AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Vol.42—No.64
4-4-77
PAGES
17865–18052

federal register

MONDAY, APRIL 4, 1977



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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
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DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

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.

federal register
Area Code 202 Phone 523–5240

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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 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0053]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

In accordance with 12 CFR 226.1(d), the Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

Official staff interpretations may be reconsidered by the Board upon request of interested parties and in accordance with 12 CFR 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

This interpretation shall be effective as of March 28, 1977.

[FC-0053]

§ 226.4(a)(5)—Insurance disclosures required to exclude premiums from the finance charge may be printed on reverse side of Truth in Lending disclosure statement. (Clarifies FC-0037)

§ 226.4(a)(6)—Insurance disclosures required to exclude premiums from the finance charge may be printed on reverse side of Truth in Lending disclosure statement. (Clarifies FC-0037)

MARCH 15, 1977.

This is in reply to your letter of * * *, requesting clarification of recent Official Staff Interpretation FC-0037. That interpretation stated that the disclosures and authorization required by § 226.4(a)(5) and (6) in order to exclude certain insurance premiums from the finance charge may be made in a statement separate from the regular Truth in Lending disclosure form. You ask whether these disclosures may be placed on the reverse side of the same sheet of paper used for the regular Truth in Lending disclosures. It is staff's opinion that this would comply with the requirements of Regulation Z. FC-0037 was not meant to suggest that if the disclosures are made separately from the Truth in Lending disclosures, they must actually be made on a separate piece of paper. Therefore, printing of the disclosures on the reverse side of the disclosure statement would suffice.

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) of the regulation and is limited in its applicability to the facts outlined herein. I trust that this will prove helpful to you.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

Board of Governors of the Federal Reserve System, March 28, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-9902 Filed 4-1-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 16619; Amdt. 39-2867]

PART 39—AIRWORTHINESS DIRECTIVES

Avions Marcel Dassault/Breguet Aviation (AMD/BA) Falcon 10 Airplanes

There have been reports that tailpipe attachment flanges on Avions Marcel Dassault/Breguet Aviation Falcon 10 airplanes equipped with Grumman tailpipe P/N F10A5B10003-7 are experiencing cracks of a nature and extent that could result in detachment of the tailpipe from the airplane. Loss of a tailpipe would jeopardize the safety of persons and property on the ground. Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires replacement of the tailpipes.

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

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive.

AVIONS MARCEL DASSAULT/BREGUET AVIATION (AMD BA) Applies to Falcon 10 airplanes, certificated in all categories, equipped with Grumman tailpipe, P/N F10A5B10003-7, installed without back-up ring, P/N F10A5B10606-11.

Compliance is required as indicated, unless already accomplished.

To prevent the possible loss of the tailpipe, accomplish the following:

(a) For tailpipes having more than 750 hours time in service on the effective date of this AD, comply with paragraph (c) of this AD within 90 days or 150 hours time in service after the effective date of this AD, whichever occurs first.

(b) For tailpipes having 750 hours or less time in service on the effective date of this AD, comply with paragraph (c) of this AD prior to the accumulation of 900 hours total time in service.

(c) Replace tailpipe, P/N F10A5B10003-7, with a new part of the same part number, or with a serviceable part of improved design, P/N F10A5RDB20217-3, and in either case install with back-up ring P/N F10A5B10606-11

(Falcon 10 Service Bulletin No. 0129, dated December 21, 1976, covers this subject.)

This amendment becomes effective April 18, 1977.

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C. on March 28, 1977.

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

[FR Doc.77-9864 Filed 4-1-77;8:45 am]

[Docket No. 77-CE-7-AD; Amdt. 39-2863]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Models C90 and E90 Airplanes

AGENCY: Federal Aviation Administration/DOT(FAA).

ACTION: Final Rule.

SUMMARY: This amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) adds a new Airworthiness Directive (AD) applicable to certain Beech Models C90 and E90 airplanes. It requires inspection of the left hand rudder cable for adequate clearance between it and the electrical relay panel. Inadequate clearance could cause the rudder cable to strike the electrical components and be damaged by electrical arcing resulting in failure of the rudder cable and loss of airplane rudder control. Where clearance is inadequate, the AD requires relocation or modification of the electrical relay panel and the replacement of damaged rudder cables.

EFFECTIVE DATE: April 11, 1977, to all persons except those to whom it has already been made effective by air mail letter from the Federal Aviation Administration dated March 14, 1977.

ADDRESSES: Beechcraft Service Instruction 0896 may be obtained from Beech Aircraft Corporation, Wichita, Kansas 67201.

FOR FURTHER INFORMATION CONTACT:

E. L. Tankesley, Aerospace Engineer, Engineering and Manufacturing Branch, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-3446.

SUPPLEMENTARY INFORMATION: There have been reports in which the left hand rudder cable was damaged by electrical arcing when it came in contact with electrical components on the relay panel located under the left hand cockpit floorboard on Beech Models C90 and E90 airplanes. This condition can result when there is inadequate clearance between the rudder cable and the relay panel. A damaged rudder cable could fail and result in the loss of airplane control under critical flight situations. The reports showed that severe cable damage had occurred. In one of the reports only a single strand of cable remained intact. Therefore, the FAA determined that an unsafe condition of an emergency nature existed which required immediate corrective action and thereby determined that notice and public procedure thereon were impracticable and contrary to the public interest. Accordingly, all known registered owners of affected aircraft were notified of the emergency AD by air mail letter dated March 14, 1977. Since the unsafe condition is likely to exist or develop in other airplanes of the same type design, an AD is being issued applicable to Beech Models C90 and E90 making it effective as to all persons who did not receive the AD letter notification. The AD requires, prior to further flight, inspection of the left hand rudder cable to determine if at least ¾ inch clearance exists between it and the electrical components located on the relay panel. If inadequate clearance is found, the AD further requires modification or relocation of the relay panel, inspection of the rudder cable for damage and its replacement if damaged. On those aircraft where the inspection shows that clearance is more than ⅜ inch but less than ¾ inch, correction is required within 25 hours' time in service after the effective date of this AD. Procedures for accomplishing the AD inspection and modification of the aircraft, if required, are provided in Beechcraft Service Instructions No. 0896.

Accordingly, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR § 39.13) is amended effective April 11, 1977, by adding the following new AD:

BEECH. Applies to Models C90 (Serial Numbers LJ-640 thru LJ-716), and E90 (Serial Numbers LW-126 thru LW-220, LW-222 and LW-223) airplanes.

To assure adequate clearance between the left hand rudder cable and the electrical components on the relay panel located under the left hand cockpit floorboard, accomplish the following:

(A) Prior to further flight inspect the left hand rudder control cable under the left hand cockpit floorboard in accordance with Steps 1 through 4 of Beechcraft Service Instructions 0896, or later approved revisions, to determine that at least ¾ inch clearance exists between the rudder control cable and all electrical components located on the relay panel.

(B) If the inspection required by Paragraph A shows that the clearance is less than ¾ inch, prior to further flight:

1. If possible, relocate the relay panel to provide at least ¾ inch clearance, or if the relay panel cannot be relocated to provide at least ¾ inch clearance, modify the panel in accordance with Steps 6 through 13 of Beechcraft Service Instructions 0896, or later approved revisions, and

2. Inspect the rudder cable to determine if it has been damaged by coming in contact with the electrical components. If the cable has been damaged, install a new cable, Beech P/N 50-524438-17, or an equivalent cable fabricated in accordance with acceptable FAA standards (AC 43.13-1A).

(C) If the inspection required by Paragraph A shows that the clearance is between ⅜ and ¾ inches, within 25 hours' time in service after the effective date of this AD, accomplish the requirements of Paragraphs B(1) and B(2).

(D) If the inspection required by Paragraph A shows that the clearance is ¾ inch or more, make an entry in the aircraft's maintenance records indicating that this AD has been accomplished and the airplane may be returned to service.

(E) Airplanes may be flown in accordance with FAR 21.197 to a location where the needed electrical system modification or rudder cable replacement required by this AD may be accomplished. Prior to authorizing a flight under FAR 21.197, the FAA District Office involved should contact the Chief, Engineering and Manufacturing Branch, FAA, Central Region, for appropriate operating limitations.

(F) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This amendment becomes effective April 11, 1977, to all persons except those to whom it has already been made effective by air mail letter from the Federal Aviation Administration dated March 14, 1977.

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.81, Federal Aviation Regulation, (14 CFR 11.81).)

Issued in Kansas City, Missouri, on March 25, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-9858 Filed 4-1-77;8:45 am]

[Docket No. 16620; Amdt. 39-2869]

PART 39—AIRWORTHINESS DIRECTIVES

Britten Norman, Ltd. BN-2A and BN-2A Mk III Airplanes

There has been a report of internal corrosion of an aileron mass balance support arm installed on a Britten-Norman, Ltd. Model BN-2A airplane which had progressed to the exterior surface and could result in failure of the support arm, possible hazardous flutter, and loss of airplane control. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection, repair, and replacement, as necessary, of the aileron mass balance support arm on Britten-Norman Model BN-2A and BN-2A Mk III airplanes.

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

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BRITTEN NORMAN, LTD. Applies to Models BN-2A Islander and BN-2A Mk III Trislander airplanes, all series, certificated in all categories, except those airplanes incorporating Britten Norman Modification NB/M878.

Compliance is required as indicated, unless already accomplished.

To detect internal corrosion and prevent possible failure of the aileron mass balance support arm, accomplish the following:

(a) For ailerons modified in accordance with Britten-Norman, Ltd. Modification NB/M/336, within the next 25 hours time in service after the effective date of this AD or prior to 3 years since new, whichever occurs later, accomplish the following:

(1) Gain access to and inspect the interior surface of the aileron mass balance support arm in accordance with steps 1 thru 4 of Part 1 and Figure 1 of Britten-Norman, Ltd. Service Bulletin BN-2/SB.98, Issue 1, dated October 27, 1976 (hereinafter S.B.BN-2/SB.98), or an FAA-approved equivalent.

(2) If no corrosion or acceptable corrosion (as defined in Table 1 of Figure 1 of S.B. BN-2/SB.98) is found as a result of the inspection required by paragraph (a)(1) of this AD, clean and protect the interior surface of the support arm and the shank of the bobweight in accordance with subpart (a) of step 5, and reassemble in accordance with steps 6 through 9, of Part 1 of S.B. BN-2/SB.98, or an FAA-approved equivalent.

(3) If marginal corrosion (as defined in Table 2 of Figure 1 of S.B. BN-2/SB.98) is found as a result of the inspection required by paragraph (a)(1) of this AD, before further flight, clean, protect, and reassemble the support arm, in accordance with paragraph (a)(2) of this AD. Thereafter, within the next 300 hours time in service or 3 months, whichever occurs sooner, replace the support arm with a new part of the same part number or an FAA-approved equivalent, and reassemble in accordance with paragraph (a)(2) of this AD.

(4) If, during the inspection required by paragraph (a)(1) of this AD, corrosion is found beyond acceptable limits (as defined in Table 3 of Figure 1 of S.B. BN-2/SB.98), before further flight, replace the support arm with a new part of the same part number, or an FAA-approved equivalent, and reassemble in accordance with paragraph (a)(2) of this AD.

(b) For ailerons not modified in accordance with Britten-Norman, Ltd. Modifica-

tion NB/M/336, within the next 25 hours time in service after the effective date of this AD or prior to 3 years since new, whichever occurs later, accomplish the following:

(1) Gain access to and inspect the interior surface of the mass balance support arm in accordance with steps 1 thru 4 of Part 2 and Figure 2 of S.B. BN-2/SB.98, or an FAA-approved equivalent.

(2) If no corrosion or acceptable corrosion (as defined in Table 1 of Figure 1 of S.B. BN-2/SB.98) is found as the result of the inspection required by paragraph (b)(1) of this AD, clean and protect the interior surface of the support arm and the shank of the bobweight in accordance with subpart (a) of Step 5, Part 1, and repair the support arm in accordance with Figure 2 and reassemble in accordance with steps 6 thru 9, of Part 2 of S.B. BN-2/SB.98, or an FAA-approved equivalent.

(3) If marginal corrosion (as defined in Table 2 of Figure 1 of S.B. BN-2/SB.98) is found as a result of the inspection required by paragraph (b)(1) of this AD, before further flight, clean, protect, repair, and reassemble the support arm and shank of the bobweight in accordance with paragraph (b)(2) of this AD. Thereafter within the next 300 hours time in service or 3 months, whichever occurs sooner, replace the support arm in accordance with the repair and reassembly instructions specified in Part 3 and Figure 3, of S.B. BN-2/SB.98, or an FAA-approved equivalent.

(4) If, during the inspection required by paragraph (b)(1) of this AD, corrosion is found beyond acceptable limits (as defined in Table 3 of Figure 1 of S.B. BN-2/SB.98), before further flight, replace the support arm in accordance with Part 3 and Figure 3 of S.B. BN-2/SB.98, or an FAA-approved equivalent.

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

This amendment becomes effective April 18, 1977.

Issued in Washington, D.C. on March 29, 1977.

R. P. SKULLY,
Director,
Flight Standards Service.

[FR Doc.77-9865 Filed 4-1-77;8:45 am]

[Docket No. 77-SO-10; Amendment No. 39-2861]

PART 39—AIRWORTHINESS DIRECTIVES

Grumman American Aviation Corporation AA-5 and AA-5A Airplanes

There have been failures of the carburetor heat valve in Grumman American Aviation Corporation (GAAC) Model AA-5 and AA-5A airplanes which could cause partial or complete loss of power of the engine, or release parts which could be ingested by the engine. Since this condition is likely to occur on other airplanes of the same type, an airworthiness directive has been issued to require inspection within the next ten hours of operation, repetitive inspections to permit additional flight, and the replacement of an unacceptable original configuration carburetor heat valve with a new configuration carburetor heat valve.

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

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89) § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

GRUMMAN AMERICAN AVIATION CORPORATION. Applies to GAAC Model AA-5, Serial Numbers 0641 through 0834, and to Model AA-5A, Serial Numbers 0001 through 0321, airplanes certificated in all categories.

Compliance required as indicated below after the effective date of this AD unless already accomplished.

(a) Within 10 hours of flight after the effective date of this Ad, in order to prevent possible failure of the carburetor heat valve assembly, remove the lower cowl and inspect the carburetor heat valve assembly for configuration as shown in Figure 1.

(1) If Configuration B is installed, reinstall lower cowl, and the aircraft may be approved for return to service.

(2) If Configuration A is installed, remove the carburetor heat valve assembly and inspect for cracks in the bend radius. If cracks are found, remove valve assembly from service and replace with a new valve assembly Part Number 5503006-505. Do not reuse the removed carburetor heat valve assembly which must be discarded.

(b) If no cracks are found in Configuration A carburetor heat valve assembly, valve assembly may be reinstalled, the lower cowl reinstalled, and after compliance with (c) below, the aircraft may be approved for return to service for twenty-five (25) hours of operation.

(1) At the end of the first period not to exceed twenty-five hours of operation after the initial inspection required in (a)(2), repeat the initial inspection procedure required in (a)(2).

(2) If no cracks are found at this second inspection of the carburetor heat valve assembly, the valve assembly may be reinstalled, the cowl replaced, and after compliance with (c) below, the aircraft may be approved for return to service for a second and final operational period not to exceed 25 hours.

(3) No Configuration A carburetor heat valve assembly may be continued in service in excess of 50 hours after the initial inspection required in (a)(2) above.

(c) To insure adequate carburetor heat rise, after the removal and reinstallation of the carburetor heat valve assembly, the following checks must be made prior to flight:

(1) After carburetor heat valve assembly is installed into air box assembly, temporarily install air box assembly onto lower cowl. Remove air filter and check forward and aft gap between the valve assembly and carburetor heat box/lower cowl contact points. Maximum gap is 0.120 inch at both ends of valve with carburetor heat in the on and off position. If excessive gap exists, remove air box assembly and crimp edge of valve assembly up or down as required to obtain a gap less than 0.120 inch as specified in the GAAC Service Bulletin No. 159.

(2) Following cowl installation, perform engine run up to check carburetor heat drop (50 RPM drop minimum). If drop does not meet minimum requirements, rework valve per subparagraph (c)(1) above.

(3) Carburetor heat rigging to be accomplished in accordance with the AA-5 series Service Manual.

Grumman American Aviation Corporation Service Bulletin No. 159 dated February 25, 1977, or later approved revisions, pertains to this subject.

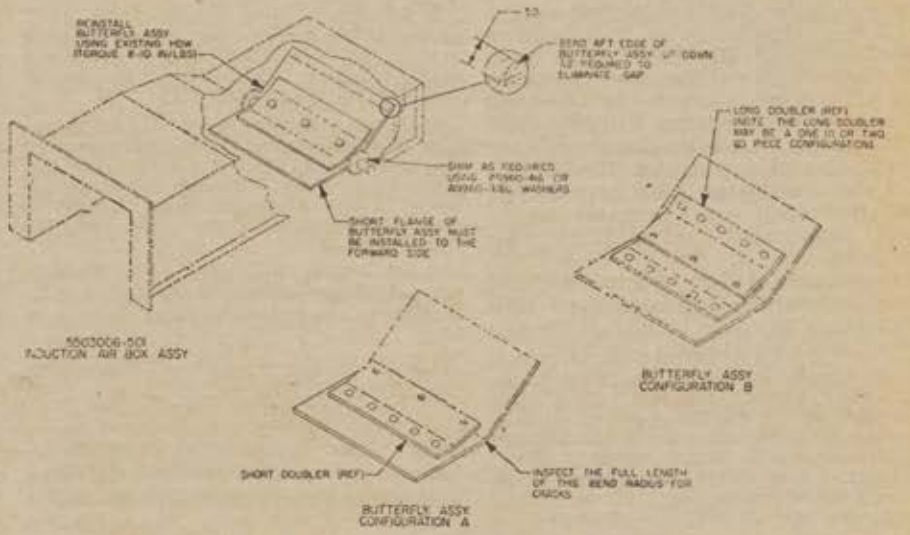
Equivalent methods of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southern Region, 3400 Whipple Street, East Point, Georgia 30344.

This amendment becomes effective April 11, 1977.

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11941, and OMB Circular A-107.

Issued in East Point, Georgia, on March 23, 1977.

PHILLIP M. SWATEK,
Director,
Southern Region.



[FR Doc.77-9856 Filed 4-1-77;8:45 am]

[Docket No. 74-WE-41-AD, Amdt. 39-2862]

PART 39—AIRWORTHINESS DIRECTIVES

Hiller UH-12 Series Helicopters

AGENCY: Federal Aviation Administration/DOT (FAA).

ACTION: Final Rule.

SUMMARY: This amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) prescribes a new airworthiness directive (AD) that will supersede AD 74-21-05 (Amendment 39-1990, 39 FR 36855). After issuing AD 74-21-05, recent Hiller Aviation fatigue test data showed a service life of 6,860 hours for Hiller P/N 36124 when used with unfaired paddles. Therefore, the AD is being superseded by a new AD that requires a finite life of 6,860 hours for Hiller P/N 36124 when used with unfaired paddles, clarifies the 2,500 hours service life after repair per Hiller Aviation Service Bulletin No. 36-1, Revision 2, dated June 19, 1974, and continues the 100 hour inspection of AD 74-21-05.

EFFECTIVE DATE: April 7, 1977.

FOR FURTHER INFORMATION:

Kyle L. Olsen, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007 Worldway Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION. On October 4, 1974 the FAA issued airworthiness directive (AD) 74-21-05 (Amendment 393-1990, 39 FR 36855) on Hiller UH-12 helicopters, which required inspections of the control rotor blade spar tube for cracks, corrosion or excessive wear of the outboard retention bolts; and replacement or repair, if necessary. This AD was required because of fatigue cracks in the control rotor blade spar tube initiating at the outboard attachment (to the cuff) bolt hole which have propagated completely around the spar tube causing the blade assembly to separate from the cuff which will result in loss of control of the helicopter.

Recent fatigue tests conducted by Hiller Aviation have established a service life of 6,860 hours for Hiller control rotor blade cuff, Hiller P/N 36124 when used with unfaired paddles. Therefore, the AD is being superseded by a new AD to require that the Hiller P/N 36124 cuff be taken out of service before reaching 6,860 hours time in service. The new AD will also clarify the 2,500 hour service life after repair, and will retain the 100 hour inspections required by AD 74-21-05.

Accordingly, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR Part 39) is amended by adding the following new airworthiness directive:

HILLER AVIATION. Applies to Hiller Model UH-12, UH-12A, UH-12B, UH-12C, UH-12D, UH-12E, UH-12E (4-place), (including military Models H-23A, H-23B, H-23C, H-23D, H-23F, OH-23G, HTE-1, HTE-2, and CH112) helicopters, certificated in all categories.

Compliance required as indicated, unless already accomplished.

To detect cracks in the control rotor blade spar tube and cuff and to establish a service life of 6,860 hours for Hiller P/N 36124 cuff used with unfaired paddles accomplish the following:

(a) Within the next 100 hours time in service after the effective date of this AD, unless already accomplished within the last 100 hours time in service and thereafter at intervals not to exceed 100 hours time in service from the last inspection, inspect, replace or repair the control rotor blade spar tube and cuff in accordance with Hiller Aviation Service Bulletin No. 36-1, Revision 2, dated June 19, 1974, or later FAA-approved revisions.

(b) After any repair is accomplished in accordance with Hiller Aviation Service Bulletin No. 36-1, Revision 2, dated June 19, 1974 or later FAA-approved revisions, the control rotor blade spar tube (faired and unfaired) and cuff must be retired before 2,500 additional hours time in service after rework or when the current approved total service life (total service life before repair plus service life after repair) is reached, whichever comes first.

(c) Fabric covered, metal covered, faired and unfaired control rotor blades are not interchangeable and must not be intermixed.

(d) For Hiller P/N 36124 cuffs used with unfaired paddles.

(1) Cuffs with more than 6,660 hours time in service, remove and replace with a serviceable part within 200 hours time in service after the effective date of this AD.

(2) Cuffs with less than 6,660 hours time in service, remove and replace with a serviceable part prior to 6,860 hours time in service.

(3) For cuffs for which the prior service history cannot be documented, within the next 25 hours time in service after the effective date of this AD, remove and discard the cuff from service.

(e) Equivalent inspection procedures and repair procedures for Hiller P/N 36124 cuff when used only with unfaired paddles may be approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(f) Special flight permits may be issued in accordance with FAR's 21.197 and 21.199 to operate helicopters to a base for accomplishment of the inspections required by this AD.

This supersedes Amendment 39-1990 (39 FR 36855), AD 74-21-05.

This amendment becomes effective April 7, 1977.

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

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amend by Executive Order 11949, and OMB Circular A-107.

NOTE.—The incorporation by reference in the preceeding document was approved by Director of the Federal Register on June 19, 1967.

Issued in Los Angeles, California on March 24, 1977.

ROBERT H. STANTON,
Director,
FAA Western Region.

[FR Doc.77-9857 Filed 4-1-77;8:45 am]

[Airspace Docket No. 76-GL-38]

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

Designation of Transition Area

Correction

In FR Doc. 77-5793, appearing on page 11236 of the issue for Monday, February 28, 1977, in the last line of the first paragraph of the Upper Sandusky, Ohio Transition Area, "longtiude 33°18'52" W." should read "longitude 83°18'52" W.".

[Airspace Docket No. 77-RM-1]

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

Alteration of Control Zone and Establishment of Transition Area; Correction

On February 14, 1977, a notice of proposed rulemaking was published in the FEDERAL REGISTER (42 FR 9029) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the control zone and establish a transition area at Greenwood Village, Colorado. On February 17, 1977, a correction to the Notice of Proposed Rule Making was published in the FEDERAL REGISTER (42 FR 9682) amending the coordinates.

Interested persons were given 30 days in which to submit written comments, suggestions or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date: This amendment shall be effective 0901 G.m.t., June 16, 1977.

Issued in Aurora, Colorado, on March 23, 1977.

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

M. M. MARTIN,
Director, Rocky Mountain Region.

On February 2, 1977, a notice of proposed rulemaking was issued and was published at 41 FR 9029, Monday, February 14, 1977, which would establish a transition area and alter the control zone at Greenwood Village, Colorado. The description of the location of the Castle LOM as latitude 39°35'07" N., longitude 104°51'04" W. is changed to latitude 39°27'08" N., longitude 104°50'43" W.

[FR Doc.77-9855 Filed 4-1-77;8:45 am]

[Airspace Docket No. 77-NE-6]

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

Change in Effective Hours of Control Zone in New England Region

AGENCY: Federal Aviation Administration/DOT (FAA).

ACTION: Final Rule.

SUMMARY: This rule amends the published hours of four New England Region control zones to reflect the actual hours of operation presently published in the Airman's Information Manual (AIM) and published by Notices to Airmen (NOTAM).

EFFECTIVE DATE: April 4, 1977.

ADDRESSES: Federal Aviation Administration, Office of the Regional Counsel, ANE-7, Attn: Rules Docket Clerk, Docket No. 77-NE-6, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT:

Richard G. Carlson, Operations Procedures and Airspace Branch, ANE-536, Air Traffic Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273-7285.

SUPPLEMENTARY INFORMATION: A review of the FEDERAL REGISTER by the Federal Aviation Administration indicates a need for amending the published hours of four New England Region control zones in § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR 71.171) to reflect the actual hours of operation presently published in the Airman's Information Manual (AIM) and published by Notices to Airmen (NOTAM). The four control zones affected by this change are Beverly, Massachusetts; Hyannis, Massachusetts; Manchester, New Hampshire; and Norwood, Massachusetts. Since this change merely reflects the current hours of the respective control zones, it has no adverse effect on any person and notice and public procedure thereon is unnecessary.

Accordingly, the Federal Aviation Administration amends § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR 71.171), effective upon publication in the FEDERAL REGISTER, to change the old effective hours of the Beverly, Massachusetts; Hyannis, Massachusetts; Manchester, New Hampshire; and Norwood, Massachusetts, control zones to the new effective hours as follows:

Section 71.171

	Old hours	New hours
Beverly, Mass.	0700 to 1900	0700 to 2300 (local).
Hyannis, Mass.	0700 to 2300	0600 to 2300 (local).
Manchester, N.H.	0600 to 2400	0600 to 2300 (local).
Norwood, Mass.	0800 to 2000	0700 to 2300 (local).

(Secs. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348(a)) and Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Burlington, Massachusetts, on March 25, 1977.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.77-9863 Filed 4-1-77;8:45 am]

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

Freedom of Information Regulations

Pursuant to the authority vested in me by 42 U.S.C. 2473, Subpart 3, § 1206.300 (b)(3), Subpart 4, § 1206.401 (c) and (k), and Subpart 5, § 1206.503(b) of Part 1206 of the National Aeronautics and Space Administration regulations are amended.

The purpose of these amendments is to change Exemption 3 so that it conforms to the Exemption 3 enacted in the Government in the Sunshine Act, Public Law 94-409, Section 5(b), to change the names of two Information Centers and to give authority to the Director of Headquarters Administration to redelegate the initial determination and unusual circumstance determination functions to the Manager or his designee, NASA Resident Procurement Office-JPL.

Since these amendments are concerned with a change in agency practice, as mandated by Public Law 94-409, Section 5(b) and changes in agency organization, notice and public procedure thereon is not required.

Subpart 3—Exemptions

14 CFR Part 1206 is amended as follows:

1. In Subpart 3, § 1206.300(b)(3) is revised to read as follows:

§ 1206.300 Exemptions.

* * * * * *

(b) * * *

(3) Specifically exempted from disclosure by any statute (other than Title 5, United States Code, Section 552), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

* * * * * *

Subpart 4—Location for Inspection and Request of Agency Records

2. In Subpart 4, § 1206.401 (c) and (k) are revised as follows:

§ 1206.401 Location of NASA Information Centers.

* * * * * *

(c) NASA Information Center, Hugh L. Dryden Flight Research Center, Post Office Box 273, Edwards, CA 93523.

* * * * * *

(k) NASA Information Center, NASA Resident Procurement Office—JPL, 4800 Oak Grove Drive, Pasadena, CA 91103.

* * * * * *

Subpart 5—Responsibilities

3. In Subpart 5, § 1206.503(b) is revised to read as follows:

§ 1206.503 NASA Headquarters.

* * * * * *

(b) The functions set forth in paragraphs (a) (2) and (3) of this section may be delegated by the Director of Headquarters Administration to a Public Affairs Officer designated by the Assistant Administrator for Public Affairs and to the Manager or his/her designee, NASA Resident Procurement Office—JPL.

Effective Date: These amendments to Subpart 3, § 1206.300(b)(3), Subpart 4, § 1206.401 (c) and (k), and Subpart 5, § 1206.503(b) become effective on March 12, 1977.

JAMES C. FLETCHER,
Administrator.

[FR Doc.77-9919 Filed 4-1-77;8:45 am]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

PART 51—PASSPORTS

Subpart A—General

VALIDITY OF DIPLOMATIC PASSPORTS

Subpart A of Part 51, Chapter 1, 22 CFR, is amended to limit the period of validity of diplomatic passports. Section 51.4 paragraph (d) is amended to read as follows:

§ 51.4 Validity of passports.

* * * * * *

(d) *Period of validity of a diplomatic passport.* A diplomatic passport issued on or after January 1, 1977 is valid for a period of five (5) years or so long as the bearer maintains his/her diplomatic status, whichever is shorter. A diplomatic passport which has not expired must be returned to the Department upon the termination of the bearer's diplomatic status or at such other time as the Secretary shall determine. Any outstanding diplomatic passport issued before January 1, 1977 will expire effective December 31, 1977.

(Section 1, 44 Statute 887, Section 4, 63 Statute 111, as amended; 22 U.S.C. 211a, 2658; Executive Order 11295, 36 FR 10603; 3 CFR 1966-70 Comp., page 507.)

Since, under 22 CFR 51.3(c), a diplomatic passport can only be issued "to a Foreign Service Officer, a person in the diplomatic service or to a person having diplomatic status either because of the nature of his foreign mission or by reason of the office he holds," the publication of the general notice of proposed rulemaking has been dispensed with under Clause (B) of 5 U.S.C. 553(b) as unnecessary. For the same reasons, the amendment falls within the exception

provided in 5 U.S.C. 553(d)(3) and shall be effective April 4, 1977.

For the Secretary of State.

ROBERT T. HENNEMEYER,
Acting Administrator, Bureau of Security and Consular Affairs.

[FR Doc.77-9916 Filed 4-1-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7477]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Expenditures To Remove Architectural and Transportation Barriers to Handicapped and Elderly

AGENCY: Internal Revenue Service, Treasury.

ACTION: Interim regulations.

