Torchmen; Chain Saw Operator; Jackhammer and Drill Operators; Layout man; Steel Form Setters (street and highway); Air Tamping Hammerman; Signalman on crane, Concrete Saw Operator; Screenman on Asphalt Pavers; Laborers tending Masons w/hot materials are used; Multiple Concrete Duct-Leadmen; Lutemen; Curb Asphalt Machine Operator; Ready-mix Scalemen; Portable or temporary plant; Laborers handling master plate or similar materials; Laser Beam Operator; Coring Machine Operator

DECISION NO. IL7-62125

ILL-12-PEO-1

POWER EQUIPMENT OPERATORS: Bureau(E. of Rt. #26); LaSalle; Livingston; Putnam(E. of Illinois River	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$11.25	.65	.85	.40	.05
CLASS II	9.95	.65	.85	.40	.05
CLASS III	8.80	.65	.85	.40	.05
CLASS IV	7.55	.65	.85	.40	.05

POWER EQUIPMENT OPERATORS:

CLASS I: Asphalt plant, asphalt spreader, auto-grad, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson rigs, central redi-mix plant, combination backhoe front end-loader machine, compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2¼ yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, locomotives (all), mechanic, motor patrol, pile drivers & skid rig, post-hole digger, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), pumpcretes, squeeze cretes - screw types pumps, Gysum bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoopes - tractor drawn, slip form paver, straddle buggies, tournapull, tractor with boom & side boom, trenching machines

CLASS II: Boilers, bulldozers, broom all power propelled, concrete mixer (2 bag & over), conveyor portable, forklift truck greaser engineer, highlift shovels or front endloaders under 2¼ yd., hoists, automatic, hoists, all elevators, hoists, tugger single drum, rollers, all, steam generators, stone crushers, tractors, all, winch trucks with "A" frame

CLASS III: Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air compressor - large over 150, combination - small equipment opr., generators under & over 50 KW, heaters, mechanical, pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), pumps, well points, welding machines (2 through 5), winches, 4 small electric drill winches

CLASS IV: Oilers

DECISION NO. IL76-2125

ILL-6-PEO-1

POWER EQUIPMENT OPERATORS: Bureau(W. of Rt. #26); Marshall; Putnam(W. of Illinois River); & Woodford Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	App. Tr.
Group 1	$10.57	.45	.55		.05
Group 2	10.37	.45	.55		.05
Group 3	9.995	.45	.55		.05
Group 4	9.72	.45	.55		.05
Group 5	9.11	.45	.55		.05

POWER EQUIPMENT OPERATORS:

Group 1: Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27E-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, koehring scoopers, draglines, backhoe, hoptoes-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes, caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

Group 2: Trench machine, pumpcrete-belt crete-squeeze cretes-screw-type pumps and gypsum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit, earth movers, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine, euclid loader, forklifts, formless finishing machine, jeeps w/ditching machine, or other attachments, tuneluger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), (require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I. and similar types (require oiler) straw blower, hydro seeder and F.W.D. and similar types

DECISION NO. IL76-2125

POWER EQUIPMENT OPERATORS (Cont'd)

Group 3: Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barber greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

Group 4: Air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air without attachments, curb machines, truck crane oilers, and truck type hoptoe oilers

Group 5: Herman Nelson heater, Dravo, Warner, Silent glo, and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spreed, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (standard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO IL76-2125 ILL-82-TD-1-2-3

TRUCK DRIVERS: Bureau, LaSalle, Marshall & Putnam Cos., Woodford Co: (NW Corner)Livingston Co:(SW Corner)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.60	.55	a14.00		
GROUP II	10.00	.55	a14.00		
GROUP III	10.20	.55	a14.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks haluing 16 ton or more, drivers on oil distributores, water pulls, mechanics & wroking foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Cass, Morgan and Scott

DECISION NUMBER: IL76-2129

DATE: Date of Publication

Supersedes Decision No. IL76-2063 dated May 21, 1976, in 41 FR 21023

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	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 11.38	.45	.62		
BOILERMAKERS	10.90	.65	1.20		.03
BRICKLAYERS:					
Morgan and Scott Counties:					
Bricklayers, Stonemasons, Plasterers, Marble-Tile and Terrazzo Workers, Cement Block Layers-Pointers-Caulkers and Cleaners	9.40	.35	.52		.02
Cass County:					
Bricklayers	9.40	.35	.52		.02
CARPENTERS:					
Carpenters and Soft Floor Layers	8.95	.45	.25		.02
Piledrivermen	9.20	.45	.25		.02
CEMENT MASONS and PLASTERERS:					
Morgan and Scott Counties:					
Cement Masons	9.155	.35	.52		.02
Cass County:					
Cement Masons	9.98	.35	.35		.02
Plasterers	8.85	.35	.30		.02
ELECTRICIANS	9.87	.40	1%+.30		2%
ELEVATOR CONSTRUCTORS:					
Morgan and Scott Counties:					
Constructors	10.30	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				
GLAZIERS:					
Morgan and Scott Counties	8.80	.25	.15		
IRONWORKERS	10.35	.55	.75		.05
LABORERS:					
Unskilled	8.14	.30	.30		.035
Semi-Skilled	8.34	.30	.30		.035
Skilled	8.49	.30	.30		.035
LATHERS	9.90				
LEADBURNERS	9.25	.35		c	.01
PAINTERS:					
Brush and Roller	8.90	.45	.15		
Spray	9.40	.45	.15		
PLUMBERS and PIPEFITTERS	10.91	.35	.55		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Composition	11.63				
Slate-Tile-Precast Slab	11.88				
SHEET METAL WORKERS	10.37	3%+.40	.50		.05
SPRINKLER FITTERS	11.40	.60	.90		.08
WELDER: Receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Six Paid Holidays

b. Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee who has worked in the business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employees who has worked in the business less than 5 years.

c. Nine Paid 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 regular scehduled work days immediately preceding and following the Holiday.

DECISION NO. IL76-2129

ILL-5-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$ 9.75	.30	.40		.05
CLASS II	8.775	.30	.40		.05
CLASS III	8.15	.30	.40		.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders eingeers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozers, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot foller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS. WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

DECISION NO IL76-2129

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.60	.55	a14.00		
GROUP II	10.00	.55	a14.00		
GROUP III	10.20	.55	a14.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks haluing 16 ton or more, drivers on oil distributores, water pulls, mechanics & wroking foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

STATE: ILlinois COUNTY: McLean
DECISION NUMBER: IL76-2127 DATE: Date of Publication
Supersedes Decision No. IL76-2067 dated May 21, 1976, in 41 FR 21974
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	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.51	.81	.72		.12
BOILERMAKERS	10.95	.65	.95		.03
BRICKLAYERS:					
Bricklayers, Stonemasons, Marble, Tile, Terrazzo Workers	10.10	.50	.50		
CARPENTERS:					
Carpenters and Soft Floor Layers	9.36	.40	.40		.05
Millwrights and Piledrivermen	9.86	1.40	.40		.05
CEMENT MASONS:	10.63	.40			
ELECTRICIANS:					
Cropsey, Anchor, Cheney Grove and Bell Flower Townships	10.60	.40	1%+.30		.3%
Remainder of County	10.45	.40	1%+.40		.002%
ELEVATOR CONSTRUCTORS:					
Constructors	10.30	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				
GLAZIERS	9.985	.45	.30		
IRONWORKERS:					
Eastern Part of County	10.05	.50	1.00		.08
Western Part of County	10.475	.50	.675		.025
LABORERS:					
Unskilled	8.60	.40	.42		.035
Semi-Skilled	8.80	.40	.42		.035
Skilled	9.00	.40	.42		.035
LATHERS	10.27	.40	.40		.01
LEADBURNERS	9.25	.35		c	.01
PAINTERS:					
Brush	9.45	.45			.06
Structural Steel and Spray	9.95	.45			.06
PLASTERERS	11.15				.01
PLUMBERS and STEAMFITTERS	9.80	.45	.95		.15
ROOFERS:					
Composition, slate, tile and Asbestos Damp and Waterproof	9.75		.15		
SHEET METAL WORKERS	10.32	.50	.75		.08
SPRINKLER FITTERS	11.40	.60	.90		.08
WELDERS; Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. IL76-2127

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Six Paid Holidays: A through F

b. Employer contributes 4% of Regular Hourly Rate ot Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 2% of Regulat Hourly Rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

c. Nine Paid 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 regular scheduled work days immediately preceding and following the Holiday.

DECISION NO. IL76-2127

ILL-6-PEO-1

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Group 1	$10.57	.45	.55		.05
Group 2	10.37	.45	.55		.05
Group 3	9.995	.45	.55		.05
Group 4	9.72	.45	.55		.05
Group 5	9.11	.45	.55		.05

POWER EQUIPMENT OPERATORS:

Group 1: Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27E-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, koehring scoopers, draglines, backhoe, hoptoes-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes, caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

Group 2: Trench machine, pumpcrete-belt crete-squeeze cretes-screw-type pumps and gypsum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit, earth movers, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine, euclid loader, forklifts, formless finishing machine, jeeps w/ditching machine, or other attachments, tuneluger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), (require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I. and similar types (require oiler) straw blower, hydro seeder and F.W.D. and similar types

DECISION NO. IL76-2127

POWER EQUIPMENT OPERATORS (Cont'd)

Group 3: Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barber greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

Group 4: Air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air without attachments, curb machines, truck crane oilers, and truck type hoptoe oilers

Group 5: Herman Nelson heater, Dravo, Warner, Silent glo, and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spreed, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (standard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO IL76-2127

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.60	.55	a14.00		
GROUP II	10.00	.55	a14.00		
GROUP III	10.20	.55	a14.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks haluing 16 ton or more, drivers on oil distributores, water pulls, mechanics & wroking foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Logan, Mason, and Menard

DECISION NUMBER: IL76-2126

DATE: Date of Publication

Supersedes Decision No. IL76-2072 dated June 4, 1976, in 41 FR 22715

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	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.38	.45	.62		
BOILERMAKERS:					
Menard County	10.90	.65	1.20		.03
Logan and Mason	10.95	.65	.95		.03
BRICKLAYERS:					
Logan and Mason Counties					
Bricklayers, Stonemason, Cement Blocklayers, Caulkers, Pointers, Cleaners and Plasterers	10.35				
Marble-Tile and Terrazzo Workers	10.10				
Marble-Tile Helpers	9.35				
Menard County					
Bricklayers, Stonemasons, Marble-Tile and Terrazzo Workers, Pointers, Caulkers and Cleaners	9.45	.50	.75		.02
Plasterers	8.85	.35	.30		.02
Marble and Tile Helpers	9.35				
CARPENTERS:					
Logan County					
Carpenters and Soft Floor Layers	9.65	.45	.35		.05
Millwrights and Piledrivermen	10.15	.45	.35		.05
Menard County					
Carpenters and Soft Floor Layers	10.10	.45	.45		.06
Millwrights and Piledrivermen	10.60	.45	.45		.06
Mason County					
Carpenters and Soft Floor Layers	10.21	.40	.40		.05
Millwrights and Piledrivermen	10.71	.40	.40		.05
CEMENT MASONS:					
Logan County	9.90				
Menard County	9.98	.35	.35		.02
Mason County	9.90	.60	.60		.05

DECISION NO. IL76-2126

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Logan and Menard Counties; the Townsips of Bath, Crane Creek, Kilbourne, Lynchburg, Mason City and Salt Creek in Mason County	$9.87	.40	1%+.30		.2%
Remainder of Mason County	10.77	.40	1%+.50		1%
GLAZIERS	8.80	.25	.15		
IRONWORKERS	10.35	.55	.75		.05
LABORERS:					
Logan County and Northern half of Menard County					
Unskilled	8.45	.45	.35		.035
Semi-Skilled	8.65	.45	.35		.035
Skilled	8.80	.45	.35		.035
Southern half of Menard County					
Unskilled	9.05	.35	.35		.035
Semi-killed	9.25	.35	.35		.035
Skilled	9.40	.35	.35		.035
Mason County:					
Unskilled	8.14	.30	.30		.035
Semi-Skilled	8.34	.30	.30		.035
Skilled	8.49	.30	.30		.035
LATHERS	9.90				
PAINTERS:					
Logan and Menard Counties					
Brush and Roller	8.90	.45	.15		
Spray	9.40	.45	.15		
Mason County					
Brush	9.65	.45	.30		.03
Spray	10.15	.45	.30		.03
PLUMBERS and PIPEFITTERS	10.91	.35	.55		
ROOFERS:					
Composition	11.63				
Slate, Tile, Precast Slab	11.88				
SHEET METAL WORKERS	10.37	3%+.40	.50		.05
SPRINKLER FITTERS	11.40	.60	.90		.08
WELDERS: Receive rate prescrived for craft performing operation to which welding is incidental.					

DECISION NO. IL76-2126

ILL-5-PEO-1-2-3

POWER EQUIPMENT OPERATORS: LOGAN & MENARD COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$ 9.75	.30	.40		.05
CLASS II	8.775	.30	.40		.05
CLASS III	8.15	.30	.40		.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders eingeers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozers, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot foller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS. WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR

DECISION NO. IL76-2126

ILL-6-PEO-1

POWER EQUIPMENT OPERATORS MASON COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Group 1	$10.57	.45	.55		.05
Group 2	10.37	.45	.55		.05
Group 3	9.995	.45	.55		.05
Group 4	9.72	.45	.55		.05
Group 5	9.11	.45	.55		.05

POWER EQUIPMENT OPERATORS:

Group 1: Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27E-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, koehring scoopers, draglines, backhoe, hoptoes-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes, caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

Group 2: Trench machine, pumpcrete-belt crete-squeeze cretes-screw-type pumps and gypsum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit, earth movers, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine, euclid loader, forklifts, formless finishing machine, jeeps w/ditching machine, or other attachments, tunneluger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), (require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I. and similar types (require oiler) straw blower, hydro seeder and F.W.D. and similar types

DECISION NO. IL76-2126

POWER EQUIPMENT OPERATORS (Cont'd)

Group 3: Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barber greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

Group 4: Air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air without attachments, curb machines, truck crane oilers, and truck type hoptoe oilers

Group 5: Herman Nelson heater, Dravo, Warner, Silent glo, and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spread, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (standard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO IL76-2126

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.60	.55	a14.00		
GROUP II	10.00	.55	a14.00		
GROUP III	10.20	.55	a14.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks haluing 16 ton or more, drivers on oil distributores, water pulls, mechanics & wroking foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

STATE: Kentucky COUNTY: *See below
DECISION NUMBER: KY76-1114 DATE: Date of Publication
Supersedes Decision No.: KY-75-1095 dated September 19, 1975 in 40 FR-43459
DESCRIPTION OF WORK: Heavy and Highway Construction

*Counties: Anderson, Bath, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Carroll, Carter, Clark, Elliott, Fayette, Fleming, Franklin, Gallatin, Grayson, Grant, Greenup, Hardin, Harrison, Henry, Jefferson, Jessamine, Johnson, Larue, Lawrence, Lewis, Madison, Marion, Mason, Meade, Mercer, Montgomery, Morgan, Nelson, Nicholas, Oldham, Owens, Robertson, Rowan, Scott, Shelby, Spencer, Trimble, Washington and Woodford

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY & HIGHWAY CONSTRUCTION					
Carpenters	8.01	.30	.30		
Cement masons	9.28	.60	.30		
Electricians:					
Linemen (outside)	11.60	.50	1%+.40		¼ of 1%
Cable splicers (outisde)	11.60	.50	1%+.40		¼ of 1%
Groundmen (outside)	7.19	.50	1%+.40		¼ of 1%
Ironworkers:					
Structural, ornamental, & reinforcing	10.50	.75	.95		.05
Painters:					
Brush and roller	8.22	.30	.20		
Sandblasting	8.67	.30	.20		
Spray	8.57	.30	.20		
Painters, bridge over navigable water					
Brush and roller	10.22	.30	.20		
Sandblasting	10.67	.30	.20		
Spray	10.57	.30	.20		
Piledrivermen	8.26	.30	.30		
Plumbers	11.42	.60	.75		.10

Welders - Rate for craft.

KY76-1114 - (Cont'd)

LABORERS: HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	6.79	.35	.35		
GROUP 2	7.04	.35	.35		
GROUP 3	7.09	.35	.35		
GROUP 4	7.69	.35	.35		

Group 1 - Laborers: Asphalt plant laborers, concrete laborers, asphalt laborers, storm and sanitary sewer laborers, carpenter tenders, cement mason tenders mesh handlers and placers, landscaping and seeding, planters and tree trimmers, sign, guard rail and fence installers, grade checkers, ageing and curing of concrete, truck spotters and dumpers, flagmen, riprap and grouters, dredging laborers, right-of-way laborers, wrecking and demolition laborers, drill helpers, and all hand digging and hand back filling, batch truck dumper

Group 2 - Wagon drill, jackhammers, paving breakers, chain saw, concrete saw, paving joint machine, vibrator operator, power driven Georgia buggy or wheelbarrow, sandblaster and concrete chippers, green concrete cutting, brickmason tenders and mortar mixers, pipe layers, joint maker, batter board man (sanitary and storm sewer), dry cement handlers, concrete rubbers, walk-behind tamper machine, surface grinderman, hand operated grouter and grinder machine, deckhand scow man, burner and welder, walk behind trenching machine

Group 3 - Powderman and blasters, side rail setters including metal rail paved ditches, tunnel laborers (free air), gunnite operators and mixers man, gunnite nozzleman, asphalt luteman and rakeman air tract driller (all types), grout pump operator

Group 4 - Tunnel blaster, tunnel muckers (free air), miners and drillers (free air), caisson workers (free air)

KY76-1114 - (Cont'd)

HEAVY CONSTRUCTION

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	9.65	.35	.35		.05
CLASS B	7.51	.35	.35		.05
CLASS C	6.89	.35	.35		.05

CLASS A
Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator, (regardless of ownership when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, orangepeel bucket, piledriver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-Frame winch truck, concrete paver, gradeall, hoist (two or more drums), hyster, pumpcrete, ross carrier, side boom, tail boom, rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader.