SUMMARY: This document provides interim regulations relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations may affect persons who make expenditures to remove architectural and transportation barriers to the handicapped and elderly and provide them with the guidance needed to comply with the law. In addition, the regulations promulgated by this document are proposed to be prescribed as final regulations.

EFFECTIVE DATES: The interim regulations are effective for taxable years beginning after December 31, 1976, and the final regulations are proposed to be effective for taxable years beginning after December 31, 1976. Written comments and requests for a public hearing must be delivered or mailed by

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

John M. Coulter, Jr., of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. (Attention: CC:LR:T). (202-556-3346).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains interim income tax regulations under part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954. These amendments conform the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) to section 2122 of the Tax Reform Act of 1976 (90 Stat. 1914). They are issued under the authority contained in sections 190 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1914 and 68A Stat. 917; 26 U.S.C. 190 and 7805). In addition, the regulations promulgated in this document are proposed to be prescribed as final Income Tax Regulations (26 CFR Part 1) under section 190 of the Internal Revenue Code of 1954. The amendments are proposed to conform the Income Tax Regulations to section 2122 of the Tax Reform Act of 1976 (90 Stat. 1914). They are also to be issued under the authority contained in sections 190 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1914 and 68A Stat. 917; 26 U.S.C. 190 and 7805).

EXPLANATION OF PROVISIONS

Section 2122 of the Tax Reform Act of 1976 added section 190 to the Code. Section 190 provides that a taxpayer may elect to deduct certain amounts paid or incurred by him in any taxable year beginning after December 31, 1976, and before January 1, 1980, for qualified architectural and transportation barrier removal expenses. The deduction is allowed for certain expenses for the purpose of making any facility, or public transportation vehicle, owned or leased by the taxpayer for use in connection with his trade or business more accessible to, or usable by, handicapped or elderly individuals.

Under the interim regulations, the term "facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or similar real or personal property. Further, a "public transportation vehicle" is defined as a vehicle, such as a bus, a railroad car, or other conveyance, whether publicly or privately owned, which provides to the public general or special transportation service. This includes service rendered to the customers of a taxpayer who is not in the trade or business of, rendering transportation services. The term "handicapped individual" means any individual who has (1) a physical or mental disability (including, but not limited to, blindness or deafness) which for that individual constitutes or results in a functional limitation to employment, or (2) a physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more of the individual's major life activities. Examples of these activities are performing manual tasks, walking, speaking, breathing, learning, and working. An "elderly individual" is one age 65 or over.

To qualify for the deduction, the taxpayer must establish, to the satisfaction of the Commissioner or his delegate, that the removal of a barrier conforms a facility or public transportation vehicle to one or more of the standards set forth in the interim regulations. The interim regulations also provide that qualified expenses include only expenses specifically attributable to the removal of an existing architectural or transportation barrier. These expenses do not include any part of an expense in connection with the construction or comprehensive renovation of a facility or public transportation vehicle or the normal replacement of depreciable property..

The amount deductible under section 190 for any taxable year is limited to $25,000. Under the interim regulations, the maximum deduction for a taxpayer (including an affiliated group of corporations filing a consolidated return) for any taxable year is $25,000. The $25,000 limitation applies to a partnership and to each partner. The interim regulations further provide that expenditures for a taxable year in excess of this amount are to be treated as capital expenditures and constitute adjustments to basis under section 1016(a). A special rule applies where a partner's expenditures exceed $25,000.

The election to deduct qualified architectural and transportation barrier removal expenses is made by claiming the deduction as a separate item identified as such on the taxpayer's income tax return for the taxable year for which the election applies. The return must be filed not later than the time prescribed by law for filing the return (including extensions). Once made, an election is irrevocable and applies to all qualified expenditures paid or incurred during the taxable year up to the limitation. If such expenditures exceed $25,000, the taxpayer elects which expenditures comprise those deducted. An electing taxpayer must have available records and documentation of all the facts necessary to determine the amount deductible pursuant to the election, as well as the amount of any adjustment to basis required to be made for expenditures exceeding the $25,000 limit.

STATUTORY CONCURRENCE

The Architectural and Transportation Barriers Compliance Board has concurred in the standards set forth in this interim regulation.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adoption of the final regulations proposed in this document, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of this regulation was John M. Coulter, Jr. of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the following interim regulations are adopted:

1. Section 7.190-1 is added to read as set forth below.

§ 7.190–1 Expenditures to remove architectural and transportation barriers to the handicapped and elderly.

(a) *In general.* Under section 190 of the Internal Revenue Code of 1954, a taxpayer may elect, in the manner provided in § 7.190–3 of this chapter, to deduct certain amounts paid or incurred by him in any taxable year beginning after December 31, 1976, and before January 1, 1980, for qualified architectural and transportation barrier removal expenses (as defined in § 7.190–2(b) of this chapter). In the case of a partnership, the election shall be made by the partnership. The election applies to expenditures paid or incurred during the taxable year which (but for the election) are chargeable to capital account.

(b) *Limitation.* The maximum deduction for a taxpayer (including an affiliated group of corporations filing a consolidated return) for any taxable year is $25,000. The $25,000 limitation applies to a partnership and to each partner. Expenditures paid or incurred in a taxable year in excess of the amount deductible under section 190 for such taxable year are capital expenditures and are adjustments to basis under section 1016(a). A partner must combine his distributive share of the partnership's deductible expenditures (after application of the $25,000 limitation at the partnership level) with that partner's distributive share of deductible expenditures from any other partnership plus that partner's own section 190 expenditures, if any (if he makes the election with respect to his own expenditures), and apply the partner's $25,000 limitation to the combined total to determine the aggregate amount deductible by that partner. In so doing, the partner may allocate the partner's $25,000 limitation among the partner's own section 190 expenditures and the partner's distributive share of partnership dedctible expenditures in any manner. If such allocation results in all or a portion of the partner's distributive share of a partnership's deductible expenditures not being an allowable deduction by the partner, the partnership may capitalize such unallowable portion by an appropriate adjustment to the basis of the relevant partnership property under section 1016. For purposes of adjustments to the basis of properties held by a partnership, however, it shall be presumed that each partner's distributive share of partnership deductible expenditures (after application of the $25,000 limitation at the partnership level) was allowable in full to the partner. This presumption can be rebutted only by clear and convincing evidence that all or any portion of a partner's distributive share of the partnership section 190 deduction was not allowable as a deduction to the partner because it exceeded that partner's $25,000 limitation as allocated by him. For example, suppose for 1978 A's distributive share of the ABC partnership's deductible section 190 expenditures (after application of the $25,000 limitation at the partnership level) is $15,000. A also made section 190 expenditures of $20,000 in 1978 which he elects to deduct. A allocates $10,000 of his $25,000 limitation to his distributive share of the ABC expenditures and $15,000 to his own expenditures. A may capitalize the excess $5,000 of his own expenditures. In addition, if ABC obtains from A evidence which meets the requisite burden of proof, it may capitalize the $5,000 of A's distributive share which is not allowable as a deduction to A.

2. Section 7.190–2 is added to read as set forth below.

§ 7.190–2 Definitions.

For purposes of section 190 and the regulations thereunder—

(a) *Architectural and transportation barrier removal expenses.* The term "architectural and transportation barrier removal expenses" means expenditures for the purpose of making any facility, or public transportation vehicle, owned or leased by the taxpayer for use in connection with his trade or business more accessible to, or usable by, handicapped individuals or elderly individuals. For purposes of this section—

(1) The term "facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or similar real or personal property.

(2) The term "public transportation vehicle" means a vehicle, such as a bus, a railroad car, or other conveyance, which provides to the public general or special transportation service (including such service rendered to the customers of a taxpayer who is not in the trade or business of rendering transportation services).

(3) The term "handicapped individual" means any individual who has—

(i) A physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or

(ii) A physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more of such individual's major life activities, such as performing manual tasks, walking, speaking, breathing, learning, or working.

(4) The term "elderly individual" means an individual age 65 or over.

(b) *Qualified architectural and transportation barrier removal expense*—(1) *In general.* The term "qualified architectural and transportation barrier removal expense" means an architectural or transportation barrier removal expenses (as defined in paragraph (a) of this section) with respect to which the taxpayer establishes, to the satisfaction of the Commissioner or his delegate, that the resulting removal of any such barrier conforms a facility or public transportation vehicle to all the requirements set forth in one or more of paragraphs (b)(2) through (22) of this section or in one or more of the subdivisions of paragraph (b)(20) or (21). Such term includes only expenses specifically attributable to the removal of an existing architectural or transportation barrier. It does not include any part of any expense paid or incurred in connection with the construction or comprehensive renovation of a facility or public transportation vehicle or the normal replacement of depreciable property. Such term may include expenses of construction, as, for example, the construction of a ramp to remove the barrier posed for wheelchair users by steps. Major portions of the standards set forth in this paragraph were adapted from "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped" (1971), the copyright for which is held by the American National Standards Institute, 1430 Broadway, New York, New York 10018.

(2) *Grading.* The grading of ground, even contrary to existing topography, shall attain a level with a normal entrance to make a facility accessible to individuals with physical disabilities.

(3) *Walks.* (i) A public walk shall be at least 48 inches wide and shall have a gradient not greater than 5 percent. A walk of maximum or near maximum grade and of considerable length shall have level areas at regular intervals. A walk or driveway shall have a nonslip surface.

(ii) A walk shall be of a continuing common surface and shall not be interrupted by steps or abrupt changes in level.

(iii) Where a walk crosses a walk, a driveway, or a parking lot, they shall blend to a common level. However, the preceding sentence does not require the elimination of those curbs which are a safety feature for the handicapped, particularly the blind.

(iv) An inclined walk shall have a level platform at the top and at the bottom. If a door swings out onto the platform toward the walk, such platform shall be at least 5 feet deep and 5 feet wide. If a door does not swing onto the platform or toward the walk, such platform shall be at least 3 feet deep and 5 feet wide. A platform shall extend at least 1 foot beyond the strike jamb side of any doorway.

(4) *Parking lots.* (i) At least one parking space that is accessible and approximate to a facility shall be set aside and identified for use by the handicapped.

(ii) A parking space shall be open on one side to allow room for individuals in wheelchairs and individuals on braces or crutches to get in and out of an automobile onto a level surface which is suitable for wheeling and walking.

(iii) A parking space for the handicapped, when placed between two conventional diagonal or head-on parking spaces, shall be at least 12 feet wide.

(iv) A parking space shall be positioned so that individuals in wheelchairs and individuals on braces or crutches need not wheel or walk behind parked cars.

(5) *Ramps.* (i) A ramp shall not have a slope greater than 1 inch rise in 12 inches.

(ii) A ramp shall have at least one handrail that is 32 inches in height, measured from the surface of the ramp, that is smooth, and that extends 1 foot

beyond the top and bottom of the ramp. However, the preceding sentence does not require a handrail extension which is itself a hazard.

(iii) A ramp shall have a nonslip surface.

(iv) A ramp shall have a level platform at the top and at the bottom. If a door swings out onto the platform or toward the ramp, such platform shall be at least 5 feet deep and 5 feet wide. If a door does not swing onto the platform or toward the ramp, such platform shall be at least 3 feet deep and 5 feet wide. A platform shall extend at least 1 foot beyond the strike jamb side of any doorway.

(v) A ramp shall have level platforms at not more than 30-foot intervals and at any turn.

(vi) A curb ramp shall be provided at an intersection. The curb ramp shall not be less than 4 feet wide; it chall not have a slope greater than 1 inch rise in 12 inches. The transition between the two surfaces shall be smooth. A curb ramp shall have a nonslip surface.

(6) *Entrances.* A building shall have at least one primary entrance which is usable by individuals in wheelchairs and which is on a level accessible to an elevator.

(7) *Doors and doorways.* (i) A door shall have a clear opening of no less than 32 inches and shall be operable by a single effort.

(ii) The floor on the inside and outside of a doorway shall be level for a distance of at least 5 feet from the door in the direction the door swings and shall extend at least 1 foot beyond the strike jamb side of the doorway.

(iii) There shall be no sharp inclines or abrupt changes in level at a doorway. The threshold shall be flush with the floor. The door closer shall be selected, placed, and set so as not to impair the use of the door by the handicapped.

(8) *Stairs.* (i) Stairsteps shall have round nosing of between 1 and 1½-inch radius.

(ii) Stairs shall have a handrail 32 inches high as measured from the tread at the face of the riser.

(iii) Stairs shall have at least one handrail that extends at least 18 inches beyond the top step and beyond the bottom step. The preceding sentence does not require a handrail extension which is itself a hazard.

(iv) Steps shall have risers which do not exceed 7 inches.

(9) *Floors.* (i) Floors shall have a nonslip surface.

(ii) Floors on a given story of a building shall be of a common level or shall be connected by a ramp in accordance with subparagraph (5) of this paragraph.

(10) *Toilet rooms.* (i) A toilet room shall have sufficient space to allow traffic of individuals in wheelchairs.

(ii) A toilet room shall have at least one toilet stall that—

(A) Is at least 36 inches wide;

(B) Is at least 56 inches deep;

(C) Has a door, if any, that is at least 32 inches wide and swings out;

(D) Has handrails on each side, 33 inches high and parallel to the floor, 1½ inches in outside diameter, 1½ inches clearance between rail and wall, and fastened securely at ends and center; and

(E) Has a water closet with a seat 19 to 20 inches from the finished floor.

(iii) A toilet room shall have, in addition to or in lieu of a toilet stall described in (ii), at least one toilet stall that—

(A) Is at least 66 inches wide;

(B) Is at least 60 inches deep;

(C) Has a door, if any, that is at least 32 inches wide and swings out;

(D) Has a handrail on one side, 33 inches high and parallel to the floor, 1½ inches in outside diameter, 1½ inches clearance between rail and wall, and fastened securely at ends and center; and

(E) Has a water closet with a seat 19 to 20 inches from the finished floor, centerline located 18 inches from the side wall on which the handrail is located.

(iv) A toilet room shall have lavatories with narrow aprons. Drain pipes and hot water pipes under a lavatory shall be covered or insulated.

(v) A mirror and a shelf above a lavatory shall be no higher than 40 inches above the floor, measured from the top of the shelf and the bottom of the mirror.

(vi) A toilet room for men shall have wall-mounted urinals with the opening of the basin 15 to 19 inches from the finished floor or shall have floor-mounted urinals that are level with the main floor of the toilet room.

(vii) Towel racks, towel dispensers, and other dispensers and disposal units shall be mounted no higher than 40 inches from the floor.

(11) *Water fountains.* (i) A water fountain and a cooler shall have up-front spouts and controls.

(ii) A water fountain and a cooler shall be hand-operated or hand-and-foot-operated.

(iii) A water fountain mounted on the side of a floor-mounted cooler shall not be more than 30 inches above the floor.

(iv) A wall-mounted, hand-operated water cooler shall be mounted with the basin 36 inches from the floor.

(v) A water fountain shall not be fully recessed and shall not be set into an alcove unless the alcove is at least 36 inches wide.

(12) *Public telephones.* (i) A public telephone shall be placed so that the dial and the headset can be reached by individuals in wheelchairs.

(ii) A public telephone shall be equipped for those with hearing disabilities and so identified with instructions for use.

(iii) Coin slots of public telephones shall be not more than 48 inches from the floor.

(13) *Elevators.* (i) An elevator shall be accessible to, and usable by, the handicapped or the elderly on the levels they use to enter the building and all levels and areas normally used.

(ii) Cab size shall allow for the turning of a wheelchair. It shall measure at least 54 by 68 inches.

(iii) Door clear opening width shall be at least 32 inches.

(iv) All essential controls shall be within 48 to 54 inches from cab floor. Such controls shall be usable by the blind and shall be tactilely identifiable.

(14) *Controls.* Switches and controls for light, heat, ventilation, windows, draperies, fire alarms, and all similar controls of frequent or essential use, shall be placed within the reach of individuals in wheelchairs. Such switches and controls shall be no higher than 48 inches from the floor.

(15) *Identification.* (i) Raised letters or numbers shall be used to identify a room or an office. Such identification shall be placed on the wall to the right or left of the door at a height of 54 inches to 66 inches, measured from the finished floor.

(ii) A door that might prove dangerous if a blind person were to exit or enter by it (such as a door leading to a loading platform, boiler room, stage, or fire escape) shall be tactilely identifiable.

(16) *Warning signals.* (i) An audible warning signal shall be accompanied by a simultaneous visual signal for the benefit of those with hearing disabilities.

(ii) A visual warning signal shall be accompanied by a simultaneous audible signal for the benefit of the blind.

(17) *Hazards.* Hanging signs, ceiling lights, and similar objects and fixtures shall be placed at a minimum height of 7 feet, measured from the floor.

(18) *International accessibility symbol.* The international accessibility symbol (see illustration) shall be displayed on routes to and at wheelchair-accessible entrances to facilities and public transportation vehicles.



(19) *Additional standards for rail facilities.* (i) A rail facility shall contain a fare control area with at least one entrance with a clear opening at least 36 inches wide.

(ii) A boarding platform edge bordering a drop-off or other dangerous condition shall be marked with a warning device consisting of a strip of floor material differing in color and texture from the remaining floor surface. The gap between boarding platform and vehicle doorway shall be minimized.

(20) *Standards for buses.* (i) A bus shall have a level change mechanism (e.g., lift or ramp) to enter the bus and sufficient clearance to permit a wheelchair user to reach a secure location.

(ii) A bus shall have a wheelchair securement device. However, the preceding sentence does not require a wheelchair securement device which is itself a barrier or hazard.

(iii) The vertical distance from a curb or from street level to the first front door step shall not exceed 8 inches; the riser height for each front doorstep after the first step up from the curb or street level shall also not exceed 8 inches; and the tread depth of steps at front and rear doors shall be no less than 12 inches.

(iv) A bus shall contain clearly legible signs that indicate that seats in the front of the bus are priority seats for handicapped or elderly persons, and that encourage other passengers to make such seats available to handicapped and elderly persons who wish to use them.

(v) Handrails and stanchions shall be provided in the entranceway to the bus in a configuration that allows handicapped and elderly persons to grasp such assists from outside the bus while starting to board and to continue to use such assists throughout the boarding and fare collection processes. The configuration of the passenger assist system shall include a rail across the front of the interior of the bus located to allow passengers to lean against it while paying fares. Overhead handrails shall be continuous except for a gap at the rear doorway.

(vi) Floors and steps shall have nonslip surfaces. Step edges shall have a band of bright contrasting color running the full width of the step.

(vii) A stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread. Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(viii) The doorways of the bus shall have outside lighting that provides at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such lighting shall be located below window level and shall be shielded to protect the eyes of entering and exiting passengers.

(ix) The fare box shall be located as far forward as practicable and shall not obstruct traffic in the vestibule.

(21) *Standards for rapid and light rail vehicles.* (i) Passenger doorways on the vehicle sides shall have clear openings at least 32 inches wide.

(ii) Audible or visual warning signals shall be provided to alert handicapped and elderly persons of closing doors.

(iii) Handrails and stanchions shall be sufficient to permit safe boarding, onboard circulation, seating and standing assistance, and unboarding by handicapped and elderly persons. On a level-entry vehicle, handrails, stanchions, and seats shall be located so as to allow a wheelchair user to enter the vehicle and position the wheelchair in a location which does not obstruct the movement of other passengers. On a vehicle that requires the use of steps in the boarding process, handrails and stanchions shall be provided in the entranceway to the vehicle in a configuration that allows handicapped and elderly persons to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process.

(iv) Floors shall have nonslip surfaces. Step edges on a light rail vehicle shall have a band of bright contrasting color running the full width of the step.

(v) A stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread. Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(vi) Doorways on a light rail vehicle shall have outside lighting that provides at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such lighting shall be located below window level and shall be shielded to protect the eyes of entering and exiting passengers.

(22) *Other barrier removals.* The provisions of this subparagraph apply to any barrier which would not be removed by compliance with paragraphs (b)(2) through (21) of this section. The requirements of this subparagraph are:

(i) A substantial barrier to the access to or use of a facility or public transportation vehicle by handicapped or elderly individuals is removed;

(ii) The barrier which is removed had been a barrier for one or more major classes of such individuals (such as the blind, deaf, or wheelchair users); and

(iii) The removal of that barrier is accomplished without creating any new barrier that significantly impairs access to or use of the facility or vehicle by such class or classes.

3. Section 7.190–3 is added to read as set forth below:

§ 7.190–3 Election to deduct architectural and transportation barrier removal expenses.

(a) *Manner of making election.* The election to deduct expenditures for removal of architectural and transportation barriers provided by section 190(a) shall be made by claiming the deduction as a separate item identified as such on the taxpayer's income tax return for the taxable year for which such election is to apply (or, in the case of a partnership, to the return of partnership income for such year). For the election to be valid, the return must be filed not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year for which the election is to apply.

(b) *Scope of election.* An election under section 190(a) shall apply to all expenditures described in § 7.190–2 (or, in the case of a taxpayer whose architectural and transportation barrier removal expenses exceed $25,000 for the taxable year, to the $25,000 of such expenses with respect to which the deduction is claimed) paid or incurred during the taxable year for which made and shall be irrevocable after the date by which any such election must have been made.

(c) *Records to be kept.* In any case in which an election is made under section 190(a), the taxpayer shall have available, for the period prescribed by paragraph (e) of § 1.6001–1 of this chapter (Income Tax Regulations), records and documentation, including architectural plans and blueprints, contracts, and any building permits, of all the facts necessary to determine the amount of any deduction to which he is entitled by reason of the election, as well as the amount of any adjustment to basis made for expenditures in excess of the amount deductible under section 190.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 190 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1914 and 68A Stat. 917; 26 U.S.C. 190 and 7805).)

WILLIAM E. WILLIAMS,
Acting Commissioner of Internal Revenue.

Approved: March 28, 1977.

LAURENCE N. WOODWORTH,
Assistant Secretary of the Treasury.

[FR Doc.77-9995 Filed 3-30-77;4:50 pm]

SUBCHAPTER C—EMPLOYMENT TAXES

[T.D. 7476]

PART 31—EMPLOYMENT TAXES

PART 33—EMPLOYMENT TAX REGULATIONS

Repayment of Interest in Case of Certain Retroactive Elections of Social Security Coverage by Tax-Exempt Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to repayment of interest in the case of certain retroactive elections of FICA coverage by tax-exempt organizations. These regulations clarify the circumstances under which a waiver certificate electing retroactive social security coverage for the employees of an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 will be considered filed with the Internal Revenue Service.

DATE: The regulations apply in the case of certain waiver certificates electing retroactive social security coverage that are furnished to the Internal Revenue Service after February 12, 1976.

FOR FURTHER INFORMATION CONTACT:

William E. Mantle of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3734).

SUPPLEMENTAL INFORMATION:

BACKGROUND

On February 13, 1976, the FEDERAL REGISTER published proposed amendments to the Employment Tax Regulations (26 CFR Part 31) under section 3121(k) of the Internal Revenue Code of 1954, 41 FR 6776. The amendments were proposed in order to clarify the regulations under section 3121(k) of the Code (relating to the waiver of exemption from social security taxes by religious, charitable, and certain other organizations). After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. This Treasury decision also supersedes Part 33 of the Employment Tax Regulations under 26 U.S.C. 3121(k) (relating to waiver of exemption by religious, charitable, and certain other organizations (26 CFR Part 33)).

IN GENERAL

The amendment adds a new rule to § 31.3121(k)-1(c)(4) for determining when a waiver certificate electing retroactive social security coverage for the employees of an organization described in section 501(c)(3) of the Code is to be considered filed with the Internal Revenue Service. The amendment applies in those cases where an organization has filed a claim for credit or refund of social security taxes based on its exemption from paying those taxes. It provides that the organization must first repay interest it has received in connection with the claim for credit or refund. However, the interest received by the organization must be repaid only to the extent it relates to taxes for which the organization would be liable by reason of the waiver certificate. In the case of a waiver certificate that has been filed prior to the payment of such a refund to the organization, no credit or refund in respect of the taxes for which the certificate waives the exemption is allowable.

DATE CERTIFICATE CONSIDERED FILED

The certificate is to be considered filed on the date it was originally furnished to the Internal Revenue Service if the interest has been repaid on or before the last day of the calendar month following the calendar quarter in which it is furnished. If the repayment occurs after such day, the certificate is to be considered filed on the date the interest is actually repaid.

EFFECTIVE DATE

Due to administrative and equitable considerations, it was decided to modify the proposed rule to apply only in those cases where the waiver certificate electing retroactive social security coverage is furnished by the organization to the Internal Revenue Service after February 12, 1976.

DRAFTING INFORMATION

The principal author of this regulation was William E. Mantle of the Legislation and Regulations Division, of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 33, Employment Tax Regulations, Temporary Employment Tax Regulations under 26 U.S.C. 3121(k) (relating to waiver of exemption by religious, charitable, and certain other organizations), adopted in T.D. 7405, is hereby superseded and reserved, and 26 CFR Part 31 is amended by adding at the end of paragraph (c)(4) of § 31.3121(k)-1 the following new sentences:

§ 31.3121(k)-1 Waiver of exemption from taxes.

* * * * *

(c) *Effect of waiver.* * * *

(4) *Administrative provisions applicable when certificate has retroactive effect.* * * * A waiver certificate (as described in section 3121(k)(1) and this section) furnished to the Internal Revenue Service after February 12, 1976, shall not be considered filed with the Internal Revenue Service unless interest paid to the organization (or credited to its account) in connection with a claim for credit or refund of taxes, which claim was based upon the exemption from taxes the organization is waiving by such certificate, is repaid. The interest so paid must be repaid only to the extent such interest relates to any taxes for which the organization or its employees would be liable by reason of the waiver certificate. Furthermore, when a waiver certificate has been filed prior to the payment of a refund of taxes based upon the exemption from taxes the organization in waiving, no credit or refund in respect of the taxes for which the exemption has been waived shall be allowed. If repayment of the interest is made as required by this subparagraph, on or before the last day of the calendar month following the calendar quarter in which the certificate is furnished to the Internal Revenue Service, such certificate shall be considered to have been filed on the date it was originally furnished. If repayment occurs after that day, such certificate shall be considered to have been filed on the date of the repayment. References in this subparagraph to a waiver certificate refer also to any supplement to such a certificate.

* * * * *

PART 33—[RESERVED]

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

WILLIAM E. WILLIAMS,
Acting Commissioner of Internal Revenue.

Approved: March 14, 1977.

LAURENCE N. WOODWORTH,
Assistant Secretary of the Treasury.

[FR Doc.77-9994 Filed 4-1-77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 74-194]

PART 110—ANCHORAGE REGULATIONS

Anchorage Grounds, Port of New York, N.Y.; Correction

In FR Doc. 76-25037 appearing at page 36018 in the FEDERAL REGISTER of August 26, 1976, paragraph (c)(5) of § 110.155 appearing on page 36019 is corrected in the eighth line by substituting longitude 73°59'18" W. in place of longitude 73° 59'13" W.

Dated: March 29, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.71-9923 Filed 4-1-77;8:45 am]

Title 35—Panama Canal

CHAPTER I—CANAL ZONE REGULATIONS

PART 7—CLAIMS OF EMPLOYEES OF PANAMA CANAL COMPANY AND CANAL ZONE GOVERNMENT UNDER MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT OF 1964, AS AMENDED

Settlement of Employee Claims

This document revises 35 CFR Part 7 which governs the settlement of claims by employees of the Panama Canal Company and Canal Zone Government for loss of or damage to personal property under the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. §§ 240-243. The substantive changes include (i) a provision for use of replacement cost, rather than purchase price, to determine the value of the property for which claim is made; (ii) extension of the regulations to cover claims for losses due to vandalism that is found to be politically motivated; and (iii) reduction from ten dollars to one dollar of the minimum amount for which a claim may be filed. The document also revises the regulations to show changes in the titles of agency personnel who handle the claims, to conform with amendments in the statute, to delete a section made obsolete by Pub. L. 91-311 which repealed a report-to-Congress requirement, and to restate portions of the text for purposes of clarity.

Accordingly, 35 CFR Part 7 is amended as follows:

1. By revising paragraphs (d), (e) and (f) of § 7.1 to read as follows:

§ 7.1 Definitions.

* * * * *

(d) "Financial Vice President" means the Financial Vice President of the Panama Canal Company acting for and in behalf of that agency or for and in behalf of the Canal Zone Government, as the case may be;

(e) "Chief Accountant" means Chief Accountant of the Panama Canal Company acting for and in behalf of that agency or for and in behalf of the Canal Zone Government, as the case may be;

(f) "Chief, Claims Branch," means the Chief of the Claims Branch, Accounting Division, of the Panama Canal Company acting for and in behalf of that agency or for and in behalf of the Canal Zone Government, as the case may be.

2. By revising the title and text of § 7.2 to read as follows:

§ 7.2 Applicability and scope.

Pursuant to the Act, the Government will settle and pay claims by employees for the loss of or damage to personal property which occurs incident to Government service. Each such claim must be substantiated and the possession of the property must be shown to have been reasonable, useful, or proper under the circumstances. The maximum amount allowable on any claim is $15,000. In lieu of a cash settlement, property may be replaced in kind at the option of the Government.

3. By redesignating paragraphs (d), (e) and (f) of § 7.5 as paragraphs (e), (f) and (g); by revising the introductory paragraph and paragraph (c) and by inserting a new paragraph (d), the three last-mentioned paragraphs to read as follows:

§ 7.5 Principal types of claims payable.

The following examples are illustrative of the circumstances or situations out of which compensable claims may arise. Loss or damage due to other causes may also be payable under these regulations.

* * * * *

(c) Damage to or loss of property, including vehicles, trailers, and property contained therein, which:

(1) Is incident to the performance of duty and is sustained as a result of or in connection with civil disturbance, public disorder, efforts to save human life or Government property, or a natural or other disaster; or

(2) Occurs in the Canal Zone and results from vandalism that is determined to have been politically motivated.

(d) Damage to or loss of property which is incident to the performance of duty, *Provided*, That such damage or loss results from an incident that is not attributable to a common or usual risk of the claimant's employment.

* * * * *

§ 7.6 [Amended]

4. By deleting the figures "$10" from paragraph (a) of §7.6 and substituting therefor the words "one dollar"; by deleting the phrase "under § 7.5 (c) or (f)" from paragraph (g) of § 7.6 and substituting therefor the phrase "under § 7.5 (c) or (g)".

5. By revising § 7.8 to read as follows:

§ 7.8 Computation of award.

(a) *Lost or destroyed property.* The amount allowable for an item of property that is lost or destroyed may not exceed its actual value at the time the loss occurs. Such value may be based upon the replacement cost at the place where claimant resides when award is made, subject to appropriate depreciation to reflect the age and condition of the item at the time of loss and to reduction for salvage value, if any. Property is considered "destroyed", for purposes of this section, if the cost of repairs would exceed the value of the property immediately prior to the incident out of which the claim arose.