CLASS B
All air compressors (over 900 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull bloat, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, whirley oiler, tractair and road widening trencher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or buck hoist), power sweeper (riding type), core drill and caisson drill helper (truck mounted).

CLASS C
Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand steerman, hydraulic post driver, core drill and caisson drill helper (track or skid mounted).

KY76-1114 - (Cont'd)

HIGHWAY CONSTRUCTION

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	8.45	.35	.35		.05
CLASS B	7.00	.35	.35		.05
CLASS C	6.41	.35	.35		.05

Class A
Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, elevator (regardless of ownership when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, piledriver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, highlift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-Frame winch truck, concrete paver, gradeall, hoist (two or more drums), hyster, pumpcrete, ross carrier, sideboom, tailboom, rotary drill (5" and over), mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French German and other types), hydrocranes, backfiller, gurries, subgrader, and dredge engineer.

Class B
All air compressors (600 cu. ft. per min, or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 hp and over), bull float, finish machine, outboard motor boat, electric vibrator compactor/ self-propelled compactor, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5), throttlevalve man tugger, well points, flexplane, firemen, and hoist (one drum).

Class C
Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 hp), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

KY76-1114 - (Cont'd)

HEAVY & HIGHWAY CONSTRUCTION TRUCK DRIVERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	6.96	a	b		
GROUP II	7.07	a	b		
GROUP III	7.25	a	b		
GROUP IV	7.28	a	b		
GROUP V	7.35	a	b		

GROUP I: Truck helper and warehousemen

GROUP II: Driver, 3 tons and under, greaser, tire changer and mechanic helper

GROUP III: Truck mechanic, driver, over 3 tons, distributors, dump truck and tandem axle, semi-Trailer or pole trailer when used to pull building material or equipment

GROUP IV: Driver on mixer trucks (all types)

GROUP V: Driver, euclid and other heavy earth-moving equipment and low boy, fork lift truck when used to transport building materials, pavement breakers, winch truck and A-Frame truck when used in transporting materials

FOOTNOTES:

a. $14.50 per week for each employee who has been employed a minimum of twenty (20) work days within any ninety (90) consective day period for that employer.

b. $16.00 per week for each employee who has been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer.

SUPERSEDEAS DECISION

STATE: Nebraska
DECISION NO.: NE76-4167
COUNTY: Lancaster
DATE: Date of Publication
Supersedes Decision No.: NE76-4205 dated June 11, 1976, in 41 FR 23903
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	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.91	.41	.51	4½%	.03
BOILEMAKERS	8.90	.70	1.00		.02
BRICKLAYERS: Stonemasons	8.875	.45	.30		
CARPENTERS:					
Carpenters	7.75	.45	.30		
Piledrivermen	8.00	.45	.30		
CEMENT MASONS:					
Cement Masons	7.725	.45	.30		
Swing Stage	7.975	.45	.30		
ELECTRICIANS:					
Electricians - Ceble Splicers' Zone Definition					
Electricians-Ceble Splicers from the main Post Office in Lincoln, Nebraska:					
Zone A	10.31	.42	1%		.04
Zone B	10.61	.42	1%		.04
Zone C	10.91	.42	1%		.04
Zone D	11.31	.42	1%		.04
Cable Splicers:					
Zone A	10.56	.42	1%		.04
Zone B	10.86	.42	1%		.04
Zone C	11.16	.42	1%		.04
Zone D	11.56	.42	1%		.04
ELEVATOR CONSTRUCTORS	10.41	.495	.32	3%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70% JR	.495	.32	3%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50% JR				
GLAZIERS	8.45	.40	.35		.01
IRONWORKERS	8.43	.50	.40	.70	
LABORERS:					
Common Laborers	6.465	.45	.30		
Machine and air tool operators;					
Mason Tenders	6.615	.45	.30		
Plasterers Tenders	6.69	.45	.30		
LATHERS	7.80	.50	1.00		.01
MARBLE MASONS	8.10				

DECISION NO. NE76-4167

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush	$6.775	.30	.20		
Spray, Steel, Swing Stage	7.275	.30	.20		
Paperhangers, Taper	7.025	.30	.20		
PLASTERERS	8.255	.45			
PLUMBERS: Pipefitters	9.11	.58	.60		.10
ROOFERS:					
Composition	7.45		.10		
Slate and Tile	7.85		.10		
SHEET METAL WORKERS	9.02	.35	.20		
SOFT FLOOR LAYERS	8.00				.03
SPRINKLER FITTERS	10.55	.50	.80		.08
TERRAZZO WORKERS & TILE SETTERS	8.10		.25		
TRUCK DRIVERS:					
Single Axle	5.825	.20	.25		
Tandem Axle	5.95	.20	.25		
Trailers and Lowboys	6.075	.20	.25		
Limber Carriers	6.25	.20	.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. NE76-4167

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LINE CONSTRUCTION:					
Linemen	$ 8.86	.35	1%		1/2%
Cable Splicers	9.26	.35	1%		1/2%
Truck Driver	6.42	.35	1%		1/2%
Equipment Operator	8.33	.35	1%		1/2%
GROUNDMEN:					
(Inexperienced) 1st 6 months	3.01	.35	1%		1/2%
(Inexperienced) 2nd 6 months	4.40	.35	1%		1/2%
Thereafter	5.81	.35	1%		1/2%
POWER EQUIPMENT OPERATORS:					
Group 1	6.575	.45	.30		
Group 2	6.70	.45	.30		
Group 3	7.25	.45	.30		
Group 4	7.425	.45	.30		
Group 5	7.05	.45	.30		
Group 6	7.775	.45	.30		
Group 7	7.70	.45	.30		
Group 8	7.75	.45	.30		
Group 9	7.85	.45	.30		
Group 10	8.10	.45	.30		

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATOR'S CLASSIFICATION DEFINITION

GROUP 1: Firemen 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; winch 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 NE76-4167

SITE PREPARATION, EXCAVATING AND INCIDENTAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Carpenter	$5.25				
Carpenter helper	4.00				
Cement finisher	4.80				
Concrete saw operator	4.60				
Form setter (road)	4.55				
Form setter (structures)	3.75				
Laborer	3.45				
Manhole builder	4.25				
Painter	3.60				
Piledriver leadsman	3.60				
POWER EQUIPMENT OPERATORS:					
All purpose spreader	4.10				
Asphalt distributor	4.00				
Asphalt distributor helper	3.75				
Asphalt heaterman	3.80				
Asphalt paving machine	4.75				
Asphalt paving machine screedman	4.25				
Stationary Pl. (base of stabilization)	4.60				
Stationary Pl. (asphalt or concrete)	4.90				
Beginner Operator	4.25				
Bulldozer:					
Less than 115 drawbar H.P.	4.65				
115 drawbar H.P. and over	5.25				
Cement handler	3.50				
Clamshell, dragline, backhoe, crane, pile driver or shovel	5.35				
Concrete mixer	3.60				
Concrete paver	4.45				
Slip form paver	5.25				
Conveyor	3.60				
Crusher (including those with integral screening plant)	4.65				
Dredge pump under 10"	4.00				
Dredge pump 10" and over	4.45				

DECISION NO NE76-4167

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)	$3.80				
Front End Loader:					
3½ cu. yds. or less	4.55				
over 3½ cu. yds.	4.65				
Mechanic	5.35				
Mechanic helper	4.60				
Motor grader	5.15				
Oiler or greaser	4.50				
Roller, self-propelled (hot mix)	4.50				
Roller or compactor, self-propelled (other)	4.50				
Scraper under 16 cu. yds.	4.75				
Scraper 16 cu. yds. and over	5.25				
Power grade machine (trimmer)	5.25				
TRACTOR:					
Farm type (towing)	3.65				
Farm type (with attachments)	3.95				
Less than 115 drawbar H.P.	4.65				
115 drawbar H.P. and over	5.00				
Traveling plant (stabilization)	4.60				
Traveling plant helper (stabilization)	3.90				
Concrete finishing machine and spreader	4.80				
TRUCK DRIVERS:					
Single Axle	3.65				
Tandem Axle	3.75				
Semi-Trailer	3.85				
Transit Mix	3.85				
Lowboy	4.25				

SUPERSEDEAS DECISION

STATE: NEW YORK

COUNTIES: ALBANY, RENSSELAER, SARATOGA, SCHENECTADY

DATE: DATE OF PUBLICATION

DECISION NO.: NY76-3255

SUPERSEDES DECISION NO.: NY76-3197 dated June 25, 1976 in 41 FR26497

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	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.28	.47	.28		.02
BOILERMAKERS	11.50	.75	10%		.02
BRICKLAYERS, CEMENT MASONS, PLASTERERS, STONE MASONS, POINTERS AND CAULKERS	10.49	.70	.35		.01
CARPENTERS, BUILDING					
SARATOGA COUNTY: TWPS. OF DAY, HADLEY, EDINBURG, CORINTH, AND MOREAU					
CARPENTERS AND SOFT FLOOR LAYERS	9.05	.40	.40	g	.005
MILLWRIGHTS	9.30	.40	.40	g	.005
PILEDRIVERMEN	9.20	.40	.40	g	.005
CARPENTERS, BUILDING					
ALBANY COUNTY, RENSSELAER COUNTY, SCHENECTADY COUNTY, SARATOGA COUNTY: REMAINDER OF COUNTY					
CARPENTERS AND SOFT FLOOR LAYERS	9.90	.60	.60		.02
MILLWRIGHTS	10.40	.60	.60		.02
PILEDRIVERMEN	9.86	.95	1.53	.55	.02
CARPENTER, HEAVY AND HIGHWAY	9.12	.60	.60	j	.025
CEMENT MASONS	9.15	.70	.35		
ELECTRICIANS:					
SARATOGA COUNTY: GANSEVEEN, MT. McGREGOR, SCHUYLERVILLE, VICTORY MILLS, WAYVILLE, STILLWATER,					
MECHANICVILLE, AND WATERFORD	11.00	.70	1%+.60	a	h
REMAINDER OF COUNTY:	10.35	.55	1%+.70	i	.05
ALBANY COUNTY: ELECTRICIANS					
COHOES AND WATERVLIET	11.00	.70	1%+.60	g	.05
REMAINDER OF COUNTY	11.35	.45	1%+.50		
RENSSELAER COUNTY: ELECTRICIANS					
SCHODACK, RENSSELAER, E. GREENBRUSH, STEPHENTOWN AND NASSAU	11.35	.45	.50	a	
REMAINDER OF COUNTY	11.00	.70	1%+.60	g	.05
SCHENECTADY COUNTY: ELECTRICIANS	10.35	.55	1%+.70	a	.05
ELEVATOR CONSTRUCTORS	10.62	.545	.35	3%+b+c	.02
ELEVATOR CONSTRUCTORS HELPERS	7.43	.545	.35	3%+b+c	.02
ELEVATOR CONSTRUCTORS HELPERS (PROB.)	5.31				
IRONWORKERS: STRUCTURAL, REINFORCING, AND ORNAMENTAL	10.00	.69	.85		.04

DECISION NO. NY76-3255

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS, BUILDING:					
LABORERS	8.60	.70	.90		.07
PIPELAYERS (2 MAN TEAM), HOD CARRIERS, MORTAR MIXERS (HAND OR MACHINE), JACKHAMMER OPERATOR, WELL POINTING, ALL AIR OR GAS DRIVEN TOOLS, CONCRETE VIBRATORS,					
POWER DRIVEN BUGGIES	8.75	.70	.90		.07
FORM SETTERS (CURB)	8.775	.70	.90		.07
WAGON DRILL OPERATOR	8.825	.70	.90		.07
ACELYTENE BURNERS	8.875	.70	.90		.07
DEMOLITION	8.85	.70	.90		.07
BLASTERS	9.075	.70	.90		.07
LEAD BURNERS	10.50	.40	.25	d	.01
LATHERS	9.56	.70	.30		.01
LINE CONSTRUCTION:					
LINEMAN	11.10	.65	1%+.60	e	1/2%
CABLE SPLICER	12.21	.65	1%+.60	e	1/2%
GROUNDMAN DIGGING MACHINE OPERATOR	9.99	.65	1%+.60	e	1/2%
GROUNDMAN MOBILE EQUIPMENT OPERATOR	8.88	.65	1%+.60	e	1/2%
GROUNDMAN TRUCK DRIVER	8.325	.65	1%+.60	e	1/2%
GROUNDMAN DYNAMITE MAN AND MECHANIC	8.88	.65	1%+.60	e	1/2%
PAINTERS: ALBANY COUNTY, RENSSELAER COUNTY, AND SCHENECTADY COUNTY					
BRUSH	8.92		.35		
STRUCTURAL STEEL & BRIDGE	9.67		.35		
SPRAY	10.02		.35		
SWING SCAFFOLD, BOSUN CHAIR, WATER TOWERS, FLAGPOLES, AND WINDOW JACKS	9.42		.35		
PAINTERS: SARATOGA COUNTY TWPS. OF CLIFTON PARK, HALF MOON, MALTA, CHARLTON, GALWAY, MILTON & WEST MILTON					
BRUSH	8.92		.35		
STRUCTURAL STEEL & BRIDGE	9.67		.35		
SPRAY	10.02		.35		
SWING SCAFFOLD, BOSUN CHAIR, WATER TOWERS, FLAGPOLES, AND WINDOW JACKS	9.42		.35		

DECISION NO. NY76-3255

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS CONT'D					
SARATOGA COUNTY: TWPS. OF DAY, HADLEY, CORINTH, MOREAU, GANSEVOORT, AND MT. McGREGOR					
BRUSH	8.04	.25	.20		
STRUCTURAL STEEL, SWING SCAFFOLD AND BRIDGE	8.37	.25	.20		
SPRAY AND SANDBLASTING	8.59	.25	.20		
SARATOGA COUNTY: REMINDER OF COUNTY					
COMMERCIAL WORK	7.25				
SWING SCAFFOLD, BOSUN CHAIR, WATER TOWERS, FLAGPOLES, AND WINDOW JACKS	7.75				
MARBLE SETTERS, TERRAZZO WORKERS, AND TILE SETTERS					
SARATOGA COUNTY	8.95	.70	.35		
PLUMBERS, STEAMFITTERS, AIR CONDITIONING AND REFRIGERATION					
ALBANY COUNTY:					
ALBANY AREA	9.79	.56	.87		.05
PLUMBRS AND STEAMFITTERS					
ALBANY COUNTY:					
CITY OF LATHAM	*10.30*	*.60*	*1.00*		*.04*
COHOES AREA	*9.79*	*.56*	*.87*		*.05*
PLUMBERS AND STEAMFITTERS					
RENSSELAER COUNTY:					
CITY OF GREEN ISLAND, WATERVLIET	*10.30*	*.60*	*1.00*		*.04*
SOUTHERN PART OF COUNTY	*9.79*	*.56*	*.87*		*.05*
PLUMBERS AND STEAMFITTERS:					
SARATOGA COUNTY TWPS OF STILLWATER AND HALFMOON	*10.30*	*.60*	*1.00*		*.04*
SARATOGA COUNTY: TWPS. OF GALWAY, MILTON, CHARLTON, CLIFTON PARK AND ATOMIC PROJECTS AT WEST MILTON AND MALTA	10.50	.65	.90		.10
SARATOGA COUNTY: REMAINDER OF COUNTY	9.50	2.01	1.52	1.14	.10
SCHENECTADY COUNTY	*10.50*	*.65*	*.90*		*.10*
ROOFERS	*9.60*	*.63*	*.40*		*.02*
SHEET METAL WORKERS	*9.96*	*.70*	*.50*		*.05*
SPRINKLER FITTERS	*11.61*	*.60*	*.90*		*.08*

DECISION NO. NY76-3255

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS, BUILDING STRAIGHT, WINCH, TRANSIT MIX ON JOB SITE, ROAD OILERS, DUMP, PANEL, PICK-UP, WATER AND FUEL					
TRUCKS ON SITE	*8.70*	*.70*	*.59*	*f*	*.02*
EUCLIDS	*8.95*	*.70*	*.59*	*f*	*.02*
LOWBOY OR LOWBOY TRAILERS	*8.85*	*.70*	*.59*	*f*	*.02*
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. *Holiday: E, provided the employee works the day after the holiday.*
b. *Holidays: A thru F.*
c. *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.*
d. *Holidays: A thru F, Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 30 full days during the 90 days prior to the holiday, and the regularly scheduled work days immediately preceeding and following the holiday.*
e. *Holidays: A thru F; Washington's Birthday, Election Day for the president of the United States and Election of Governor of New York (provided the employee works the day before and the day after the holiday).*
f. *One week vacation after one year's work; 2 weeks after 5 years work.*
g. *Holiday: Thanksgiving Day provided employee reports for work the day after the holiday.*
h. *Employer contributes $15.00 per year to an apprentice training program.*
i. *Holiday: D & E, plus two hours on Election Day.*
j. *Paid Holidays: Labor Day & Memorial Day.*

DECISION NO. NY76-3255

NY-27-LAB-2-3-G

HEAVY AND HIGHWAY CONSTRUCTION SARATOGA AND RENSSELAER COUNTIES:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LABORERS:					
Laborers and driller helpers	$ 7.49	.70	.85	a	.05
Concrete aggregate bin, mortar mixer, hand or machine vibratoe gin buggy, mason tenders, concrete bootmen, chain saw, jackhammer, pavement breaker and all other gas, electric oil and air-tool operators, bull float tamper pipelayers	7.69	.70	.85	a	.05
Drillers, asphalt rakers, stone or granite curb setters and acetylene torch operator	7.89	.70	.85	a	.05
Blasters, form setters, stone or granite curb setters	8.09	.70	.85	a	.05

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
a. Holidays A through F, providing the employee works the day before and after the holiday.

DECISION NO NY76-3255

NY 29-LAB 2 3

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ALBANY COUNTY and SCHENECTADY COUNTY					
CLASS A	$ 7.44	.70	.90	a	.05
CLASS B	7.64	.70	.90	a	.05
CLASS C	7.84	.70	.90	a	.05
CLASS D	8.04	.70	.90	a	.05

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; E-Christmas Day.

FOOTNOTE:
a. Paid Holidays A through F, provided the employee has worked the day before and after the holiday.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS A
Laborers, drill helper, flagmen, outboard and hand boats.

CLASS B
Bull float, chain saw, concrete aggregate, bin, concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphragm), nozzle (asphalt, gunnite, seeding and sand blasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C
All rock or drilling machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D
Blasters, form setters, stone or granite curb setters.

Albany County, Rensselaer County, Saratoga County, Schenectady County N.Y. 3-PEO-1-J 1 of 1

BUILDING CONSTRUCTION - POWER EQUIPMENT OPERATORS:

GROUP 1: Oilers

GROUP 2: Firemen and heavy duty greasers, all boilers and steam generators

GROUP 3: Pumps, vibrators, concrete mixers, spreaders, concrete finishing machines, mortar mixers, air compressors, dust collectors, welding machines well points, two or more Herman Nelson and like heaters, batch and plant op., seed and mulching machines, generators, temporary light plants, concrete pump, beltcrete power pac (beltcrete system), electric submersible pump 4" and over

GROUP 4: Dinkey locomotives, Barber Greene loaders, loaders and conveyors, tractors, scoopmobiles, bulldozers, road rollers, form fine graders, power brooms and sweepers

GROUP 5: Black top spreaders, black top rollers, high lifts, fork lifts, one drum hoist or hod hoists, post hole diggers, traxcavators, core and well well drillers (one drum), economobile and similar type machines, elevators, A-L frame winches, power hoisting (single drum)

GROUP 6: LeTourneau graders or scrapers, trenching machines, push cart

GROUP 7: Tractor road pavers, cranes, power road graders, shovels, backhoes, draglines, pile drivers, hoists two or more drums, three drum engines, hysters, two drum and swinging engines, three drum swinging engine, locomotive cranes, gradalls, hydrocrane, model CHB Vibrotamp or similar, Murphy type diesel generator-beltcrete system, side booms, hydro hammer, tractor mounted drill (quarry master), euclid loaders, concrete pumps, all CMI equipment, concrete central mix plant, automated asphalt, concrete central plant, derrick, whirlies, tower cranes, cableways, hydraulic cranes, power hoisting (2 drum and over), mucking machine

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP 1	$9.99	.85	.60	a	.10
GROUP 2	10.06	.85	.60	a	.10
GROUP 3	10.17	85	.60	a	.10
GROUP 4	10.36	85	60	a	.10
GROUP 5	10.69	85	.60	a	.10
GROUP 6	10.84	.85	.60	a	.10
GROUP 7	11.02	.85	.60	a	.10

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.

ALBANY COUNTY: Excluding the City of Albany
RENSSELAER COUNTY: Excluding the City of Troy
SARATOGA COUNTY: Entire County
SCHENECTADY COUNTY: Excluding the City of Schenectady

27-PEO-2-3

POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. T
GROUP I	$9.69	.55	.60+a	b	.10
GROUP II	9.37	.55	.60+a	b	.10
GROUP III	8.69	.55	.60+a	b	.10
GROUP IV	7.90	.55	.60+a	b	.10

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 $.30per hour to an Supplemental Unemployment Benef Fund.

b. Paid Holidays A through F; providing the employee works the working day before and after the holiday

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION

Group I - Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or ove crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated, (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader 4 c.y. and over) head tower (sauerman or equal) hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver (if second man is needed, he shall be an oiler), tractor drawn belt type loader, truck crane, tunnel shovel.

Group II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated and all concrete batching plants), cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lobs. and over), hoist (one drum) Kolman plant loader and similar type loaders (if another man is required to clean screen or to maintain the equipment, he shall be an oiler), locomotive maintenance/engineer/greaseman/welder, mixer (for stablized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION CONT'D.

Group III - A-frame truck, compressors (4 not to exceed 2000 C.F.M. combined capacity or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), compressors (any size but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, drill-well, electric pumps used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), gunite machine, hammers (hydraulic-self-propelled), post hole digger and post driver, power sweeper, roller (grade and fill), submersible electric pump (when used in lieu of well point system), tractor with towed accessories, vibratory compactor, vibro tamp, well point.

Group IV - Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), compressor (any size, but subject to other provisions for compressors) dust collectors, generator pumps, welding machines (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), lighting plants, mulching machine, oiler parapet- (concrete or pavement grinder), power broom (towed), power heaterman, revinius widener, shell winder, steam cleaner, tractor.

N.Y. 3-PEO-1-J 1 of 1

Cities of Albany, Troy, and Schenectady

HEAVY AND HIGHWAY CONSTRUCTION—POWER EQUIPMENT OPERATORS

GROUP 1: Oilers

GROUP 2: Firemen and heavy duty greasers, all boilers and steam generators

GROUP 3: Pumps, vibrators, concrete mixers, spreaders, concrete finishing machines, mortar mixers, air compressors, dust collectors, welding machines well points, two or more Herman Nelson and like heaters, batch and plant op., seed and mulching machines, generators, temporary light plants, concrete pump, beltcrete power pac (beltcrete system), electric submersible pump 4" and over

GROUP 4: Dinkey locomotives, Barber Greene loaders, loaders and conveyors, tractors, scoopmobiles, bulldozers, road rollers, form fine graders, power brooms and sweepers

GROUP 5: Black top spreaders, black top rollers, high lifts, fork lifts, one drum hoist or hod hoists, post hole diggers, traxcavators, core and well well drillers (one drum), economobile and similar type machines, elevators, A-L frame winches, power hoisting (single drum)

GROUP 6: LeTourneau graders or scrapers, trenching machines, push cart

GROUP 7: Tractor road pavers, cranes, power road graders, shovels, backhoes, draglines, pile drivers, hoists two or more drums, three drum engines, hysters, two drum and swinging engines, three drum swinging engine, locomotive cranes, gradalls, hydrocrane, model CHB Vibrotamp or similar, Murphy type diesel generator-beltcrete system, side booms, hydro hammer, tractor mounted drill (quarry master), euclid loaders, concrete pumps, all CMI equipment, concrete central mix plant, automated asphalt, concrete central plant, derrick, whirlies, tower cranes, cableways, hydraulic cranes, power hoisting (2 drum and over), mucking machine

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP 1	$9.99	.85	.60	a	.10
GROUP 2	10.06	.85	.60	a	.10
GROUP 3	10.17	85	.60	a	.10
GROUP 4	10.36	85	60	a	.10
GROUP 5	10.69	85	.60	a	.10
GROUP 6	10.84	.85	.60	a	.10
GROUP 7	11.02	.85	.60	a	.10

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.

DECISION NO. NY76-3255

1-TD-2-3

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS 1	$7.69	.65	.60	a	
CLASS 2	7.74	.65	.60	a	
CLASS 3	7.79	.65	.60	a	
CLASS 4	7.94	.65	.60	a	
CLASS 5	8.09	.65	.60	a	

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:

a. Paid Holidays A through F, provided the employee has worked the working day before and after the holiday.

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS 1

Warehouseman, yardmen, truck helpers, pickups, panel trucks, flatboy material trucks (straight jobs), single axel dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

CLASS 2

Tandems, batch trucks, mechanics and dispatcher.

CLASS 3

Semi-trailers, low-boy trucks, asphalt distributor trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

CLASS 4

Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self loaded, and straddle (ross) carrier.

CLASS 5

Off-highway tandem back-dump, twin engine equipment and double-hitched equipment where not self loaded.

STATE: NEW YORK

COUNTIES: BRONX, KINGS, QUEENS, RICHMOND AND NEW YORK

DECISION NO.: NY76-3256

DATE: DATE OF PUBLICATION

Supersedeas Decision No. NY76-3203 dated July 23, 1976 in 41 FR 30553.
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, AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$10.45	1.43	.94	1.25	
Boilermakers	10.57	5%	15%	7%	.02
Bricklayers	10.99	1.13	3.38		
Carpenters, Building: Carpenters, Soft Floor Layers, Millwrights, Dock builders, and Piledrivermen	10.92	1.25	1.73	.65	.02
Carpenters, Heavy: Carpenters, Dock builders, and Piledrivermen	10.92	1.25	1.73	.65	.02
Timbermen, Heavy	9.93	1.25	1.73	.65	.02
Cement Masons	9.50	1.36	1.13	1.75	.01
Electricians and Linemen	12.25	7%	1%+a	5.7%+b	1/2%
Elevator Constructors	10.12	.495	.32+j	c + d	.02
Elevator Constructors' helpers	7.59	.495	.32+j	c + d	.02
Elevator Constructors' helpers (prob.)	5.06				
Elevator Constructors Modernization	9.35	.495	.32+j	c + d	.02
Elevator Constructors Modernization helpers	7.01	.495	.32+j	c + d	.02
Elevator Constructors Repair	8.50	.495	.32+j	c + e	.02
Elevator Constructors Repair's helpers	6.38	.495	.32+j	c + e	.02
Glaziers	10.30	.66	1.66	.47	.01
Ironworkers:					
Structural	11.65	1.20	2.70	1.50+i	.06
Ornamental Finisher	10.24	.86	2.35	.78	.04
Reinforcing	9.10	.785	1.755	.75	.01
Laborers:					
Asphalt Rakers	9.49	1.10	1.00	m	
Asphalt Tampers	9.27	1.10	1.00	m	
Asphalt Laborers	9.25	1.10	1.00	m	
Blasters (Hvy.)	8.59	.805	1.335	.65+c	
Cement Concrete Workers	8.90	.8025	1.3525		
Curb Setters (Hvy.)	11.58	1.10	1.00	m	
Laborers, Puddlers, Concrete Rakers (Hvy.)	9.32	1.10	1.00	m	
Laborers (Bldg. and Hvy.)	8.15	1.30	1.41		
Mason Tenders	8.30	.687	1.295		
Pneumatic Gas, Electrical Tool Operator (Hvy.)	7.46	.805	1.335	.65+c	
Laborers, Demolition: Barmen	9.00	6%	8%	.35	

DECISION NO. NY76-3256

	Basic Hourly Rates	Fringe Benefits Payments			
Laborers: (Cont'd)		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Barmen helpers	8.70	6%	8%	.35	
Pavers(Hwy.)	11.58	1.10	1.00	m	
Plasterers' helpers (Kings)	8.20	2.45		.80	
Plasterers' helpers (Queens)	9.45	1.40		1.00	
Plasterers' helpers (NY-Bronx-Richmond)	8.25	.90	1.00	.35	
Power Carriers (Hvy.)	6.77	.805	1.335	.65+c	
Rammers (Hvy.)	11.16	1.10	1.00	m	
Wagon Drills (Hvy.)	7.62				
Lathers, Metallic	10.10	.785	1.765	.75+p	.03
Lathers, Nail-on (Kings-Queens)	8.40	.655	1.655	.70	.01
Lathers, Nail-on (NY-Bronx-Richmond)	6.75		.25		.01
Lead Burners	10.50	.40	.25	f	.01
Marble Setters:					
Carvers	7.95	.63	1.41	h	
Cutters and Setters	8.00	.63	1.41	h	
Sawyers, Rubbers, and Polishers	7.57	.63	1.41	h	
Crane Operators and Derrickmen	7.33	.63	1.41	h	
Painters:					
Brush	8.85	8½%	5%+g	3%	
Spray, Spray Gun, Scaffold Work	10.74	8½%	5%+g	3%	
Structural Steel	7.50	8%	11%		
Structural Steel Spray	8.50	8%	11%		
Plasterers:					
Kings	9.55	1.10		1.40	.01
Queens	8.70	1.00	.20	1.40	.01
Bronx-NY- Richmond	9.25	1.10	.80	.90	.01
Plumbers:					
Manhattan-Bronx	9.25	1.07	1.86	.72	.06
Kings-Queens	10.01	1.75	1.59	1.19	.22
Richmond	10.15	85+n	1.93	1 05	30
Roofers:					
Composition, Damp & Waterproofer	9.25	1.59	2.45	.65	
Slate-Tile (Kings-Queens)	10.82	.55	1.20	1.75	
Slate-Tile helpers (Kings-Queens)	5.13	.50	1.40	1.40	
Slate-Tile (Bronx-NY-Richmond)	9.70	.50	1.40	1.60	
Slate-Tile helpers (Bronx-NY-Richmond)	7.90	.50	1.00	1 20	
Sheet Metal Workers	11.77	1.715	1.045	.405	.02
Sprinkler Fitters & Steamfitters	10.07	2.65	1.12	.86	.07

DECISION NO. NY76-3256

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Stonemasons	10.25	.50	1.00		
Stone Derrickmen and Riggers	11.16	.98	.77		
Terrazzo Workers	9.10	.62	1.95		
Terrazzo Workers' helpers	8.84	1.21	1.50		
Terrazzo Workers', Machine Oper.	8.99	1.21	1.50		
Tile Setters	8.50	.80	2.05		
Tile Setters helpers	7.90	.50	1.27		
Tuckpointers:					
Steam Cleaners	8.97	.70	1.44	.50	.015
Waterproofers	8.72	.70	1.44	.50	.015
Sandblasters	9.72	.70	1.44	.50	.015
Truck Drivers: Building					
Ready-Mix Concrete, Sand, Gravel and asphalt	8.87	.9675	1.8525	k + 1	
Euclids and Turnapull Operators	8.825	.9675	1.8525	k + 1	
4 Wheel Trucks, Hi-Lo Lift Oper.	7.525	.9675	1.8525	k + 1	
Helpers and Yardmen	7.275	.9675	1.8525	k + 1	
Euclids & Turnapull op., Heavy	8.825	.9675	1 8525	k + 1	
Welders-receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Columbus Day; H-Day after Thanksgiving

FOOTNOTES:

a. Employer contributes $7.00 per day to Annuity and Security Benefit Fund.
b. Holidays: A through H; Election Day; Employee's Birthday;
c. Holidays: A through F; Lincoln's Birthday; Washington's Birthday; Columbus Day; Election Day; Armistice Day.
d. Employees with 6 months or more but less than 5 years service receive 2 weeks vacation, 5 or more years of service receive 3 weeks vacation.
e. Employees with 6 months or more but less than 5 years service receive 2 weeks vacation, 5 or more years but less than 15 years service receive 3 weeks vacation, 15 or more years receive 4 weeks vacation.

BUILDING, HEAVY AND HIGHWAY CONSTRUCTION

FOOTNOTES: (Cont'd)

f. Holidays: A through F; Washington's Birthday; Christmas Eve and Good Friday, providing the employee has worked 30 full days during the 90 calander days prior to the holiday, and regular schedule work days immediately preceding and following the holiday.
g. Employer contributes $4.50 per day to an Annuity Fund.
h. Paid Holiday: St. Patrick's Day.
i. Paid Holidays: A through F provided the employee works a full half day preceeding the holiday.
j. Employer contributes $7.00 per day to Annuity Fund.
k. Holidays: A through F, Lincoln's Birthday, Washington's Birthday, Columbus Day, Election Day, Veteran's Day, provided the employee works two days in the calander week in which the holiday falls and each remaining work day during such calander week.
l. For each 15 days worked within the contract year an employee will receive one day's vacation with pay, with a maximum vacation of 3 weeks per year.
m. Holidays: B, C, D, E, Election Day, Columbus Day, providing employee works at least 1 day in the week in which the holiday occurs.
n. Employer contributes $3.56 per day to an additional Security Benefit Fund.
p. Work on X-mas Eve and New Year's Eve will terminate at 12 noon, but employee will receive a full day's pay.

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
Double drum hoist	$11.07	5%	5%+.90	.70 +a	.02	
Stone derrick, cranes, cherry picker	10.92	5%	5%+.90	.70 +a	.02	
Hoist, fork lifts, house cars, plaster (platform machine), plaster bucket, plaster pumps, compressors-welding machines (cutting concrete-tank work) paint spraying, sand blasting, and all equipment used for hoisting material	10.50	5%	5%+.90	.70 +a	.02	
Cranes: All types - crawler or truck						
100' to 149' boom	11.42	5%	5%+.90	.70 +a	.02	
150' to 249' boom	11.67	5%	5%+.90	.70 +a	.02	
250' to 349' boom	11.92	5%	5%+.90	.70 +a	.02	
350' to 450' boom	12.42	5%	5%+.90	.70 +a	.02	
Steel Erection:						
Three drum derricks	11.34	5%	5%+.90	.70 +a	.02	
Cranes, 2 drum derricks, cherry pickers	10.93	5%	5%+.90	.70 +a	.02	
Compressors, welding machines	9.94	5%	5%+.90	.70 +a	.02	
Tower Crane	11.25	5%	5%+.90	.70 + a	.02	

FOOTNOTES:

. Paid Holidays: New Year's Day; Lincoln's Birthday; Washington's Birthday; Good Friday (Iron League only); Decoration Day; Independence Day; Labor Day; Columbus Day; Election Day; Armistice Day; Thanksgiving Day; and Christmas Day providing the employee is employed during the payroll week in which the holiday falls.

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Class 1	$11.05	5%	5%+a	.70+b	.05
Class 2	10.98	5%	5%+a	.70+b	.05
Class 3	10.77	5%	5%+a	.70+b	.05
Class 4	10.59	5%	5%+a	.70+b	.05
Class 5	10.28	5%	5%+a	.70+b	.05
Class 6	10.37	5%	5%+a	.70+b	.05
Class 7	10.13	5%	5%+a	.70+b	.05
Class 8	9.94	5%	5%+a	.70+b	.05
Class 9	9.90	5%	5%+a	.70+b	.05
Class 10	9.53	5%	5%+a	.70+b	.05
Class 11					
a	11.48	5%	5%+a	.70+b	.05
b	11.73	5%	5%+a	.70+b	.05
c	11.98	5%	5%+a	.70+b	.05
d	12.48	5%	5%+a	.70+b	.05
Class 12	10.80	5%	5%+a	.70+b	.05
Class 13	10.55	5%	5%+a	.70+b	.05
Class 14	10.38	5%	5%+a	.70+b	.05
Class 15	10.04	5%	5%+a	.70+b	.05

FOOTNOTES:

a. Employer contributes $1.00 per hour to an annuity fund.

b. New Year's Day; Lincoln's Birthday; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Election Day; Veterans' Day; Thanksgiving Day; Christmas Day, providing the employee works one day in the payroll week in which the holiday occurs.