(b) *Damaged property.* Normally the amount allowable for damaged property will be the cost of repairs, unless it is determined to be in the best interests of the Government to authorize a higher award.

(c) *Special limitations.* There is reserved to the Chief, Claims Branch, subject to the supervision of the Chief Accountant, the authority to fix the maximum amount payable for specific classes of articles, to establish limitations on the maximum quantity of an item for which payment will be allowed, and, when appropriate, to require that repairs be made by the Government.

6. By revising § 7.9 to read as follows:

§ 7.9 Claims procedure.

The claimant must submit his claim in writing on a prescribed form covering employees claims for loss of or damage to personal property. The form should be sent to the Chief, Claims Branch, Office of the Financial Vice President, Panama Canal Company, Balboa Heights, Canal Zone. Copies of the required form may be obtained from the Claims Branch.

7. By revising the introductory paragraph and paragraph (a) of § 7.10 to read as follows:

§ 7.10 Supporting papers.

In addition to the information provided on the claim form, the claimant may be required to furnish the following:

(a) Detailed estimates of the value of the property immediately before the incident out of which the claim arose and detailed estimates of the repair costs.

* * * * *

8. By revising § 7.11 to read as follows:

§ 7.11 Settlement.

Upon receipt of a claim under the regulations in this part, the Chief, Claims Branch, subject to the supervision of the Chief Accountant, shall make a determination with respect to its merits and, if allowable, authorize payment. If the claim is disallowed in whole or in part, the claimant shall be advised in writing as to the reason for the disallowance. The settlement determination by the Chief, Claims Branch, is final and conclusive.

§ 7.13 [Revoked]

9. By revoking § 7.13.

Effective date: These amendments are effective March 1, 1977, and apply to claims arising after February 28, 1977.

(Secs. 2–4, 78 Stat. 767, as amended (31 U.S.C. §§ 241–43).)

Dated: March 18, 1977.

RICHARD L. HUNT,
Acting Governor of the Canal Zone, Vice President, Panama Canal Company.

[FR Doc.77-9901 Filed 4-1-77;8:45 am]

Title 36—Parks, Forests, and Public Property

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 221—TIMBER

Extension of Interim Regulations for the Sale of National Forest Timber, Bidding Procedures

On November 4, 1976, interim-regulations governing the sale of National Forest timber under the National Forest Management Act of 1976 were published in the FEDERAL REGISTER (41 FR 48538).

The interim regulations were to expire no later than April 1, 1977. Subsequently, on February 23, 1977, proposed permanent regulations were published in the FEDERAL REGISTER (42 FR 10806) with a deadline for comments on or before March 25, 1977. Because of delays in publishing the proposed regulations, it will not be possible to adequately consider comments received from the public and to adopt permanent regulations prior to the scheduled expiration of the interim regulations. Notice is hereby given that the interim regulations published in the FEDERAL REGISTER (41 FR 48538) on November 4, 1976, are extended as revised through April 30, 1977.

Included with the interim regulations published on November 4 was the addition of paragraph (d) to § 221.8. This paragraph implemented changes required by section 14(e) of the National Forest Management Act of 1976. Subsequent public comments have identified a need to revise the definition of dependent communities and to make some procedural changes in order to prevent adverse impacts on the economies of communities dependent upon National Forest timber. Permanent regulations will be prepared based on public input to the proposed regulations which were published on February 23, 1977. However, in order to minimize adverse impacts on local economies and timber supplies immediate implementation of the changes in bidding procedures are required. Since such immediate action is necessary, notice and provision for further public comment at this time on this change in § 221.8 would be impractical and contrary to the public interest. Section 221.8 is, therefore, amended by substituting a new paragraph (d), to read as follows:

§ 221.8 Advertisements and bids.

* * * * *

(d) (1) During the period April 1 through April 30, 1977, sealed bidding will be used for competitive sale of National Forest timber, except as provided in paragraphs (d) (2) through (4) of this section.

(2) Oral auction bidding may be used in areas where pre-existing agreements required the sale of National Forest timber by oral auction.

(3) (i) In areas tributary to communities dependent upon National Forest timber, Forest Supervisors may authorize the use of a mix of sealed bidding and oral auction bidding methods. When a mix of bidding methods is used, bidding methods on individual sales shall be determined on a random basis designed to provide about 50 percent sealed bid and 50 percent oral auction bid by volume. A record of National Forest timber sales purchased by firms with primary manufacturing facilities outside the dependent community shall be maintained in areas where a mix of bidding methods is used. If there is a significant increase in the volume of timber purchased by such firms within the tributary area, the Forest Supervisor may increase the proportion of volume sold by oral auction for a period not to exceed one year.

(ii) As used herein, a community is an area with common social and economic interests, bounded by established daily marketing and workforce commuting patterns, and encompassing one or more primary wood product manufacturing facilities. A community is dependent upon National Forest timber when 10 percent or more of the total community workforce is employed in the primary manufacture of wood products, and when National Forest timber has accounted for 30 percent or more of the timber supply for the primary wood product manufacturing facilities in the last 5 years. Tributary are those portions of National Forest System lands from which the dependent communities obtained at least 75 percent of their timber supply in the last 5 years.

(iii) If the Regional Forester finds substantial indication of collusive bidding practices in the sale of timber in an area tributary to a dependent community, he may direct that sealed bidding be used in all future sales.

(4) Oral auction bidding may be used where there is urgent need to salvage insect-infested or damaged timber in order to prevent the spread of insects or product deterioration.

BOB BERGLAND,
Secretary.

MARCH 29, 1977.

[FR Doc.77-9851 Filed 3-31-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 707-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Revision of the Delaware State Implementation Plan

On September 3, 1975, the State of Delaware submitted to EPA Region III amendments to Section V of each portion of the Delaware State Implementation Plan (SIP) for the attainment and maintenance of ambient air quality standards. The State requested that the modified Section V be incorporated as a revision of the federally approved Delaware SIP.

The amendments consist of a revised Section V—Surveillance as it applies to both the State of Delaware SIP and the New Castle County portion of the SIP for attainment and maintenance of standards for particulate matter and sulfur dioxide. These changes to Section V consist of the following:

1. *General narrative*—The modifications listed below are made:

a. Changes are included to eliminate the requirement to monitor nitrogen dioxide. Monitoring of this pollutant is no longer required in the New Castle County portion of the Metropolitan Philadelphia Interstate Air Quality Control Region (AQCR), because this county has been redesignated Priority III (38 FR 16346). The State has indicated that nitrogen oxides are still being monitored at sites P–1 and P–2, to provide an ongoing assessment of its concentration level. The narrative also specifies that carbon monoxide and photochemical oxidants are being monitored at sites P–1 and P–2.

b. Changes are included to reflect availability of manually processed data for hourly periods only, rather than for both 15-minute and one-hour periods.

2. *Tables and figures*—The following modifications listed below are made:

Table V–1—The Jacobs-Hochheiser Method for nitrogen dioxide, as well as footnotes c and d, has been deleted.

Table V–2—This table replaces former Table V–3; former Table V–2 is deleted.

Table V–3—Former Tables V–4 and V–5 are combined and restructured so that the sampling frequency parameter is a function of the air pollutant.

Table V–4—Former Tables V–6 and V–7 are combined. Changes made as of January 1, 1973 are reflected.

Table V–5—This table replaces former Table V–9, and is restructured in format similar to Table V–3.

Figures V–1 and V–2 are amended to indicate changes in the location of monitoring sites.

3. *Changes to monitoring systems*—

a. *Deletion of Narrative.* The narrative describing previously proposed additions to the State's monitoring network is deleted.

b. *Primary System.* i. The types of data listed below are still being generated, but either by using different reference methods or by monitoring only at specific sites:

(a) *Carbon monoxide*—The existing monitoring technique applies, but this information is being generated only at monitoring sites P–1 and P–2.

(b) *Photochemical Oxidants*—The existing monitoring technique applies, but this information is being generated only at monitoring sites P–1 and P–2.

(c) *Nitrogen Oxides*—Information is being generated only at monitoring sites P–1 and P–2.

(d) *Soiling Index*—Coefficient of Haze Units replaces reference units and are being monitored at site P–2 only.

ii. Data Reduction—The 15-minute and 6-hour averages are deleted; one-hour averages are now being reduced manually, and running 24-hour and annual averages are now being generated through computer processing.

iii. Changes in monitoring site—Site P–2 is relocated in downtown Wilmington and site P–1 is now located at the Woods Haven-Kruse School in Claymont.

c. *Secondary System.* i. The following types of data are still being generated but are either using different reference methods or are being monitored only at specific sites:

(a) *Soiling Index*—The Coefficient of Haze Units (continuous, stand-by basis) is replacing the A.I.S.I. Tape Sampler.

(b) *Sulfur Dioxide*—The conductivity method (½ hour averages) is being replaced with the West-Gaeke method (continuous) at all New Castle County Stations. In addition, the bubbler method is being used at monitoring sites S–11 and S–12.

ii. The following monitoring sites are added:

S–12, City Water Tower, Seaford
S–13, Danneker School, Milford (stand-by basis)

iii. The following monitoring sites are changed in status to stand-by basis:

S–4, Lombardy School, Faulk Road
S–6, Ferris School, Centre Road
S–7, Delaware SPCA, Greater Wilmington Airport
S–10, County Route 413, East of Mt. Pleasant

iv. The following monitoring site is deleted:

S–14, Georgetown

d. *Tertiary System* — (Telephone Poles)—The entire system is deleted.

e. *Mobile Unit System*—A mobile unit system is added.

f. *Federal System*—The following monitoring sites are deleted or relocated:

i. P–1, Silverside School, Claymont (deleted)
ii. P–2, Downtown Wilmington (relocated)

All four primary stations and the remaining secondary stations located throughout the State will continue full operation. The State has determined that the lack of resources prevents adequate data handling and analysis, and that reallocation of the available resources to the remaining stations would improve the overall efficiency of the network. The State has also indicated that once a fully automatic telemetry network is installed in the four primary stations and if additional resources become available, the standby stations will resume operations.

On June 9, 1976 (41 FR 23203), the Administrator acknowledged receipt of the amendments submitted by the State, proposed the amendments as a revision of the Delaware State Implementation Plan and provided for a 30 day public comment period, ending July 9, 1976. During the public comment period, no comments were received.

The revised system meets population and emergency episode requirements as well as collection reporting techniques as specified by the Administrator in 40 CFR 51.17. However, two of the relocated monitoring sites, P–1 and P–2, do not presently meet the requirements for locating monitors in areas of maximum concentrations as specified in 40 CFR 51.17(a)(2). Site P–1, which is designated to measure maximum concentration of photochemical oxidants (specifically ozone) is located too close to Route I–95. Site P–2, which is designed to measure maximum concentration of carbon monoxide (CO), is not located in a maximum downtown street canyon site. In addition, Region III's evaluation of the monitoring instrumentation portion of this plan revision indicates that the instrument that the State plans to use to measure sulfur dioxide is antiquated and outmoded. The State of Delaware has made commitments to relocate monitoring sites P–1 and P–2 during fiscal year (FY) 1977, and to negotiate a mutually acceptable compliance schedule for replacement of the outmoded instrumentation. Therefore, with the exception of the location of monitoring sites P–1 and P–2, and the type of instrumentation currently being used to measure sulfur dioxide, the Administrator approves changes to Part V of both the Delaware State Implementation Plan and the New Castle County portion of the Delaware State Implementation Plan as a revision to the federally approved Delaware State Implementation Plan effective May 4, 1977. However, in view of the commitment to relocate the P–1 and P–2 monitoring sites to acceptable locations and to update the monitoring instrumentation, the Administrator conditionally approves the present location of these two monitoring sites as well as the continued use of the current sulfur dioxide monitoring instruments.

Similarly, the Administrator hereby amends 40 CFR 52.20 to incorporate this revision into the Delaware SIP.

Copies of the amendments to the monitoring network for the State of Delaware are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. Attention: Mr. Hank Sokolowski.

Delaware Department of Natural Resources & Environmental Control, Tatnall Building, Lackerman Street and Legislative Avenue, Dover, Delaware 19901. Attention: Mr. Robert French.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

(Authority: 42 U.S.C. 1857c–5.)

Dated: March 29, 1977.

BARBARA BLUM,
Acting Administrator.

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

Subpart I—Delaware

1. In § 52.420, Paragraph (c)(10) is added as follows:

§ 52.420 Identification of Plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified. * * *

(10) Amendments to Section V (Surveillance) of the Delaware State Implementation Plan and amendments to Section V (Surveillance) of the New Castle County Portion of the Delaware State Implementation Plan, covering changes to the airpollution monitoring system; submitted on September 3, 1975 by the Delaware Department of Natural Resources and Environmental Control.

[FR Doc.77-9883 Filed 4-1-77;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Certification of Receipt of AFDC; Extension

The Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare, hereby amends § 235.40 for the purpose of implementing section 2107(d) of Pub. L. 94–455, the Tax Reform Act of 1976.

Section 401 of Pub. L. 94–12, the Tax Reduction Act of 1975, provided for a Federal Welfare Recipient Employment Incentive Tax Credit to employers who hire AFDC recipients. This tax credit, originally effective through June 30, 1976, has been extended to December 31, 1979, under section 2107(d) of Pub. L. 94–455, enacted October 4, 1976.

Regulations in § 235.40 required welfare agencies to certify whether the individuals employed were in fact eligible for, and recipients of, Aid to Families with Dependent Children (AFDC). However, the requirement was effective only through June 30, 1976, and therefore was dropped from the CFR.

The basic purpose of the amendments is to conform the Department's regulations with the statutory changes by extending the certification requirement through December 31, 1979.

Experience under current regulation has indicated the need for clarification as to appropriate procedures and the confidentiality requirements. For instance, some employers have made their requests by phone. One large corporation wrote asking that a complete list of AFDC recipients be provided to them as a basis for determining which of their employees belong in the group for which the tax credit is available.

Accordingly, language has been added to make clear that:

1. The request for certification, and the certification itself, are to be in writing. (The State agency needs a record of the request and its purpose in order to comply with confidentiality requirements. The employer needs a written certification to submit in claiming the tax credit); and

2. The confidentiality provisions of 45 CFR 205.50 require that the information be released and used only for the stated purpose of claiming the tax credit (§ 205.50(a)(1)(i)(c) specifically refers to certification of receipt of AFDC for such purpose.)

Section 2107(f) of Pub. L. 94–455 also provides that either the Department of Labor or the State or local welfare agency may certify to employers that individuals hired were, in fact, AFDC recipients. Policies to implement this provision will be issued jointly by the Department of Labor and HEW.

The Department finds good cause to dispense with proposed rulemaking procedures for two reasons. The law is specific and provides no alternative but to extend the effective date. The tax year has ended and those who have employed welfare recipients (and should be encouraged to continue to do so) will need the certifications in order to claim the tax credit.

Accordingly, § 235.40, Part 235, Chapter II, Title 45 of the Code of Federal Regulations is restored, with its extended certification date, to read as set forth below:

§ 235.40 Certification of AFDC recipients for employment incentive tax credit.

(a) Upon written request from an employer of any individual who is hired and receives wages for services performed after March 28, 1975, and before January 1, 1980, the State or local welfare agency shall, if such individual was eligible for, and was continuously receiving, financial assistance under an approved State AFDC plan during the 90-day period immediately preceding the date on which he was hired by such employer, so certify. Such certification shall be made in writing and in accordance with provisions of § 205.50 of this chapter, and only for purposes of an employer

claiming a Federal welfare recipient employment incentive tax credit under Section 401 of Pub. L. 94–12, the Tax Reduction Act of 1975, and Section 2107(d) of Pub. L. 94–455, the Tax Reform Act of 1976.

(b) The provisions of this section are applicable to both business and nonbusiness employers.

(c) The State agency shall make such reports in such form and containing such information as the Secretary may require.

Effective date: The statutory amendment implemented by this regulation was effective July 1, 1976.

(Section 1102, 49 Stat. 647 (42 U.S.C. 1302).)
(Catalog of Federal Domestic Assistance Program No 13.761, Public Assistance—Maintenance Assistance (State Aid).)

Answers to specific questions may be obtained by calling Mr. James A. Watson, area code 202–245–0016.

NOTE.—The Social and Rehabilitation Service has determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order No. 11821 and OMB Circular A–107.

Dated: January 10, 1977.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: March 28, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc.77-9962 Filed 4-1-77;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 908]

HANDLING OF VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposal would require fresh Valencia oranges shipped from District 2 of the California-Arizona production area to measure at least 2.32 inches in diameter during the period April 22, 1977, through January 15, 1978. The proposal was submitted by the Valencia Orange Administrative Committee established under the order to administer the program locally. The committee reports that the composition of the crop is such that more than ample quantities of larger, more desirable sizes of oranges are available to meet fresh market demand, and it would be in the interest of producers and consumers to limit shipments to the sizes specified. The smaller sizes of oranges could be disposed of in export and in processing outlets.

DATE: Comments must be received on or before April 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202-447-3545).

Notice is hereby given that the Department is considering the establishment of a size regulation for Valencia oranges grown in District 2, pursuant to the applicable provisions of the amended marketing agreement and order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposed amendment was recommended by the Valencia Orange Administrative Committee, established under the amended marketing agreement and order as the agency to administer its terms and provisions.

The 1976-77 season crop of Valencia oranges is currently estimated by the committee at 55,500 cars. The committee reports that demand in regulated fresh market channels is expected to require about 38 percent of this volume. The remaining 62 percent would be available for utilization in export and processing outlets. The committee indicates that volume and size composition of the crop of Valencia oranges grown in District 2 are such that ample supplies of the more desirable sizes will be available to satisfy the demand in regulated channels. The regulation is designed to permit shipments of ample supplies of fruit of the more desirable sizes in the interest of growers and consumers.

All persons who desire to submit written comment for consideration in connection with the proposed regulation shall file two copies with the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, not later than April 15, 1977. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Order. (a) During the period April 22, 1977, through January 15, 1978, no handler shall handle any Valencia oranges grown in District 2 which are of a size smaller than 2.32 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the Valencia oranges contained in any type of container may measure smaller than 2.32 inches in diameter.

(b) As used in this section, "handle", "handler", and "District 2" shall have the same meaning as when used in said amended marketing agreement and order.

Dated: March 29, 1977

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

[FR Doc.77-9912 Filed 4-1-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 76-NW-19-AD]

BOEING MODEL 727-200 SERIES AIRPLANES

Withdrawal of Notice of Proposed Airworthiness Directive

AGENCY: Federal Aviation Administration/DOT (FAA).

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Aviation Administration has determined upon further consideration and in the light of comments received in response to the Notice of Proposed Rulemaking that the possible loss of braking during low speed ground operations does not presently exist as originally believed. Therefore, the proposed AD is not required at this time.

FOR FURTHER INFORMATION CONTACT:

Donald L. Riggin, Engineering and Manufacturing Branch, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Washington 98108, telephone 206-767-2717.

SUPPLEMENTARY INFORMATION: Comments were received by letter dated November 15, 1976, from the Air Transport Association and by letter dated December 1, 1976, from the Boeing Company. The Boeing Company stated that a program had already been started with its vendor, HydroAire, and that they had modified 13 of the P/N 42-307-1 Mark III autobrake/antiskid control boxes out of a total of 23. Recently we received verification that all 23 of the affected control boxes have been modified. Boeing also provided us with new technical data which demonstrates that this fault does not exist on the basic P/N 42-307 Mark III antiskid control boxes as originally believed.

Withdrawal of this Notice of Proposed Rule Making constitutes only such action, and does not preclude the FAA from issuing another Notice or commit the FAA to any other course of action in the future.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), the proposed airworthiness directive published in the FEDERAL REGISTER on Thursday, September 30, 1976, Vol. 41, No. 191, (31 FR 43181) is hereby withdrawn.

Issued in Seattle, Washington, March 23, 1977.

C. B. WALK, Jr.,
Director, Northwest Region.

[FR Doc.77-9860 Filed 4-1-77;8:45 am]

[14 CFR Part 39]

[Docket No. 76-WE-19-AD]

PROPOSED AIRWORTHINESS DIRECTIVES

Lockheed-California Company Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration/DOT (FAA).

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to amend Part 39 of the Federal Aviation

Regulations (14 CFR Part 39) to amend Airworthiness Directive (AD) 76-20-08 (Amendment 39-2742, 41 FR 45817) to require modification of the main landing gear upper side brace trunnion joint. AD 76-20-08 was issued as a result of stress corrosion failures of the retaining bolts installed on the main landing gear upper side brace trunnion joint on Lockheed-California L-1011-385 Series airplanes.

DATES: Comments must be received on or before May 6, 1977. Proposed compliance date: Thirty days after adopted rule amendment effectivity date.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Office of Regional Counsel, AWE-7, Attn: Rules Docket, P.O. Box 92007 Worldway Postal Center, Los Angeles, California 90009.

FOR FURTHER INFORMATION CONTACT:

Kyle L. Olsen, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007 Worldway Postal Center, Los Angeles, California 90009. Telephone 213-536-6351.

SUPPLEMENTARY INFORMATION: AD 76-20-08 requires repetitive visual inspections of the main landing gear upper side brace trunnion joint areas with replacement or repair of damaged parts, as necessary, on Lockheed-California Company Model L-1011-385 series airplanes. Amendment 39-2742 was issued as a result of several cases where one of the two main landing gear upper side brace spherical bearing trunnion retaining bolts failed due to stress corrosion on Lockheed-California Company L-1011-385 series airplanes. A single bolt failure will not usually result in secondary structural failures leading to unsafe conditions, however, continued operation with one failed bolt combined with severe landing or ground maneuver conditions, could lead to a collapse of a main landing gear assembly. The required repetitive visual checks provides an interim safety precaution until the compliance with § 25.573(b) of the Federal Aviation Regulations is established. After issuing Amendment 39-2742, the manufacturer modified the type design of the upper side brace trunnion joint components to eliminate the potential stress corrosion condition of the upper side brace spherical bearing trunnion retaining bolts. These modifications are described in FAA Approved Lockheed-California Company Service Bulletins 093-32-115 and 093-32-120. Therefore, the FAA is considering amending Amendment 39-2742 to require modification of the upper side brace spherical bearing trunnion joints in accordance with the manufacturer's Service Bulletins, and thereby secure compliance with FAR 25.573(b).

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Information on the economic, environmental, and energy impact that might result because of adoption of the proposed rule is requested. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Regional Counsel. All communications received on or before the closing date May 6, 1977 will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by amending Amendment 39-2742 (41 FR 45817), AD 76-20-08, by adding the following new paragraphs (c) and (d):

"(c) Compliance is required on or before (Calendar Date: Thirty days from effective date of the amendment, as adopted), unless already accomplished:

(1) Replace the existing side brace trunnion support fitting sleeves P/N 1538681-103, washers P/Ns LS 9672C18C and LS 9672C18, nuts P/N 69678M1812, bolts P/Ns 7654-18-71 or 6968V-18-71 or 69680-18-71, and shims P/N 1539005-101, with new sleeves P/N 1608986-101, washers P/Ns LS 15655C18C and LS 15655C18, nuts 72275K-1812, bolts P/N LS 15654-18-68, and shims, if required, P/N 1539005-101, in accordance with the accomplishment instructions of the FAA approved Lockheed-California Company Service Bulletin 093-32-115 dated December 21, 1976 or later FAA approved revisions. Installation of these new side brace trunnion components is considered to provide a safe service life of 70,000 flights in service for the upper side brace trunnion joint, or

(2) Replace the existing side brace trunnion support washers P/Ns LS 9672C18C and LS 9672C18, nuts P/N 69678M1812, bolts P/Ns 76754-18-71 or 69680V18-71 or 69680-18-71, with new washers P/Ns LS 15655C18C and LS 15655C18, nuts 72275K-1812, and bolts P/N LS 15654-18-68, in accordance with the accomplishment instructions of the FAA approved Lockheed-California Company Service Bulletin 093-32-120 dated December 21, 1976 or later FAA approved revisions. Installation of these new side brace trunnion components is considered to provide a safe service life of 6,000 flights in service for the upper side brace trunnion joint.

(d) Accomplishment of the replacements in accordance with paragraphs (c)(1) or (c)(2) will remove the need for accomplishment of requirements of paragraph (a). Operators are alerted to observe the safe life limits set forth in paragraphs (c)(1) and (c)(2), above."

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

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Los Angeles, California on March 21, 1977.

ROBERT H. STANTON,
Director,
FFA Western Region.

NOTE.—The incorporation by reference in the preceding document was approved by Director of the Federal Register on June 19, 1967.

[FR Doc.77-9861 Filed 4-1-77;8:45 am]

[14 CFR Part 39]

[Docket No. 76-NE-28]

IN PRATT & WHITNEY JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, AND -11 AIRCRAFT ENGINES

Proposed Airworthiness Directives

AGENCY: Federal Aviation Administration/DOT (FAA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend Airworthiness Directive 76-24-01, Amendment 39-2775 (41 FR 52047). Airworthiness Directive 76-24-01 presently requires removal of eight stage compressor disk, P/N 496908, prior to reaching 6,000 cycles in service since new, or by December 31, 1977, whichever comes later. This NPRM will revise the compliance time of the present AD to require earlier removal of the eighth stage compressor disk, P/N 496908.

Subsequent to the issuance of AD 76-24-01, Amendment 39-2775, an operator experienced an eighth stage compressor disk failure which resulted in serious aircraft damage. After review of this failure and the preceding failure history, the FAA has determined it necessary, in the interest of safety, to revise the compliance time of AD 76-24-01.

DATES: Comments must be received on or before May 4, 1977.

ADDRESS: Send comments on the proposals to: Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attn: Rules Docket No. 76-NE-28, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION, CONTACT:

Jay J. Pardee, Propulsion Section, ANE-214, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone 617-273 7337.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to:

Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attn: Rules Docket No. 76-NE-28, 12 New England Executive Park, Burlington, Massachusetts 01803.

All communications received on or before May 4, 1977, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the rules docket, for examination by interested persons. A report summarizing each public contact with FAA personnel concerned with this rulemaking will be filed in the public regulatory docket. Persons desiring copies of this NPRM should contact:

Docket Clerk, Office of the Regional Counsel, ANE-7, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

AD 76-24-01, Amendment 39-2775 (41 FR 52047), appeared in the FEDERAL REGISTER on November 26, 1976, and became effective December 27, 1976.

The present AD was issued to require removal of eighth stage compressor disk, P/N 496908, due to fatigue cracking of the disk which resulted in uncontained failure of the disk. The proposed NPRM would modify the compliance time in the present AD by requiring eighth stage disk removal by June 30, 1977, for those disks above 8,000 cycles, in lieu of the present requirement to remove disks by December 31, 1977, for those disks above 6,000 cycles. In addition, the proposed NPRM would create another compliance category which allows disks between 6,000 and 8,000 cycles to continue in service until September 30, 1977, after which they must be removed. The proposed NPRM also establishes a new retirement life of 6,000 cycles for P/N 496908 compressor disks after September 30, 1977.

After the issuance of AD 76-24-01, a U.S. certificated air carrier experienced a severe eighth stage compressor disk failure while climbing through 14,000 feet. The disk sustained a 360° rim separation which exited through a 12 inch by 20 inch hole in the engine case, resulting in separation of the engine starter, start bleed valve, and portions of the upper and lower cowling. A review of the preceding failure history indicated six similar uncontinued disk failures, two of which resulted in fires and five of which caused secondary aircraft damage. Based on the degree of serious secondary aircraft damage sustained during these failures, the FAA has determined that the eighth stage compressor disk failure mode does have potentially hazardous effects due to the release of high energy projectiles. The original AD compliance was based upon a low energy type failure. Therefore, the FAA has determined it necessary, in the interest of safety, to revise the compliance time of AD 76-24-01 to require earlier removal of eighth stage compressor disks.

This NPRM will affect U.S. domestic carriers and foreign carriers by requiring, in some instances, premature engine removals, aircraft on the ground, and increased maintenance effort to meet the proposed removal schedule. The cost for compliance is estimated as 47 million dollars.

Accordingly, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13), Amendment 39-2775 (41 FR 52047), AD 76-24-01 as follows:

1. By deleting the words in Paragraph 1 beginning with "prior to reaching" and ending with "not to be exceeded."

2. By inserting in Paragraph 1 after "P/N 496908," the words "in accordance with the following schedule:."

3. By adding the following new paragraphs:

A. By June 30, 1977, disks with over 8,000 cycles since new. The original established life of 11,000 cycles shall not be exceeded.

B. By September 30, 1977, disks with over 6,000 cycles, but less than 8,000 cycles since new. After September 30, 1977, disks shall not exceed 6,000 cycles.

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

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Burlington, Massachusetts, on March 25, 1977.

QUENTIN S. TAYLOR,
Director,
New England Region.

[FR Doc.77-9862 Filed 4-1-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Regulations No. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Computing Self-Employment Income for Social Security Purposes

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553) that the amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. These proposed amendments update the self-employment provisions of the regulations which apply to certain ministers, members of religious orders, Christian Science Practioners, retired business partners, public officers and employees paid on a fee basis, and citizens engaging in business outside the United States. These provisions are based upon public laws which have already been fully implemented by the Social Security Administration.

The proposed amendments reflect changes made by sections 115, 118 and 122 of Pub. L. 90-248 enacted January 2, 1968, section 203 of Pub. L. 92-336 enacted July 1, 1972, sections 121, 124, and 140 of Pub. L. 92-603 enacted October 30, 1972, section 203 of Pub. L. 93-66 enacted July 9, 1973, and section 5 of Pub. L. 93-233 enacted December 31 1973.

Coverage of ministerial services of clergymen. Section 115 of Pub. L. 90-248 provides that the services a clergyman, Christian Science practitioner, or member of a religious order (except a member who has taken a vow of poverty) performs in the exercise of his profession are covered under social security under the provisions applicable to the self-employed unless, within certain time limits, he files an irrevocable application for exemption, effective for taxable years ending after 1967.

Prior to the 1967 amendments the services which a clergyman, Christian Science practitioner, or member of a religious order who had not taken a vow of poverty performed in the exercise of his respective calling were excluded from social security coverage unless he elected coverage. To elect coverage, the individual was required by law to file a waiver certificate within a prescribed time. Services which a member of a religious order who had taken a vow of poverty performed were compulsorily excluded from coverage.

An individual clergyman has been able to decide on a completely voluntary basis whether he would be covered under social security.

From time to time clergymen who did not file the waiver certificate within the prescribed time, later have wished to become covered. On several occasions in the past, the time has been extended in which clergymen could elect coverage.

The Act, as amended, now changes the coverage provisions for clergymen. All clergymen are automatically covered under social security, except those who are opposed for reasons of religious principles or conscience to the acceptance of public insurance, including social security benefits, based on their services as clergymen. Clergymen who are so opposed can have their ministerial services excluded from coverage by filing with the Internal Revenue Service a statement to that effect, together with an application for exemption. When the application is approved, it is irrevocable.

Members of religious orders who have taken a vow of poverty continue to be excluded from social security coverage.

Retirement payments made to retired partners. Section 118 of Pub. L. 90-248 provides that certain payments on account of retirement made by a partnership to a retired partner are excluded in the computation of his net earnings from self-employment, effective for taxable years ending on or after December 31, 1967.

Before the 1967 amendments, the retirement payments made by a partnership to a retired partner from the cur-

rent earnings of the partnership were generally treated as earnings from self-employment and were covered under social security. This was true even though the retired partner had no relationship (other than receiving retirement payments) with, and performed no services for, the partnership. The law now provides, effective with taxable years ending on or after December 31, 1967, that these payments may be excluded not only for retirement test purposes but also for social security contributions and benefit computations.

The payments are excluded under conditions which assure that they are bona fide retirement income. The basic requirements that must be met are:

1. The retirement payments must be made pursuant to a written plan of the partnership, and

2. The written plan must apply to partners generally or to a class or classes of partners, and

3. The written plan provides periodic payments until the retired partner's death, and

4. The retired partner renders no service for the partnership during the partnership taxable year ending with or within his taxable year, and

5. At the end of the partnership's taxable year, the only obligation from the other partners to the retired partner is to make retirement payments and the retired partner's share in the partnership capital has been paid to him in full.

The requirements for the retirement plan of a partnership are the requirements prescribed by the Secretary of the Treasury's delegate, as required by section 211(a)(9) of the Social Security Act.

Employees in positions compensated solely on a fee basis. Section 122 of Pub. L. 90–248 provides that fees received after 1967 by State and local public officials and employees in positions compensated solely on a fee basis and not covered by social security under an agreement between the State and the Secretary of Health, Education, and Welfare are covered under social security under the provisions applicable to the self-employed.

This provision applies mainly to State and local government employees who are compensated solely on a fee basis. Fees received after 1967 by employees who are compensated solely on a fee basis in positions which are not covered under a State agreement are covered under the self-employment provisions of the law, except that employees in these positions in 1968 could have elected not to have their fees covered under the self-employment provisions by filing a statement, requesting the exclusions, with the Internal Revenue Service on or before the due date of the tax return for 1968.

Prior to this provision, the States were permitted to cover or exclude from coverage fee-basis employees at the time a State extended coverage to a coverage group. The State could extend coverage to fee-basis employees at a later date. If they were excluded at the time coverage was extended to a coverage group, but if they were once brought under coverage, they could not later be excluded. Under section 122 of Pub. L. 90–248, a State may be permitted to cover or exclude from coverage, employees who are compensated solely by fees by modifying its agreement after 1967. States have not provided coverage for most fee-basis employees, partly because fees are generally paid directly to the employee by the public and the employer would have difficulties in withholding the social security tax and in making accurate reports on the amount of fees received.

Maximum amount of self-employment earnings creditable. Section 203 of Pub. L. 92–336, section 203 of Pub. L. 93–66, and section 5 of Pub. L. 93–233 relate to the maximum amount of earnings creditable for social security purposes. The Social Security Act now provides for automatic increases in benefits and in the level of earnings subject to the social security tax. The automatic increases, which apply to both wages and self-employment income, are intended to keep the social security program up to date with changes in the economy. Whenever social security cash benefits are raised because of increases in the cost of living, the law requires a review of wages covered by social security. If average wages have gone up, the earnings base must be raised too.

Under this provision, the social security earnings base was automatically increased for 1977 to reflect increases in average earnings covered by social security. The new base is $16,500, compared to $15,300 for 1976. The self-employment income provisions in the regulations are being updated to reflect the 1977 increase in addition to other increases over the past several years.

Optional method of reporting self-employment income from nonfarm business. Section 121 of Pub. L. 92–603 provides an optional method of determining net earnings from nonfarm self-employment, effective for taxable years beginning after 1972.

Under the amendments, nonfarm self-employed people have the option of reporting as their net earnings for social security purposes two-thirds of their gross income from nonfarm self-employment but not more than $1,600. This option is comparable to the option which has been available to farm operators for some time. The provision includes a regularity of coverage requirement, and can be used only five times by any individual.

The intent of the option is to enable regularly self-employed operators of nonfarm business to maintain continuity of social security coverage in years when they have small net earnings or suffer net losses. The law contains the condition that, in order to use the optional method of reporting, a person must have had actual net earnings from self-employment of at least $400 in 2 of the 3 consecutive prior years. The optional method allows these people to receive higher social security credit than would be possible based on their actual net earnings.

U.S. citizens self-employed outside the U.S. who retain residence in the United States. Section 124 of Pub. L. 92–603 provides that a U.S. citizen self-employed outside the United States who retains his residence in the United States throughout the entire taxable year shall compute his net earnings from self-employment without regard to the Internal Revenue Code "earned-income-abroad" exclusions, effective for taxable years beginning after 1972.

The 1972 amendments provided that a U.S. citizen self-employed outside the United States who retains residence in the United States throughout the entire taxable year will compute his net earnings from self-employment for social security purposes on the same basis as a person self-employed in the United States. Under the Internal Revenue Code, the first $20,000 of self-employment income earned outside the United States by a citizen who was present in a foreign country at least 510 days out of an 18-consecutive month period was, under certain circumstances, excluded in computing gross income for income tax purposes. (This amount was reduced to $15,000, effective for taxable years beginning after December 31, 1975, by Pub. L. 94–455, enacted October 4, 1976.)

While identical exclusions in the Social Security Act and the Internal Revenue Code have permitted consistent administration and rules for taxpayers, the exclusions have had serious adverse effects on the social security protection of many workers and their families. For example, many free-lance newspapermen, news photographers and commentators, and clergymen did not have any covered earnings from self-employment outside the U.S. because they did not earn more than the excluded amount.

U.S. ministers and members of religious orders who maintain residence in a foreign country. Section 140 of Pub. L. 92–603 provides that an American minister or member of a religious order serving outside the United States shall compute his net earnings from self-employment without regard to the "earned-income-abroad" exclusions, effective for taxable years beginning after 1972.

The $20,000 exclusion ($15,000 for taxable years beginning after December 31, 1975) does not apply in taxable years beginning after 1972 to U.S. citizen clergymen and members of religious orders serving abroad who are residents of a foreign country. Thus, coverage is extended to such individuals who were previously excluded because they neither worked for an American employer nor served congregations composed predominantly of U.S. citizens. These individuals will compute their net earnings from self-employment for social security purposes in the same way as clergymen in the United States.

If there are any questions concerning this regulation, you may contact William J. Ziegler, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7415.

Prior to final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203, on or before May 19, 1977.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201.

(Sec. 205, 211, and 1102 of the Social Security Act, as amended, 53 Stat. 1368, as amended, 64 Stat. 502, as amended, 49 Stat. 647, as amended; 42 U.S.C. 405, 411, and 1302)

(Catalog of Federal Domestic Assistance Program No. 13.803, Social Security—Retirement Insurance.)

NOTE.—The Social Security Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: February 28, 1977.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: March 28, 1977.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.1051 is amended by revising paragraph (a) to read as follows:

§ 404.1051 General rule for computation of net earnings from self-employment.

(a) *Determining net earnings.* In general, the gross income and deductions of an individual attributable to a trade or business, (including a trade or business conducted by an employee referred to in § 404.1070 (c)(2), (c)(3), (c)(4), and (e)) for the purpose of ascertaining his net earnings from self-employment, are to be determined by reference to the provisions of law and regulations applicable with respect to the taxes imposed by sections 1 and 3 of the Internal Revenue Code of 1954. Thus, if an individual uses the accrual method of accounting in computing taxable income from a trade or business for the purpose of the tax imposed by such sections, he must use the same method in determining net earnings from self-employment. Likewise, if a taxpayer engaged in a trade or business of selling property on the installment plan elects, under the provisions of section 453 of the Internal Revenue Code of 1954, to use the installment method in computing income for purposes of the tax under section 1 or 3 of the Internal Revenue Code of 1954, he must use the same method in determining net earnings from self-employment. Income which is excludable from gross income under any provision of subtitle A of the Internal Revenue Code of 1954 is not taken into account in determining net earnings from self-employment except as otherwise provided in § 404.1059, relating to certain residents of Puerto Rico, in § 404.1061, relating to ministers or members of religious orders, in § 404.1061a, relating to United States citizens temporarily living outside the United States, and in § 404.1063, relating to the term "possession of the United States." Thus, in the case of a citizen of the United States who resides outside the United States and is conducting, in a foreign country, a trade or business in which both personal services and capital are material income-producing factors, any part of the income therefrom which is excluded from gross income as earned income under the provisions of section 911 of the Internal Revenue Code of 1954 and the regulations thereunder is not taken into account in determining net earnings from self-employment.

* * * * *

2. Section 404.1058a is added to read as follows:

§ 404.1058a Retirement payment to retired partners.

(a) *In general.* In computing his net earnings from self-employment for taxable years ending on or after December 31, 1967, a retired partner shall exclude payments made to him on a periodic basis by a partnership on account of his retirement and pursuant to a written plan of the partnership. This exclusion applies only if the requirements prescribed in paragraph (b) of this section; and, in addition, the conditions set forth in paragraph (c) of this section are met.

(b) *Retirement plan of partnership.* (1) The written plan of the partnership must set forth the terms and conditions of the program or system established by the partnership for making payments to retired partners on account of their retirement. To qualify as payments on account of retirement, the payments must constitute bona fide retirement income. Thus, payments of benefits not customarily included in a pension or retirement plan such as layoff benefits are not payments on account of retirement. Eligibility for retirement generally is established on the basis of age, physical condition, or a combination of age or physical condition and years of service. Generally, retirement benefits are measured by, and based on, such factors as years of service and compensation received. In determining whether the plan of the partnership provides for payments on account of retirement, criteria such as factors, formulas, etc., reflected in public, and in broad based private, pension or retirement plans in prescribing eligibility requirements and in computing benefits may be taken into account.

(2) The plan of the partnership must provide for payments on account of retirement—

(i) To partners generally or to a class or classes of partners,

(ii) On a periodic basis, and

(iii) Which continue at least until the partner's death. A class of partners may, in an appropriate case, contain only one member. Payments are made on a periodic basis if made at regularly recurring intervals (usually monthly) not exceeding one year.

(c) *Other conditions relating to exclusion.* (1) *In general.* A payment made to a retired partner pursuant to a written plan of a partnership which meets the requirements of paragraph (b) of this section shall be excluded, in computing net earnings from self-employment, only if——

(i) The retired partner rendered no service with respect to any trade or business carried on by the partnership (or its successors) during the taxable year of the partnership (or its successors), which ended within or with the taxable year of the retired partner in which the payment was received by him;

(ii) No obligation (whether certain in amount or contingent on a subsequent event) exists (as of the close of the partnership's taxable year referred to in paragraph (c)(1)(i) of this section) from the other partners to the retired partner except with respect to retirement payments under the plan; and

(iii) The retired partner's share (if any) of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in paragraph (c)(1)(i) of this section.

(2) Under paragraph (c)(1) of this section, either all payments on account of retirement received by a retired partner during the taxable year of the partnership ending within or with his taxable year are excluded or none of the payments are excluded. Paragraph (c)(1)(ii) of this section applies only to obligations from other partners, in their capacity as partners, as distinguished from an obligation which arises and exists from a transaction unrelated to the partnership or to a trade or business carried on by the partnership. In effect, paragraph (c)(1) of this section provides that the exclusion may apply to payments received by a retired partner during the partnership's taxable year ending within or with his taxable year only if, at the close of the partnership's taxable year, the retired partner had no financial interest in the partnership except for the right to retirement payments.

(d) *Examples.* The application of paragraph (c)(1) of this section may be illustrated by the following examples. Each example assumes that the partnership plan pursuant to which the payments are made meets the requirements of paragraph (b) of this section.

Example 1. A, who files his income tax returns on a calendar year basis, is a partner in the ABC partnership. The partnership's

taxable year is the period July 1 to June 30, inclusive. A retired from the partnership on January 1, 1973, and receives monthly payments on account of his retirement. As of June 30, 1973, no obligation existed from the other partners to A (except with respect to retirement payments under the plan) and A's share of the capital of the partnership had been paid to him in full. The monthly retirement payments received by A from the partnership in his taxable year ending on December 31, 1973, are not excluded from net earnings from self-employment since A rendered service to the partnership during a portion of the partnership's taxable year (July 1, 1972, through June 30, 1973) which ended within A's taxable year—January 1 to December 31, 1973.

Example 2. D, a partner in the DEF partnership, retired from the partnership as of December 31, 1972. The taxable year of both D and the partnership is the calendar year. During the partnership's taxable year ending December 31, 1973, D rendered no service with respect to any trade or business carried on by the partnership. On or before December 31, 1973, all obligations (other than with respect to retirement payments under the plan) from the other partners to D were liquidated, and D's share of the capital of the partnership was paid to him. Retirement payments received by D pursuant to the partnership's plan in his taxable year ending December 31, 1973, are excluded in determining his net earnings from self-employment (if any) for that taxable year.

Example 3. Assume the same facts as in Example 2 except that as of the close of December 31, 1973, D had a right to a fixed percentage of any amounts collected by the partnership after that date attributable to services rendered by him prior to his retirement for clients of the partnership. The monthly payments received by D in his taxable year ending December 31, 1973, are not excluded from net earnings from self-employment since as of the close of the partnership's taxable year which ended with D's taxable year, an obligation (other than an obligation with respect to retirement payments) existed from the other partners to D.

3. Section 404.1061 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 404.1061 Ministers and members of religious orders (computations of net earnings).

(a) *In general.* For each taxable year ending after 1954 in which a minister or a member of a religious order is engaged in a trade or business, within the meaning of section 211(c) of the Act (see § 404.1070(e)), net earnings from self-employment from such trade or business include the gross income derived during the taxable year from any such trade or business, less the deductions attributable to such gross income. For each taxable year ending on or after December 31, 1957, such minister or member of a religious order shall compute his net earnings from self-employment derived from the performance of such service without regard to the exclusions from gross income provided by section 107 of the Internal Revenue Code of 1954 (relating to rental value of parsonages) and section 119 of such code (relating to meals and lodging furnished for the convenience of the employer). Thus, a minister, engaged in a trade or business within the meaning of section 211(c) of the Act will include in the computation of his net earnings from self-employment for a taxable year ending on or after December 31, 1957, the rental value of a home furnished to him as remuneration for services performed in the exercise of his ministry or the rental allowance paid to him as remuneration for such services irrespective of whether such rental value or rental allowance is excluded from gross income by section 107 of the Internal Revenue Code of 1954. Similarly, the value of any meals or lodging furnished to a minister or to a member of a religious order in connection with services performed in the exercise of his ministry or as a member of such order will be included in the computation of his net earnings fom self-employment for a taxable year ending on or after December 31, 1957, notwithstanding the exclusion of such value from gross income by section 119 of the Internal Revenue Code of 1954.

(b) *Taxable years beginning after 1972.* For taxable years beginning after 1972, if a minister or member of a religious order engaged in a trade or business within the meaning of section 211 (c) of the Act (see § 404.1070(e)) and was a citzien of the United States performing services outside the United States in his capacity as a minister or member of a religious order, his net earnings from self-employment derived from the performance of such service shall be computed as provided in paragraph (a) of this section but without regard to the exclusions from gross income provided in section 911 of the Internal Revenue Code of 1954, relating to earned income from sources without the United States, and section 931 of the Internal Revenue Code of 1954, relating to income from sources within possessions of the United States. Thus, even though all the income of the minister or member, for service of the character to which this paragraph is applicable, was derived from sources outside the United States, or from sources within possessions of the United States and, therefore, may for income tax purposes be excluded from gross income, such income is included in computing net earnings from self-employment. The provisions of this paragraph do not apply to a minister or a member of a religious order who has been granted an exemption from the payment of the tax on self-employment income under §§ 404.1086–404.1089.

(c) *Taxable years beginning before 1973.* (1) *In the employ of an American employer.* For taxable years beginning before 1973, if a minister or member of a religious order engaged in a trade or business within the meaning of section 211(c) of the Act (see §§ 404.1070(e) and 404.1080) was a citizen of the United States and performed service, in his capacity as a minister or member of a religious order, as an employee of an American employer, as defined in § 404.1003(c)(3), his net earnings from self-employment derived from such service shall be computed as provided in paragraph (a) of this section but without regard to the exclusions from gross income provided in section 911 of the Internal Revenue Code of 1954, relating to earned income from sources without the United States, and section 931 of the Internal Revenue Code of 1954, relating to income from sources within possessions of the United States. Thus, even though all the income of the minister or member of a religious order performing service of the character to which this paragraph is applicable was derived from sources outside the United States, or within possessions of the United States, and therefore may for income tax purposes be excluded from gross income, such income is included in computing net earnings from self-employment. The provisions of this paragraph do not apply with respect to a minister or member of a religious order who has been granted an exemption from the payment of the social security self-employment tax on self-employment tax on self-employment income as ment income as provided in §§ 404.1086–404.1089.

(2) *Minister in a foreign country whose congregation is composed predominantly of citizens of the United States.*—(i) *Taxable years ending after 1956.* For any taxable year ending after 1956, a minister of a church, who engaged in a trade or business within the meaning of section 211(c) of the Act (see §§ 404.1070(e) and 404.1080), was a citizen of the United States, performed service in the exercise of his ministry in a foreign country, and had a congregation composed predominantly of citizens of the United States, shall compute his net earnings from self-employment derived from his services as a minister for such taxable year without regard to the exclusion from gross income provided in section 911 of the Internal Revenue Code of 1954, relating to earned income from sources without the United States. For taxable years ending on or after December 31, 1957, such minister shall also disregard sections 107 and 119 of the Internal Revenue Code of 1954 in the computation of his net earnings from self-employment. (See paragraph (a) of this section.) For purposes of section 211(a)(7) of the Act and this paragraph a "congregation composed predominantly of citizens of the United States" means a congregation the majority of which throughout the greater portion of its minister's taxable year were U.S. citizens. The provisions of this subdivision do not apply with respect to a minister who has been granted an exemption from the payment of the tax on self-employment income as provided in §§ 404.1086–404.1089.

(ii) *Election for taxable years ending after 1954 and before 1957.* (a) A minister described in paragraph (c)(2)(i) of this section who, for a taxable year ending after 1954 and before 1957, had income from service described in such paragraph (c)(2)(i) of this section which would have been included in computing net earnings from self-employment if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of the Internal Revenue Code of

1954 may elect to have section 211(a)(7) of the Act and paragraph (c)(2)(i) of this section apply to his income from such service for his taxable years ending after 1954 and before 1957. If such minister filed a waiver certificate prior to August 1, 1956, in accordance with § 404.1080, or he files such a waiver certificate on or before the due date of his return (including any extensions thereof) for his last taxable year ending before 1957, he must make such election on or before the due date of his return (including any extensions thereof) for such taxable year or before April 16, 1957, whichever is the later. If a waiver certificate is not so filed, the minister must make this election on or before the due date of the return (including any extensions thereof) for his first taxable year ending after 1956. Notwithstanding the expiration of the period prescribed by section 1402(e)(2) of the Internal Revenue Code of 1954 (see § 404.1081) for filing such waiver, the minister may file a waiver certificate at the time he makes the election. In no event shall an election be valid unless the minister files prior to or at the time of the election a waiver certificate in accordance with § 404.1080.

(b) The election shall be made by filing with the District Director of Internal Revenue with whom the waiver certificate, Treasury/IRS Form 2031, is filed a written statement indicating that, by reason of the Social Security Amendments of 1956, the minister desires to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to his services performed in a foreign country as a minister of a congregation composed predominantly of U.S. citizens beginning with the first taxable year ending after 1954 and prior to 1957 for which he had income from such services. The statement shall be dated and signed by the minister and shall clearly state that it is an election for retroactive self-employment tax coverage under the Self-Employment Contributions Act of 1954. In addition, the statement shall include the following information:

(1) The name and address of the minister.

(2) His social security number, if he has one.

(3) That he is a duly ordained, commissioned, or licensed minister of a church.

(4) That he is a citizen of the United States.

(5) That he is performing services in the exercise of his ministry in a foreign country.

(6) That his congregation is composed predominantly of citizens of the United States.

(7)(i) That he has filed a waiver certificate and, if so, where and under what circumstances the certificate was filed and the taxable year for which it is effective; or

(ii) That he is filing a waiver certificate with his election for retroactive coverage and, if so, the taxable year for which it is effective.

(8) That he has or has not filed income tax returns for his taxable years ending after 1954 and before 1957. If he has filed such returns, he shall state the years for which they were filed and indicate the District Director of Internal Revenue with whom they were filed.

(c) Notwithstanding the provisions set forth in section 1402(e)(3) of the Internal Revenue Code of 1954 (see § 404.1082 relating to such provisions), a waiver certificate filed pursuant to § 404.1080 by a minister making an election under this paragraph shall be effective (regardless of when such certificate is filed) for such minister's first taxable year ending after 1954 in which he had income from service described in paragraph (c)(2) of this section or for the taxable year of the minister prescribed by section 1402(e)(3) of the Internal Revenue Code of 1954 (see § 404.1082), if such taxable year is earlier, and for all succeeding taxable years.

* * * * *

4. Section 404.1061a is added to read as follows:

§ 404.1061a United States citizens temporarily living outside the United States; computation of net earnings.

For taxable years beginning after 1972, an individual engaged in a trade or business as described in section 211(c) of the Act, who is a citizen of the United States, who derives earnings from self-employment outside the United States, and who has been a resident of the United States during the entire taxable year, shall compute his net earnings from self-employment without regard to the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954. Thus, even though all income of the individual to which this section is applicable was derived from sources outside the United States, and therefore may for income tax purposes be excluded from gross income, such income is included in computing net earnings from self-employment. (See § 404.1061 relating to ministers or members of a religious order performing services outside the United States.)

5. Section 404.1066 is added to read as follows:

§ 404.1066 Options available in computing net earnings from nonfarm self-employment.

(a) *In general.* For any taxable year beginning after 1972, an individual self-employed on a regular basis as defined in paragraph (d) of this section may use an optional method to determine his net earnings from nonfarm self-employment. This option is available when the actual net earnings from nonfarm self-employment are less than $1,600 and less than 66⅔ percent of the individual's gross nonfarm income. However, an individual may not use the nonfarm option with respect to earnings derived in more than 5 taxable years, nor may he report less than his actual net earnings from nonfarm self-employment.

(b) *Computing net earnings from nonfarm self-employment.* An individual who is self-employed on a regular basis as defined in paragraph (d) of this section may, under the optional method of computing net earnings from nonfarm self-employment, report 66⅔ percent of his gross nonfarm self-employment income not to exceed $1,600 as his net earnings from nonfarm self-employment, if his actual net earnings from such self-employment are less than $1,600 and less than 66⅔ percent of his gross income from such self-employment.

Example: A operates a grocery store and files his income tax returns on a calendar year basis. He meets the "self-employed on a regular basis" requirement as he had actual net earnings from self-employment of $400 or more in 1971 and in 1972. His gross income and net profit from operating his grocery store in 1973 through 1975 are as follows:

	1973	1974	1975
Gross income	$2,800	$1,200	$1,000
Net profit	300	400	800

For the year 1973, A may report as his annual net earnings from self-employment either:

1. None. (Actual net earnings from self-employment are less than $400); or

2. $1,600. (Nonfarm option, 66⅔ percent of $2,800 but not to exceed the $1,600 maximum.)

For the year 1974, A may report as his annual net earnings from self-employment either:

1. $400. (Actual net earnings from self-employment); or

2. $800. (Nonfarm option, 66⅔ percent of $1,200.)

For the year 1975, A must report $800, his actual net earnings from self-employment. The nonfarm option is not available to him because his actual net earnings are not less than 66⅔ percent of his gross income.

(c) *Computing net earnings from both nonfarm and farm self-employment.* An individual who is self-employed on a regular basis may use the nonfarm optional method where both nonfarm and farm businesses are involved, if his actual net earnings from nonfarm self-employment combined with his actual net earnings from farm self-employment, or optional net earnings from farm self-employment, if used, are less than $1,600, and the net nonfarm earnings are less than 66⅔ percent of his gross nonfarm self-employment income. If an individual qualifies for using both the nonfarm and farm option, he may report less than his actual total net earnings but not less than his actual net earnings from nonfarm self-employment alone; if he elects to use both options in a given taxable year, the combined maximum reportable net earnings from self-employment may not exceed $1,600.

Example 1: B operated a grocery store and a farm. He files his income tax return on a calendar year basis. He had actual net earnings from self-employment of $400 or more in 1971 and in 1972 thus meeting the "self-employed on a regular basis" test. His gross

income and net profit from operating both of his businesses in 1973 through 1975 are:

	1973	1974	1975
Grocery store:			
Gross income...	$1,800	$2,100	$1,500
Net profit.....	200	400	500
Farm:			
Gross income...	$2,400	$1,200	$1,200
Net profit.....	100	400	900

For the year 1973, B may report as his net earnings from self-employment:

1. None. (Actual net earnings from self-employment from both businesses less than $400); or

2. $1,300. ($1,200 nonfarm option (66⅔ percent of $1,800 grocery store gross income) and $100 farm profit); or

3. $1,800. ($1,600 farm option (66⅔ percent of $2,400 farm gross income) and $200 grocery store profit).

The nonfarm option is not available to B for 1973 if he uses the farm option because the "less than $1,600" requirement would not be met. For the year 1974, B may report as his net earnings from self-employment:

1. $800. (Actual net earnings from self-employment from both businesses); or

2. $1,200. ($800 farm option (66⅔ percent of $1,200 farm gross income) and $400 grocery store profit); or

3. $1,800. ($1,400 nonfarm option (66⅔ percent of $2,100 grocery store gross income) and $400 farm profit); or

4. $1,600. ($800 farm option and $1,400 nonfarm option totaling $2,200 but not to exceed the $1,600 maximum).

For the year 1975, B may report as his net earnings from self-employment:

1. $1,400. (Actual net earnings from self-employment from both businesses); or

2. $1,300. ($800 farm option (66⅔ percent of $1,200 farm gross income) and $500 grocery store profit); or

3. $1,900. ($1,000 nonfarm option (66⅔ percent of $1,500 grocery store gross income) and $900 farm profit); or

4. $1,600. ($800 farm option and $1,000 nonfarm option totaling $1,800 reduced to $1,600 so as not to exceed the maximum).

Example 2: C was regularly self-employed having derived actual net earnings from self-employment of $400 or more in 1971 and in 1972. His gross income and net profit from operating both a grocery store and a farm in 1973 are:

Grocery Store	
Gross income	$1,000
Net profit	800
Farm	
Gross income	$2,600
Net profit	400

For the year 1973, C may report $1,200 (actual net earnings from self-employment from both businesses), or $2,400 ($1,600 farm option (66⅔ percent of $2,600 farm gross income not to exceed $1,600) and $800 grocery store profit). C cannot use the nonfarm option for 1973 because his actual grocery store net exceeds 66⅔ percent of his grocery store gross income.

(d) *Self-employed on a regular basis.* For any taxable year beginning after 1972, an individual is deemed to be self-employed on a regular basis, or to be a member of a partnership on a regular basis, if in at least 2 of the 3 taxable years immediately preceding such taxable year he had actual net earnings from self-employment of not less than $400 from farm and nonfarm trades or businesses (including his distributive share of the net income or loss from any partnership of which he is a member).

6. Section 404.1068 is amended by deleting paragraph (b)(2), redesignating paragraph (b)(3) as (b)(2) and by revising paragraphs (b)(1) and (c) to read as follows:

§ 404.1068 Self-employment income.

* * * * *

(b) *Maximum creditable self-employment income.* (1) The maximum creditable self-employment income of an individual for any taxable year (whether a period of 12 months or less) is

(i) The excess of—

(*a*) For taxable years ending before 1955, $3,600,

(*b*) For taxable years ending after 1954 and before 1959, $4,200,

(*c*) For taxable years ending after 1958 and before 1966, $4,800,

(*d*) For taxable years ending after 1965 and before 1968, $6,600,

(*e*) For taxable years ending after 1967 and beginning before 1972, $7,800,

(*f*) For taxable years beginning after 1971 and before 1973, $9,000,

(*g*) For taxable years beginning after 1972 and before 1974, $10,800,

(*h*) For taxable years beginning after 1973 and before 1975, $13,200,

(*i*) For taxable years beginning after 1974, an amount equal to the contribution and benefit base as determined under section 230 of the Act which is effective for such calendar year, which is

(*1*) $14,100 for taxable years beginning after 1974 and before 1976,

(*2*) $15,300 for taxable years beginning after 1975,

(*3*) $16,500 for taxable years beginning after 1976,

(ii) over the amount of any wages (as defined in section 209 of the Act) paid to such individual in such taxable year. For example, if during the taxable year ending in 1973 the individual had $12,000 of net earnings from self-employment, and was paid $1,000 of such wages he had only $9,800 of creditable self-employment income for the taxable year.

* * * * *

(c) *Minimum net earnings from self-employment.* Self-Employment income does not include the net earnings from self-employment of an individual when the amount of such earnings for the taxable year is less than $400. Thus, an individual having only $300 of net earnings from self-employment for the taxable year would not have any creditable self-employment income. However, an individual having net earnings from self-employment of $400 or more for the taxable year may have less than $400 of creditable self-employment income. This could occur in a case in which the amount of the individual's net earnings from self-employment is $400 or more for a taxable year and the amount of such net earnings from self-employment plus the amount of the wages paid to the individual during that taxable year exceed the maximum creditable earnings as prescribed in section 211(c) of the Act (see paragraph (b) of this section) for such year. For example, if an individual had net earnings from self-employment of $1,000 for 1973, and was also paid wages of $10,500 during 1973, his creditable self-employment income for 1973 was $300.

* * * * *

7. Section 404.1070 is amended by revising paragraphs (d)(1), (1)(i) and (d)(2), (e), and (g) to read as follows:

§ 404.1070 Trade or business.

* * * * *

(d) *Members of certain professions—*(1) *Professional service exclusion.* An individual is not engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession:

(i) As a Christian Science practitioner, except as provided in § 404.1080 for taxable years ending before January 1, 1968, and in 404.1087 for taxable years ending after December 31, 1967, or

* * * * *

(2) *Election of coverage.* Service performed by a Christian Science practitioner in the exercise of his profession during taxable years ending before January 1, 1968, for which a waiver certificate filed pursuant to § 404.1080 is effective, constitutes a trade or business within the meaning of section 211(c) of the Act. However, service performed by a Christian Science practitioner in the exercise of his profession during taxable years ending after 1967 constitutes a trade or business within the meaning of section 211(c) of the Act, unless an exemption from such coverage has been granted on the basis of filing for such exemption pursuant to § 404.1087.