DECISION NO. NY76-3256

POWER EQUIPMENT OPERATORS
HEAVY and HIGHWAY CONSTRUCTION

Class 1: Backhoes, Power shovels, Steel erection

Class 2: Mine hoist and cranes

Class 3: Gradalls, Keystones, Cranes (on land or water with digging buckets including sand rock cranes, Bridge cranes, Clamshellls, Draglines, Trenching machines)

Class 4: Piledriving cranes (when driving piles), Piledriving rigs (when driving piles), Cranes (under direction of a dockbuilder foreman), Derrick boats, Tunnel shovels, Concrete Plant (on site only)

Class 5: Cherrypicker (20 tons and over)

Class 6: Tunnel mucking machines, Back filling machines, Cranes (including but not limited to those utilizing scale boxes and mucking buckets), Paver dual drums

Class 7: Elevator (manually operated), Pavers, Cableways, Land derricks, Power houses (which contain low air pressure units), Asphalt spreaders, Autogrades (C.M.I. and machines of similar nature)

Class 8: Power houses (other than above), Portable compressors (used for steel erection), Compressors (3 or more in battery), Driving of truck mounted compressors, Double drum hoist, Concrete pumps, Well point pumps, Tugger machines (compressed air caissons), Drilled in caissons, Soil solidification equipment, Welding machines (used for steel erection)

Class 9: Rollers (irrespective of motor power), Concrete mixers

Class 10: River cofferdam pumps, Welding machine (1 operator 2 through 5 machines, 2 operators 6 through 10 machines except where ARC is operated by members of L-15), Concrete breaking machines, portable compressors (1 or 2 in battery not over 100' apart), High pressure boilers, Single drum hoist, Locomotives (over 10 tons), Push-button machines, Stationary engineers (car, operating and maintenance of conveyor roller and plant equipment in asphalt plants)

DECISION NO. NY76-3256

POWER EQUIPMENT OPERATORS (Cont'd)
HEAVY and HIGHWAY CONSTRUCTION

Class 11: Long Boom Land Cranes:
a - 100' - 149'
b - 150' - 249'
c - 250' - 349'
d - 350' - 450'

Class 12: Junior engineers (when operating loaders rubber-tired and/or tractor type with a manufacturer's minimum rated bucket capacity of 6 cubic yards and over)

Class 13: Junior engineers (when operating the following equipment and attachments): Scrapers, Turn-a-pulls, Tugger hoists (used exclusively for handling excavated material), Tractors (rubber-tired and/or track type), Hysters and roustabout cranes, Back scratchers, Cherrypickers (all capacities, including the crew requirement for a manufacturer's minimum rated capacity of cherrypicker twenty tons and over), Austin Western and machines of a similar nature, Basin machines, Stetco silent hoist and machines of a similar nature, Vac-all, Meyers machines, John beam and machines of a similar nature, Bulldozers, Loaders (rubber-tired and/or tractor type with a manufacturer's minimum rated bucket capacity or less than 6 cubic yards), Conveyors, Motor graders, Curb and gutter pavers and machines of a similar nature, Ross carriers and travel lifts and machines of a similar nature

Class 14: Junior engineers when operating the following pieces of minor equipment: Tractors, Locomotives (10 tons and under), Post hole diggers, Ditch winch (walk behind), Motor generators, Road finishing machines, Mixers (16S and under with or without loading devices), Rollers (5 tons and under), Tugger hoists, Dual purpose trucks, Fork lifts, Dempster dumpers, Firemen (tending to); Steam operated shovels, Power boilers, Steam operated pile drivers, Steam operated derrick boats, Steam operated water rigs

Class 15: Apprentice engineers and oilers (all gasoline, electric, diesel, or air operated), Shovels, Cranes, Draglines, Backhoes, Keystones, Gradalls, Pavers, Trenching machines, Concrete pumps, Gunite machines, Compressors (3 or more in battery), Power houses, there duties shall be to assist the engineer in oiling, greasing and repairing of all machines, giving signals when necessary, chaining buckets and scale boxes, driving truck cranes, driving and operating fuel and grease truck

SUPERSEDEAS DECISION

STATE: NEW YORK

COUNTY: BRONX, KINGS, NEW YORK, QUEENS and RICHMOND

DECISION NO. NY76-3257

DATE: DATE OF PUBLICATION

Supersedeas Decision No. NY76-3228 dated August 13, 1976 in 41 FR 34526

DESCRIPTION OF WORK: Residential Construction consisting of single family homes and garden type apartments up to an including 4 stories.

R-3-24-31-43-New York-1-C

RESIDENTIAL CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Asbestos workers	$10.45	1.43	.94	1.25	
Boilermakers	10.57	5%	5%+10%	7%	.02
Bricklayers	10.99	1.13	3.38		.01
Carpenters:					
Carpenters, soft floor layers	10.92	1.25	1.73	.65	.02
Millwrights	10.92	1.25	1.73	.65	.02
Piledrivermen	10.92	1.25	1.73	.65	.02
Cement masons	9.50	1.36	1.13	1.75	.01
Electricians and linemen	12.25	7%	1%+a	5.7%+b	½%
Elevator constructors	10.12	.495	.32+j	c+d	.02
Elevator constructors' helpers	7.59	.495	.32+j	c+d	.02
Elevator constructors' helpers (prob.)	5.06				
Elevator constructors modernization	9.35	.495	.32+j	c+d	.02
Elevator constructors modernization helpers	7.01	.495	.32+j	c+d	.02
Elevator constructors repair	8.50	.495	.32+j	c+e	.02
Elevator constructors repair's helpers	6.38	.495	.32+j	c+e	.02
Glaziers	10.30	.66	1.66	.47	.01
Ironworkers:					
Structural	11.65	1.20	2.70	1.50+1	.06
Ornamental finisher	10.24	.86	2.35	.78	.04
Reinforcing	9.10	.785	1.10+.665	.75	.01
Laborers:					
Asphalt rakers	9.49	1.10	1.00	m	
Asphalt tampers	9.27	1.10	1.00	m	
Asphalt laborers	9.25	1.10	1.00	m	
Cement concrete workers	8.90	.70	1.3525		
Laborers	8.15	1.30	1.41		
Mason tenders	8.30	.687	1.295		
Plasters' tenders (Kings)	8.20	2.45		.80	
Plasters' helpers (Queens)	9.45	1.40		1.00	
Plasters' helpers (NY-Bronx-Richmond)	8.25	.90	1.00	.35	.01
Lathers, metallic	10.10	.785	.665+1.10	.75	.01
Lead burners	10.50	.40	.25	g	.01
Marble setters:					
Carvers	7.95	.63	1.41	f	
Cutters, setters	8.00	.63	1.41	f	
Sawyers, rubbers, polishers	7.57	.63	1.41	f	
Crane Op. & Derrickman and helpers	7.33	.63	1.41	f	

DECISION NO. NY76-3257

R-3-24-31-43-New York-1-C

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Painters:					
Brush	$ 8.85	8½%	5%+h	3%	
Spray, spray gun and scafford work	10.74	8½%	5%+h	3%	
Plasterers:					
Kings	9.55	1.10		1.40	.01
Queens	8.70	1.00	.20	1.40	.01
Bronx-NY-Richmond	9.25	1.10	.80	.90	.01
Plumbers:					
Manhattan and Bronx	9.25	1.07	1.86	.72	.06
Kings-Queens	10.01	1.75	1.59	.89	.11
Richmond	10.15	.85+p	1.93	1.05	.30
Roofers:					
Composition, damp & waterproofers	9.25	1.59	2.45	.65	
Sheet metal workers	11.77	1.715	1.045	.405	.02
Sprinkler fitters	10.07	2.65	1.12	.86	.07
Steamfitters	10.07	2.65	1.12	.86	.07
Stonemasons	10.25	.50	1.00		
Terrazzo workers	9.10	.62	1.95		
Terrazzo workers' helpers	8.84	1.21	1.50		
Terrazzo workers, machine operator	8.99	1.21	1.50		
Tile setters	8.50	.80	2.05		
Tile setters' helpers	7.90	.50	1.27		
Truck Drivers:					
Ready-mix concrete, sand, gravel and asphalt	8.87	.9675	1.8525	k+1	
Euclids and turnapull operator	8.825	.9675	1.8525	k+1	
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Columbus Day; H-Day after Thanksgiving

FOOTNOTES:

a. Employer contributes $7.00 per day to an Annuity & Security Benefit Fund.

b. Holidays: A through H.

c. Holidays: A through F; Lincoln's Birthday; Washington's Birthday; Columbus Day; Election Day; Armistice Day.

d. Employees with 6 months or more but less than 5 years service receive 2 weeks vacation, 5 or more years of service receive 3 weeks.

e. Employees with 6 months or more but less than 5 years service receive 2 weeks vacation, 5 or more years but less than 15 years receive 3 weeks, 15 or more years receive 4 weeks.

f. PAID HOLIDAYS: St. Patricks Day.

g. Holidays: A through F; Washington's Birthday; Christmas Eve and Good Friday, providing employee has worked 30 full days during the 90 calendar days prior to the holiday, and regular schedule work days immediately preceding and following the holiday.

h. $4.50 per day contribution for each man to a specialy annuity fund.

i. Paid Holidays: A through F, providing the employee works a full half day preceeding the holiday.

j. Employer contributes $7.00 per day to an Annuity Fund.

k. Holidays: A through F, Lincolns Birthday; Washington's Birthday; Columbus Day; Election Day; Veteran's Day, providing the employee works two days in the calendar week in which the holiday falls and each remaining work day during such calendar week.

l. For each 15 days within the contract year an employee will receive one days vacation with pay, with a maximum vacation of three weeks per year.

m. Holidays: B, C, D & E, Election, Columbus Day, providing employee works at least 1 day in the week in which the holiday occurs.

n. Work on X-mas Eve and New Year's Eve will terminate at 12 noon, but employee will receive a full days pay.

p. Employer contributes $3.56 per day to an additional Security Benefit Fund.

NY-1-PEO-1-E

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
Double drum hoist	$11.07	5%	5%+a	.70 +b	.02	
Stone derrick, cranes, cherry picker	10.92	5%	5%+a	.70 +b	.02	
Hoist, fork lifts, house cars, plaster (platform machine), plaster bucket, plaster pumps, compressors-welding machines (cutting concrete-tank work) paint spraying, sand blasting, and all equipment used for hoisting material	10.50	5%	5%+a	.70 +b	.02	
Cranes: All types - crawler or truck						
100′ to 149′ boom	11.42	5%	5%+a	.70 +b	.02	
150′ to 249′ boom	11.67	5%	5%+a	.70 +b	.02	
250′ to 349′ boom	11.92	5%	5%+a	.70 +b	.02	
350′ to 450′ boom	12.43	5%	5%+a	.70 +b	.02	
Steel Erection:						
Three drum derricks	11.34	5%	5%+a	.70 +b	.02	
Cranes, 2 drum derricks, cherry pickers	10.93	5%	5%+a	.70 +b	.02	
Compressors, welding machines	9.94	5%	5%+a	.70 +b	.02	

FOOTNOTES:

a. Employer contributes $.90 per hour to an annuity fund.

b. Paid Holidays: New Year's Day; Lincoln's Birthday; Washington's Birthday; Good Friday (Iron League only); Decoration Day; Independence Day; Labor Day; Columbus Day; Election Day; Armistice Day; Thanksgiving Day; and Christmas Day providing the employee is employed during the payroll week in which the holiday falls.

STATE: North Dakota

COUNTIES: Burleigh, Cass, Grand Fork, Morton, Richland, Steele, Walsh and Ward

DECISION NUMBER: ND76-5096

DATE: Date of Publication

Supersedes Decision No. ND76-5037 dated April 16, 1976, in 41 FR 16416

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	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
(Except Walsh County)	$ 8.19	.35	.50		.005
BOILERMAKERS:					
(except Walsh County)	9.45	.70	1.00		
BRICKLAYERS; Stonemasons:					
Burleigh and Morton Counties	8.80		.15		
Grand Forks, Steele and Walsh Counties	10.30		.15		
Cass and Richland Counties	9.54	.40	.15	.30	
Ward County	7.23		.15		.02
CARPENTERS:					
Burleigh and Morton Counties					
Carpenters	8.50				.02
Piledrivermen	8.625				.02
Grand Forks, Steele (Northern Area) and Walsh Counties					
Carpenters	8.61		.20		
Piledrivermen	8.87		.20		
Millwrights	9.51	.40	.30	.50	.02
Cass, Richland and Steele (Southern Area) Counties					
Carpenters	8.76		.30		.02
Ward County					
Carpenters	7.78				.02
Piledrivermen	8.01				.02
Millwrights	9.51	.40	.30	.50	.02
CEMENT MASONS:					
Grand Forks and Steele Counties	7.00		.15		
Cass and Richland Counties	8.41				
Ward County	5.50				
ELECTRICIANS:					
Cass, Grand Forks, Richland and Steele Counties					
Zone mileage from main P. O. in the Cities of Grand Forks, Valley City, Fargo and West Fargo					
Zone (A) Within 0-15 miles of each main P. O.					
Electricians	8.60	.40	1%	6%	1½%
Cable Splicers	9.03	.40	1%	6%	1½%
ELECTRICIANS: (Cont'd)					
Zone (B) 15-30 miles of each main P. O.					
Electricians	$ 9.22	.40	1%	6%	1½%
Cable Splicers	9.65	.40	1%	6%	1½%
Zone (C) Over 30 miles of each main P. O.					
Electricians	9.85	.40	1%	6%	1½%
Cable Splicers	10.28	.40	1%	6%	1½%
Burleigh, Morton and Ward Cos.					
Zone mileage from main P. O. in the Cities of Minot, Bismarck and Manden					
Zone (A) within 0-25 miles of each main P. O.					
Electricians	9.00	.40	1%	6%	1½%
Cable Splicers	9.40	.40	1%	6%	1½%
Zone (B) Over 25 miles from main P. O.					
Electricians	10.50	.40	1%	6%	1½%
Cable Splicers	10.90	.40	1%	6%	1½%
ELEVATOR CONSTRUCTORS:					
(except Walsh County)	10.345	.545	.35	4%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.545	.35	4%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
IRONWORKERS:					
Ornamental; Structural; Reinforcing	9.69	.52	.50		.05
PAINTERS:					
Cass, Grand Forks, Richland and Steele Counties					
Brush; Roller; Paperhangers	7.75				.02
Sandblasting; Structural Steel Spray	8.50				.02
Burleigh and Morton Counties					
Brush	6.25				
Spray	6.55				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Ward County					
Brush	$ 7.05				
Spray	7.40				
PLASTERERS:					
Grand Forks and Steele Counties	7.62		.15		
Ward County	6.50				
Cass and Richland Counties	9.30				
PLUMBERS:					
Cass, Grand Forks, Richland, Steele and Walsh Counties	10.30	.38	.20		.01
Burleigh and Morton Counties	9.60	.40	.25		.02
Ward County	10.65	.35	.25		.04
ROOFERS:					
Cass and Richland Counties	6.85				
SHEET METAL WORKERS:					
Burleigh, Grand Forks, Morton, Steele and Ward Counties	9.80		.20		
Cass and Richland Counties	9.45	.40	.25		.01
SOFT FLOOR LAYERS:					
Cass and Richland Counties	5.75	.20			
SPRINKLER FITTERS:					
(except Walsh County)	9.45	.60	.90		.08

FOOTNOTE:

a. Employer credits 2% basic hourly rate for employee with 6 months to 5 years' service; 4% basic hourly rate with over 5 years' service as Vacation Credit Plan. Six Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

BUILDING CONSTRUCTION

LABORERS Grand Forks and Steele Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1:					
Laborers; Concrete Bucket Dumpman	$ 6.42	.20			
Group 2:					
All power tools (air, gas and electric); Operators or tools that come under the laborers' jurisdiction; Brick, Plaster and finisher tender; Sandblaster and gunnite pot tender; Hose tender where under the laborers' jurisdiction	6.57	.20			
Group 3:					
Hod Carriers; Non-metallic pipelayers; Gas line wrapping or taping; Sand blaster and gunnite nozzleman where under laborers' jurisdiction; Cutting torch for demolition	6.77	.20			
Burleigh and Morton Counties					
Group 1:					
Laborers, Concrete Bucket Man	5.80	.20			
Group 2:					
All Power Tool Operators of tools that come under the Laborers' jurisdiction, Mortar Mixer, brick and plasterer tenders	5.90	.20			
Group 3:					
Hod Carriers, Non-metallic Pipelayers, Gas line wrapping or taping, Cutting torch for demolition	6.00	.20			

LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cass and Richland Counties					
Group 1: Laborers; Concrete Bucket Dumpman	$ 5.99	.20			
Group 2: All Power Tool Operators of tools that come under the Laborers' jurisdiction; Brick and Plasterer tender; Mortar Mixer	6.09	.20			
Group 3: Hod Carriers; Non-metallic Pipe layer; Gas line wrapping and taping (Distribution Only); Cutting torch for demolition	6.14	.20			
Ward County					
Group 1: Laborers; Concrete bucket dumpman	5.99	.20			
Group 2: All Power Tool Operators of all tools that come under the laborers' jurisdiction; Mortar mixer; and Plasterer tender	6.09	.20			
Group 3: Non-metallic Pipe layer; Gas line wrapping or taping (Distribution Only); Cutting torch for demolition	6.24	.20			

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1: Cranes, tower and overhead; Cherry Picker	$ 7.95	.35	.25		
Group 2: Brakemen; Any air compressed operations over 300 well points; Frontend loader over 1½ cu. yds.; Power Plant Engineer; Straddle Carrier; Oiler; Mechanic and Welder; Batch Plant Drill Rig; Tractor, over 75 HP; Concrete Pumps, stationary and boom type; Forklift, over 3,000 lbs. lifting capacity	7.35	.35	.25		
Group 3: Hoist; Greaser; Concrete Mixer Operator; Boom Truck; Fireman; Tractor, 75 HP and under; Frontend Loader, 1½ cu. yds., and under; Forklift, 3,000 lbs. and under lifting capacity; Self-propelled Scissor Jax	6.35	.35	.25		

Site Preparation Excavation and Incidential Paving (except Walsh County)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Group 1	$ 3.20				
Group 2	3.30				
Group 3	3.40				
Group 4	3.50				
Site Preparation Excavation and Incidential Paving (except Walsh County)					
POWER EQUIPMENT OPERATORS:					
Group 1	7.45	.35	.25		
Group 2	7.30	.35	.25		
Group 3	7.15	.35	.25		
Group 4	7.10	.35	.25		
Group 5	6.85	.35	.25		
Group 6	6.62	.35	.25		
Group 7	5.69	.35	.25		
Group 8	5.54	.35	.25		
Group 9	5.44	.35	.25		
Group 10	5.10	.35	.25		
Site Preparation Excavation and Incidential Paving (except Walsh County					
TRUCK DRIVERS					
Single Axle	4.97	.35	.20		
Tandem	5.07	.35	.20		
Agitator Dumpcrete	5.32	.35	.20		
Off road heavy end dumps, 20 yds. and under; Tandem semi, Lowboy	5.32	.35	.20		
Euclid, over 20 yards	5.95	.35	.20		

LABORERS

Site Preparation Excavation and Incidential Paving (except Walsh County)

Group 1: General Construction Laborer (Chip Spreader Leverman, Fine Grader, Form Grader, Landscape Worker; Pump Operator (prewater) Tunnel Worker, Sign Erector); Reinforced Steel Setter; Sack Shaker (cement and mineral filler); Pipe Handler; Drill Runner Helper; Salamander Heater and Blower Tender

Group 2: Semi-skilled Laborer (Joint Filler Machine Operator, Chip Spreader Operator); Bulk Cement Handler; Conduit Layer, telephone or electrical; Form Setter (pavement); Gas,Electric or Pneumatic Tool Operator (Chipping Hammer, Grinders and Paving Breakers, Tamper (dirt), Concrete Vibrator Operator); Chain Saw Operator; Concrete Curing Man (not water); Bituminous Worker (Shoveler, Dumper, Raker and Floater); Kettleman (bituminous or lead); Concrete Bucket Signalman; Power Buggy Operator; Brick and Mason Tender; Multiplate Pipe Layer; Culvert Pipe Layer

Group 3: Caisson Work; Bottom Man, (sanitary sewer, storm sewer, water, and gas lines); Concrete Mixer Operator (one bag capacity); Mortar Mixer

Group 4: Pipe Layers (sanitary sewer, storm sewer, water, and gas lines); Drill Runner (including Wagon Churn or Air Track); Powderman, Gunite and Sandblast, Nozzleman

POWER EQUIPMENT OPERATORS

Site Preparation Excavation and Incidential Paving (except Walsh County)

Group 1: Cableway Operator; Crane Operator with over 135' boom; Derrick (Guy and Stiff Leg), (power), (skids and stationary); Front End Loader over 10 cu. yds.; Gantry Crane Operator; Mole Operator, including power supply or tunnel mucking machine; Power Shovel and/or other equipment with shovel type controls 3½ cu. yds.

Group 2: Concrete Mixer Stationary Plant Operator over 34E; Dredge Operator or Engineer, Dredge Operator (power) and Engineer; Elevator Grader Operator; Locomotive, Crane Operator; Master Mechanic; Mixer (paving) Concrete Paving Operator, road; Power Shovel and/or other equipment with shovels and/or other equipment with shovel type controls up to 3½ cu. yds.; Scraper Tandem; Tandem Pusher, Quad 9 or similar; Tractor Operator (pipeline); Side boom; Truck Crane Operator; Hydrocrane Operator, 15 ton and over

POWER EQUIPMENT OPERATORS (Cont'd)

Site Preparation Excavation and Incidential Paving (except Walsh County)

Group 3: Dope Machine Operator (pipeline); Drill Rigs, heavy duty Rotary or Churn or Cable Drill; Front End Loader Operator, 6 cu. yds. and over; Locomotive, all types; Pipeline wrapping, cleaning and bending Machine Operator; Power actuated Horizontal Boring Machine over 6" Operator (Pipeline); Pumpcrete Operator; Refrigeration Plant Engineer; Slip Form Operator (power driven) (paving); Tandem Scraper - twin engine, 50 cu. yds. struck and over

Group 4: Asphalt Paving Machine Operator; Asphalt Plant Operator and Console Board Operator; CMI Grading Operator; Crushing Plant Operator (gravel and stone or gravel washing crushing and screening plant operator); Front End Loader Operator, 1 cu. yd. up to 6 cu. yds.; Grader or Motor Patrol, Finishing Earth Work and Bituminius; Mechanic or Welder (heavy duty); Rubber-tired Industrial Tractor with Backhoe attachment (water main sanitary sewer and storm sewer, truck line construction); Scraper Operator; Tractor type Dozer D-6 and over; Trenching Machine Operator, sewer and water, (except Ditch Witch or similar use oiler rates); Turnapull Operator, (or similar type)

Group 5: Bituminous Spreader and Finishing Operator (power); Concrete Distributor and Spreader Operator, Finishing Machine Longitudinal Float Operator, Ft. Machine Operator and Spray Operator; Concrete Mixer Operator on job site 16S or over; Paving Breaker or Tamping Machine Operator, including machne with power shovel attachments (power driven); Power actuated Augers and Boring Machine Operator; Power actuated Jacks Operator; Power Plant Engineer, 100 K.W.H. and over; Push Tractor; Self-propelled Traveling Soil Stabilizer; Soil Cement Stabilizer; Truck Mechanic

Group 6: Concrete Saw Operator (multiple blade) (power operated); Fine Grade Operator; Roller, Steel and self-propelled rubber, on Hot Mix; Asphalt Paving; Tractor type Dozer under D-6 H.P.; Distributor Operator

Group 7: Brakeman or Switchman; Concrete Batch Plant Operator (cement, rock and sand) Electronic; Concrete Mixer Operator on job site under 16S; Crane Truck Oiler; Grader Operator (Motor Patrol) (haul road); Gravel Screening Plant Operator (portable not crushing or washing); Greaser (truck or tractor); Gunnite Operator Gunall; Hoist Engineer (power); Launchman (Tankerman or Pilot License); Pick-up Sweeper, 1 yd. and over hopper capacity; Shouldering Machine Operator (power Apsco or similar type) including self-propelled Sand Chip Spreader; Flaherty or similar; Sheepsfoot Roller or Compactor (self-propelled)

POWER EQUIPMENT OPERATORS (Cont'd)

Site Preparation Excavation and Incidential Paving (except Walsh County)

Group 8: Crawler type Tractor pulling Compactor or Areating Equipment; Farm type Rubber-tired Tractor with Backhoe attachment; Self-propelled Vibrating Packer Operator Pad type (35 hp and over); Off Road self-propelled watering equipment; Boom Truck Operator; Roller, steel and self-propelled rubber, on other than Hot Mix

Group 9: Bituminous Spreader and Bituminous Finishing Machine Operator (helper) (power); Concrete Batch Operator (cement, rock and sand) (manual); Form Trench Digger (power); Front End Loader Operator up 1 cu. yds.; Hyster Carrier of Forklift; Leverman; Mechanics' Helpers or Greaser Helper; Oiler (power shovel, crane, dragline); PUGMILL Operator; Pump Operator (well points); Self-propelled Broom

Group 10: Conveyor Operator; Curb Machie Operator (manual); Dredge Deck Hand; Farm Tractors, Rubber-tired for Compacting and Areating; Front End Loader Operator (farm type rubber tired tractor); Stump Chipper Operator; Tie Tamper and Ballast Machine Operator

LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1: Cable Splicer; Lineman; Tractor dozer operator (D-4 and larger) all rigs erecting steel tower and "H" fixtures, also tension pulling machines	$ 9.05	.35	1%		1/2%
Group 2: Groundman - operating special equipment hold digging machines; Aerial baskets on energized circuits; Tractor s (D-4) and larger; Transmission line pole hauling; All Fifth wheel trucks and other setting and assembly equipment excluding steel tower and "H" fixture erection	7.29	.35	1%		1/2%
Group 3: Groundman - truck or tractor driver (with winch); Operators of trucks up to and including 2½ tons; Tractor including D-2 and smaller; Including wheel tractors and crawler tractors	6.08	.35	1%		1/2%
Group 4: Groupman - truck or tractor driver (without winch); Operators of trucks up to and including 2½ tons; D-2 and smaller; including wheel tractors and crawler tractors; Groundmen	5.59	.35	1%		1/2%

SUPERSEDEAS DECISION

STATE: South Carolina COUNTY: See below*
DECISION NUMBER: SC76-1115 DATE: Date of Publication
Supersedes Decision No. SC75-1004 dated January 17, 1975 in 40 FR-3154.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

Counties: Anderson, Greenville, Oconee, & Pickens

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanic	4.25				
Bricklayers	5.50				
Carpenters	4.50				
Cement masons	5.00				
Drywal finishers	4.50				
Drywall hangers	4.75				
Electricians	4.61				
Insulators	3.90				
Ironworkers, structural & ornamental	3.50				
Laborers:					
Laborers	2.64				
Asphalt raker	2.70				
Mason tenders	2.75				
Mortar mixers	3.50				
Painters, bursh	4.46				
Plumbers & pipefitters	5.25				
Roofers	5.00				
Sheet metal workers	4.00				
Soft floor layers	5.25				
Tile setters	5.50				
Truck drivers	2.90				
Welders - Rate for Craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	3.16				
Bulldozer	3.25				
Motor grader	2.70				
Pan operator	3.25				
Paving machine operator	2.65				

STATE: Tennessee COUNTY: Shelby
DECISION NUMBER: TN76-1116 DATE: Date of Publication
Supersedes Decision No.: TN76-1083 dated August 6, 1976, in 41 FR-33180
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), Heavy, Water, Sewer and Utility Construction.

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	10.10	.45	.50		.05
Boilermakers	7.50	.40	.90		.02
Bricklayers, Stonemasons	9.85	.43	.20		.10
Carpenters, Piledrivermen, Soft floor layers	9.00	.30	.30		.065
Cement masons:					
Cement masons	8.875	.35	.45		.10
Cement masons machine operator	9.125	.35	.45		.10
Electricians:					
Electricians, Linemen	9.53	.75	1%+.40		.5%
Cable splicers	9.63	.75	1%+.40		.5%
Elevator constructors	9.43	.495	.32	4%+a+b	.02
Elevator constructors' helpers	70%JR	.495	.32	4%+a+b	.02
Elevator constructors' helpers (Prob.)	50%JR				
Glaziers	9.20	.35	.20		
Ironworkers	9.15	.35	.60		.125
Lathers	9.30	.25			.01
Leadburners	10.50	.40	.25	c	.01
Marble setters, Terrazzo workers tile setters	8.20	.45	.20		.05
Marble setters helpers, Terrazzo setters helpers, Tile setters helpers	4.05				
Millwrights	9.55	.46	.30		.06
Painters:					
Commercial	8.65	.40	.40		.06
Industrial	8.90	.40	.40		.06
Plasterers	9.40				.01
Plumbers	10.37	.40	.30		
Roofers:					
Composition	8.70		.25		.03
Slate, tile, asbestos & precast tile	8.95		.25		.03
Sheet metal workers	9.71	3%+.55	.25	.55	.02
Sprinkler fitters	10.10	.60	.90		.08
Steamfitters, air conditioning mechanics and pipefitters	10.47	.30	.30		
Truck drivers:					
Up to 5 tons	6.10		d		
5 tons & over incl., special equipment	6.50				
Welders, riggers, & riveters receive rate prescribed for craft performing operation to which welding is incidental.					

TN76-1116 - (Cont'd)

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. 6 paid 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. 9 paid holidays: A through F, plus Washington's Birthday, Good Friday, & 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. Employer contribution of $5.00 per week.

TN76-1116 - (Cont'd)

BUILDING CONSTRUCTION LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	6.025	.20	.20		.05
GROUP B	6.125	.20	.20		.05
GROUP C	6.175	.20	.20		.05
GROUP D	6.375	.20	.20		.05
GROUP E	6.575	.20	.20		.05
GROUP F	6.70	.20	.20		.05

GROUP A: General and common laborers, concrete laborers, track laborer walkers, cement finisher helper, plumber helpers, carpenter tenders, asphalt rakers tampers, form strippers, roofing helpers.

GROUP B: Well driller helpers, storm and sanitary pipe layers, mat weavers, motor buggie operators.

GROUP C: Chain saw operator, jackhammer, vibrator and electric hammer and all air tool and pneumatic tools.

GROUP D: Deep hole men

GROUP E: Powdermen, toolroom attendant, torchman on demolition and salvage, sand hog (free air).

GROUP F: Hod carriers, mason tenders and plasterers tenders.

TN76-1116 - (Cont'd)

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	8.925	.30	.35		
CLASS B	8.495	.30	.35		
CLASS C	7.795	.30	.35		
CLASS D	7.395	.30	.35		

CLASS A: Shovels, backhoes, draglines, cranes, derricks, gantrys, gradall, winch with boom, motor patrol, trenching machine (18" & over), pile driver, tug boat operator, mechanics (heavy), central mixing plant, locomotive engineer, strattle carriers, core drills (over 3"), tower cranes, hydro cranes, austin western (and similar type cranes), drilling of piling, tugger, earth freezing equipment, 3 drum hoist, side boom, dredge operator (engineer), hopto, pump crete, mucking machines, cableways, central compressor plant, derrick boat, concrete pump, welders (men from the craft), helicopter operator, well point system, sweeper, bulldozers, pans, scrapers, traxcavators, fork lift, front end loader

CLASS B: Trenching machines (18" and smaller), tandem rollers, pavers, mobile mixers (rubber tired, mobile, mixed on job), back filler, blade graders, dinkey operator over 10 tons, elevating graders, winches (operated from trucks or tractors, without booms and powered by other than the truck), distributors, bituminous surfaces, 1 and 2 drum hoist, grout pumps, motor boat, switchman, brakeman, earth compactors (motorized-Buffalo-Springfield type)

CLASS C: Locomotive fireman (on boilers 100 h.p. and over), operator, air compressor (stationary), earth drills, scale operators, tractors (40 h.p. and less), motor crane driver and oiler, pumps (larger than 4"), dinkey operators (10 tons and less), oilers on gantrys, greasers

CLASS D: Air compressor operators, mechanic helper, locomotive fireman, welding machine operators, deck hand, elevator operators

TN76-1116 - (Cont'd)

HEAVY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	6.40				
Carpenters or leadsman	5.35				
Cement masons	5.35				
Electricians	6.15				
Ironworkers, reinforcing	5.10				
Ironworkers, structural	5.70				
Laborers:					
Laborers, unskilled, Flagman	3.25				
Chain saw, Concrete rubber, Mortar mixer, Pipelayer	3.50				
Air tool operator, firemen	3.55				
Concrete edger	3.65				
Concrete saw operator, fence erector, guard rail erector	3.75				
Asphalt raker	3.85				
Sign erector	3.95				
Form setter, Steel road	4.25				
Powderman	4.55				
Nozzleman or gunman (gunite)	5.35				
Painters or sand blaster	5.35				
Truck drivers:					
2 & 3 axles	3.65				
4 & 5 axles or more or heavy duty off-the-road trucks	4.30				
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					
POWER EQUIPMENT OPERATORS:					
Pump operator, welder helper	3.40				
Ditch paver, mechanic helper	3.55				
Curb machine	3.65				
Motor crane driver, mulcher or seeder, scale operator	3.75				
Tractor, farm	3.80				
Concrete mixer, less than 1 yd, Earth drill	3.85				
Track drill	4.00				
Dozer or loader - stock pile only	4.10				
Oiler, roller, other than finish	4.15				

TN76-1116 - (Cont'd)

POWER EQUIPMENT OPERATORS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Distributor (bituminous)	4.35				
Tractor, crawler, utility	4.40				
Spreader (self-propelled)	4.50				
Asphalt paver, central mixing (asphalt or concrete), Concrete finishing machine, mechanic, Class II, Motor patrol (rough), Roller (high-type), Soil cement machine	4.65				
Tractor - boom & hoist, trenching machine	4.80				
Bulldozer or push dozer, scraper	5.25				
Backhoe, concrete paver, Cranes, end loader, Mechanic, Class I, Motor patrol finish, piledriver, Shovel	5.35				

TN76-1116 - (Cont'd)

WATER, SEWER AND UTILITIES	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
Bricklayers	$3.50					
Carpenters	3.50					
Cement masons	3.00					
Laborers	2.30					
Truck drivers:						
Up to 3 tons	2.32					
Over 3 tons	2.50					
Power Equipment Operators:						
Air compressors	2.37					
Backhoe	3.50					
Blade grader	3.50					
Bulldozer	3.45					
Cranes, derricks & draglines	3.85					
Front end loader	3.50					
Mechanics	3.42					
Motor grader	3.50					
Scrapers	3.34					
Shovels	3.50					
Tractors	2.37					
Trenching machines	3.30					