* * * * *

(e) *Ministers and members of religious orders—*(1) *General.* Except as provided in § 404.1080 and § 404.1087, the performance of services by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order does not constitute a trade or business within the meaning of section 211(c) of the Act.

(2) *Taxable years ending before 1968.* The Social Security Amendments of 1954 extended coverage on an individual elective basis to duly ordained, commissioned, or licensed ministers of a church and members of religious orders who had not taken a vow of poverty effective for taxable years ending after 1954. Those who elected coverage are considered as self-employed persons, even though working in the exercise of their ministry as employees. To have elected coverage a minister, performing service described in § 404.1015, must have filed an irrevocable waiver certificate (see §§ 404.1080–404.1086).

(3) *Taxable years ending after 1967.* The Social Security Amendments of 1967 extended self-employment coverage of ministerial service, described in § 404.1015, performed by duly ordained, commissioned, or licensed ministers and members of religious orders who have not taken a vow of poverty for all taxa-

ble years ending after 1967, unless the minister has been granted an exemption from such coverage by the Internal Revenue Service on the basis of timely filing for such an exemption (see §§ 404.1087–404.1089). Service performed by members of religious orders who have taken a vow of poverty which are in the exercise of the duties required by the order are not covered by the self-employment provisions of the Act. An exemption cannot be granted to a minister who filed a waiver certificate which is effective for any taxable year ending before 1968.

* * * * *

(g) *Public office.* The performance of the functions of a public office does not constitute a trade or business, except as provided in paragraphs (g) (1) and (2) of this section for certain fee basis public officers and employees. The term "public officers and employees. The term "public office" includes any elective or appointive office of the United States or any possession thereof, the District of Columbia, or of a State or its subdivision, or of a wholly owned instrumentality of any one or more of the foregoing. For example, the President, the Vice President, a governor, a mayor, the Secretary of State, a member of Congress, a State representative, a county commissioner, a judge, a county or city attorney, a marshal, a sheriff, a register of deeds, or a notary public performs the functions of a public office.

(1) *Self-employment on fee basis.* Effective with taxable years beginning after 1967, services performed by public officers and employees of State and local governments in positions compensated solely on a fee basis constitute a trade or business under the self-employment provisions of the Social Security Act if such services are eligible for (but are not made the subject of) an agreement between the State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Act to extend social security coverage thereto. (Since notaries public are not "employees" within the meaning of section 218 of the Social Security Act, their services are not eligible for an agreement under that section. Accordingly, such services do not constitute a trade or business.) If an individual performs services for a State or political subdivision thereof in any period in more than one position, each position is treated separately for purpose of determining whether he is engaging in a trade or business on a fee basis. However, public officers and employees engaging in a trade or business on a fee basis in 1968 may elect not to have his fees covered under the self-employment provisions of the Act by filing Treasury/IRS Form 4415 pursuant to paragraph (g)(2) of this section.

(2) *Election by fee basis public officials and State and local employees with respect to fees received in 1968.* Any individual who in 1968 was in a position described in paragraph (g)(1) of this section and received fees in such position may elect to have the performance of functions or services in such position excluded from the term "trade or business" for the purpose of the self-employment social security tax on self-employment income. Such election shall not be limited to service to the performance of functions or services which the fees received in 1968 are attributable but must also apply in subsequent years to the performance of any functions or services which, except for the election, would constitute a trade or business pursuant to the provisions of paragraph (g)(1) of this section. An election made pursuant to the provisions of this paragraph (g)(2) is irrevocable. An individual shall make such an election by filing a certificate of election of exemption (Treasury/IRS Form 4415) on or before the due date of his income tax return (including any extension thereof) for his taxable year which begins in 1968. The certificate of election of exemption shall be filed with an internal revenue office in accordance with the instructions on the certificate.

* * * * *

8. Section 404.1080 is amended by revising the section heading and first sentence of paragraph (a) to read as follows:

§ 404.1080 Election of self-employment coverage prior to 1968; waiver certificate.

(a) *In General.* For taxable years ending before January 1, 1968, any individual who is:

* * * * *

9. Section 404.1081 is amended by revising paragraph (a) to read as follows:

§ 404.1081 Time limitation for filing waiver certificate.

(a) *General Rule.* For taxable years ending before January 1, 1968, a waiver certificate on Treasury/IRS Form 2031 must be filed on or before the due date of the individual's income tax return, including any extension thereof (see § 6072 and § 6081 of the Internal Revenue Code of 1954), for his second taxable year ending after 1954 for which he has net earnings from self-employment (completed as prescribed in paragraph (d) of this section) of $400 or more, any part of which is derived from service to which § 404.1080 applies.

* * * * *

10. Sections 404.1087, 404.1088 and 404.1089 are added to read as follows:

§ 404.1087 Exemption from self-employment coverage by ministers, members of religious orders and Christian Science practitioners for taxable years ending after 1967.

(a) *In General.* For taxable years ending after December 31, 1967, any individual who is a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order); or, a Christian Science practitioner, may request an exemption from the tax on self-employment income with respect to services performed by him in his capacity as a minister, member of a religious order, or a Christian Science practitioner, as the case may be. Such a request shall be made by filing an application for exemption on Treasury/IRS Form 4361 in the manner provided in paragraph (b) of this section and within the time specified in § 404.1088. For provisions relating to the taxable year or years for which an exemption from the tax on self-employment income with respect to service performed by a minister, member of a religious order, or Christian Science practitioner in his capacity as such is effective, see § 404.1089. An exemption from the tax imposed on self-employment income with respect to service performed by a minister, member of a religious order, or Christian Science practitioner in his capacity as such may not be granted where he (in accordance with the provisions of § 404.1080) filed a valid waiver certificate on Treasury/IRS Form 2031 (§§ 404.1080–404.1084) electing to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to service performed by him in the exercise of his ministry or in the exercise of duties required by the order of which he is a member, or in the exercise of his profession as a Christian Science practitioner.

(b) *Application for exemption.* An application for exemption on Treasury/IRS Form 4361 shall be filed in triplicate with the internal revenue officer or the internal revenue office, as the case may be, designated in the instructions on the form. The application for exemption must be filed within the time prescribed in § 404.1088.

(1) The application for exemption shall contain, or there shall be filed with such application, a statement to the effect that the individual making application for exemption is conscientiously opposed because of religious considerations to, or because of religious principles is opposed to, the acceptance (with respect to services performed by him in his capacity as a minister, member of a religious order, or Christian Science practitioner) of any public insurance which makes payments in the even of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for medical care (including the benefits of any insurance system established by the Social Security Act). Thus, ministers, members of religious orders, and Christian Science practitioners requesting exemption from social security coverage must meet either of two alternative tests: (i) A religious principles test which refers to the institutional principles and discipline of the particular religious denomination to which he belongs, or (ii) a conscientious opposition test which refers to the opposition because of religious considerations of individual ministers, members of religious orders, and Christian Science practitioners (rather than opposition based upon the general conscience of any such individual or individuals).

(2) The term "public insurance", as used in paragraph (b)(1) of this section

refers to governmental, as distinguished from private, insurance and does not include insurance carried with a commercial insurance carrier. To be eligible to file an application for exemption on Treasury/IRS Form 4361, a minister, member of a religious order, or Christian Science practitioner need not be opposed to the acceptance of all public insurance making payments of this specified type; he must, however, be opposed on religious grounds to the acceptance of any such payment which, in whole or in part, is based on, or measured by earnings from services performed by him in his capacity as a minister, member of a religious order, or Christian Science practitioner. For example, a minister performing service in the exercise of his ministry may be eligible to file an application for exemption on Treasury/IRS Form 4361 even though he is not opposed to the acceptance of benefits under the Social Security Act with respect to service performed by him which is not in the exercise of his ministry.

(c) *Approval of application for exemption.* The filing of an application for exemption on Treasury/IRS Form 4361 by a minister, a member of a religious order, or a Christian Science practitioner does not constitute an exemption from the tax on self-employment income with respect to services performed by him in his capacity as a minister, member, or practitioner. The exemption is granted only if the application is approved by an appropriate internal revenue officer.

§ 404.1088 Time limitation for filing application for exemption.

(a) *General rule.* (1) Any individual who desires an exemption from the tax on self-employment income with respect to service performed by him in his capacity as a minister or member of a religious order or as a Christian Science practitioner must file the application for exemption (Treasury/IRS Form 4361) on or before whichever of the following dates is later:

(i) The due date of the income tax return, including any extension thereof for his second taxable year ending after 1967, or

(ii) The due date of the income tax return, including any extension thereof, for his second taxable year beginning after 1953, for which he has net earnings from self-employment of $400 or more, any part of which:

(*a*) In the case of a duly ordained, commissioned, or licensed minister of a church, consists of remuneration for service performed in the exercise of his ministry; or

(*b*) In the case of a member of a religious order who has not taken a vow of poverty as a member of such order, consists of remuneration for service performed in the exercise of duties required by such order; or

(*c*) In the case of a Christian Science practitioner, consists of remuneration for service performed in the exercise of his profession as a Christian Science practitioner.

(2) No part of the net earnings from self-employment (computed as prescribed in paragraph (c) of this section) for the taxable year shall be considered as derived from service performed as a minister, member of a religious order, or Christian Science practitioners if he derived his gross income in the taxable year both from service performed in such capacity and from the conduct of another trade or business, and the deductions allowed by Chapter I of the Internal Revenue Code which are attributable to the gross income derived from service performed in such capacity equal or exceed the gross income derived from service performed in such capacity.

(3) The application of the rules set forth in paragraphs (a)(1) and (a)(2) of this section may be illustrated by the following examples:

Example 1. M, who makes his income tax returns on a calendar year basis, was ordained as a minister in January 1960. During each of two or more taxable years ending before 1968 M has net earnings for self-employment in excess of $400 some part of which is from service performed in the exercise of his ministry. M has not filed an effective waiver certificate on Treasury/IRS Form 2031 (See §§ 404.1080ff.). If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1969 (his second taxable year ending after 1967), or any extension thereof.

Example 2. M, who makes his income tax returns on a calendar year basis, was ordained as a minister in January 1966. M has net earnings of $350 for the taxable year 1966 and has net earnings of $350 for the taxable year 1966 and has net earnings in excess of $400 for each of his taxable years 1967 and 1968 (some part or all of which is derived from service performed in the exercise of his ministry). M has not filed an effective waiver certificate on Treasury/IRS Form 2031 (see §§ 404.1080ff.). If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1969 (his second taxable year ending after 1967), or any extension thereof.

Example 3. Assume the same facts as in Example 2 except that M has net earnings in excess of $400 for each of his taxable years 1967 and 1969 (but less than $400 in 1968). The application for exemption must be filed on or before the due date of his income tax return for 1969, or any extension thereof

Example 4. M was ordained as a minister in May 1973. During each of the taxable years 1973 and 1975, M, who makes his income tax returns on a calendar year basis, derived net earnings in excess of $400 from his activties as a minister. M had net earnings of $350 for the taxable year 1974, $200 of which was derived from service performed by him in the exercise of his ministry. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1975, or any extension thereof.

Example 5. M, who was ordained a minister in January 1973, is employed as a toolmaker by the XYZ Corporation for the taxable years 1973 and 1974 and also engages in activties as a minister on weekends. M makes his income tax returns on the basis of a calendar year. During each of the taxable years 1973 and 1974 M receives wages of $10,800 and $13,200 respectively from the XYZ Corporation and derives net earnings of $400 from his activities as a minister. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry he must file an application for exemption on or before the due date of his income tax return for 1974, or any extension thereof. It should be noted that although by reason of section 211(b)(1)(G) and (H) of the Act and section 1402(b)(1)(G) and (H) of the Internal Revenue Code no part of the $400 represents "self-employment income," nevertheless the entire $400 constitutes "net earnings from self-employment" for purposes of fulfilling the requirements of section 1402(e)(2) of the Internal Revenue Code.

Example 6. M, who files his income tax returns on a calendar year basis, was ordained as a minister in March 1973. During 1973 he receives $410 for service performed in the exercise of his ministry. In addition to his ministerial services, M is engaged during the year 1973 in a mercantile venture from which he derives net earnings from self-employment in the amount of $4,000. The expenses incurred by him in connection with his ministerial services during 1973 and which are allowable deductions under Chapter I of the Internal Revenue Code amount to $410. During 1974 and 1975, M has net earnings from self-employment in amounts of $4,600 and $4,800 respectively, and some part of each of these amounts is from the exercise of his ministry. The deductions allowed in each of the years 1974 and 1975 by Chapter I of the Internal Revenue Code which are attributable to the gross income derived by M from the exercise of his ministry in each of such years, respectively, do not equal or exceed such gross income in such year. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1975, or any extension thereof.

(b) *Effect of death.* The right of an individual to file an application for exemption shall cease upon his death. Thus, the surviving spouse, administrator, or executor of a decedent shall not be permitted to file an application for exemption for such decedent.

(c) *Computation of net earnings—*(1) *Taxable years ending before 1968.* Net earnings from self-employment for taxable years ending before 1968 shall be determined without regard to the fact that without an election (Treasury/IRS Form 2031) under section 1402(e) of the Internal Revenue Code (as in effect prior to amendment by section 115(b)(2) of the Social Security Amendments of 1967), the performance of services by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, or the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, does not constitute a trade or business for purposes of the tax on self-employment income.

(2) *Taxable years ending after 1967.* Net earnings from self-employment for taxable years ending after 1967 shall be determined without regard to the fact

that Treasury/IRS Form 2031 has not been filed. Services performed by duly ordained, commissioned, or licensed ministers, members of religious orders who have not taken a vow of poverty, and Christian Science practitioners are covered unless the individual has been granted an exemption from such coverage pursuant to the procedures outlined in § 404.1087(b).

§ 404.1089 Period for which exemption is effective.

(a) *In general.* If an application for exemption on Treasury/IRS Form 4361 is filed by a minister, a member of a religious order, or a Christian Science practitioner eligible to file such an application and is approved, the exemption from the tax on self-employment income shall be effective for the first taxable year ending after 1967 for which such minister, member, or practitioner has net earnings from self-employment of $400 or more any part of which was derived from the performance of service in his capacity as a minister, member, or practitioner, and for all succeeding taxable years. However, the exemption applies only to income derived from services which the individual performs in his exercise of the ministry, or in his exercise of duties required by the religious order, or from his practice as a Christian Science practitioner.

(b) *Exemption irrevocable.* An exemption granted to a minister, a member of a religious order, or a Christian Science practitioner pursuant to the provisions of section 1402(e) of the Internal Revenue Code is irrevocable.

[FR Doc.77-9822 Filed 4-1-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 164]

[CGD 77-002]

LORAN-C VESSELS OF 1600 GROSS TONS OR MORE

Notice of Proposed Rulemaking; Extension of Comment Deadline

The Coast Guard published a Notice of Proposed Rulemaking in the January 31, 1977, issue of the FEDERAL REGISTER (42 FR 5966). This notice solicited comments on an amendment to the navigation safety regulations to require LORAN-C on vessels of 1600 gross tons or more.

Because of a request of an extension of the comment deadline by an interested party, the Coast Guard is hereby extending the comment deadline for this notice until April 20, 1977.

Dated: March 30, 1977.

A. F. FUGARO,
Rear Admiral, United States Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.77-10024 Filed 4-1-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 173]

COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS

Proposed Priorities for Special Projects for Fiscal Year 1977

Notice is hereby given that pursuant to the authority contained in section 106 of Title I of the Higher Education Act of 1965, as amended (20 U.S.C. 1005a), the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to establish the priorities set forth below for reviewing applications submitted by institutions of higher education (or combination thereof) for special programs and projects which are designed to seek solutions to national and regional problems relating to technological and social changes and environmental pollution. When the priorities are published in final form, they will be codified in Part 173 of Title 45 of the Code of Federal Regulations.

Review of application. (a) All applications will be reviewed and evaluated in accordance with the regulations set forth in 45 CFR Part 100a and Part 173, subparts A and C (Part 173 was published in the FEDERAL REGISTER on March 17, 1975, 40 FR 12084-12086).

(b) Fiscal Year 1977 Priorities. Applications for new awards for Fiscal Year 1977 must be directed to one of the following priorities (attention may be given within the scope of any of the priorities to the special needs of particular groups, such as women or older adults):

(1) Experimentation with inter-State programs of continuing education directed to the problems of regional or national energy conservation, transportation, and/or environmental pollution;

(2) Demonstration of State and/or local government cooperation with institutions of higher education in developing, operating, and evaluating innovative educational solutions to the national problem of citizen alienation from governmental processes;

(3) Demonstration of effective regional programs of continuing education which link higher education, labor, and management in solving problems of job security, productivity, and the quality of working life.

(4) National and regional evaluations of multi-institutional programs of continuing education for adults that are directed to the problems of employment, career mobility, and/or job re-entry. (20 U.S.C. 1005a)

Interested persons are invited to submit written comments, suggestions, or objections regarding this notice to Mr. Edwin J. Neumann, Community Service and Continuing Education Program, Bureau of Postsecondary Education, Regional Office Building 3, Room 3717, 7th and D Streets, SW., Washington, D.C. 20202. (Telephone 202/245-96868.) Comments received in response to this notice will be available for public inspection at the above office on Mondays through Fridays between 8:30 a.m. and 4:30 p.m. All relevant materials must be received not later May 19, 1977.

NOTE.—The Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Number 13.557; Higher Education University Community Service—Special Projects)

Dated: February 7, 1977.

WILLIAM F. PIERCE,
Acting U.S. Commissioner of Education.

Approved: March 28, 1977.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education, and Welfare.

[FR Doc.77-9960 Filed 4-1-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 148]

[CGD 76-198]

CARRIAGE OF SOLID HAZARDOUS MATERIALS IN BULK

Proposed Changes; Table of Permitted Cargoes

The Coast Guard is considering revising the amendments published in the FEDERAL REGISTER (41 FR 23401) on June 10, 1976, by correcting the Table for Permitted Cargoes, providing a relaxation to the requirements for the bulk shipment of metal borings, shavings, turnings, and cuttings, adding a special additional requirement to the carriage of unslaked lime, and exempting unmanned vessels from the requirements of shipping papers and dangerous cargo manifests.

Interested persons are invited to participate in this proposed rule making by submitting written data, views or arguments to the Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person submitting a comment should include his name and address, identify the notice (CGD 76-198), and give reasons in support of his comment. Comments received before May 15, 1977, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. The proposal may be changed in light of the comments received. No oral hearing is contemplated, but it will be held if

requested by anyone who raises a genuine issue.

In the consolidation of hazardous materials regulations (41 FR 15972) the hazardous articles of 46 CFR 146.27 were reclassified as ORM (other regulated materials) in Title 49. In order to update the Table of Permitted Cargoes in § 148.-01-7, it is proposed that all hazardous materials now classified as hazardous articles be classified as ORM.

It is proposed to relax the shipping paper requirements, 46 CFR 148.02-1, for unmanned barges transporting solid hazardous material in bulk to allow the shipping papers to be kept on board the towing vessel; and it is proposed to exempt unmanned barges from the requirements for a dangerous cargo manifest, 46 CFR 148.02-3, when transporting solid hazardous materials in bulk.

It is proposed that the specified moisture content of coconut pellets be revised to conform with the consolidation of hazardous materials (41 FR 15972) and the entry for tankage, garbage or rough ammoniate solid be revised to specify a moisture content of more than 7 percent because at 7 percent moisture or less this item is a flammable solid and not permitted in bulk.

It is proposed that the special requirements for metal borings, shavings, turnings or cuttings (§ 148.04-13) be amended to exempt this item from the requirements of § 148.04-13 when shipped in unmanned barges and transported entirely on the navigable waters of the United States. This exemption is based on a relaxation previously included in 46 CFR 146 that was inadvertently omitted from the amendments.

It is proposed that a special additional requirement for the carriage of "Lime, unslaked" be added that is consistent with the previous requirement of 46 CFR 146.27-29 which provided for the carriage of this material in bulk.

In consideration of the foregoing, it is proposed to amend Part 148 of Title 46 Code of Federal Regulations as follows:

1. By revising the part heading to read as follows:

PART 148—CARRIAGE OF SOLID HAZARDOUS MATERIALS IN BULK

2. By revising the Table of contents by adding, in the proper numerical sequence, the following:

Sec.
148.04-23 Unslaked lime.

3. By revising the table in § 148.01-7 to read as follows:

§ 148.01-7 Permitted cargoes.

* * * * *

Shipping name of the hazardous material	Hazard class of the hazardous material	Characteristic properties of the material
Aluminum dross	Flammable solid	Contact with water may cause self heating and the evolution of flammable gas.
Aluminum nitrate	Oxidizing material	If involved in a fire will greatly intensify the burning of combustible materials.
Ammonium nitrate fertilizer, formulation or mixture, containing less than 60 pct ammonium nitrate with no organic filler.	do	Do.
Ammonium sulfate nitrate	ORM-C	If involved in a fire will intensify the burning of combustible materials.
Barium nitrate	Oxidizing material	If involved in a fire will greatly intensify the burning of combustible materials.
Calcium nitrate	do	Do.
Charcoal briquets	Flammable solid	Contact with water may cause self heating.
Coconut meal pellets (or copra pellets) containing at least 6 pct and not more than 13 pct moisture and not more than 10 pct residual fat content.	ORM-C	Subject to spontaneous heating by biological decay or by oxidation.
Copra, dry	ORM-C	Susceptible to spontaneous heating or fire from spark or open flame.
Ferrophosphorous	ORM-A	May evolve poisonous gas (phosphine) in contact with moisture.
Ferrosilicon, containing less than 45 pct or more than 70 pct silicon.	ORM-A	May evolve poisonous and flammable gases (arsine/phosphine) in contact with water, acids or alkalines.
Fishmeal or scrap, ground, containing 6 to 12 pct moisture and no more than 18 pct fat by weight.	ORM-C	Susceptible to spontaneous heating and ignition.
Fishmeal or scrap, ground and pelletized (mixture), containing 6 to 12 pct moisture and no more than 18 pct fat by dry weight.	ORM-C	Do.
Fishmeal or scrap, pellitized, containing 6 to 12 pct moisture and no more than 18 pct fat by weight.	ORM-C	Do.
Lead nitrate	Oxidizing material	If involved in fire will greatly intensify the burning of combustible materials.
Lime, unslaked	ORM-B	Evolves heat on contact with water.
Magnesium nitrate	Oxidizing material	If involved in a fire will greatly intensify the burning of combustible materials.
Metal borings, shavings, turnings, or cuttings.	ORM-C	Susceptible to spontaneous heating and ignition.
Petroleum coke, calcined, at 130° F or above.	ORM-C	Do.
Petroleum coke, uncalcined	ORM-C	Do.
Potassium nitrate	Oxidizing material	If involved in a fire will greatly intensify the burning of combustible materials.
Radioactive material, low specific activity (LSA).	Radioactive material	Radiation hazard from ingestion, inhalation and contact with mucus membranes.
Sawdust	ORM-C	Susceptible to fire from sparks or open flame.
Sodium nitrate	Oxidizing material	If involved in a fire will greatly intensify the burning of combustible materials.
Strontium nitrate (not radioactive)	do	Do.
Sulfur	ORM-C	Dust forms explosive mixtures with air.
Tankage, garbage or rough ammoniate, solid, containing 7 pct or more moisture.	ORM-C	Susceptible to spontaneous heating and ignition.

4. By revising § 148.02-1(c) to read as follows:

§ 148.02-1 Shipping Papers.

* * * * *

(c) The shipping paper required in paragraph (a) of this section must be kept on board the vessel along with the dangerous cargo manifest (§ 148.02-3 of this subpart) except when the shipment is by an unmanned barge in which case it may be kept on board the towing vessel.

§ 148.02-3 [Amended]

5. By deleting paragraph (b) in § 148.02-3.

6. By revising the introductory text in § 148.04-13(a) to read as follows:

§ 148.04-13 Metal Borings, Shavings, Turnings, Cuttings.

(a) This section applies to the stowage and transportation in bulk of hazardous materials described as metal borings, shavings, turnings or cuttings on board vessels. However unmanned barges on which the article is stowed for or transported on a voyage entirely on the navigable waters of the United States are exempt from the requirements of this section. Metal borings, shavings, turnings and cuttings must not be stowed and transported in bulk unless the following conditions are met:

* * * * *

7. By adding a new § 148.04-23 to read as follows:

§ 148.04-23 Unslaked lime.

Unslaked lime may be transported in bulk in unmanned, all steel, double skin barges equipped with weathertight hatches or covers, if no other article is transported in these barges at the same time.

(46 U.S.C. 170, 49 U.S.C. 1655(b); 49 CFR 1.46.)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 25, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc.77-9625 Filed 4-1-77;8:45 am]

Materials Transportation Bureau

[49 CFR Parts 172, 175]

[Docket No. HM-149; Notice 77-2]

AIR TRANSPORTATION OF SMALL QUANTITIES OF MATERIALS EXHIBITING VERY LOW LEVELS OF RADIATION

Proposed Exemption Renewal

Correction

In FR Doc. 77-9207, appearing at page 16459 of the issue for Monday, March 28, 1977, the following changes should be made:

1. The last paragraph on page 16459 should read, "1. In § 172.204, paragraph (c)(4) would be amended by changing the last sentence to read, "* * * This requirement does not apply to materials excepted under the provisions of § 175.10(b) of this subchapter."

2. The first paragraph on page 16460 should read, "2. In § 175.10, paragraph (a)(6) would be revised and paragraph (b) added to read as follows:"

Federal Highway Administration

[49 CFR Part 395]

[Docket No. MC-69-2; Notice No. 77-4]

DRIVER'S MULTI-DAY LOG

Request for Comments

Purpose. The purpose of this Notice is to seek public comment on a proposal to permit commercial motor carriers engaged in interstate or foreign commerce to use a multi-day log.

Consideration is being given to amending Part 395 of the Federal Motor Carrier Safety Regulations which would permit drivers of commercial motor vehicles engaged in interstate or foreign commerce to record their time on a new log form. The major feature of the new proposed form would permit the use of a one day log sheet or any number of days on one sheet of paper as the carrier chooses to suit its particular operation. The proposed minimum size of the single daily driver's log would be 7" x 3". Additional units to be added on a single sheet would be 7" x 2". The log may be so located on the paper so as to provide approximately 1½" margin on the right for recapitulation of hours on duty if so desired.

This proposal is in line with governmental policy to minimize the paperwork burden upon businesses, consistent with its needs for information as set forth in Pub. L. 93-556, signed on December 27, 1974, which established a Commission on Federal Paperwork. One of the areas Congress instructed the Commission to consider involved "* * * the procedures used and the extent to which considerations of economy and efficiency impact upon Federal information activities, particularly as these matters relate to costs burdening the Federal Government and providers of information * * *"

This notice of rulemaking stems from the results of comments filed in response to two other rulemaking Notices. The first one was an Advance Notice of Proposed Rulemaking, Docket MC-47; Notice No. 74-20, which was published in the FEDERAL REGISTER on September 10, 1974 (39 FR 32620) following an experimental program of using a 7-day driver's daily log which took place from April 1, 1973, to April 1, 1974. The second rulemaking action involved a Notice of Proposed Rulemaking in Docket MC-69; Notice No. 76-1, proposing a 4-day driver's log.

The petition and claimed benefits of the 7-day log were studied in-depth, and alternative solutions considered. Because of objections raised to certain limitations placed on the 7-day log, a 4-day log was proposed as an alternative solution to overcome anticipated difficulties. Comments received on the proposed 4-day log were generally favorable including some preferring approval of the previously proposed 7-day log. Several carriers indicated that they could see no savings and would continue using the daily log. There were others, that although they approved of the 4-day log suggested an 8-day log, or a 5-day log based on their type of operation.

In reviewing all the comments submitted in response to both Notices, the American Trucking Associations, Inc., suggested that the concept of a multi-day log be adopted with a maximum limit of 7 days to a sheet. This suggestion appears to have merit and is therefore being proposed.

A copy of the multi-day log together with revisions to the instructions contained in § 395.8 for completing it, is reproduced below. The first section or unit will be the daily log, if used singely. This unit must be the first unit on a single sheet of paper when using more than 1 day since the additional units do not contain the information shown on the top half portion of the first unit. The first unit shall not be less than 7" x 3" and the additional units shall not be less than 7" x 2". All units must have at least a 1" of space for the remarks section.

There are three items not included in the proposed multi-log that are included in the present daily log. These are origin, destination and total mileage today.

The instructions for preparing the log shall be printed on either the front or back cover of the log book. In addition, a daily recap of the total hours worked and hours available must be provided with each log book. (An executed specimen multi-log will be provided in any final rule that may be issued).

A motor carrier will have the option of using either the daily log or any combination up to 7 days of logs on one sheet to suit his particular operation. It is proposed that carriers be limited to only one combination of daily logs. Carriers that elect to use a multi-day log must use it for all drivers in their employ that are subject to the daily log requirement. Conversion to a multi-day log may commence at any time a carrier chooses. However, if a safety survey reveals that the multi-day logs are being prepared in such a manner that the Safety Investigator is having a serious problem in making his survey, it is proposed that the Director, Regional Motor Carrier Safety Office issue a notice requiring that carrier to cease using the multi-day log and use the single day log only.

Interested persons are invited to submit written data, views, or arguments pertaining to adoption of the new format. All comments should refer to the Docket number and Notice number that appears at the top of this document and should be submitted in three copies to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. Comments received before the close of business on July 1, 1977, will be considered before further action is taken. Comments received will be available for examination by any interested person in the Docket Room of the Bureau of Motor Carrier Safety, Room 3404, 400 Seventh Street, SW., Washington, D.C. 20590, both before and after the closing date for comments.

1. Section 395.8 is amended by revising paragraphs (a), (e), (q), (r), and (s), adding paragraphs (u) and (v), and by amending paragraph (t) by deleting subparagraph (4) and redesignating subparagraph (5) as subparagraph (4).

§ 395.8 Driver's Log Sheet.

(a) Except provided in paragraph (t) of this section, every motor carrier shall require that a driver's log, Form MCS-139, or a multi-day driver's log, Form MCS-139 combined with additional units (MCS-139-A), not to exceed 7 consecutive days on one sheet, shall be made in duplicate by every driver used by him or it and every driver who operates a motor vehicle may make such a log. Failure to make logs, failure to make required entries therein, falsification of entries, or failure to preserve logs shall make both the driver and the carrier liable to prosecution. Drivers logs shall be prepared and retained in accordance with the provisions of paragraph (b) through (s) of this section.

(1) Form MCS-139 shall be not less than 7 inches by 3 inches overall dimensions with a minimum of 1" for the remarks section, as follows:

Form MCS 139
(Rev. 12/76)

U.S. DEPT. OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DRIVER'S LOG

I certify these entries are true and correct:

Form Approved
OMB No.

(Name of carrier or carriers)

(Driver's signature in full)

(Main Office Address)

(Home Terminal Address)

(Month)_____ (Day) _____ (Year)____ (Vehicle numbers) (Name of co-driver) Total Hours

1. Off Duty
2. Sl. Berth
3. Driving
4. On Duty (Not Driving)

1 2 3 4 5 6 7 8 9 10 11 Noon 1 2 3 4 5 6 7 8 9 10 11

Remarks:

Total Mileage Driven Today

Shipping Number

(2) Carriers choosing to use the multi-day log sheet (combination of MCS 139 and 139 A), other than the single day sheet, must use that format exclusively.

(3) Form MCS–139 A shall be not less than 7 inches by 2 inches overall dimensions with a minimum of 1'' for the remarks section as follows:

(Month)_____ (Day)_____ (Year)____ (Vehicle numbers) (Name of co-drivers) Total Hours

1 2 3 4 5 6 7 8 9 10 11 Noon 1 2 3 4 5 6 7 8 9 10 11

1. Off Duty
2. Sl. Berth
3. Driving
4. On Duty (Not Driving)

Remarks:

Total Mileage Driven Today

Shipping Number

DOT—FHWA—MCS 139A (12-76)

* * * * *

(e) *Total mileage driven today.* Total mileage driven today shall be that mileage traveled while driving.

* * * * *

(q) *Continuous off-duty periods.* Continuous off-duty periods of 2 days or more may be recorded on one log unit.

(r) *Filing Driver's Log.* The driver shall forward the original log sheet, upon completion of the last unit, to his home terminal or to the carrier's principal place of business.

(s) *Retention of Driver's Log.* Log sheets for each calendar month may be retained at the driver's home terminal until the 20th day of the succeeding calendar month and shall then be forwarded to the carrier's principal place of business where they shall be retained for 12 months from date of receipt. However, upon a written request to, and with the approval of, the Director, Regional Motor Carrier Safety Office, for the Region in which a motor carrier has his principal place of business, a motor carrier may forward and retain such logs at a regional or terminal office. The addresses and jurisdictions of the Directors of Regional Motor Carrier Safety Offices are shown in § 390.40 of this subchapter. The driver shall retain a copy of each log sheet totaling 30-days activities which shall be in his possession while on duty.

* * * * *

(u) *Non-compliance.* If investigation discloses violations of the regulations attributable to the use of the multi-day logs by a motor carrier, the Director, Regional Motor Carrier Safety Office, may require the carrier to use the single day log in lieu of the multi-day log.

(v) *Unused Units.* Unused units on a multi-day log sheet must be appropriately noted.

(Sec. 204, 49 Stat. 546, as amended (49 U.S.C. 304), Sec. 6, Pub. L. 89–670, 80 Stat. 937 (49 U.S.C. 1655); 49 CFR 1.48; 49 CFR 389.4.)

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A107.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person—Gerald J. Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590 (202–426–9767).

Principal Lawyer—Francis J. Mulcahy, Attorney, Motor Carrier and Highway Safety Law Division, Office of the Chief Counsel, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590 (202–426–0834).

Issued on March 28, 1977.

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

[FR Doc.77–9750 Filed 4–1–77;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.

CIVIL AERONAUTICS BOARD

[Docket No. 29123, etc.; Agreement CAB 26439 R-1—R-4, etc.; Order 77-3-162]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreements Relating to Passenger Fare, Cargo Rate and Currency Matters; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of March, 1977.

(Docket Nos. 29123, 27573; Agreement C.A.B. 26439, R-1 through R-4, Docket 27592; Agreement C.A.B. 26483; Agreement C.A.B. 26486, R-1 through R-17; Agreement C.A.B. 26488.)

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other car-Traffic Conferences of the International Air Transport Association (IATA).

Agreement C.A.B. 26439 was adopted at the Eighth Meeting of the IATA Cargo Agency Committee held in Ft. Lauderdale, November 29-December 2, 1976. The agreement, inter alia, revalidates and amends certain elements of the reduced-fare program for IATA cargo agents. The existing productivity feature for U.S.-based agents, which provides reduced-fare tickets above the normal yearly allotment where an agent's annual commissionable international sales exceed the average for all U.S. agents by a specified amount, would be revalidated through December 31, 1979. The extension of retroactive discounts, granted where an agent shows good cause for not having submitted the normal advance application, would be limited to a period of three months from the date of ticket purchase.[1] Finally, reduced tickets for agents' travel to group training courses would be permitted for courses of two-five days' duration rather than the present three-five days.[2] The Board will approve the resolutions inasmuch as they merely revalidate existing provisions already approved; limit the potential for abuse under the retroactive discount provisions; or do not affect U.S.-based agents.

Agreements C.A.B. 26483, 26486 and 26488, adopted at the recent currency conference in Cannes, largely involve amendments to currently effective currency surcharge and discount resolutions from foreign points, intended to align selling fares in local curency more closely with recent fluctuations in exchange rates. Agreement C.A.B. 26486 would also extend the validity of several resolutions which set up the basic framework by which IATA hopes to move toward a new fare and rate specification system based on the International Monetary Fund's Special Drawing Right (SDR)[3].

Finally, the method of calculating fares sold outside the country of commencement of travel would be clarified to further limit potential misuse of tickets sold in third countries; and the calculation of currency-related discounts on cargo rates from strong-currency countries would also be clarified.

The Board will approve the proposed amendments to these previously approved resolutions subject, where applicable, to previous conditions. We would note that the method of calculating discounts on cargo rates specifies rounding up in all cases, and is subject to the Board's recently-imposed condition on all rounding procedures, which stipulated normal rounding-up or down to be effective April 1, 1977. (See Order 77-2-22, February 3, 1977.)

Pan American World Airways, Inc. (Pan American), in a motion, states that, although it does not object to the rounding procedure specified by the Board, it nevertheless believes that the Board should delay the implementation date until October 1, 1977, insofar as it relates to cargo rates. In support of its request, Pan American asserts that the April 1 date poses no practical tariff-filing problem for pasenger fares which generally change on that date anyway. Cargo rates, however, are ordinarily published with a September 30 expiry date and for the carriers to meet the April 1 requirement would require a worldwide tariff revision entailing considerable cost (which Pan American estimates at $60,000 out-of-pocket alone). If the implementation of the condition is delayed until October 1, it can be undertaken as part of the annual worldwide cargo tariff revision.

The Board has determined to grant Pan American's motion, and will amend the effective date of our condition insofar as it relates to cargo rates to October 1, 1977. The intent of our action in Order 77-2-22 was to provide uniformity with previous Board conditions relating to rounding, and thus avoid confusion in fare and rate construction. Besides the consideration of extra costs to the carriers in publishing an extra worldwide tariff revision, we believe that implementation on October 1, 1977, the traditional date for worldwide cargo rate revisions, will assure the most orderly transition with the least possible confusion.

The Board, acting pursuant to the Federal Aviation Act of 1958 and particularly sections 102, 204(a) and 412 thereof, does not find that the following resolutions, which have direct or indirect application in air transportation as defined by the Act and are incorporated in the agreements indicated, are adverse to the public interest or in violation of the Act, provided that approval is subject, where applicable, to conditions previously imposed by the Board:

Agreement C.A.B.	IATA No.	Title	Application
26439:			
R-1	002	Standard Revalidation Resolution (New)	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-2	203a	Reduced Fares for Cargo Agents (United States Only) (Amending).	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-3	203c	Reduced Fares for Cargo Agents (Except United States) (Amending).	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-4	203e	Training Courses for Cargo Agents (Amending)	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
26483	022i	JT12/JT123 (South Atlantic) Adjustment Factors for Sales of Passenger Air Transportation.	1/2; 1/2/3.
R-1	001aa	Expedited—Special Effectiveness Resolution (Amending)	1; 2; 3.
R-2	003	Expedited—Standard Rescission Resolution (New)	2/3; 3/1; 1/2/3.
R-3	013a	Establishing Basic SDR Passenger Fares and Related Charges (Revalidating and Amending).	1; 2; 3.
R-4	013b	Establishing Specified Cargo Rates and Charges Expressed in Special Drawing Rights (SDRs) (Revalidating and Amending).	1; 2; 3.
R-5	021L	Special Rules for Fares Currency Adjustments (Amending).	1; 2; 3.
R-6	022b	Expedited—JT23/123 Special Rules for Sales of Cargo Air Transportation (Amending).	2/3; 1/2/3.
R-7	022d	Expedited—JT12 (Mid and South Atlantic) Special Rules for Sales of Cargo Air Transportation (Amending).	1/2.
R-8	022j	Expedited—JT12 (North Atlantic) Rules for Sales of Cargo Air Transportation (Amending).	1/2.
R-9	022jj	Expedited—JT12 (North Atlantic) Special Rules for Sales of Cargo Air Transportation (Amending).	1/2.
R-10	022k	Expedited—JT12 (Mid Atlantic) Special Rules for Sales of Cargo Air Transportation (Amending).	1/2.
R-11	022kk	Expedited—TC2 Special Rules for Sales of Cargo Air Transportation (Amending).	2.

[1] Presently there is no time limitation.

[2] Reduced tickets for training courses are not available to U.S. agents due to the Board's disapprovals of governing resolution 203e for U.S. agents in Order 76-3-160, March 25, 1976 and 74-3-109, March 26, 1974.

[3] These resolutions were approved with conditions by Order 76-4-135, April 26, 1976.

Agreement C.A.B.	IATA No.	Title	Application
R-12	022L	Expedited—JT12 (South Atlantic) Special Rules of Sales of Cargo Air Transportation (Amending).	1/2.
R-13	022m	Expedited—TC2 Special Rules ofr Sales of Cargo Air Transportation (Amending).	2.
R-14	022mm	Expedited—JT23/123 Special Rules for Sales of Cargo Air Transportation (Amending).	2/3; 1/2/3.
R-15	022pp	Expedited—JT31 (North and Central Pacific) Special Rules for Sales of Cargo Air Transportation (Amending).	3/1.
R-16	022nn	Expedited—TC3 Special Rules for Sales of Cargo Air Transportation (Amending).	3.
R-17	023a	Expedited—Rounding-off Passenger Fares (Amending)	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
26488	023d	JT23/JT123 Adjustment Factors for Sales of Passenger Air Transportation (New).	2/3; 1/2/3.

Accordingly, *it is ordered*, That:

1. Agreements C.A.B. 26439, R–1 through R–4, C.A.B. 26483, C.A.B. 26486, R–1 through R–17, and C.A.B. 26488, be and hereby are approved subject, where applicable, to conditions previously imposed by the Board;

2. Ordering paragraph 5(a) of Order 77–2–22 be and hereby is amended insofar as it affects cargo rates and charges in air transportation as defined by the Act to apply effective October 1, 1977; and

3. The March 3, 1977 motion of Pan American World Airways, Inc. in Docket 29123 be and hereby is granted.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-9809 Filed 4-1-77;8:45 am]

[Docket No. 30465]

SPANTAX, S.A. AND OVERSEAS NATIONAL AIRWAYS, INC.

Proposed Approval of Application

Notice is hereby given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that the undersigned intends to issue the attached order under delegated authority. Interested persons are hereby afforded until April 14, 1977, within which to file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., March 30, 1977.

PHYLLIS T. KAYLOR,
Secretary.

[Docket No. 30465]

SPANTAX, S.A. AND OVERSEAS NATIONAL AIRWAYS, INC.

ORDER GRANTING APPROVAL OF APPLICATION

Issued under delegated authority.

Spantax, S.A. (Spantax) and Overseas National Airways, Inc. (ONA) have requested that the Board approve without hearing, pursuant to the third proviso of section 408 (b) of the Federal Aviation Act of 1958, as amended (the Act), the lease of one DC–8–61 aircraft by ONA to Spantax. By amendment to their application, Spantax and ONA have requested that the Board approve a conditional sales contract in lieu of the lease.

ONA is a certificated supplemental air carrier authorized to perform domestic, transatlantic, and Caribbean air transportation.

Spantax holds a foreign air carrier permit under section 402 of the Act which authorizes transatlantic charter service to and from the United States.

Under the terms of the agreement, Spantax is required to make monthly payments of $98,000 for a minimum of two years. At the end of two years, it has a choice of terminating the agreement through payment of $50,000, of purchasing the aircraft outright for a fixed sum, or of continuing the agreement for two-year terms ending in 1958. Should it choose to purchase the aircraft, during this period, Spantax has the option of acquiring title to the aircraft at any time upon 120 days' notice. Unless Spantax pays the $50,000 termination fee in 1985, it is required to pay the purchase price and take title to the aircraft.

Spantax is to provide insurance and flight crews and all necessary overhauls, modifications, and repairs to the aircraft. Spantax is also required to make periodic payments into a reserve account for overhaul expenses. Payments are based on aircraft usage. Unused funds are to be returned to Spantax at the termination of the contract by payment of the $50,000 fee. Upon taking title to the aircraft, Spantax has a right to the entire account.

In support of their request, Spantax and ONA assert, inter alia, that the transaction would be subject to the exemption provided by Part 299 of the Board's Economic Regulations but for the fact that Spantax is not an air carrier;[1] that the transaction was the result of arm's length bargaining; that there are no control or interlocking relationships between ONA and Spantax; and that the transaction will not interfere with ONA's service commitments, but will, on the contrary, assist financially in the introduction of two DC–10 aircraft into ONA's fleet.

The applicants have also requested expedited action so that the aircraft can be delivered to Spantax at the earliest possible date.

No objections to the application or requests for a hearing have been received.

Notice of intent to dispose of this application without a hearing has been published in the FEDERAL REGISTER, and a copy of such notice has been furnished by the Board to the Attorney General not later than the day following the date of such publication, both in accordance with the requirements of section 408(b) of the Act.

Upon consideration of the above, it is concluded that ONA is an air carrier, that Spantax is a person engaged in a phase of aeronautics, and that the aircraft involved in the contemplated transaction constitutes a substantial part of the properties of ONA, all within the meaning of section 408 of the Act; and that the transaction is therefore subject to that section. However, it is further concluded that the above-described transaction will not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation or tend to unreasonably restrain trade, substantially lessen competition, or create a monopoly. This transaction was entered into after arm's length bargaining and there appear to be no interlocking or control relationships between ONA, on the one hand, and Spantax, on the other. Furthermore, no person disclosing a substantial interest in the proceeding is currently requesting a hearing, and it is concluded that the public interest does not require a hearing. It does not appear that ONA will be hindered in performing its certificate obligations since ONA will be taking delivery of two DC–10 aircraft shortly after the subject lease takes effect. It thus appears that the transaction will not be inconsistent with the public interest or leave the requirements of section 408 of the Act otherwise unfulfilled.

It is therefore found, pursuant to authorits duly delegated by the Board in the Board's regulations, 14 CF 385.13, that the transaction as described above should be approved without hearing, pursuant to the third proviso of section 408(b) of the Act.[2]

Accordingly, it is ordered, That: The application for approval of the transaction described herein be and it hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations 14 CFR 385.50 may file such petitions within 10 days of the date of service of this order.

This order shall be effective immediately and the filing of such petitions shall not stay its effectiveness.

[FR Doc.77-9953 Filed 4-1-77;8:45 am]

[1] The aircraft involved constitutes 6.2 percent of ONA's aircraft, 9.5 percent of its overall lift capacity, and 12.3 percent of the market value of ONA's fleet.

[2] It is further found, pursuant to § 385.6 of the Board's that the action taken herein is governed by prior Board precedent and policy and that immediate action is required to enable effectuation of the transaction. Therefore, it is determined that the filing of petitions for review of this order will not preclude this order from becoming effective immediately. (See e.g. Hawaiian Airlines, Inc., Aerolinee Itavia, S.P.A., Lease Transaction, Order 76–5–141, May 27, 1976.)

CIVIL RIGHTS COMMISSION

MEMPHIS, EQUAL PROTECTION OF THE LAWS UNDER THE CONSTITUTION

Collection of Information Concerning Legal Developments Constituting Denial; Hearing

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on May 9, 1977, at the Memphis Federal Building, 167 North Main Street, Memphis, Tennessee. An executive session, if appropriate, may be convened at any time before or during the hearing.

The purpose of the hearing is to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning police/community relations; to appraise the laws and policies of the Federal Government with respect to de-

nials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning police/community relations; and to disseminate information with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning police/community relations.

Dated at Washington, D.C., March 28, 1977.

ARTHUR S. FLEMMING,
Chairman.

[FR Doc.77-9955 Filed 4-1-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

SUBCOMMITTEE ON EXPORT ADMINISTRATION OF THE PRESIDENT'S EXPORT COUNCIL

Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (Supp. V, 1975)), notice is hereby given that a meeting of the Subcommittee on Export Administration of the President's Export Council will be held on Thursday, April 28, 1977, at 9:00 a.m., in Room 7A23 of the Federal Building at 1100 Commerce Street, Dallas, Texas.

The Subcommittee on Export Administration was initially established on June 1, 1976. On January 6, 1977, the Assistant Secretary for Administration approved the recharter and extension through December 31, 1978, of the Subcommittee, pursuant to the provisions of section 3 of Executive Order 11753 (December 20, 1973), as extended by section 1(k) of Executive Order 11948 (December 20, 1976), and the Federal Advisory Committee Act.

The Subcommittee advises the Secretary of Commerce on matters pertinent to those portions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 et seq.), that deal with United States policy of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

The Subcommittee meeting agenda has seven parts:

GENERAL SESSION—9 A.M. TO 2:30 P.M.

1. Unfinished business.
   a. Demonstration policy.
   b. Provision of information to embassies.
2. Congressional action.
3. Identification by the Subcommittee of those parts of the Export Administration Regulations needing simplification and clarification.
4. Views of the Subcommittee on the appropriate basis for the Commodity Control List: Schedule B? CoCom List? Other?
5. Views of the Subcommittee on the nature and frequency of reports on agreements/understandings which may result in the export of technology.

EXECUTIVE SESSION—2:30 TO 5 P.M.

6. Unfinished business—CoCom.
7. Compliance inquiry views of the Subcommittee.

The General Session is open to the public. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to Agenda Items 6 and 7, the Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 11, 1977, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In the Sunshine Act (Pub. L. 94-409), that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters specifically authorized under criteria established by Executive Order 11652 to be kept secret in the interest of the national defense or foreign policy. Materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under the Executive Order. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close portions of the series of meetings of the Subcommittee on Export Administration of the President's Export Council is printed at 42 FR 3011 (January 14, 1977).

Copies of the minutes of the General Session will be available upon written request addressed to Mr. Edward P. Kemp, Office of the Director, Bureau of East-West Trade, Room 3836, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Kemp either in writing at the address shown above or by telephone at (202) 377-5334.

Dated: March 29, 1977.

ARTHUR T. DOWNEY,
Deputy Assistant Secretary for East-West Trade.

[FR Doc.77-9921 Filed 4-1-77;8:45 am]

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE OBSERVER PROGRAM

Fishing by Foreign Vessels in Waters Under the Jurisdiction of the United States of America

The Director, National Marine Fisheries Service, (the "Director") hereby issues notice of an observer program for foreign vessels fishing in the waters over which the United States exercises exclusive fishery management authority pursuant to the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801-1882) (the "Act"). Section 201(c)(2)(D) of the Act requires that any foreign nation which enters into a governing international fishery agreement, and the owner or operator of any fishing vessel fishing pursuant to such agreement, "* * * will abide by the requirement that * * * duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers."

Certain other requirements concerning the observer program, with which the foreign nation and the owner or operator of the fishing vessel must comply, are set forth in the Department of Commerce/NOAA/NMFS Foreign Fishing Regulations, at 50 CFR 611.8 (42 FR 8813, 8817, February 11, 1977).

This observer program is being established to meet the need of the United States to obtain onboard catch and effort data that are essential to the continued management of those fishery resources allocated to foreign nations and to determine compliance with the regulations promulgated for those fisheries. Therefore the responsibilities of the observers and the methods and procedures for implementation of the observer program are presented.

PURPOSE OF OBSERVER PROGRAM

Observers will be primarily responsible for data collection, including foreign vessel total catch, catch composition, fishing effort, gear utilized, disposition of catch, vessel efficiency, marine mammal catch, and biological sampling. Observers will record any violations of regulations and the terms of vessel permits and will determine the accuracy of foreign vessel reporting. The observers will not have direct enforcement responsibilities. However, their presence may serve as a deterrent to violations of U.S. regulations. The observers' records may be used in subsequent enforcement actions and in planning for deployment of observers and agents in future years.

FOREIGN VESSEL COVERAGE

The use of observers aboard fishing vessels will be limited to the level needed for providing a technically valid statistical sample of data for each fishery and to provide a presence to insure compliance with U.S. regulations. Allocations, the nature of the fishery, the incidental catch, the history of compliance in the fishery, and the number of vessels permitted to fish will be used to determine which vessels and nations will receive observers and in what number. Initial observer coverage for the 1977 program will be established at approximately the 20 percent level, although this may vary in the individual fisheries based upon the above considerations. After some operational experience has been gained, the effectiveness of this level of coverage will be evaluated.

DEPLOYMENT OF OBSERVERS

In 1977, observers will be placed on vessels of the following nations operating in the Northwest Atlantic:

Bulgaria	Republic of Korea
France	Romania
German Democratic Republic	Spain
Italy	Union of Soviet Socialist Republics
Japan	West Germany
Poland	

Observers will also be placed aboard foreign fishing vessels of the following nations operating in the North and West Pacific:

Japan	Republic of Korea
Poland	Union of Soviet Socialist Republics
Republic of China (Taiwan)	

Observers also will be placed aboard vessels of other nations subsequently authorized to fish. Physically placing the observers on foreign fishing vessels will be accomplished by a variety of means, including boarding the vessel in its home port, having the Coast Guard arrange for boarding on the high seas, and permitting the foreign vessel to enter selected U.S. ports to pick up observers.

OBSERVER PROGRAM COSTS AND BILLING

The United States will recover the full costs of the observer program including appropriate costs of NMFS, NOAA, Navy, and Coast Guard. The NMFS will prepare a single bill which will be submitted to each foreign nation or that nation's agent for payment. The rationale used to calculate each nation's bill will be made available to that foreign nation.

Billing actual costs to each nation should provide an incentive to foreign nations to minimize the need for observers. It should encourage the adherence to regulations and the reporting of accurate statistics. It may further provide incentives to cooperate with the U.S. in reducing the costs of placing observers on board vessels.

It is currently estimated that the average trip of two months for each observer will cost the U.S. government about $4,000, including both direct and indirect support costs. The exact cost will be determined by the National Marine Fisheries Service, NOAA, as indicated in the accounting records of the applicable Financial Management Centers (FMCs). FMC records will be broken down into sufficient detail to indicate the name of the observer, the vessel, the foreign nation and the fishery, as well as the time period covered by the costs, and the amounts applicable to support costs. These costs will be accumulated for the period March 1, 1977 through December 31, 1977. The listing of observer costs will be transmitted by February 15, 1978 to the Office of Fisheries Management, NMFS (F3), Washington, D.C. 20235 for the preparation of a request for billing to the Central Accounting Branch (AD54), NOAA Finance Division, NBOC-1, Rockville, Maryland 20852. Bills for Collection prepared by the Central Accounting Branch covering payments due will be sent via covering transmittal memo to the Department of State, Office of the Deputy Assistant Secretary for Oceans and Fisheries Affairs (AES/OFA/FA): Attn: Coast Guard Fisheries Enforcement Officer, Washington, D.C. 20520, for forwarding to the foreign nations.

All payments received must be drawn in U.S. dollars, payable at a bank in the United States and be made payable to the U.S. Department of Commerce, NOAA. Payments should be sent to the Director, National Marine Fisheries Service, Attn: F3, Washington, D.C. 20235. Payments may be made in the United States also at NOAA Field Finance Offices located at 1700 Westlake Avenue, North, Seattle, Washington 98109, and at 75 Virginia Beach Drive, Building 2, Miami, Florida 33149.

PUBLIC NOTICE

The Director has determined that the Observer Program outlined herein is equitable and will be effective within the intent of the Act.

NOTE.—The National Marine Fisheries Service has determined that this document does not contain rulemaking and therefore does not require the preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 29, 1977.

ROBERT W. SCHONING,
Director, National Marine Fisheries Service.

[FR Doc.77-9915 Filed 4-1-77;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS FROM FEDERATIVE REPUBLIC OF BRAZIL

Establishment of Import Levels

MARCH 30, 1977.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: New levels for cotton textiles and cotton textile products exported from Brazil during the year beginning on April 1, 1977.

SUMMARY: The Bilateral Cotton Textile Agreement of April 22, 1976 between the Governments of the United States and the Federative Republic of Brazil establishes levels of restraint for certain specified categories of cotton textiles and cotton textile products, produced or manufactured in Brazil and exported to the United States during the three-year period, beginning on April 1, 1976 and extending through March 31, 1979. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to limit to the designated levels of restraint the amounts of cotton textiles and cotton textile products in Categories 1-4, 9, 18/19, 22/23, 26 (duck), 26/27 (other than duck), 30/31, 43, 44, 45, 46, 50, 51, 55, 56, 62 and parts of 64, produced or manufactured in Brazil, which may be entered into the United States for consumption or withdrawn from warehouse for consumption during the agreement period which begins on April 1, 1977 and extends through March 31, 1978.

EFFECTIVE DATE: April 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230. (202-377-5423).

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

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 Textile Agreement of April 22, 1976, between the Governments of the United States and the Federative Republic of Brazil, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on April 1, 1977, and for the twelve-month period extending through March 31, 1978, entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textiles and cotton textile products in Categories 1-4, 9, 18/19, 22/23, 26 (duck), 26/27 (other than duck), 30/31, 43, 44, 45, 46, 50, 51, 55, 56, 62, and parts of 64 in excess of the following levels of restraint:

Category	Twelve-Month Level of Restraint	
1-4	9,304,348	pounds
9	16,371,000	square yards
18/19	13,803,000	square yards
22/23	6,099,000	square yards
26 (duck) [1]	3,424,000	square yards
26/27 (other than duck) [2]	8,881,000	square yards
30/31	9,224,138	numbers
43	151,906	dozen
44	43,614	dozen
45	86,670	dozen
46	96,300	dozen
50	123,050	dozen
51	90,184	dozen
55	32,100	dozen
56	107,000	dozen
62	227,957	pounds
64 (only T.S.U.S.A. 366.6500)	674,565	pounds
64 (floor coverings) [3]	465,217	pounds

[1] The T.S.U.S.A. Nos. 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

[2] All T.S.U.S.A. Numbers in Category 26, except those listed in footnote 1.

[3] The T.S.U.S.A. Numbers for floor coverings are:

360.2000
360.2500
360.3000
360.7600
360.8100
361.0522
361.0542
361.1820
361.2010
361.5000
361.5422
361.5622

In carrying out this directive, entries of cotton textile products in the foregoing categories, produced or manufactured in Brazil and exported to the United States prior to April 1, 1977, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period April 1, 1976 through March 31, 1977. 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 in the future pursuant to the provisions of the Bilateral Cotton Textile Agreement of April 22, 1976, between the Governments of the United States and the Federative Republic of Brazil which provide, in part, that: (1) within the aggregate and applicable group limits, specific limits may be exceeded by designated percentages; (2) specific ceilings 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 future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 31, 1975 (40 FR 60220), December 30, 1976 (41 FR 56881), January 21, 1977 (42 FR 3888), and March 7, 1977 (42 FR 12898).

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 Federative Republic of Brazil and with respect to imports of cotton textiles and cotton textile products from Brazil have been determined by the Committee for the implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions of 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, U.S. Department of Commerce.

[FR Doc.77-10027 Filed 4-1-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Navy

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 (CNO) Executive Panel Advisory Committee will meet on April 19-20, 1977, at the Pentagon, Washington, D.C. Sessions of the meeting will commence at 9:00 a.m. on both days and terminate at 5:30 p.m. on April 19 and 4:30 p.m. on April 20. All sessions will be closed to the public.

The agenda will consist of matters required by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order, including intelligence briefings on Soviet military capabilities and recent operational developments, U.S. naval strategy, specialized technology and U.S.-allied naval capabilities. Accordingly, the Secretary of the Navy has 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 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander William A. Armbruster, USN, Executive Secretary of the CNO Executive Committee, 1401 Wilson Blvd., Room 405, Arlington, VA 22209, telephone number (202) 694-3191.

Dated: March 29, 1977.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Administrative Law).

[FR Doc.77-9911 Filed 4-1-77;8:45 am]

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON COUNTER-COMMUNICATIONS, COMMAND AND CONTROL (C^3)

Advisory Committee Meeting

The Defense Science Board Task Force on Counter-Communications, Command and Control (Counter-C^3) will meet in closed session on 19 and 20 April 1977 in the Pentagon, Washington, D.C. The title of this Task Force has been changed from Electronic Warfare and Counter-Communications, Command and Control to Counter-Communications, Command and Control to reflect that electronic warfare is not the only consideration of the Task Force.

The mission of the Defense Science Board Task Force 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 to the Department of Defense in these areas.

The Task Force will provide an analysis of the communications, command and control (C^3) employed by potentially hostile forces and identify countermeasures that might be of significant help if the Department of Defense were required to counter those forces.

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 552b(c) 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, Office of the Assistant Secretary of Defense (Comptroller).

MARCH 25, 1977.

[FR Doc.77-9893 Filed 4-1-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 708-7; OPP-50286]

ELANCO PRODUCTS CO., ET AL.

Issuance of Experimental Use Permits

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.), experimental use permits have been issued to the following applicants. Such permits are 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. 1471-EUP-49. Elanco Products Company, Indianapolis, Indiana 46206. This experimental use permit allows the use of 1,600 pounds of the herbicide tebuthiuron on sugarcane to control a broad spectrum of weeds and grasses. A total of 1617 acres is involved; the program is authorized only in the States of Louisiana, Florida, and Texas. The experimental use permit is effective from March 11, 1977, to March 11, 1978. Any crops treated under this permit will be destroyed or used for research purposes only.

No. 677-EUP-11. Diamond Shamrock Corporation, Cleveland, Ohio 44114. This experimental use permit allows the use of 972 pounds of the fungicide chlorothalonil on soybeans to evaluate control of Septoria brown spot and downy mildew. A total of 141 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Dakota, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from March 9, 1977, to March 9, 1978. Any crops treated under this permit will be destroyed or used for research purposes only.