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Bowie
DECISION NO.: TX76-4169 DATE: Date of Publication
Supersedes Decision No. TX76-4033, dated February 13, 1976, in 41 FR 7019.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 9.38	.325	.685		.025
BOILERMAKERS	9.00	.50	1.00		.02
BRICKLAYERS & STONEMASONS	8.75		.25		
CARPENTERS:					
Carpenters	7.45				.01
Millwright	9.35				.04
Piledrivermen	8.05				.01
CEMENT MASONS	7.72	.25			.03
ELECTRICIANS	8.90	.40	1%		1/4%
ELEVATOR CONSTRUCTORS	9.33	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
IRONWORKERS	9.45	.35	.35		.04
LABORERS, UNSKILLED	2.85				
LINE CONSTRUCTION:					
Lineman	9.30		1%		1/2%
Cable splicer	9.58		1%		1/2%
Hole digger operator, Heavy equipment operators (or pole cat equivalent); powderman	8.46		1%		1/2%
Line truck driver (winch operator)	7.63		1%		1/2%
Jackhammer man	6.98		1%		1/2%
Groundman	6.23		1%		1/2%
Groundman, 1st year	4.65		1%		1/2%
Truck driver (flat bed, ton & half & under)	6.60		1%		1/2%
PAINTERS:					
GROUP 1 - Brush	5.50				
GROUP 2 - Spray	6.90				
GROUP 3 - Brush structural steel, iron & galvanized pipe; Painters working from window jacks	6.60				
GROUP 4 - Brush structural steel, iron & galvanized pipe over 40 ft. up & down to ground; Brush swinging stage & chair work	6.95				
GROUP 5 - Brush swinging stage & chair work over 40 ft. up & down to ground	7.25				
GROUP 6 - Spray, sandblasters & power tools	7.50				

DECISION NO. TX76-4169

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
GROUP 7 - Spray, sandblasters & power tools over 40 ft. up & down to ground	$ 7.75				
PLUMBERS & PIPEFITTERS	9.50	.40	.55		.05
ROOFERS	4.50				
SHEET METAL WORKERS	8.985	3%+.35	.50		.055
SOFT FLOOR LAYERS	7.45				.01
SPRINKLER FITTERS	10.90	.60	.90		.08
TRUCK DRIVERS	2.45				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental					

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru F

PAID HOLIDAYS:
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. TX76-4169

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 7.24	.40	.625		.10
GROUP 2	8.025	.40	.625		.10
GROUP 3	8.425	.40	.625		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler-Fireman

GROUP 2 - Air Compressor, Pumps, Welding Machines, Throttle Valves, Light Plants; Conveyor; Wagon Drill; Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade and mower on rear; Mixers, less than 14 cubic feet; Screening Plants; Crushing Plants; Fork Lifts (short, under 25 feet); Concrete Pumps (all types); Bobcat type equipment; All other equipment of similar nature coming under the Light Equipment Classification, when power operated

GROUP 3 - Ford Tractor or like with any attachment (except blade and mower on rear); Drilling Machine (all types); Scoopmobile; Hoists, two drums or more; Forklifts (over 25 ft.); Winch Truck; Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cubic ft. or over; Blade Graders, self-propelled; Cableways; Cranes-power operated to 100 ft.; Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixers (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressor & Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic; All other equipment of similar nature coming under the Heavy Equipment Classification, when power operated

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Taylor
DECISION NO.: TX76-4171 DATE: Date of Publication
Supersedes Decision No. TX76-4048, dated February 20, 1976, in 41 FR 7920.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$ 4.00				
ASBESTOS WORKERS	9.38	.325	.685		.025
BOILERMAKERS	9.00	.50	1.00		.02
BRICKLAYERS	7.20				
CARPENTERS	6.00	.25	.30		
CEMENT MASONS	5.41				
ELECTRICIANS:					
Electricians	8.65	.40	1%		1/4%
Cable splicers	8.90	.40	1%		1/4%
GLAZIERS	4.50				
IRONWORKERS	6.65	.55	.50		.10
LABORERS:					
Laborers	3.20				
Mason tenders	3.80				
LINE CONSTRUCTION:					
Lineman	8.65	.40	1%		1/4%
Cable splicers	8.90	.40	1%		1/4%
Groundman (over 1 year of experience)	6.49	.40	1%		1/4%
Groundman (under 1 year of experience)	5.19	.40	1%		1/4%
Equipment operator	7.09	.40	1%		1/4%
Flat bed truck driver	5.36	.40	1%		1/4%
PAINTERS:					
Brush, tape & bedding, paperhanger	6.70		.15		
Spray	7.575		.15		
PLASTERERS	6.60				
PLUMBERS & PIPEFITTERS	7.70	.25	.55		.03
POWER EQUIPMENT OPERATORS:					
Backhoes	4.75				
Cranes, derricks, draglines	5.575				
Drilling	5.575				
Oilers	4.65				
ROOFERS	3.94				
SHEET METAL WORKERS	6.26				
SOFT FLOOR LAYERS	3.75				
TILE SETTERS	4.00				
TRUCK DRIVERS	3.00				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Howard
DECISION NO.: TX76-4164 DATE: Date of Publication
Supersedes Decision No. TX76-4081, dated May 7, 1976, in 41 FR 19039.
DESCRIPTION OF WORK: Building (including Residential) Construction. (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 7.00				
CARPENTERS	6.10				
CEMENT MASONS	5.00				
ELECTRICIANS	7.40	.30	1%		1/10%
IRONWORKERS, STRUCTURAL & ORNAMENTAL	7.93	.55	.85		.10
LABORERS:					
Laborers	3.06				
Mason tenders	3.50				
PAINTERS	4.50				
PLUMBERS	4.26				
ROOFERS	4.00				
SHEET METAL WORKERS	5.25				
TILE SETTERS	4.00				
TRUCK DRIVERS	2.50				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. TX76-4164

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION (RESIDENTIAL CONSTRUCTION ONLY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 2.75				
Asphalt Heaterman	3.00				
Asphalt Raker	3.70				
Asphalt Shoveler	2.75				
Batching Plant Scaleman	3.40				
Batterboard Setter	3.65				
Carpenter	3.90				
Carpenter Helper	2.75				
Concrete Finisher (Paving)	3.65				
Concrete Finisher Helper (Paving)	3.00				
Concrete Finisher (Structures)	4.00				
Concrete Finisher Helper (Structures)	3.50				
Form Builder (Structures)	4.00				
Form Builder Helper (Structures)	2.75				
Form Setter (Paving and Curb)	3.95				
Form Setter Helper (Paving & Curb)	2.75				
Form Setter (Structures)	3.85				
Form Setter Helper (Structures)	2.75				
Laborer, Common	2.50				
Laborer, Utility Man	3.20				
Manhole Builder, Brick	3.00				
Mechanic	4.00				
Mechanic Helper	3.00				
Oiler	3.00				
Serviceman	3.50				
Painter (Structures)	3.50				
Pipelayer	3.50				
Pipelayer Helper	2.90				
Powderman	3.75				
Powderman Helper	2.75				
Reinforcing Steel Setter (Structures)	3.25				
Reinforcing Steel Setter Helper	3.00				
Spreader Box Man	3.25				
Power Equipment Operators:					
Asphalt Distributor	3.50				
Asphalt Paving Machine	3.50				
Broom or Sweeper Operator	3.25				
Bulldozer, 150 HP and Less	3.50				
Bulldozer, over 150 HP	4.00				

DECISION NO. TX76-4164

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION (RESIDENTIAL CONSTRUCTION ONLY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	$ 4.05				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.55				
Crusher or Screening Plant Op.	3.00				
Elevating Grader	4.10				
Foundation Drill Operator (Truck Mounted)	4.90				
Front End Loader (2½ CY & Less)	3.50				
Front End Loader (Over 2½ CY)	3.95				
Motor Grader Op., Fine Grade	4.50				
Motor Grader Operator	4.25				
Roller, Steel Wheel (Plant-Mix Pavements)	3.50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.00				
Roller, Pneumatic (Self-Propelled)	2.95				
Scrapers (17 CY and Less)	3.25				
Scrapers (Over 17 CY)	4.00				
Side Boom	3.55				
Tractor (Crawler Type) 150 HP and Less	3.10				
Tractor (Crawler Type) over 150 HP	4.00				
Tractor (Pneumatic) 80 HP & Less	3.10				
Tractor (Pneumatic) over 80 HP	3.30				
Traveling Mixer	2.75				
Trenching Machine, Light	3.70				
Trenching Machine, Heavy	3.80				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.50				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.00				
Tandem Axle or Semitrailer	3.10				
Lowboy-Float	3.35				
Winch	3.40				
Weighman (Truck Scales)	2.50				
Welder	4.00				

STATE: Texas COUNTY: Wichita
DECISION NO.: TX76-4166 DATE: Date of Publication
Supersedes Decision No. TX76-4082, dated May 7, 1976, in 41 FR 19041.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 7.00				
CARPENTERS	6.00				
CEMENT MASONS	4.50				
ELECTRICIANS	5.55				
LABORERS:					
Laborers	3.00				
Mason tenders	3.55				
PAINTERS, BRUSH	4.32				
PLUMBERS & PIPEFITTERS	5.53				
ROOFERS	4.00				
SHEET METAL WORKERS	5.30				
SOFT FLOOR LAYERS	5.00				

DECISION NO. TX76-4166

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.75				
Asphalt Raker	4.00				
Batching Plant Scaleman	4.90				
Carpenter	4.00				
Carpenter Helper	3.75				
Concrete Finisher (Paving)	4.30				
Concrete Finisher Helper (Paving)	3.00				
Concrete Finisher (Structures)	4.80				
Concrete Finisher Helper (Structures)	3.50				
Form Builder (Structures)	4.75				
Form Builder Helper (Structures)	3.75				
Form Liner (Paving and Curb)	4.00				
Form Setter (Paving and Curb)	4.10				
Form Setter Helper (Paving & Curb)	3.45				
Form Setter (Structures)	5.05				
Form Setter Helper (Structures)	4.40				
Laborer, Common	3.00				
Laborer, Utility Man	3.30				
Manhole Builder, Brick	3.75				
Mechanic	4.80				
Mechanic Helper	3.50				
Oiler	4.10				
Serviceman	3.90				
Painter (Structures)	5.00				
Pipelayer	3.55				
Pipelayer Helper	3.00				
Powderman	4.40				
Reinforcing Steel Setter (Paving)	4.35				
Reinforcing Steel Setter (Structures)	4.75				
Reinforcing Steel Setter Helper	3.05				
Sign Erector	3.25				
Spreader Box Man	4.30				
Swamper	3.65				
Power Equipment Operators:					
Asphalt Distributor	4.20				
Asphalt Paving Machine	4.65				
Broom or Sweeper Operator	3.55				
Bulldozer, 150 HP and Less	3.70				
Bulldozer, over 150 HP	4.40				
Concrete Paving Curing Machine	3.75				

DECISION NO. TX76-4166

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Concrete Paving Finishing Machine	$ 4.65				
Concrete Paving Form Grader	3.75				
Concrete Paving Mixer	4.75				
Concrete Paving Saw	4.30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.55				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5.05				
Crusher or Screening Plant Op.	4.30				
Foundation Drill Operator (Crawler Mounted)	5.35				
Foundation Drill Operator (Truck Mounted)	5.85				
Foundation Drill Operator Helper	3.90				
Front End Loader (2½ CY & Less)	4.00				
Front End Loader (Over 2½ CY)	4.50				
Mixer (Over 16 CF)	4.60				
Motor Grader Operator, Fine Grade	5.05				
Motor Grader Operator	4.65				
Roller, Steel Wheel (Plant-Mix Pavements)	3.90				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.65				
Roller, Pneumatic(Self-Propelled)	3.45				
Scrapers (17 CY and Less)	4.10				
Scrapers (Over 17 CY)	4.20				
Side Boom	4.00				
Tractor (Crawler Type) 150 HP and Less	3.30				
Tractor (Crawler Type) over 150 HP	3.95				
Tractor (Pneumatic) 80 HP & Less	3.75				
Tractor (Pneumatic) over 80 HP	4.20				
Traveling Mixer	4.35				
Trenching Machine, Light	4.00				
Trenching Machine, Heavy	4.00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.50				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.50				
Tandem Axle or Semitrailer	3.00				
Lowboy-Float	3.50				
Transit-Mix	3.50				
Winch	3.25				
Vibrator Man (Hand Type)	3.05				
Weighman (Truck Scales)	3.00				
Welder	5.05				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Cameron, Hidalgo, Starr & Willacy

DECISION NO.: TX76-4162

DATE: Date of Publication

Supersedes Decision No. TX76-4083, dated May 7, 1976, in 41 FR 19043.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 6.00				
CARPENTERS:					
Carpenters	5.00				.025
Piledrivermen	4.67				
CEMENT MASONS	3.50				
ELECTRICIANS:					
Electrical contracts under $300,000	6.95	.40	1%		1%
Electrical contracts $300,000 & over	8.40	.40	1%		1%
GLAZIERS	2.75				
LABORERS:					
Common laborers	2.30				
Mason tenders	2.30				
Pipelayers (concrete & clay)	2.30				
PAINTERS, BRUSH	2.60				
PLASTERERS	5.00				
PLUMBERS & PIPEFITTERS	7.68	.32	.15		.05
ROOFERS:					
Roofers	3.00				
Kettlemen	2.30				
SOFT FLOOR LAYERS	2.30				
TERRAZZO WORKERS	2.50				
TERRAZZO WORKERS' HELPERS	2.30				
TILE SETTERS	2.50				
TILE SETTERS' HELPERS	2.30				
TRUCK DRIVERS	2.30				

DECISION NO. TX76-4162

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 2.75				
Asphalt Heaterman	3.25				
Asphalt Raker	3.00				
Asphalt Shoveler	2.50				
Batching Plant Scaleman	3.40				
Carpenter	3.50				
Carpenter Helper	2.50				
Concrete Finisher (Paving)	3.00				
Concrete Finisher Helper (Paving)	2.75				
Concrete Finisher (Structures)	3.50				
Concrete Finisher Helper (Structures)	3.00				
Electrician	7.50				
Form Builder (Structures)	4.00				
Form Builder Helper (Structures)	3.00				
Form Liner (Paving and Curb)	3.00				
Form Setter (Paving and Curb)	3.50				
Form Setter Helper (Paving & Curb)	2.75				
Form Setter (Structures)	3.75				
Form Setter Helper (Structures)	3.20				
Laborer, Common	2.30				
Laborer, Utility Man	3.00				
Manhole Builder, Brick	3.50				
Mechanic	4.10				
Mechanic Helper	3.05				
Oiler	2.70				
Serviceman	2.50				
Piledrivermen	3.95				
Pipelayer	2.75				
Pipelayer Helper	2.40				
Reinforcing Steel Setter (Structures)	3.70				
Reinforcing Steel Setter Helper	2.60				
Spreader Box Man	3.55				
Power Equipment Operators:					
Asphalt Distributor	3.50				
Asphalt Paving Machine	3.50				
Broom or Sweeper Operator	2.85				
Bulldozer, 150 HP and Less	3.50				
Bulldozer, over 150 HP	3.90				

DECISION NO. TX76-4162

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	$ 3.50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.50				
Front End Loader (2½ CY & Less)	3.40				
Front End Loader (Over 2½ CY)	3.50				
Mixer (Over 16 CF)	3.00				
Mixer (16 CF and Less)	3.00				
Motor Grader Op., Fine Grade	4.50				
Motor Grader Operator	3.50				
Roller, Steel Wheel (Plant-Mix Pavements)	3.65				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.00				
Roller, Pneumatic (Self-Propelled)	3.00				
Scrapers (17 CY and Less)	3.00				
Scrapers (Over 17 CY)	3.75				
Self-Propelled Hammer	3.15				
Tractor (Crawler Type) 150 HP and Less	2.75				
Tractor (Crawler Type) over 150 HP	3.50				
Tractor (Pneumatic) 80 HP & Less	3.00				
Tractor (Pneumatic) over 80 HP	3.35				
Traveling Mixer	3.25				
Trenching Machine, Light	3.40				
Truck Drivers:					
Single Axle, Light	2.50				
Single Axle, Heavy	2.75				
Lowboy-Float	3.50				
Welder	3.75				

STATE: Texas

COUNTIES: Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler

DECISION NO.: TX76-4168

DATE: Date of Publication

Supersedes Decision No. TX76-4084, dated May 21, 1976, in 41 FR 21141.

DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 9.70	.50	.30		.07
BOILERMAKERS	9.00	.50	1.00		.02
BRICKLAYERS & STONEMASONS	8.95		.30		
CARPENTERS:					
ZONE 1 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties:					
Carpenters	8.85				
Millwrights	9.20				
ZONE 2 - Childress County:					
Carpenters	8.42	.38	.40		.07
Millwrights	8.92	.38	.40		.07
CEMENT MASONS:					
Cement masons	8.30				
Machine operators	8.55				
ELECTRICIANS:					
ZONE 1 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties:					
Electricians	9.48	.40	1%		1/2%
Cable splicers	10.43	.40	1%		1/2%
ZONE 2 - Childress County:					
Electricians	9.95	.30	1%		1/4%
Cable splicers	10.20	.30	1%		1/4%
ELEVATOR CONSTRUCTORS	4.06	.175	.20	2%+a+b	
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.175	.20	2%+a+b	
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				

DECISION NO. TX76-4168

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS	$ 6.45			b	
IRONWORKERS	8.55	.55	.70		.10
LABORERS:					
GROUP 1 - Construction laborers, including excavation, pouring concrete, carpenter tenders, reinforcing, shoring, digging, loading & unloading materials, wrecking buildings & all structures & all unskilled laborers	4.71	.34	.15		
GROUP 2 - Air tool operator (jackhammer, tamper, brush hammer, chipping hammer, air or electric), sand blasterer, power buggy man, pipelayer (concrete & clay & all non-metallic pipe) & pipe wrappers; mortar mixers, mason tenders, plasterer tenders, cement finisher tenders, lather tenders, asphalt rakers, tampers, well drillers, bell hole men, dumpers, spotters	4.86	.34	.15		
LATHERS	9.05				.01
LINE CONSTRUCTION:					
ZONE 1 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties:					
Lineman	8.98	.40	1%		1/2%
Cable splicer	9.88	.40	1%		1/2%
Groundman, more than 1 year experience	5.89	.40	1%		1/2%
Groundman, less than 1 year experience	5.15	.40	1%		1/2%
Operator-hole digger, line truck	6.83	.40	1%		1/2%
Flat bed truck driver	5.15	.40	1%		1/2%

DECISION NO. TX76-4168

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
ZONE 2 - Childress County:					
Lineman; Operator	$10.96		1%		1/2%
Cable splicer	12.06		1%		1/2%
Groundman, 1st 6 months	6.58		1%		1/2%
Groundman, 2nd 6 months	7.12		1%		1/2%
Groundman, 1 year & over	7.67		1%		1/2%
MARBLE MASONS (EXTERIOR)	8.95		.30		
MARBLE MASONS (INTERIOR)	4.60				
PAINTERS:					
GROUP 1 - Brush & roller; paperhangers; perfa-tapers	7.70		.30		
GROUP 2 - Structural steel painters; swinging stage or chair below 50 ft.	7.82		.30		
GROUP 3 - Spray painters & sandblasters	8.45		.30		
GROUP 4 - Perfa-tape machine operator	7.95		.30		
PLASTERERS	9.05				.01
PLUMBERS & PIPEFITTERS:					
ZONE 1 - shall extend a distance of 25 road miles beyond the police station in Amarillo & Borger	8.56	.35	.55	.60	
ZONE 2 - shall extend a distance of 25 road miles beyond the outer perimeter of Zone 1	8.81	.35	.55	.60	
ZONE 3 - shall apply to all areas not within Zone 1 or 2	9.06	.35	.55	.60	
ROOFERS	4.50				
SHEET METAL WORKERS	9.43	.35	.30		.10
SPRINKLER FITTERS	10.90	.60	.90		.08
TERRAZZO WORKERS	4.60				
TILE SETTERS	4.60				

DECISION NO. TX76-4168

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
1/2 ton to 3 tons	$ 2.88				
3 to 5 tons	3.13				
5 tons and over	3.38				
Ready mix concrete to 3 yds.	2.88				
Ready mix concrete over 3 yds.	3.13				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental					

FOOTNOTES:

a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate

b - Paid Holidays A thru F

PAID HOLIDAYS

A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. TX76-4168

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 8.40	.40	.50		.10
GROUP 2	7.90	.40	.50		.10
GROUP 3	6.30	.40	.50		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Blade Grader, self-propelled; Clam Shells; Cable Ways; Cranes, power operated (all types); Air Compressors, Pumps, Welding Machines & Light Plants (7 to 12 machines); Derricks, power operated (all types); Dragline; Elevating Graders, self-propelled; Hoist, 2 drum or more; Locomotive; Mixermobiles; Paving Mixers, all types; Pile Drivers; Scrapers; Bulldozers; Side Boom; Cherry Pickers - 12½ ton & over; Shovels; Heavy Duty Mechanics; All Welders; All tractors with power attachments; Ditching Machines - crawler type; Farm type Tractor (Loader, 1 yd. & over) with Backhoe; All other equipment of similar nature coming within the Heavy Equipment Classification, when power operated

GROUP 2 - Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants (3 to 6 machines); Cherry Pickers - under 12½ tons; Ditch Witch - J30 and under; Farm type Tractor (Loader under 1 yd.) with Backhoe; Go-Devil; Mixers, 14 cu. ft. or over; Rollers over 10 tons; Air Compressor and one Tugger; Boilers, 2 or more; Winch Trucks; Front End Scoopmobile, Loader and PayLoader; Blade Grader, towed; Elevators, Building; Fork Lifts; Hoists, single drum or 1 line hoisting (1 tugger); Mixers less than 15 cu. ft.; Rollers; Screening Plants; Crushing Plants; Tractors - Wheel type except when hauling material; All other equipment of similar nature coming within the Light Equipment Classification, when power operated

GROUP 3 - Oiler-Fireman-Greasers

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Brazos
DECISION NO.: TX76-4170 DATE: Date of Publication
Supersedes Decision No. TX76-4101, dated June 18, 1976, in 41 FR 24876.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.00	.70	.70		.06
BOILERMAKERS	9.00	.50	1.00		.02
BRICKLAYERS	10.13	.38	.50		.05
CARPENTERS	8.70				
CEMENT MASONS	9.25	.49	.42		.05
ELECTRICIANS	11.05	.40	3%		.04
ELEVATOR CONSTRUCTORS	9.33	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	10.07	.60	.425		.01
IRONWORKERS	9.63	.55	.85		.075
LABORERS:					
GROUP 1	4.25	.28	.20		.02
GROUP 2	4.35	.28	.20		.02
GROUP 3	4.45	.28	.20		.02
GROUP 4	4.40	.28	.20		.02
GROUP 5	4.50	.28	.20		.02
GROUP 6	4.65	.28	.20		.02

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Construction labor, including excavation, concrete work, reinforcing, mason handler and wheeler (stock pile), asphalt ironer and raker, water proofing tender, pipe layer (non-metallic), pump crete pipe (handling and laying) and all building construction labor excepting that hereinafter classified; window washer, carpenters tender, cement mason tender, vibrator operator, other mechanic tender (except as otherwise classified); Dumper & spotter
GROUP 2 - Air tool operator
GROUP 3 - Well driller
GROUP 4 - Cutting torch man; mason tender; mason handler & wheelers handling material from first stock pile; concrete pipe (handling and laying); Sand blaster; power buggy operator; plasterer tender & hod carrier; lather tender; well driller tender
GROUP 5 - Tool room tender; mortar mixer (hoe and otherwise); Blaster, powder man; gunite worker
GROUP 6 - Gunite nozzleman

DECISION NO. TX76-4170

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Lineman & cable splicer	$11.26	.40	1%		1/2%
Groundman (1st 6 months)	3.94	.40	1%		1/2%
Groundman (2nd 6 months)	4.73	.40	1%		1/2%
Groundman	6.53	.40	1%		1/2%
MARBLE MASONS	9.51				
PAINTERS:					
Brush	4.75				
Spray	5.00				
Roller	4.50				
PLASTERERS	9.70	.52	.30		.02
PLUMBERS & PIPEFITTERS	8.21		.25		.03
SHEET METAL WORKERS	9.80	.275	.525	.32	.06
SOFT FLOOR LAYERS	9.17	.35	.45		.09
TERRAZZO WORKERS	9.51				
TILE SETTERS	9.51				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru F

PAID HOLIDAYS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christman Day

DECISION NO. TX76-4170

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 9.87	.35	.65		.06
GROUP 2	8.38	.35	.65		.06
GROUP 3	7.84	.35	.65		.06
GROUP 4	7.66	.35	.65		.06

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy Duty Mechanic; Blade Grader, Self-propelled; Bull Clam; Back Filler; Derrick-power operated (all types); Clam shell; Draglines; Push Cat Operator; Bull Dozer & all types Cat Tractors; Cable-Way; Backhoe; Shovel, power operated; Crane, power operated (all types); Elevating Grader, Self-propelled; Hoist, Motor-Driven, Two Drums or more; Mix Mobile; Water Well Drilling Machines, used on construction; Building Elevator, used on construction; Tug Boat Operator, assigned to construction; Winch Truck; Locomotive Crane; Concrete Mixer, 14 cubic feet or more; Paving Mixer (all types); Pile Driver; Scraper, heavy type, over 3 cubic yards; Trenching Machines (all sizes); Gradall; High-Lift; Foundation Boring Machine; Gasoline or Diesel-Driven Welding Machines, 7 or more; Pumpcrete Machine Operator; Turnapulls; DW-10 Caterpillar, S-18 Euclid and similar tractors; Asphalt Plant Mixer Operator on job; Crusher Operator on job; Scoopmobiles; Forklift used on construction (not including warehousing); Well Point Pump; Concrete Batch Plant Operator; Pneumatic Rollers, self-propelled; All other equipment of similar nature coming under the Heavy Equipment Class, when power operated

GROUP 2 - Air Compressors; Blade Grader, Towed; Flex Plane; Form Grader; Concrete Mixer, less than 14 cubic feet; Pumps; Pulsometer; Truck Crane Driver; Gasoline or diesel driven welding machines (on 3 or more, up to 6 machines); Hoist, Single Drum; Scraper, 3 cubic yards or less; Wagon Drill Operator; Conveyor; Generator, Gasoline or diesel driven, over 1500 watts; Rubber Tired Farm Tractor with attachments; A light equipment operator may run 1 or 2 105 cfm compressors; All other equipment of similar nature coming under the Light Equipment Class, when power operated

GROUP 3 - Fireman

GROUP 4 - Oiler

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Gregg, Harrison, Rusk & Upshur

DECISION NO.: TX76-4163

DATE: Date of Publication

Supersedes Decision No. TX76-4116, dated July 16, 1976, in 41 FR 29601.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$ 4.00				
BRICKLAYERS	6.00				
CARPENTERS	4.88				
CEMENT MASONS	3.965				
ELECTRICIANS:					
Single or multiple family dwellings or apartments up to and including 3 families	5.50		1%		1%
Over 3 families	7.95	.40	1%		1/4%
IRONWORKERS, STRUCTURAL & ORNAMENTAL	4.50				
LABORERS	3.98				
PAINTERS, BRUSH	5.25				
PLASTERERS	7.50				
PLUMBERS & PIPEFITTERS	6.40				
ROOFERS	3.00				
SHEET METAL WORKERS	5.50				
TILE SETTERS	5.00				
TRUCK DRIVERS	3.00				

DECISION NO. TX76-4163

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.00				
Asphalt Raker	3.75				
Asphalt Shoveler	2.50				
Batching Plant Scaleman	3.90				
Carpenter	4.50				
Carpenter Helper	3.50				
Concrete Finisher (Paving)	5.00				
Concrete Finisher Helper (Paving)	3.55				
Concrete Finisher (Structures)	4.00				
Concrete Finisher Helper (Structures)	3.50				
Concrete Rubber	3.10				
Electrician	5.75				
Form Builder (Structures)	4.15				
Form Builder Helper (Structures)	3.25				
Form Liner (Paving & Curb)	4.05				
Form Setter (Paving & Curb)	3.75				
Form Setter Helper (Paving & Curb)	3.15				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.75				
Laborer, Common	2.50				
Laborer, Utility Man	3.30				
Mechanic	4.50				
Mechanic Helper	3.60				
Oiler	3.75				
Serviceman	3.35				
Painter (Structures)	4.50				
Piledrivermen	5.00				
Pipelayer	3.80				
Pipelayer Helper	2.70				
Powderman	4.25				
Powderman Helper	3.25				
Reinforcing Steel Setter (Paving)	3.50				
Reinforcing Steel Setter (Structures)	4.20				
Reinforcing Steel Setter Helper	3.00				
Steel Worker (Structural)	4.35				
Spreader Box Man	3.50				
Swamper	3.30				
Power Equipment Operators:					
Asphalt Distributor	3.60				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	3.75				

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Bulldozer, 150 HP and Less	$ 3.75				
Bulldozer, over 150 HP	4.25				
Concrete Paving Curing Machine	5.00				
Concrete Paving Finishing Machine	4.50				
Concrete Paving Mixer	4.50				
Concrete Paving Saw	4.50				
Concrete Paving Spreader	4.00				
Paving Sub Grader	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.50				
Crusher or Screening Plant Op.	4.00				
Form Loader	3.75				
Foundation Drill Operator (Crawler Mounted)	5.80				
Foundation Drill Operator (Truck Mounted)	5.75				
Foundation Drill Op. Helper	4.00				
Front End Loader (2½ CY & Less)	3.75				
Front End Loader (Over 2½ CY)	4.50				
Mixer (Over 16 CF)	4.50				
Motor Grader Op., Fine Grade	4.50				
Motor Grader Operator	4.00				
Pump Crete	3.60				
Roller, Steel Wheel (Plant-Mix (Pavements)	3.65				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.50				
Roller, Pneumatic (Self-Propelled)	3.15				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				
Tractor (Crawler Type) 150 HP and Less	3.50				
Tractor (Crawler Type) over 150 HP	4.00				
Tractor (Pneumatic) 80 HP & Less	3.35				
Tractor (Pneumatic) over 80 HP	3.50				
Traveling Mixer	4.00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.40				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.00				
Tandem Axle or Semitrailer	3.00				
Lowboy-Float	3.00				
Vibrator Man (Hand Type)	2.50				
Weighman (Truck Scales)	3.00				
Welder	4.50				

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Smith, Van Zandt & Wood
DECISION NO.: TX76-4165 DATE: Date of Publication
Supersedes Decision No. TX76-4117, dated July 16, 1976, in 41 FR 29603.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 6.00				
CARPENTERS	5.00				
CEMENT MASONS	4.75				
ELECTRICIANS	5.25				
GLAZIERS	4.20				
IRONWORKERS, STRUCTURAL & ORNAMENTAL	4.94				
LABORERS	3.00				
LATHERS	5.80				
PAINTERS, BRUSH	4.50				
PLASTERERS	6.00				.01
PLUMBERS & PIPEFITTERS	4.10				
ROOFERS	4.50				
SHEET METAL WORKERS	4.00				
TILE SETTERS	4.125				
TRUCK DRIVERS	2.62				

DECISION NO. TX76-4165

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.00				
Asphalt Raker	3.75				
Asphalt Shoveler	2.50				
Batching Plant Scaleman	3.90				
Carpenter	4.50				
Carpenter Helper	3.50				
Concrete Finisher (Paving)	5.00				
Concrete Finisher Helper (Paving)	3.55				
Concrete Finisher (Structures)	4.00				
Concrete Finisher Helper (Structures)	3.50				
Concrete Rubber	3.10				
Electrician	5.75				
Form Builder (Structures)	4.15				
Form Builder Helper (Structures)	3.25				
Form Liner (Paving and Curb)	4.05				
Form Setter (Paving and Curb)	3.75				
Form Setter Helper (Paving & Curb)	3.15				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.75				
Laborer, Common	2.50				
Laborer, Utility Man	3.30				
Mechanic	4.50				
Mechanic Helper	3.60				
Oiler	3.75				
Serviceman	3.35				
Painter (Structures)	4.50				
Piledrivermen	5.00				
Pipelayer	3.80				
Pipelayer Helper	2.70				
Powderman	4.25				
Powderman Helper	3.25				
Reinforcing Steel Setter (Paving)	3.50				
Reinforcing Steel Setter (Structures)	4.20				
Reinforcing Steel Setter Helper	3.00				
Steel Worker (Structural)	4.35				
Spreader Box Man	3.50				
Swamper	3.30				
Power Equipment Operators:					
Asphalt Distributor	3.60				
Asphalt Paving Machine	4.00				

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Broom or Sweeper Operator	$ 3.75				
Bulldozer, 150 HP and Less	3.75				
Bulldozer, over 150 HP	4.25				
Concrete Paving Curing Machine	5.00				
Concrete Paving Finishing Machine	4.50				
Concrete Paving Mixer	4.50				
Concrete Paving Saw	4.50				
Concrete Paving Spreader	4.00				
Paving Sub Grader	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.50				
Crusher or Screening Plant Op.	4.00				
Form Loader	3.75				
Foundation Drill Operator (Crawler Mounted)	5.80				
Foundation Drill Operator (Truck Mounted)	5.75				
Foundation Drill Op. Helper	4.00				
Front End Loader (2½ CY & Less)	3.75				
Front End Loader (Over 2½ CY)	4.50				
Mixer (Over 16 CF)	4.50				
Motor Grader Op., Fine Grade	4.50				
Motor Grader Operator	4.00				
Pump Crete	3.60				
Roller, Steel Wheel (Plant-Mix Pavements)	3.65				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.50				
Roller, Pneumatic(Self-Propelled)	3.15				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				
Tractor (Crawler Type) 150 HP and Less	3.50				
Tractor (Crawler Type) over 150 HP	4.00				
Tractor (Pneumatic) 80 HP & Less	3.35				
Tractor (Pneumatic) over 80 HP	3.50				
Traveling Mixer	4.00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.40				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle,Heavy	3.00				
Tandem Axle or Semitrailer	3.00				
Lowboy-Float	3.00				
Vibrator Man (Hand Type)	2.50				
Weighman (Truck Scales)	3.00				
Welder	4.50				

SUPERSEDEAS DECISION

STATE: VIRGINIA

LOCATION: THE INDEPENDENT CITIES OF HAMPTON AND NEWPORT NEWS (INCLUDING LANGLEY AIR FORCE)

DECISION NO.: VA76-3254

DATE: DATE OF PUBLICATION

Supersedes Decision No. AQ-2103, dated April 19, 1974, in 39 FR 14119.