No. 6922-EUP-2. Armak Company, Chicago, Illinois 60606. This experimental use permit allows the use of the remaining supply of approximately 75 gallons of undecanol as a chemical pinching agent to treat an estimated 2,250,000 chrysanthemums and other flowers; this use was authorized in a previous experimental use permit. The program is authorized only in the States of Alabama, California, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, and Virginia. The experimental use permit is being extended from January 22, 1977, to January 22, 1978.

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., SW., 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 permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: March 28, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-9887 Filed 4-1-77;8:45 am]

[FRL 708-8]

NATIONAL DRINKING WATER ADVISORY COUNCIL

Open Meeting

Pursuant to Pub. L. 92-423, notice is hereby given that a meeting of the National Drinking Water Advisory Council established under Pub. L. 93-523, the "Safe Drinking Water Act," will be held at 9:00 a.m. on April 28, 1977, in Conference Room 3305, Mall Area, Waterside Mall, and at 8:30 a.m., April 29, 1977, in Conference Room 3305, Mall Area, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

The purpose of the meeting will be to discuss the National Academy of Sciences' Report on the health aspects of constituents found in drinking water; to review the revisions in EPA's Underground Injection Control Regulations; and to examine EPA's proposed regulation to control trihalomethanes in drinking water. In addition, five new Council members will be sworn in.

Both days of the meeting will be open to the public. The Council encourages the hearing of outside statements and allocates a portion of 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 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, SW., Washington, D.C. 20460.

The telephone number is: Area Code 202-426-8847.

ANDREW W. BREIDENBACH,
Assistant Administrator
for Water and Hazardous Materials.

MARCH 29, 1977.

[FR Doc.77-9888 Filed 4-1-77;8:45 am]

[FRL 708-4; OPP-50283]

STAUFFER CHEMICAL CO., ET AL.

Issuance of Experimental Use Permits

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.), experimental use permits have been issued to the following applicants. Such permits are 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. 476-EUP-77. Stauffer Chemical Company, Richmond, California 94804. This experimental use permit allows the use of 5,224 pounds of the fungicide Captan on soybeans to evaluate control of Anthracnose, Cercospora leaf spot, Cercospora purple stain, mildew, Septoria brownspot, and Diaporthe pod and stem blight. A total of 1,306 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas. The experimental use permit is effective from March 1, 1977, to March 1, 1978. A permanent tolerance for residues of the active ingredient in or on soybeans has been established (40 CFR 180.103).

No. 476-EUP-86. Stauffer Chemical Company, Richmond, California 94804. This experimental use permit allows the use of 490 pounds of the herbicide S-propyl dipropylthiocarbamate on soybeans to evaluate control of various annual grasses. A total of 180 acres is involved; the program is authorized only in the States of Kentucky, Illinois, Indiana, and Louisiana. The experimental use permit is effective from March 1, 1977, to March 1, 1978. A permanent tolerance for residues of the active ingredients in or on soybeans has been established (40 CFR 180.240).

No. 7968-EUP-8. BASF Wyandotte Corporation, Parsippany, New Jersey 07054. This experimental use permit allows the use of 5,440 pounds of the herbicide pyrazon in sugar beets to evaluate control of various annual weeds. A total of 1,600 acres is involved; the program is authorized only in the States of Arizona, California, Colorado, Idaho, Maine, Michigan, Minnesota, Montana, North Dakota, Ohio, Oregon, Utah, Washington, and Wyoming. The experimental use permit is effective from March 1, 1977, to March 1, 1978. A permanent tolerance for residues of the active ingredient in or on sugar beets has been established (40 CFR 180.316).

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., SW., 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 permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: March 28, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 77-9884 Filed 4-1-77;8:45 am]

[FRL 708-6; OPP-50285]

STAUFFER CHEMICAL CO., ET AL.

Issuance of Experimental Use Permits

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.), experimental use permits have been issued to the following applicants. Such permits are 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. 476-EUP-88. Stauffer Chemical Company, Richmond, California 94804. This experimental use permit allows the use of 350 pounds of the herbicide S-ethyl dipropylthiocarbamate for pre-plant application through irrigation water on potatoes to evaluate control of lambsquarters, pigweed, nightshade, watergrass, and foxtail. A total of 92 acres is involved; the program is authorized only in

the States of California, Idaho, Texas, and Washington. The experimental use permit is effective from February 14, 1977, to February 14, 1978. A permanent tolerance for residues of the active ingredient in or on potatoes has been established (40 CFR 180.232).

No. 476-EUP-89. Stauffer Chemical Company, Richmond, California 94804. This experimental use permit allows the use of 138.5 pounds of the herbicide S-ethyl dipropylthiocarbamate impregnated on dry fertilizer on alfalfa, potatoes, beans, and sugarbeets to evaluate control of annual grasses, and broadleaf and perennial weeds. A total of 45 acres is involved; the program is authorized only in the States of Idaho, Minnesota, Oregon, Pennsylvania, Washington, and Wisconsin. The experimental use permit is effective from February 16, 1977, to February 16, 1978.

No. 38338-EUP-1. University of Idaho Cooperative Extension Service, Twin Falls, Idaho 83301. This experimental use permit allows the use of 310 pounds of the insecticide methoxychlor on irrigation canals to evaluate control of blakfly larvae. The areas involved are the Twin Falls Canal in Murtaugh; the Northside Canal in Burley; the Walker Ditch and the Pioneer Reservoir in King Hill; and the East Branch Canal, the Bench Canal, the Turner Canal and the Soda Canal in Grace. The program is authorized only in the State of Idaho. The experimental use permit is effective from May 1, 1977, to May 1, 1978.

No. 1109-EUP-1. Cities Service Company, Atlanta, Georgia 30302. This experimental use permit allows the use of a fungicide which is a mixture of copper abietate, copper linoleate, and copper oleate on peaches and plums to evaluate control of bacterial spot. The experimental use permit is effective from February 18, 1977, to March 15, 1978.

No. 1109-EUP-2. Cities Service Company, Atlanta, Georgia 30302. This experimental use permit allows the use of a fungicide which is a mixture of cooper abietate, cooper linoleate, and cooper oleate on peaches and plums to evaluate control of bacterial spot. A total of 27 acres are involved in this permit and the one above; approximately 77 pounds of the fungicide will be used for both permits. The permits are authorized only in the States of Georgia, Illinois, Missouri, New Jersey, South Carolina, and Texas. This experimental use permit is also effective from February 18, 1977, to March 15, 1978. The permits will use the same active ingredient, but different formulations. An exemption from the requirement of a tolerance for residues of the fungicide mixture in or on peaches and plums has been established (40 CFR 180.1001(b)(1).

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., SW., 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 permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: March 28, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-9886 Filed 4-1-77;8:45 am]

[FRL 708-5; OPP-50284]

ZOECON CORP. AND TENNESSEE VALLEY AUTHORITY

Issuance of Experimental Use Permits

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.), experimental use permits have been issued to the following applicants. Such permits are 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. 20954-EUP-5. Zoecon Corporation, Palo Alto, California 94304. This experimental use permit allows the use of 346.9 pounds of the insecticide Methoprene in non-fish-bearing waters to evaluate control as an insect growth regulator for various species of mosquitoes. A total of 163 aquatic acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Florida, Georgia, Illinois, Louisiana, Minnesota, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, and Washington. The experimental use permit is effective from April 7, 1977, to April 7, 1978.

No. 39305-EUP-1. Tennessee Valley Authority, Muscle Shoals, Alabama 35660. This experimental use permit allows the use of 72 pounds of the herbicide diquat dibromide in the reservoirs on the Tennessee River to evaluate control of various aquatic weeds. The program is authorized only in the States of Alabama and Tennessee. The experimental use permit is effective from March 4, 1977, to March 4, 1978. A permanent tolerance for residues of the active ingredients in potable water has been established (40 CFR 193.160).

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., SW., 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 permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: March 28, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-9885 Filed 4-1-77;8:45 am]

[FRL 709-4]

SCIENCE ADVISORY BOARD; ENVIRONMENTAL POLLUTANT MOVEMENT AND TRANSFORMATION ADVISORY COMMITTEE

Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Environmental Pollutant Movement and Transformation Advisory Committee of the Science Advisory Board will be held on April 20, 1977, at 9:00 a.m. to 4:30 p.m. in Conference Room 1112A of Crystal Mall No. 2. The address is 1921 Jefferson Davis Highway, Arlington, Virginia.

The agenda includes discussions with selected grantees of the Office of Research and Development dealing with modeling studies in air pollution as part of the Committee's evaluation of the quality of research programs of the Office of Research and Development, and items of Member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Joel L. Fisher, Executive Secretary of the Environmental Pollutant Movement and Transformation Advisory Committee by close of business April 14, 1977, at 703-557-7710.

LLOYD T. TAYLOR,
Acting Staff Director,
Science Advisory Board (A-101).

MARCH 30, 1977.

[FR Doc.77-9999 Filed 4-1-77;8:45 am]

[FRL 709-2]

SCIENCE ADVISORY BOARD; ENVIRONMENTAL POLLUTANT MOVEMENT AND TRANSFORMATION ADVISORY COMMITTEE

Request for Nominations for Members

The Administrator requests nominations for the Environmental Pollutant Movement and Transformation Advisory Committee, an entity of the Science Advisory Board. Current terms for five of the members expire in May, 1977.

The function of the Committee is to provide to the Administrator expert advice on issues related to the scientific and technical problems associated with the movement of pollutants through various media (air, water, land) and their subsequent chemical transformations within those media, and within biotic substrates (organisms and their tissues). Also of primary concern to the Committee is to provide advice on the intermedia aspects of pollutant movement and transformation.

The members are scientists of recognized accomplishment and stature in professional fields such at atmospheric chemistry, oceanography, limnology, biophysics, chemical and mechanical engineering. They are knowledgeable about problems of establishing material balances for selected pollutants on regional and global scales; modeling of the dynamics of pollutant movement and transformation in various media; and experienced in the uses of scientific information for various kinds of decision-making and regulatory activities. Employees of Federal Agencies will not be considered for membership.

Any interested person or organization may nominate one or more qualified persons for membership. Nominees should be

identified by name, occupation or position, address, and telephone number. The nominations should include a resume of the nominee's background, experience and qualifications. This request for nominees does not imply any commitment on the part of the Agency to appointment of individuals nominated, nor will formal replies to letters of nomination be sent.

Nominations should be submitted to Mrs. Mary Beatty, Committee Management Office (PM-213), Room W405, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, no later than May 30, 1977.

LLOYD T. TAYLOR,
Acting Staff Director,
Science Advisory Board.

MARCH 28, 1977.

[FR Doc.77-9998 Filed 4-1-77;8:45 am]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

GOVERNMENT-WIDE STANDARD RACE/ETHNIC CATEGORIES

In a memorandum from the Office of Management and Budget dated October 13, 1976, the Equal Employment Opportunity Commission was advised that OMB had changed the government-wide standard race/ethnic categories. This revision requires EEOC to change its race/ethnic categories. These definitions do not revise the underlying regulations. Accordingly, the following changes are being made in the EEO-4, EEO-5, and EEO-6 survey definitions:

1. White, not of Hispanic Origin.—Persons having origins in any of the original peoples of Europe, North Africa, or the Middle East

Change: Indian Subcontinent deleted.

2. American Indian or Alaskan Native.—Persons having origins in any of the original peoples of North America, *and who maintain cultural identification through tribal affiliation or community recognition*

Change: Italicized wording added.

3. Asian or Pacific Islander.—Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Somoa.

Change: Indian Subcontinent added.

With this notice, employers should have no difficulty implementing the changes, and will have ample time to change their internal records to reflect the changes.

The Equal Employment Opportunity Commission hereby gives notice that the State and Local Government Information (EEO-4) as required by 29 CFR 1602.30 for 1977 and for subsequent years will reflect five (5) revised race/ethnic categories. The same race/ethnic categories will also be reflected on the Elementary-Secondary Staff Information (EEO-5), 29 CFR 1602.39, and the Higher Education Staff Information (EEO-6) 29 CFR 1602.48 for 1977 and subsequent years. The five race/ethnic categories are defined as follows:

White, not of Hispanic Origin.—Persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Black, not of Hispanic Origin.—Persons having origins in any of the Black racial groups of Africa.

Hispanic.—Persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

American Indian or Alaskan Native.—Persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander.—Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

Signed at Washington, D.C. this 28th day of March, 1977.

ETHEL BENT WALSH,
Vice Chairman, Equal Employment Opportunity Commission.

[FR Doc.77-9920 Filed 4-1-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

AMES ELECTRIC UTILITY'S AMES GENERATING STATION, POWERPLANT 7

Negative Determination of Environmental Impact

Pursuant to 10 CFR 208.4 and 305.9, the FEA hereby gives notice that it has performed an analysis and review of the environmental impact of the proposed issuance of a Notice of Effectiveness for the prohibition order to Ames Electric Utility's Ames Generating Station, Powerplant 7.

On June 30, 1975, the FEA issued a prohibition order to the above-listed powerplant which prohibited the powerplant from burning natural gas or petroleum products as its primary energy source. The prohibition order provided, however, that in accordance with the requirements of 10 CFR Parts 303 and 305, the order would not become effective until either, (1) the Administrator of the Environmental Protection Agency (EPA) notifies the FEA, in accordance with section 119(d)(1)(B) of the Clean Air Act, that a particular powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under Section 119, or (2) if no notification is given by EPA, the date that the Administrator of EPA certifies pursuant to Section 119(d)(1)(B) of the Clean Air Act is the earliest date that a particular powerplant will be able to comply with all applicable air pollution requirements under section 119 of that Act; and, until FEA has performed an analysis of the environmental impact of the issuance of a Notice of Effectiveness, pursuant to 10 CFR 305.9, and has served the powerplant the Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.37 (b), and 305.7.

The FEA has analyzed and reviewed the effect on the human environment of issuance of the Notice of Effectiveness, and has determined it is clear that issuance of a Notice of Effectiveness for the prohibition order to the above-listed powerplant is not a "major Federal action significantly affecting the quality of the human environment." National Environmental Policy Act, at 42 U.S.C. 4332(2)(C). Therefore, pursuant to 10 CFR 208.4(c), FEA concludes that an environmental impact statement is not required.

Additional copies of this negative determination of environmental impact and copies of the environmental assessment upon which it is based are available upon request from the FEA National Energy Information Center, Room 1404, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. Copies of the documents are also available for public review in the FEA Freedom of Information Reading Room, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C.

Interested persons are invited to submit data, views, or arguments with respect to the environmental impacts of the Notice of Effectievness and the associated negative determination and environmental assessment to Executive Communications, Box LJ, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA Executive Communications with the designation, "Negative Determination—Proposed NOE to Ames Electric Utility's Ames Generating Station, Powerplant 7." Fifteen copies should be submitted on or before April 25, 1977.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., March 30, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-1000 Filed 3-31-77;9:34 am]

FEDERAL MARITIME COMMISSION

BOARD OF TRUSTEES OF THE GALVESTON WHARVES AND BUNGE CORP.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before April 25, 1977. 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.

Mr. Carl S. Parker, Jr., Traffic Manager, Port of Galveston, P.O. Box 328, Galveston, Texas 77553.

Agreement No. T-3289-3, between the Board of Trustees of Galveston Wharves (Wharves) and Bunge Corporation (Bunge), further modifies the basic lease of a grain elevator and terminal facilities. The modification enlarges the leased premises to include certain railroad trackage, as further described in the basic amendment. As compensation, Bunge will pay Wharves additional quarterly rental payments of $3,000.

By Order of the Federal Maritime Commission.

Dated: March 30, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-9988 Filed 4-1-77;8:45 am]

CITY OF LONG BEACH AND PIERPOINT MANAGEMENT CORP.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 1026; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before April 25, 1977. 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.

Mr. Leslie E. Still, Jr., Deputy City Attorney, City of Long Beach, Suite 600 City Hall, Long Beach, California 90802.

Agreement No. T-3295-1, between City of Long Beach (City) and Pierpoint Management Company (Pierpoint), modifies the parties' basic agreement providing for the nonexclusive preferential assignment by City of certain premises at Pier A, to be used in the operation of a marine terminal. The purpose of the modification is to increase the area of the leased premises.

By Order of the Federal Maritime Commission.

Dated: March 30, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-9989 Filed 4-1-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-9583]

CENTRAL POWER & LIGHT CO. AND WEST TEXAS UTILITIES CO.

Filing of Complaint

MARCH 28, 1977.

Take notice that on March 7, 1977, Central Power and Light Company (CP&L) and West Texas Utilities Company (WTU) (collectively called the Petitioners) filed a Petition to Intervene and request that the order entered in the above-referenced docket by the Commission on February 4, 1977, be modified or supplemented by the issuance of an appropriate order pursuant to Section 202 (c) of the Federal Power Act, 16 U.S.C. 824a(b). Pursuant to Section 1.6 of the Commission's Rules (18 CFR 1.6), the above-mentioned Petition to Intervene has been accepted for filing as a Complaint.

CP&L is a Texas Corporation with its principal place of business at Corpus Christi, Texas. WTU is a Texas Corporation with its principal place of business at Abilene, Texas. All of the outstanding shares of Common Stock of CP&L and WTU are owned by Central and South West Corporation (CSW), a Delaware Corporation with its offices in Wilmington, Delaware.

CP&L and WTU assert that they are members of the Electric Reliability Council of Texas (ERCOT) and are interconnected with each other and with certain other members of ERCOT, specifically Lower Colorado River Authority and the municipal electric utility systems of the City of Austin and the City of San Antonio, Texas (the South Texas Governmentals). Petitioners contend that prior to May 4, 1976, they were also interconnected and operated in synchronism with the major member of ERCOT, Texas Electric Service Company, (TESCO), (and through it with the other operating subsidiaries of Texas Utilities Company (TU): Dallas Power and Light Company (DP&L) and Texas Power & Light Company (TP&L)), and were also interconnected with Houston Light & Power Company (HL&P).

WTU states that on May 4, 1976, it commenced sales of electricity to three small communities in Oklahoma from its previously intrastate transmission lines, thus placing all ERCOT systems in interstate commerce. Petitioners state that TESCO and HL&P responded by opening their interconnections with CP&L, WTU and the South Texas Governmentals. On July 21, 1976, in Docket No. E-9558, the Commission entered an order authorizing emergency interconnection pursuant to Section 202(d) of the Federal Power Act.

In addition, Petitioners contend that substantially all of their present electric generating facilities are regularly fueled by natural gas purchased from intrastate sources. Petitioners state that in 1976, 97.5% of the Kilowatt-hour output was generated using natural gas and the remaining 2.5% using oil.

Petitioners assert that following the entry by the Commission on February 4, 1977, of its order authorizing emergency reinterconnection of ERCOT to facilitate reduction of gas consumption by ERCOT members so that gas could be diverted to interstate markets, CP&L and WTU, through C&SW's service company affiliate, wrote a letter to HL&P and TU requesting reinterconnection as a basis for reducing gas used to fuel spinning reserves. In addition, Petitioners contend that they have clearly indicated their desire to make gas available to the interstate market and are discussing arrangements with their respective principal gas suppliers Lo Vaca Gathering Company and Lone Star Gas Company, to transport diverted gas into the interstate pipeline system.

Therefore, Petitioners request that the Commission enter an order under Section 202(c) of the Federal Power Act requiring the immediate resumption and continuation of all interconnected service among all of the members of ERCOT as it was on May 3, 1976, specifically requiring HL&P and TESCO as well as DP&L and TP&L, to restore all of the interconnections and services which were opened on May 4, 1976. Petitioners aver that such an order is necessary in addition to, or in substitution for, the order already entered under Section 202(d) since neither TESCO nor HL&P has been willing to act under the earlier order.

Any person desiring to be heard or to make any protest with reference to said Complaint should on or before April 25, 1977, file with the Federal Power Com-

mission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The Complaint is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9938 Filed 4-1-77;8:45 am]

[Docket No. CP77-300]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

MARCH 29, 1977.

Take notice that on March 16, 1977, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorckle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP77-300 an application pursuant to section 7(c) of the Natural Gas Act and section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas for PPG Industries, Inc. (PPG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to transport up to 3,500 Mcf of natural gas per day for PPG for a primary period of two years, which gas would be received into Applicant's Lines O-880 and FO-1633 in Valley and Center Townships, Guernsey County, Ohio, to an existing point of delivery from Transcontinental Gas Pipe Line Corporation (Transco) to Applicant near Dranesville, Fairfax County, Virginia. Transco would transport such gas to the Cities of Lexington and Shelby, North Carolina, for ultimate delivery and use by PPG's facilities in these locations. Deliveries to Transco would be accomplished by reducing Applicant's scheduled receipts from Transco at Dranesville.

The application states that PPG has contracted with David S. Towner dba David S. Towner Enterprises (Towner) to purchase gas for a primary term extending from the date of first delivery of such gas through April 30, 1979, at which time PPG has the option to extend the contract for a two-year period and from year-to-year thereafter under terminated. It is stated that Towner has contracted to sell an average daily volume of 1,500 Mcf of gas per day in the contract periods of November 1 through April 30 of each year and 1,000 Mcf per day in the contract periods of May 1 through October 31 of each year. It is further stated that Towner affirms that gas from the lease covered by the PPG contract has never been sold in interstate commerce, that the gas would not be sold in the interstate market because intrastate markets are available, and that marginal gas reserves such as these cannot be developed for the regulated interstate market because of the high cost of development. The price at which PPG would purchase gas from Towner is $2.20 per Mcf from first delivery through April 30, 1977; $2.05 per Mcf from May 1 through October 31, 1977; $2.30 per Mcf from November 1, 1977, through April 30, 1978.

It is stated that PPG's plants in Lexington and Shelby make up its entire Fiber Glass Division, which accounts for approximately 40 percent of the continuous fiberglass filament produced in the United States and the gas to be transported would be used in furnace forehearths, refiners and cannals and other miscellaneous fiber "conditioning" equipment for which alternate fuels cannot be used since they require the constant flame and precise temperature control characteristics of a gaseous fuel.

It is asserted that PPG employs approximately 2,600 people in these two plants and is the major employers in the City of Lexington with a population of 1,350 people and in the City of Shelby with a population of 1,300 people and continued operation of these two plants is seriously threatened by present curtailment conditions. A shutdown of PPG's operations would have a direct economic effect on the Cities of Lexington and Shelby and ripple effects in the rest of North Carolina, it is said.

Applicant states that it has available pipeline capacity, to transport the natural gas without the construction of additional facilities.

It is stated that Applicant's transportation charge for all volumes delivered into its Line O-890 would be its average system-wide unit storage and transmission costs exclusive of company-use and unaccounted-for gas, which is currently 22.21 cents per Mcf effective November 1, 1976; for all volumes delivered into its Line FO-1633, the transportation charge would be Applicant's average systemwide unit gathering, storage and transmission costs exclusive of company-use and unaccounted-for gas, which charge is currently 24.75 cents per Mcf effective November 1, 1976. Applicant would retain for company-use and unaccounted-for gas a percentage of the total volumes received for the account of PPG, which percentage is currently 3.1 percent. The transported gas is subject to diversion to Applicant in emergency periods when such gas is required for the protection of Priority 1 requirements on its system.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 11, 1977, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9939 Filed 4-1-77;8:45 am]

[Docket No. CP77-165]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

MARCH 29, 1977.

Take notice that on March 16, 1977, Columbia Gas Transmission Corporation (Applicant 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP77-165 an application pursuant to section 7(c) of the Natural Gas Act and section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas for Wheeling-Pittsburgh Steel Corporation (Wheeling-Pittsburgh), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas for Wheeling-Pittsburgh from an existing point of Delivery from Texas Gas Transmission Corporation (Texas Gas) to Applicant in Warren County, Ohio, to existing points of delivery by Applicant to Columbia Gas of Ohio, Inc. (Columbia, Ohio), Columbia Gas of West Virginia, Inc. (Columbia, W. Va.), and Columbia Gas of Pennsylvania, Inc. (Columbia Pennsylvania), all of which are wholesale customers of Columbia. The gas would be delivered by the distributors to Wheeling-Pittsburgh's plants in Steubenville, Martins Ferry, and Yorkville, Ohio, in Beech Bottom, Follansbee, and Wheeling, West Virginia, and in Allenport, Pennsylvania.

It is asserted that Wheeling-Pittsburgh has been advised by Columbia Ohio that on February 1, 1977, its Steu-

benville, Ohio, would receive only plant maintenance gas and Columbia, W. Va. and Columbia, Pennsylvania had both increased curtailments to Wheeling-Pittsburgh plants. Applicant proposes herein to transport natural gas for Wheeling-Pittsburgh for a two-year period.

Wheeling-Pittsburgh, the ninth largest steel producer in the United States, is an integrated steel company manufacturing plates, hot and cold rolled sheets, coated sheets, tin mill products, welded and seamless tubular products and semi-finished steel, it is said. It is stated that Wheeling-Pittsburgh currently employs approximately 7,700 people in its Ohio operations to which natural gas deliveries would be made, approximately 1,500 people in its West Virginia operations to which deliveries would be made and approximately 2,500 people in its Pennsylvania operation to which deliveries would be made.

Applicant states that Wheeling-Pittsburgh has contracted with McGoldrick Joint Venture No. 1–73 (McGoldrick) to purchase gas for a period of 730 consecutive days from and after the date of first delivery of such gas. It is stated that McGoldrick would sell 5,000 Mcf of gas per day on a take or pay basis to Wheeling-Pittsburgh from certain of its leaseholds in Clairborne Parish, Louisiana, and Wheeling-Pittsburgh would pay McGoldrick $1.70 per Mcf, subject to Btu adjustment, for the first 365 days, after which time the price is subject to renegotiation on the basis of the highest price then being paid for natural gas in the Monroe and Shreveport, Louisiana, Conservation Districts, provided that the price would not be less than $1.85 nor more than $2.52 per Mcf. There is also a provision for the sale and purchase of excess gas, it is said.

Applicant states it would transport up to 5,000 Mcf per day. The gas is subject to diversion to Applicant in emergency periods when required for the protection of Priority 1 requirements on Applicant's system. Applicant states it would not have to construct any additional facilities.

Applicant states that its transportation charge for this service would be its average systemwide unit storage and transmission costs exclusive of company-use and unaccounted-for gas, which is 22.21 cents per Mcf effective November 1, 1976, and that it would retain for company-use and unaccounted-for gas a percentage of the total volumes received for the account of Wheeling-Pittsburgh, which percentage is currently 3.1 percent.

It is indicated that the natural gas which Wheeling-Pittsburgh will purchase from McGoldrick is not available to the interstate market, and that the gas would be used for Priority 2 purposes or those Priority 3 uses that would have been in Priority 2 had the gas been purchased on a firm basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 11, 1977, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9940 Filed 4-1-77;8:45 am]

[Docket No. ER77-244]

CONNECTICUT LIGHT AND POWER CO.

Transmission Agreement

MARCH 28, 1977.

Take notice that on March 14, 1977, The Connecticut Light and Power Company (C.L. & P.) tendered for filing a proposed rate schedule with respect to the Transmission Agreement dated January 1, 1977 between (1) C.L. & P., The Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO) and (2) Middleborough Gas and Electric Department (MGED).

CL&P states that the Transmission Agreement provides for a transmission service to MGED during the period from January 1, 1977 to October 31, 1977.

CL&P indicates that the transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the Northeast Utility system determined in accordance with Section 13.9 (Determination of Amount of Pool Transmission Facilities (PTF) Costs) of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee, multiplied by the number of kilowatts which MGED is entitled to receive.

C.L. & P. requests an effective date of January 1, 1977 for the Transmission Agreement.

HELCO and WMECO have filed certificates of concurrence in this docket.

C.L. & P. states that copies of this rate schedule have been mailed or delivered to C.L. & P., Hartford, Connecticut, HELCO, Hartford, Connecticut, WMECO, West Springfield, Massachusetts and MGED, Middleborough, Massachusetts.

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 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 April 8, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9931 Filed 4-1-77;8:45 am]

[Docket No. CP77-201]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Application

MARCH 29, 1977.

Take notice that on March 18, 1977, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP77-201 an application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas for two years for Mobay Chemical Corporation (Mobay), an existing distribution customer of Applicant's Hope Natural Gas Company division (Hope), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to transport for Mobay up to 2,000 Mcf of gas per day for two years for use at Mobay's New Martinsville, West Virginia, chemical plant. The natural gas proposed to be transported would be received by Applicant into its existing Line Nos. 3, 4, and 106 in Wetzel County, West Virginia, and for delivery by Applicant into the distribution facilities of Hope, for Mobay's account at an existing point of delivery in Wetzel County, West Virginia.

It is stated that Hope is Mobay's sole gas supplier, that Hope curtailed deliveries to Mobay to the minimum level sufficient to protect property from January 16, 1977, to February 9, 1977, and that deliveries are currently being curtailed by 20 percent of Mobay's priority 2 requirements. Deliveries of Mobay's priority 5 boiler fuel gas have been completely curtailed since 1975, it is said.

Applicant states it filed a telegraphic request for temporary emergency authorization for the transportation of natural gas for Mobay on February 11, 1977, and was granted a temporary certificate by the Commission on February 16, 1977.

It is stated that Mobay's New Martinsville plant employs approximately 850 persons and is one of the largest employers in the New Martinsville area. Mobay produces, among other things, polyurethane chemicals, plastics, and coating materials at the New Martinsville plant, which products are used in the manufacture of home and industrial insulation products, automobiles, and furniture, it is said. It is further stated that Mobay intends to use the volumes proposed to be transported for priority 2 process or feedstock uses in its reformer, sulphuric acid concentration and environmental control facilities. The reformer facility, which consumes approximately 90 percent of the gas proposed to be transported requires gaseous fuel as feedstock to produce carbon monoxide and hydrogen, which are essential in the operation of Mobay's TDI unit, it is said. Applicant states that continued insufficient gas supplies would result in shortages of critical materials, as well as the layoff of part or all of Mobay's work force, which layoffs would adversely affect the economic situation in that area.

Applicant states that it would charge Mobay 8.92 cents per Mcf for this transportation service[1] and would retain 4 percent of the gas to provide the service. The gas to be transported would be produced by Mobay from its own wells located in Wetzel County, West Virginia, and has never been sold in interstate commerce, the application states.

It is further stated that Applicant has available pipeline capacity to perform the proposed transportation service without the construction of additional facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 11, 1977, file with the Federal Power Commission, Washington, D.C. 20460, 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.

[1] It is stated that Applicant's February 9, 1977, telegraphic request for temporary emergency authorization to transport natural gas for Mobay in the instant docket inadvertently stated Applicant's proposed transportation charge as 7.60 cents per Mcf. Applicant states this error was due to a misapprehension as to the location of Mobay's plant and wells with respect to Applicant's zone boundaries.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-9941 Filed 4-1-77;8:45 am]

[Docket No. ER76-536]

GEORGIA POWER CO.