DESCRIPTION OF WORK: Residential Construction consisting of single family houses and garden type apartments up to and including four (4) stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Conditioning Mechanic	$ 4.75				
Bricklayer	6.70				
Carpenter	5.28				
Carpet Layer	8.50				
Cement Mason	6.80				
Drywall Finisher	6.00				
Drywall Hanger	6.49				
Drywall Taper	6.50				
Electrician	4.53				
Laborer:					
Unskilled	3.40				
Mason Tender	3.42				
Painter - Brush	5.29				
Plumber	4.87				
Roofer	4.40				
Sheet Metal Worker	4.41				
Soft Floor Layer	6.50				
Tile Setter	7.28				
Truck Driver	4.00				
Power Equipment Operators:					
Backhoe	4.38				
Bulldozer	5.00				
Crane	5.96				
Forklift	4.20				
Front End Loader	4.72				

STATE: Wisconsin COUNTY: Statewide
DECISION NUMBER: WI76-2119 DATE: Date of Publication
Supersedes Decision Number WI75-2115 dated October 10, 1975, in 40 FR 48089
DESCRIPTION OF WORK: Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS and STONEMASONS:					
Zone 1 - Barron, Buffalo, Burnett, Chippewa, Dunn, Eau Clair, Pepin, Pierce, Polk, Rusk, St. Croix and Sawyer Counties	$9.19	.55	.25		.03
Zone 2 - Fond Du Las County	7.20	.30	.25	.40	
Zone 3 - Brown, Calumet, Door, Florence, Green Lake, Kewaunee, Manitowoc, Marinette, Marquette, Oconto, Outagamie, Shawano, Waupaca, Washara, and Winnebago Counties	8.15	.45	.35	.55	.02
Zone 4 - Green, Lafayette and Rock Counties	10.65				
Zone 5 - Crawford, Jackson, Juneau, La Crosse, Vernon, Trempealeau and Monroe Cos.	9.05	.40	.25		
Zone 6 - Walworth County	10.35	.40	.40		.02
Zone 7 - Dane, Grant, Iowa and Richland Counties	9.29	.55	.50		
Zone 8 - Milwaukee, Ozaukee, Washington and Waukesha Cos.	10.44	.80	.60	.56	
Zone 9 - Columbia and Sauk Cos.	9.60	.55	.30		
Zone 10 - Kenosha and Racine Cos.	10.35	.40	.40		
Zone 11 - Sheboygan County	8.60	.55	.35		.02
Zone 12 - Ashland, Bayfield, Douglas and Iron Counties	9.56	.45	.45		
Zone 13 - Dodge and Jefferson Counties	9.10	.45	.25		
Zone 14 - Adams, Clark, Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Price, Taylor, Vilas and Wood Counties	8.80	.45	.25		
CARPENTERS and PILEDRIVERMEN:					
Zone 1 - Ashland County					
Carpenters	6.94	.30	.25	.15	
Piledrivermen	7.14	.30	.25	.15	
Zone 2 - Barron, Burnett, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk, Rusk, St. Croix, Sawyer, and Taylor Counties					

DECISION NO. WI76-2119

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS (Cont'd)					
Zone 2 (Cont'd)					
Carpenters	$9.20	.30	.30		.03
Piledrivermen	9.60	.30	.30		.03
Zone 3 - Brown, Calumet, Door, Fon Du Lac, Green Lake, Kewaunee, Manitowoc, Marinette, Marquette, Menominee, Oconto, Outagamie, Shawano, Waupaca and Waushara and Winnebago Counties					
Carpenters	8.82	.30	.40		.03
Piledrivermen	9.22	.30	.40		.03
Zone 4 - Green, Jefferson and Rock Counties					
Carpenters	9.86	.30	.40		.04
Piledrivermen	10.01	.30	.40		.04
Zone 5 - Kenosha County					
Carpenters	9.85	.40	.60		.03
Piledrivermen	9.93	.40	.60		.03
Zone 6 - Jackson, La Crosse, Monroe, Trempealeau and Vernon Counties					
Carpenters	8.82	.30	.40		.03
Piledrivermen	9.22	.30	.40		.03
Zone 7 - Adams, Columbia, Crawford, Dane, Dodge, Grant, Iowa, Juenau, La Fayette, Richland and Sauk Counties					
Carpenters	9.37	.30	.40		.03
Piledrivermen	9.77	.30	.40		.03
Zone 8 - Florence and Iron Cos.					
Carpenters	8.29	.50	.40		.01
Piledrivermen	8.49	.50	.40		.01
Zone 9 - Milwaukee, Ozaukee, Washington and Waukesha Cos.					
Carpenters	9.76	.80	.70	.51	.06
Piledrivermen	10.21	.80	.70	.51	.06
Zone 10 - Racine County					
Carpenters	9.16	.40	.50		.03
Piledrivermen	9.22	.40	.50		.03

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CARPENTERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 11 - Sheboygan County					
Carpenters	$8.85	.40	.30		
Piledrivermen	9.54	.40	.30		
Zone 12 - Bayfield and Douglas Counties					
Carpenters	7.55	.30	.35	.30	
Piledrivermen	7.55	.30	.35	.30	
Zone 13 - Walworth County					
Carpenters	8.21	.40	.30	.50	.02
Piledrivermen	8.21	.40	.30	.50	.02
Zone 14 - Forest, Langlade, Lincoln, Marathon, Oneida, Portage, Price, Villas, and Wood Counties					
Carpenters	8.82	.30	.40		.03
Piledrivermen	9.22	.30	.40		.03
CEMENT MASONS:					
Zone 1 - Ashland, Bayfield, Douglas, and Iron Counties	9.345	.30			
Zone 2 - Barron, Burnett, Chippewa, Dunn, Polk, Rusk, St. Croix, Sawyer and Washburn Counties	8.73	.45	.25	.50	.03
Zone 3 - Adams, Clark, Forest, Langlade, Lincoln, Marathon Menominee, Oneida, Portage, Price, Taylor, Vilas and Wood Counties	8.30	.45	.25		.04
Zone 4 - Buffalo, Eau Claire, Pepin, and Pierce Counties	8.73	.45	.25	.50	.03
Zone 5 - Brown, Calumet, Door, Florence, Green Lake, Kewaunee, Mainitowoc, Marinette, Marquette, Oconto, Outagamie, Shawano, and Waupaca Counties	8.20	.45	.35		.02
Zone 6 - Crawford, Jackson, Juneau, La Crosse, Monroe, Richland. Trempealeau and Vernon Counties	8.53	.45	.25		
Zone 7 - Waushara and Winnebago Counties	7.05	.45	.35	.50	
Zone 8 - Sheboygan County	8.10	.55	.35		.02
Zone 9 - Fond Du Lac County	7.05	.45	.35	.50	.02

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CEMENT MASONS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 10 - Dodge and Jefferson Counties	$8.60	.45	.25		
Zone 11 - Columbia and Sauk Cos.	9.35	.55	.40		
Zone 12 - Milwaukee, Ozaukee, Washington and Waukesha Cos.	9.09	.60	.60	.51	
Zone 13 - Dane, Green, Iowa, Lafeyette and Rock Counties	9.35	.45	.40		
Zone 14 - Grant County	7.85				
Zone 15 - Walworth County	9.05	.40	.40	.40 .02	.02
Zone 16 - Racine County	8.76	.40	.60	.50	
Zone 17 - Kenosah County	8.76	.40	.60	.50	
ELECTRICIANS:					
Zone 1 - Calumet, Outagamie, Waupaca, Waushara and Winnebago Counties	10.43	.60	1%		
Zone 2 - Barron, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk, Price, Rusk and St. Croix, and Taylor Counties	9.85	4%	1%		.25%
Zone 3 - Brown, Door, Dewaunee, and Shawano Counties	9.65	.38	1%		.25%
Zone 4 - Florence and Forest Cos.	8.33	.40	1%		.50%
Zone 5 - Kenosha County	11.34	.45	1%	.25	.75%
Zone 6 - Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau and Vernon Counties	10.15	.55	1%		.50%
Zone 7 - Walworth County	10.20	.45	1%	7%	.50%
Zone 8 - Columbia, Dane, Dodge, Green Lake, Iowa, Marquette, and Sauk Counties	9.49	.48	1%	7%	.75%
Zone 9 - Sheboygan County	9.01	.85	1%+.20	10%	1.25%
Zone 10 - Ashland, Bayfield, Burnett, Douglas, Iron, Sawyer, and Washburn Cos.	10.15	4%	1%	11%	3%

DECISION NO. WI76-2119

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (Cont'd)					
Zone 11 - Langlade, Lincoln, Marathon, Menominee, Oneida and Vilas Counties	$9.60	.45	1%	7%	1/8 of 1%
Zone 12 - Adams, Portage and Wood Counties	9.14	.35	1%	6½%	.25%
Zone 13 - Fond Du Lac County	9.01	.85	1%+.20	10%	1.25%
Zone 14 - Green, Jefferson, Lafayette and Rock Counties	10.20	.45	1%	7%	.50%
Zone 16 - Milwaukee, Ozaukee, Washington and Waukesha Cos.	10.58	.85	1%+.20	10%	1.25%
Zone 17 - Marinette and Oconto Counties	9.65	.38	1%		.25%
Zone 18 - Manitowoc County	9.65	.38	1%		.25%
IRONWORKERS:					
Zone 1 - Barron, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk St. Croix and Trempealeau Counties	9.40	.55	.55		.02
Zone 2 - Ashland, Bayfield, Burnett, Douglas, Forest, Iron, Lincoln, Oneida, Price, Rusk, Sawyer, Taylor Vilas and Washburn Counties	9.05	.25	.50	.10	
Zone 3 - Adams, Columbia, Crawford, Dane, Dodge, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Langlade, Marquette, Marathon, Menominee, Monroe, Portage, Richland, Sauk, Shawano, Waupaca, Vernon, Waushara, and Wood Counties	10.22	.50	.25		.13
Zone 4 - Brown, Claumet, Door, Florence, Fond Du Lac, Kenosha, Kewaunee, Manitowoc, Marinette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington and Waukesha and Winnebago Cos.	10.06	.95	.70	1.15	.15

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS: (Cont'd)					
Zone 5 - Rock County	$11.20	.40	.375		.05
LINE CONSTRUCTION:					
Linemen	9.37	.35	1%		.5%
Cable Splicers	10.23	.35	1%		.5%
Equipment Operator	7.77	.35	1%		.5%
Truck Drivers with Boom or Digger Tractor or 5th wheel	6.46	.35	1%		.5%
Truck Drivers	6.16	.35	1%		.5%
Groundman	5.88	.35	1%		.5%
Groundman 1st 6 months	5.09	.35	1%		.5%
PAINTERS:					
Zone 1 - Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Price and Taylor Counties					
Brush	8.50				
Spray	9.00				
Zone 2 - Barron, Buffalo, Burnett Chippewa, Dunn, Eau Claire, Pepin, Pierce, Polk, Rusk, St. Croix, Sawyer, Trempealeau, and Washburn Counties					
Brush	8.15				
Spray	8.65				
Steel	8.40				
Zone 3 - Brown, Door, Kewaunee, and Oconto Counties					
Brush	8.05	.40			
Spray	8.43	.40			
Zone 4 - Florence County					
Brush	6.70			.45	
Spray	7.20			.45	
Zone 5 - Kenosha County					
Brush	8.275	.40	.40		
Steel	8.425	.40	.40		
Spray	9.02	.40	.40		

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PAINTERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 6 - Adams, Clark, Crawford, Jackson, Juneau, La Crosse, Monroe, Portage, Vernon and Wood Counties					
Brush	$7.28		.35		
Steel	7.55		.35		
Spray	7.97		.35		
Zone 7 - Walworth County					
Brush	8.275	.40	.40		
Spray	9.02	.40	.40		
Zone 8 - Columbia, Dane, Dodge, Grant, Green, Iowa, Lafayette, Richland, Rock and Sauk Counties					
Brush	8.69	.60	.30	.30	.01
Spray	9.44	.60	.30	.30	.01
Zone 9 - Calumet and Manitowoc Counties					
Brush	7.05				
Spray	7.05				
Zone 10 - Marinette County					
Brush	5.90			.40	
Spray	6.40			.40	
Zone 11 - Jefferson, Milwaukee, Ozaukee, Washington and Waukesha Counties					
Brush	8.85	.50	.60	.50	.02
Steel and Spray	9.20	.50	.60	.50	.02
Zone 12 - Fond Du Lac, Green Lake, Marquette, Outagamie, Shawano, Waushara, Waupaca, and Winnebago Counties					
Brush and Steel	7.50	.30	.10		.03
Spray	8.00	.30	.10		.03
Zone 13 - Racine County					
Brush	7.90	.40	.20		
Steel	8.05	.40	.20		
Spray	8.65	.40	.20		
Zone 14 - Sheboygan County					
Brush and Steel	6.35	.20	.30	.20+.10	
Spray	6.75	.20	.30	.20+.10	
Zone 15 - Ashland, Bayfield, Douglas, Iron and Vilas Counties					
Brush	8.31	.25	.20		.05
Spray and Steel	8.56	.25	.20		.05

DECISION NO. WI76-2119

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 1 - Milwaukee, Ozaukee, Washington and Waukesha Counties					
Group 1	$7.46	.55	.60	.25	.02
Group 2	7.56	.55	.60	.25	.02
Group 3	7.61	.55	.60	.25	.02
Group 4	7.66	.55	.60	.25	.02
Group 5	7.71	.55	.60	.25	.02
Group 6	7.76	.55	.60	.25	.02
Group 7	8.11	.55	.60	.25	.02
Zone 2 - Racine County					
Group 1	7.26	.40	.50	.20	.02
Group 2	7.36	.40	.50	.20	.02
Group 3	7.41	.40	.50	.20	.02
Group 4	7.46	.40	.50	.20	.02
Group 5	7.51	.40	.50	.20	.02
Group 6	7.56	.40	.50	.20	.02
Group 7	7.91	.40	.50	.20	.02
Zone 3 - Kenosha County					
Group 1	7.26	.40	.50	.25	.02
Group 2	7.36	.40	.50	.25	.02
Group 3	7.41	.40	.50	.25	.02
Group 4	7.46	.40	.50	.25	.02
Group 5	7.51	.40	.50	.25	.02
Group 6	7.56	.40	.50	.25	.02
Group 7	7.91	.40	.50	.25	.02
Zone 4 - Dane County					
Group 1	7.06	.30	.25		.02
Group 2	7.11	.30	.25		.02
Group 3	7.15	.30	.25		.02
Group 4	7.21	.30	.25		.02
Group 5	7.26	.30	.25		.02
Zone 5 - Remainder of State					
Group 1	6.78	.30	.25		.02
Group 2	6.83	.30	.25		.02
Group 3	6.88	.30	.25		.02
Group 4	6.93	.30	.25		.02
Group 5	6.98	.30	.25		.02

LABORERS (Cont'd)

Classifications for ZONES 1, 2 and 3 RESPECTIVELY

Group 1: Bituminous worker (shoveler, loader, utility man), Demolition and wrecking laborer, Guard rail builder, Reinforcing steel setter (pavement), Stone handler, Tree trimmer, Landscaper, Multiplate culvert assembler, Conduit layer, Unskilled laborer

Group 2: Bituminous worker (dumper, ironer, smoother, tamper), Batch truck dumper, Cement handler, Concrete handler

Group 3: Chain Saw Operator, Demolition burning torch laborer, Joint sawer and filler (pavement), Vibrator or tamper operator (mechanical, hand operated)

Group 4: Air tool operator (hand operated)

Group 5: Form setter (curb, walk, and pavement), Strike off man

Group 6: Bituminous Worker (raker and luteman)

Group 7: Powderman, blaster

LABORERS (Cont'd)

Classifications for ZONES 4 and 5 RESPECTIVELY

Group 1: Bituminous Worker (dumper, ironer, smoother, tamper, shoveler, loader, utility man), Strike off man, Joint sawer or filler (pavement), Concrete handler, demolition and wrecking laborer, Guard rail builder, Reinforcing steel setter (pavement); Stone handler, Landscaper, Multiplate culvert assembler, Conduit layer, Unskilled laborer

Group 2: Form setter (curb, walk, and pavement), Tree trimmer

Group 3: Air tool operator, Vibrator or tamper operator, Batch truck dumper, Cement handler

Group 4: Bituminous worker (raker, luteman), Chain saw operator, Demolition burning torch laborer

Group 5: Powderman, blaster

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	Basic Hourly Rates	Fringe Benefits Payments			
POWER EQUIPMENT OPERATORS:		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$9.12	.65	.65		.10
Group 2	8.86	.65	.65		.10
Group 3	8.77	.65	.65		.10
Group 4	8.69	.65	.65		.10
Group 5	8.61	.65	.65		.10
Group 6	8.57	.65	.65		.10
Group 7	8.48	.65	.65		.10
Group 8	8.36	.65	.65		.10
TRUCK DRIVERS					
Zone 1 - Milwaukee, Ozaukee, Washington and Waukesha Counties					
Group 1	7.39	a21.00	a22.00	.35	
Group 2	7.54	a21.00	a22.00	.35	
Zone 2 - Kenosha and Racine Counties					
Group 1	7.39	b93.01	a22.00	.35	
Group 2	7.54	b93.01	a22.00	.35	
Zone 3 - Remainder of State					
Group 1	7.39	b93.01	a22.00	.35	
Group 2	7.54	b93.01	a22.00	.35	

FOOTNOTES:

a. Per week per employee on payroll 30 days or longer.

b. Per month per employee on payroll 30 days or longer.

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POWER EQUIPMENT OPERATORS

CLASSIFICATIONS:

Group 1: Bituminous paver or plant, Concrete breaker (truck mounted, heavy), Crane, Derrick, Dragline, Dredge, Piledriver, Power shovel, Material hoist, Mixer or paver 21 cu. ft. or over, Roller over 5 ton, Self-propelled stabilizing mixer, Trenching machine, Tractor (side boom, heavy), Concrete pavement spreader (heavy duty) Rubber tires, Hydraulic back hoe, Asphalt Plane engineer; Automatic slipform concrete paver, Automatic concrete subgrader, Batch mixer, portable, Caisson rigs, Central Mixer concrete, Dredge engineer, Concrete batch plant engineer, Central mix plant concrete, Percussion or rotary drill machine, Grader or motor patrol, Loading machine (conveyor), Mechanic or welder (heavy duty equipment), Tractor (scraper, dozer, pusher, loader), Tugger, End Loader, Asphalt heater and planer, Boatman, Bump cutter and grooving machine, Shoulder widener, Winches and "A" frames, Tube finisher

Group 2: Concrete mixer less than 21 cu. ft., Concrete pump, Steel roller, 5 tons or less

Group 3: Screed (bituminous paver), Shouldering machine, Self-propelled chip spreader

Group 4: Concrete breaker and tamper (light), Concrete spreader, Finishing machine, Mechanical float, Curing machine, Power subgrader, Joint sawer (multiple balde), Launch, Roller (pneumatic tired) Self-propelled tractor (mounted or towed compactors and light equipment), Light rubber tired tractor - end loader, Fork-lift, Belting machine, Burlap machine, Jeep digger, Mulcher, Texturing machine

Group 5: Fireman, Evironmental burner

Group 6: Air compressor, Drilling or boring machine (mechanical heavy), Greaser (heavy equipment) Lead-man, Tank car heaters, Stump chipper, Curb machine, Concrete proportioning plant, Generators, Mud jacks

Group 7: Crusher or screening plant, Automatic belt conveyor and surge bin, pneumatic tired roller farm tractor towed, Pug mill

Group 8: Oiler, Pump over 3", Surge bin, Drilling machine helper

TRUCK DRIVERS

Group 1: Truck Drivers, 2 Axle - Mehcanics helper, truck

Group 2: Truck Drivers, 3 or more axle trucks - Euclid ror Dumpster type hauling units - Mechanic, truck

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