Filing of Settlement Agreement

(MARCH 29, 1977).

Take notice that on March 15, 1977, the Georgia Power Company submitted a Settlement Agreement in the above-named docket.

On March 18, 1977, the Presiding Administrative Law Judge certified the offer of settlement in this contested proceeding to the Commission for its consideration and ruling.

The proposed settlement provides that Georgia Power will file a revised tariff sheet containing rates which would have produced, on an annualized basis, an increase in revenues of $15,000,000 for the twelve-month period ending on December 31, 1976, based on the sales estimates contained in the Period II data as originally filed with the Commission on March 1, 1976. Georgia Power will refund to the collective Cities who are parties to this proceeding and to the City of Dalton, Georgia, also a party, with simple interest at 9% per annum, the difference between the amounts actually collected and the amounts which would have been collected if the revised rates had been in effect. Georgia Power will also file revised tariff sheets which will clarify the procedure used in applying the fuel adjustment clause.

Any person wishing to do so may submit comments in writing concerning the proposed Settlement Agreeemnt to the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, on or before April 29, 1977. The Settlement Agreement is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9942 Filed 4-1-77;8:45 am]

[Docket No. ER77-145]

GULF STATES UTILITIES CO.

Filing of Agreement

(MARCH 28, 1977).

Take notice that on March 16, 1977, Gulf States Utilities Company (Gulf States) tendered for filing an agreement for wholesale service between it and the City of College Station, Texas.

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 April 8, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9933 Filed 4-1-77;8:45 am]

[Docket No. ER77-252]

ILLINOIS POWER CO.

Filing New Connection Point

MARCH 28, 1977.

Take notice that Illinois Power Company ("IP" or "Illinois Power") on March 21, 1977 tendered for filing two additional connection points to be included in Appendix A of the Interconnection Agreement between Central Illinois Public Service Company ("CIPS"), Union Electric Company ("UE") and Illinois Power. Illinois Power indicates that the new connection point, indentified as CIPS–IP Connection Point 34—West Mt. Vernon 345 kv, provides for a new 345 kv connection point in Class County, Illinois. Illinois Power also indicates that the new connection point, identified as CIPS–IP Connection Point 35—Humrick, provides for a new 69 kv connection point in Vermilion County, Illinois. Effective dates of March 12, 1976 and March 8, 1977 are respectfully requested.

A copy of this filing has been served upon CIPS and UE. In addition, Connection 34 is being filed with the Illinois Commerce Commission, Springfield, Illinois.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 14, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person

wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9943 Filed 4-1-77;8:45 am]

[Docket No. ER77-242]

INDIANA & MICHIGAN ELECTRIC CO.

Changes in Rates and Charges

MARCH 28, 1977.

Take notice the American Electric Power Service Corporation (AEP) on March 14, 1977, tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company (I&M), a letter of agreement dated January 15, 1977 to the Operating Agreement dated March 1, 1966, between I&M and Michigan Companies, designated Indiana Rate Schedule FPC No. 68.

AEP states that the letter of agreement provides for an increase in the minimum energy charge for Emergency Service from 17.5 mills to three cents per kilowatt hour, proposed to become effective April 15, 1977. A similar letter agreement between Illinois Power Company and I&M was recently submitted to the Commission as a proposed settlement of FPC Docket No. ER76-21 and on September 8, 1976 the Commission issued an order approving this settlement making it effective as of March 2, 1976. AEP also states that since the use of Emergency Service under the proposed minimum charge cannot be accurately determined or estimated, it is impossible to determine or estimate the increase in revenues resulting from the letter of agreement.

Copies of the filing were served upon Michigan Companies, The Public Service Commission of Indiana and the Michigan Public Service Commission.

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 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 April 8, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9932 Filed 4-1-77;8:45 am]

[Docket No. ER77-249]

KENTUCKY POWER CO.

Changes in Rates and Charges

MARCH 29, 1977.

Take notice that American Electric Power Service Corporation (AEP) on March 18, 1977 tendered for filing on behalf of its affiliate Kentucky Power Company (Kentucky Company), Modification No. 1 dated March 1, 1977 to the Interconnection Agreement dated May 14, 1963, between Kentucky Power Company and East Kentucky Power Cooperative, Inc. designated Kentucky Company rate schedule FPC No. 14.

AEP indicates that modification No. 1 replaces the existing Short Term Service Schedule E with a new updated version of that service. AEP also indicates that the modification provides for (1) an increase in the demand charge for Short Term Power from $0.30/kW-week to $0.60/kW-week, (2), reservation of Short Term Power from the system of a third party with a transmission charge of $0.15/kW-week and (3) a new initial rate schedule entitled "Limited Term Power" Service Schedule G with a demand charge rate of $3.25/kW-month and a transmission charge of $0.65/kW-month for third party transactions. AEP states that since the use of Short Term and Limited Term Power cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

Copies of the filing were served upon East Kentucky Power Cooperative, Inc. and the Kentucky Public Service Commission.

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 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 April 13, 1977. 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9944 Filed 4-1-77;8:45 am]

[Docket Nos. RI77-13 and CI76-806]

MESA OFFSHORE CO.

Order Consolidating Proceedings, Setting Consolidated Proceedings for Hearing, Setting Notice Period

MARCH 28, 1977.

On November 22, 1976, Mesa Offshore Company, a wholly owned subsidiary of Mesa Petroleum Company ("Mesa") filed in the instant docket, a Petition for special relief pursuant to § 2.56a(g) of the Commission's General Policy and Interpretations (18 CFR § 2.56a(g)) authorizing the sale of natural gas from the Federal Domain, offshore Louisiana as described below. Mesa Offshore requests authorization to sell its interests in gas underlying Eugene Island 256 an undeveloped block, and Vermilion 228, a developed block which is available for delivery upon completion of the connection to the pipeline ("Sea Robin Pipeline Company").

The underlying gas purchase contract between Mesa Offshore ("Offshore") and United Gas Pipe Line Company ("United"), dated February 1, 1972 covered the instant two blocks as well as Eugene Island 330 and Blocks 199 and 270 in the East Cameron Area. Mesa commenced sales of its interest in Eugene Island 330 and East Cameron 270 in July, 1973 for a one year limited term at 35 cents/Mcf under a certificate issued in Docket No. CI73-663. Thereafter, sales have continued at the applicable national rate under the authority of a small producer certificate issued to Mesa in Docket No. CS67-82. East Cameron 199 apparently is still undeveloped and without a pending request for Commission action.

The 1972 gas purchase contract ("contract") set a sale price for the gas of 35.0 cents/Mcf with tax and Btu adjustments for the first year following commencement of deliveries with a 0.5 cents/Mcf annual escalation thereafter for the duration of the 20 year contract term. The contract also included a FPC area rate clause which allowed the seller to collect any Commission established area rate applicable to the premises which was higher than the 35 cents/Mcf (with escalation) rate mentioned above. Under the area rate clause, seller could collect the higher applicable area rate for the first year following the establishment of such area rate and annual escalations of 0.5 cents/Mcf each year thereafter.

By an amendatory agreement dated October 7, 1976 Sea Robin (United's successor-in-interest to the February 1, 1972 contract, by virtue of a February 1, 1972 assignment) agreed to pay Mesa Offshore any price authorized by a final Commission order pursuant to the Commission's special relief regulations (18 CFR 2.56a(g); 2.76) for the Vermilion 228 and Eugene Island 256 gas. As was mentioned above, Offshore, on November 22, 1976 petitioned the Commission under Section 2.56a(g) for a special relief rate of $3.07/Mcf for its gas interests in the subject two blocks. Without special relief, Offshore is entitled to the base rates established in Opinion No. 770-A, namely 93 cents/Mcf or 1.43/Mcf depending on the particular well commencement dates involved. Offshore alleges that "its costs of producing all of the gas attributable to its interests in the two Blocks covered by this Petition is approximately $3.07 per Mcf * * *" (Petition at 2). It estimates that its "proved, probable and possible equivalent gas reserves" in the two Blocks "amounts to 45,800 MMcf". (Ibid.)

All of the five above-mentioned blocks involved in the February 1, 1972 contract were acquired by Mesa in the December 15, 1970 Outer Continental Shelf ("OCS") Lease Sale. The primary lease term of five years from the effective date of the lease within which to develop and produce the properties expired on February 1, 1976 for Eugene Island 256, Vermilion 228 and East Cameron 199. Extentions of the lease term beyond the primary 5 year term in the absence or

cessation of production can be granted by a USGS supervisor in accordance with the pertinent regulations, particularly 30 CFR 250.1 et seq and OCS Order No. 4.

Mesa has not included into one project all of the leases it acquired at the December, 1970 OCS Lease Sale. There is a question as to whether the instant Petition for special relief is based upon one or more projects. Offshore does not allege in its Petition that the blocks herein have either geographical or geological coherence nor that these blocks were all the blocks it acquired at a single Outer Continental Shelf Lease Sale. In fact the distance between Eugene Island 256 and Vermilion 228 is approximately 60 linear miles. Accordingly, the Commission Staff is directed to examine those Blocks Mesa purchased at the Outer Continental Shelf Lease Sales in 1970, 1972 and 1973 in which its working interest was at least 5 percent. And the Commission directs Petitioner to submit evidence of gas supply and cost data for each of the instant blocks individually. Petitioner may also submit evidence supporting its view that the blocks should be treated as a single project. Petitioner shall fully explain why these blocks were included in the present Petition and other, as yet uncertificated blocks that they acquired in the 1970, 1972 and 1973 OCS Lease Sales were not so included.

In their Petition for special relief, Petitioner states its willingness "to accept the applicable Opinion No. 770–A National Rate" pending approval of its special relief rate in the event Sea Robin is willing and able to take deliveries, "provided such Petition will be acted upon by the Commission within 7 months" of the filing date [Petition at 3]. Petitioner also requests that this filing be consolidated with that of Pennzoil Offshore Gas Operators, Inc. in Docket No. CI76–806.

The delivery points for the gas herein involved are to be on the offshore production platforms at Eugene Island 256 and Vermilion 228. Petitioner's present ownership interest in Eugene Island 256 is 16.77% and it now owns 43.285% of Vermilion 228. It estimates that sales volumes from its interests in the two blocks will be 540,830 Mcf/month equally about 6,489,960 Mcf/year.

Mesa Petroleum Company, Incorrated in Delaware in 1964, formed Mesa Offshore Co. in 1971. Offshore is one of Mesa's seven wholly-owned subsidiaries. In addition, Mesa has interests in 2 other companies, General American Oil Company of Texas and Sunlite Oil Co., Ltd. As of December 31, 1975, Mesa had 7,365,563 Gross Acres of undeveloped acreage including leases, drilling permits and petroleum and natural gas reservations. In December, 1976 it had agreed to purchase McMoRan Exploration Company's interests in 6 Federal offshore Louisiana blocks and one Federal offshore Texas block, subject to certain closing conditions.

An examination of the Petition for Special Relief and the data submitted in support thereof raises a question as to whether there is sufficient basis for the Commission to find the proposed rate to be just and reasonable. Therefore, we deem it necessary that a hearing be held in this matter to help determine answers to all of the issues raised.

The Commission finds:

(1) It is necessary and in the public interest that the above-docketed proceeding be set for hearing.

(2) It is necessary and in the public interest that the above-docketed proceeding (RI77–13) be consolidated with that of Pennzoil Offshore Gas Operators, Inc. in Docket No. CI76–806.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 14 and 16 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Chapter I), a public hearing in Docket No. RI77–13 shall be held in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washintgon, D.C. 20426 for the purpose of hearing and disposition of the issues in this proceeding.

(B) The proceeding in the instant docket is hereby and hereafter consolidated for all purposes with the proceeding in Docket No. CI76–806.

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR 3.5(d)) shall preside at the hearing in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the exception of petitions to intervene, motions to consolidate and sever, and motions to dismiss, as provided for in the Rules of Practice and Procedure).

(D) Any person desiring to be heard or to make any protest with reference to this consolidated proceeding should, on or before April 12, 1977, file with the Federal Power Commission, at the address stated in Ordering Paragraph (A), a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding, or to participate as a party in any hearing herein, must file a petition to intervene in accordance with the Commission's Rules.

(E) The interventions granted in Ordering Paragraph (G) of the Order Setting Proceeding For Hearing And Granting Interventions, in Docket No. CI76–806, issued March 11, 1977 are hereby and hereafter granted intervention in this consolidated proceeding under the same terms and conditions stated in the aforementioned Ordering Paragraph (G).

(F) Pursuant to § 1.8 of the Commission's Rules of Practice and Procedure (18 CFR 1.8), the Presiding Administrative Law Judge is hereby authorized to permit the participation at the prehearing conference or hearing of any party that has filed a petition to intervene pursuant to Ordering Paragraph (D) that has not been acted upon by the Commission.

(G) Petitioner and any intervenor supporting the Petition for special relief shall file their direct testimony and evidence on or before April 12, 1977. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all parties to this proceeding. Petitioner shall submit gas supply and cost data for each block individually. Petitioner may submit evidence supporting its view that the blocks should be treated as a single project. Mesa shall submit evidence as to why these blocks were included in this Petition and others that they acquired in the 1970, 1972 and 1973 OCS Lease Sales were excluded. Petitioner shall file not only opinion evidence on the costs and the gas supply issues but also sufficient underlying data so that the reasonableness and credibility of the opinion evidence can be weighed by application of traditional evidentiary standards. The aforementioned list of evidence is not intended to foreclose data, testimony, or other evidence not specifically enumerated from being brought within this proceeding. All relevant and material evidence shall be admissible.

(H) The Commission staff shall examine, and copy where appropriate, the records, accounts and memoranda of Mesa pertaining to its blocks purchased in the Outer Continental Shelf Lease Sales held in 1970, 1972, and 1973 in which it held a working interest of at least 5 percent.

(I) The Presiding Judge shall preside at a pre-hearing conference to be held in this consolidated proceeding on April 29, 1977 at 10 a.m. e.s.t. in a hearing room at the address noted in Ordering Paragraph (A).

(J) Upon completion of the necessary pipeline connections Petitioner is hereby authorized to commence deliveries to Sea Robin and receive the applicable national rate for such gas sales, in accordance with the terms of Opinion No. 770–A. Within 10 days of commencement of any deliveries under this Ordering Paragraph, Offshore shall so notify the Commission.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9945 Filed 4-1-77;8:45 am]

[Docket No. E-9306]

NEVADA POWER CO.

Order Accepting Briefs on and Opposing Exceptions as Amici Curiae

MARCH 29, 1977.

On March 3, 1975, Nevada Power Company (Nevada) tendered for filing a notice of cancellation of wholesale service to California-Pacific Utilities Company (Cal-Pac) at Henderson, Nevada, to become effective as of June 1, 1975. In its notice of cancellation, Nevada stated that the reason for termination is its

inability to attract capital to support its sales to Cal-Pac at Henderson.

Notice of the March 3, 1975, filing was issued on March 18, 1975, with comments, protests or petitions to intervene due on or before May 1, 1975. Subsequently, Cal-Pac filed a motion to intervene within the prescribed period. Cal-Pac resisted the notice of cancellation of service at Henderson, Nevada and moved that Nevada's tendered filing of March 18, 1975, be rejected for not conforming with the terms of § 35.15 of the Commission's Regulations under the Federal Power Act.

The Initial Decision of Administrative Law Judge Curtis L. Wagner, Jr., in Docket No. E-9306, rendered December 15, 1976, permits Nevada to terminate service to Cal-Pac. On January 11, 1977, Cal-Pac, by letter, requested an extension until January 21, 1977 for filing briefs on exceptions. This extension was granted by notice issued January 17, 1977.

On January 18, 1977, North Carolina Electric Membership Corporation (N.C. EMC) and Four County Electric Membership Corporation (Four County EMC) filed a motion for Allowance of Untimely Petition to Intervene, For Acceptance of Brief on Exceptions or, in the Alternative, For Acceptance of Brief on Exceptions as Amicus. N.C. EMC and Four County EMC receive most of their power at wholesale in transactions governed by the Federal Power Act, and therefore seek to intervene in order to protect their interests and the interests of N.C. EMC's distribution member systems. By order issued February 9, 1977, the Commission denied N.C. EMC and Four County EMC's petition to intervene out of time, but accepted its Brief on Exceptions as amicus curiae.

On February 11, 1977, N.C. EMC and Four County EMC filed a motion for acceptance of its Brief Opposing Exceptions or, in the Alternative, for Acceptance of its Brief Opposing Exceptions as amicus curiae. For the reasons set forth in the Commission's order of February 9, 1977, we accept N.C. EMC and Four County EMC's Brief Opposing Exceptions as amicus curiae.

On March 1, 1977, the American Public Power Association (APPA) filed a Brief on Exceptions as amicus curiae pursuant to the Commission's Rules and Regulations, 18 CFR 1.31. On March 4, 1977, the National Rural Electric Cooperative Association (NRECA) joined in the APPA brief. The APPA is a national service organization representing over 1,400 local consumer-owned electric utility power systems, including municipalities, public utility districts and rural electric cooperatives. NRECA is an association representing 1,000 rural electric cooperatives. Many members of APPA and NRECA purchase all or part of their electric power requirements at wholesale from public utilities subject to regulation by the Federal Power Commission.

We find that it may be in the public interest to accept the APPA's brief on exceptions and we will allow Nevada fourteen days in which to respond to the brief.

The Commission finds:

(1) Good cause exists to accept N.C. EMC and Four County EMC's Brief Opposing Exceptions as amicus curiae.

(2) Good cause exists to accept APPA's Brief on Exceptions as amicus curiae.

The Commission orders:

(A) The motion of North Carolina Electric Membership Corporation and Four County Electric Membership Corporation for acceptance of its Brief Opposing Exceptions as Amicus Curiae is granted.

(B) The American Public Power Association's Brief on Exceptions, joined in by the National Rural Electric Cooperative Association is accepted as *amici curiae*.

(C) Nevada Power Company is granted 14 days from the date of this order to respond to the American Public Power Association's brief.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9946 Filed 4-1-77;8:45 am]

[Docket No. CP77-288]

NORTHERN UTILITIES, INC.

Notice of Application

MARCH 29, 1977.

Take notice that on March 9, 1977, Northern Utilities, Inc. (Applicant), 1075 Forest Avenue, Portland, Maine 04103, filed in Docket No. CP77-288 an application pursuant to Section 3 of the Natural Gas Act for authorization to import liquefied natural gas (LNG) from Montreal, Canada to Lewiston, Maine, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into an agreement with Gaz Metropolitan, Inc. (Gaz Metro) for the purchase of 100,000 Mcf vaporous equivalent of LNG for delivery during November and December, 1977, which it proposes to take delivery of at Gaz Metro's storage tanks in Montreal, Canada and to transport to its facilities at Lewiston, Maine, via cryogenic semi-trailer tanker trucks which it would supply.

It is stated that Applicant and Gaz Metro have agreed upon a price of $2.80 per Mcf vaporous equivalent of LNG sold during November, 1977, and $3.25 per Mcf for volumes sold during December, 1977, and that these prices are subject to any gas cost increases approved by the Canadian National Energy Board. It is further stated that Applicant may take delivery of a portion of the 100,000 Mcf prior to November 1, 1977, dependent upon availability by Gaz Metro.

It is asserted that Applicant utilizes LNG for peak shaving, and to maintain service to its distribution customers during periods of curtailment of its natural gas supply; that Applicant obtains its entire natural gas supply from its wholly-owned subsidiary, Granite State Gas Transmission, Inc. (Granite State), which in turn receives its entire gas supply from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) at Haverhill, Massachusetts. It is further asserted that Tennessee is currently curtailing service to its customers; the curtailments which Granite State experiences from Tennessee are passed on to Applicant, necessitating Applicant's requirements for supplemental LNG supplies.

Applicant further asserts that the location on the LNG storage and supply facility at the terminus of its system in Maine is an important safety factor in maintaining service to both the Portland and the Lewiston/Auburn markets in the event of an outage on Applicant's line in Maine or in the event of further extreme curtailments from Tennessee.

Applicant states that in the past, it purchased LNG from New England distributors which have LNG liquefaction capability and had excess LNG beyond their own immediate market requirements, but these purchases have been somewhat inflexible, being limited to single 60-day periods in the wintertime, and truck deliveries due to wintertime road meeting scheduled delivery dates. Applicant further states that it may request deliveries of a portion of its contract volume prior to November 1, 1977, which it desires to avail itself of because cryogenic tank trucks are less in demand during the off-season and road conditions are better, allowing more precise scheduling of deliveries.

It is stated that the prices per Mcf for LNG deliveries in November and December, 1977 as specified are less than what Applicant has paid for LNG supplies during the 1976-77 winter and probably less than what it could expect to pay for LNG supplies next winter from U.S. suppliers.

Any person desiring to be heard or to make any protest with reference to to said application should on or before April 16, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9947 Filed 4-1-77;8:45 am]

[Docket No. ES77-14]

NORTHWESTERN PUBLIC SERVICE CO.

Notice of Application

MARCH 28, 1977.

Take notice that on March 21, 1977, Northwestern Public Service Company

(Applicant) filed an application, pursuant to Section 204 of the Federal Power Act and the Regulations thereunder, for authorization to enter into a loan agreement with the City of Salix, Iowa, in connection with arrangements pursuant to which the City is to issue not to exceed $4,000,000 aggregate principal amount of its pollution control revenue bonds and loan the proceeds therefrom to Applicant to use to pay Applicant's share of the cost of pollution control facilities being constructed at Unit No. 4 at the George Neal Steam Electric Generating Station located near the City. Neal Unit No. 4 is owned by the Company and others as tenants in common with Applicant having an 8.681 percent interest. The loan agreement between Applicant and the City will provide for payments to be made thereunder by Applicant sufficient to enable the City to pay the principal, premium if any, and interest on the pollution control revenue bonds, when due.

The pollution control revenue bonds will be sold to underwriters by the City under a bond purchase agreement to be entered into by the City and the underwriters. Applicant will not be a party to such bond purchase agreement. The sale of the pollution control revenue bonds will be governed by State law and will be accomplished without competitive bidding by the City. The obligations of the Company under the loan agreement must correlate with the terms of the pollution control revenue bonds so that competitive bidding with respect to the loan agreement is not possible. Consequently, as part of its application, Applicant has requested an exemption from competitive bidding under Section 34.-2(f) of the Commission's Regulations with respect to the loan agreement.

Applicant is incorporated under the laws of the State of Delaware and is qualified to do business in the States of Iowa, Nebraska, North Dakota, and South Dakota, with its principal business office at Huron, South Dakota. Applicant is engaged in generating, transmitting, distributing and selling electric energy in the east central portion of South Dakota where it furnishes electric service in 108 communities and in distributing and selling natural gas in three Nebraska communities and in 24 communities in South Dakota.

Any person desiring to be heard, or to make any protest with reference to the application, should on or before April 15, 1977, 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 became 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9948 Filed 4-1-77;8:45 am]

[Docket No. ES77-23]

PACIFIC POWER & LIGHT CO.

Notice of Application

MARCH 29, 1977.

Take notice that on March 17, 1977, Pacific Power & Light Company (Applicant), a Maine corporation, qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana and Idaho, with its principal business office at Portland, Oregon, filed an application with the Federal Power Commission, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing it to issue not to exceed 2,500,000 shares of its Common Stock of the par value of $3.25 per share (Additional Common Stock).

Applicant proposes to sell the Additional Common Stock at competitive bidding in accordance with the applicable requirements of Section 34.1a of the Commission's Regulations.

Proceeds from the issuance and sale of the shares of Additional Common Stock will be used to refund $29,000,000 of First Mortgage Bonds, 3½ percent Series due 1977, to repay short-term notes prior to or as they mature and to finance, in part, Applicant's 1977–1978 construction program presently estimated at $602,-141,000.

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 14, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9949 Filed 4-1-77;8:45 am]

[Docket No. ES77-24]

PACIFIC POWER & LIGHT CO.

Request for Permission To Negotiate With Underwriters for the Issue and Sale of Securities

MARCH 29, 1977.

Take notice that on March 14, 1977, Pacific Power & Light Company (Pacific), a Maine corporation, qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana and Idaho, with its principal business office at Portland, Oregon, filed a request with the Federal Power Commission (Commission) seeking permission to negotiate with underwriters for the issue and sale of securities. Pacific states that it plans to issue in early May, 1977, up to $40,000,000 in principal amount of its Serial Preferred Stock in the form of either up to 1,600,000 shares of its No Par Serial Preferred Stock with a $25 stated value or up to 400,000 shares of its $100 Par Serial Preferred Stock (Securities). It is anticipated that proceeds from the sale of the Securities will be used to retire outstanding short-term indebtedness issued to temporarily finance part of the Company's 1977 construction program.

Pacific states that at this time it applies for permission to negotiate with the underwriters with respect to terms on which the Securities might be issued in order to determine whether application for exemption from the competitive bidding requirements of Section 34.1a of Federal Power Commission Regulations should be made. Pacific states that it has not engaged in any negotiations for the sale or underwriting of the Securities, and will not do so prior to the Commission's granting of this request for permission to negotiate.

Pacific states that although it supports competitive bidding of debt and common issues during receptive markets, in the case of preferred stocks, it would like to have as an alternative the ability to seek to sell the Securities through negotiation in the event that market conditions require such a procedure for Pacific to obtain the lowest dividend cost. For the foregoing reasons, therefore, Pacific respectfully requests that the Commission grant it permission to engage in preliminary negotiations with underwriters in order to determine if exemption from the Commission's competitive bidding requirements should be sought.

Any person desiring to be heard or to make any protest with reference to the request should on or before April 8, 1977, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9036 Filed 4-1-77;8:45 am]

[Docket No. ER77-248]

ROCHESTER GAS AND ELECTRIC CORP.

Notice of Cancellation

MARCH 29, 1977.

Take notice that on March 18, 1977, Rochester Gas and Electric Corporation (RG&E) tendered for filing a notice of cancellation of its Rate Schedule FPC No. 21 whereby it agrees to sell 100 MW of Firm Capability and the energy associated therewith to New York State Electric and Gas Corporation from October 31, 1976 through April 23, 1977. RG&E states that the Schedule will expire in accordance with its term provision on April 23, 1977.

RG&E further states, that a copy of the filing was served on New York State Electric and Gas Corporation.

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 April 8, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9935 Filed 4-1-77;8:45 am]

[Docket No. CP76-314]

SOUTHERN TRANSMISSION CORP.

Supplement to Application

MARCH 29, 1977.

Take notice that on March 11, 1977, Southern Transmission Corporation (Applicant), 1114 Avenue of the Americas, New York, N.Y. 10036, filed in Docket No. CP76-314 the second supplement to its application filed in said docket pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity by which supplement Applicant sets forth that agreements have been negotiated between Memphis Light, Gas and Water Division, City of Memphis, Tennessee, (MLG&W), Applicant and W. R. Grace & Co. (Grace), Applicant's parent, as a result of which MLG&W's objection to the pipeline proposed herein has been satisfied, all as more fully set forth in the supplement on file with the Commission and open to public inspection.

The supplement states that on March 30, 1976, Applicant filed in the instant docket an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of its proposed 148 miles of 8⅝ inch O.D. pipeline from the location of certain natural gas reserves owned by Grace in Monroe County, Mississippi to the anhydrous ammonia and urea fertilizer plant (Grace Plant) owned by Grace located approximately 12 miles north of Memphis in Shelby County, Tennessee.

It is stated that on April 21, 1976, MLG&W filed a petition to intervene in this proceeding which states although it has been the sole supplier of gas to the Grace Plant, it would be unable for the foreseeable future to meet Grace's requirements, but it has a policy of cooperation with its industrial customers in any attempts to obtain additional supplies of natural gas. However, MLG&W stated that it objected to the construction of a gas pipeline within its " * * * service area, which consists of Shelby County, Tennessee." The petition states that MLG&W expressed its willingness to provide transportation service for Grace " * * * from a point on the boundary of Shelby County to the Grace plant north of the City of Mexico."

It is indicated that on August 24, 1976, Applicant filed with the Commission a Supplement to the application in which it submitted responses to requests of the Secretary of the Commission dated May 28, 1976, and July 6, 1976, for additional information. Notice of a conference was issued on December 6, 1976, to attempt to resolve any and all questions presented by the application, the Secretary's letters of May 28 and July 6, 1976, and the petitions to intervene. An affidavit was submitted by Southern Transmission which concluded that " * * * it is apparent that a satisfactory long-term firm agreement cannot be worked out with existing pipelines which would assure the continued operation of the Grace anhydrous ammonia and urea plant."

In the instant supplement Applicant states that on January 11, 1977, a conference was held and attended by representatives of the various parties. A representative of Texas Eastern Gas Pipeline Company (Texas Eastern) stated that Texas Eastern could offer Grace only short-term interruptible transportation service. At the conference, Staff requested that a revised transportation tariff be filed.

It is indicated that several agreements were entered into, of which, the "Pipeline Agreement" contains the overall agreement reached between MLG&W and Applicant and incorporates as a part of such contract the "Construction Agreement," the "Pipeline Operating Contract," and the "Easement in Perpetuity."

Applicant states that the agreement provides that: MLG&W would support Applicant in its efforts to obtain expeditiously such Federal Power Commission authorizations as may be required for the construction and operation of the proposed pipeline during the term of the agreement and would withdraw its opposition to the application in this proceeding; MLG&W would design and construct for Applicant the 37-mile segment of the proposed pipeline to be located in Shelby County, Tennessee, referred to in the agreement as "Shelby Pipeline;" MLG&W would operate and maintain Shelby Pipeline; MLG&W would locate the Shelby Pipeline within MLG&W's utility easements and grant to Applicant all required easement rights; and MLG&W is granted the option upon the expiration of a 20-year period, to purchase the Shelby Pipeline and the related easements which Applicant obtained from MLG&W.

It is indicated that these changes do not alter the objective of the original application. Applicant states that the very minor change in the route of the line at the northwestern end is to provide that all of the Tennessee segment would be located in Shelby County. It is stated that the benefits flowing from this change are that the entire Shelby Pipeline would be located within utility easements now owned by MLG&W plus a short five-mile utility easement to be acquired by MLG&W.

In the instant supplement Applicant states that the effect of the agreements upon the cost of getting the gas through Shelby County, to the Grace Plant is difficult to evaluate. It is said that the Pipeline Operating Contract provides, in general, that Applicant shall pay to MLG&W $91,000 per year, subject to escalations after the first three calendar years of operation, and each succeeding three year period, tied into the actual cost experienced by MLG&W and as related to certain Federal Government price indices. The supplement further states that it is impracticable to estimate with any reasonable degree of accuracy what the effect would be upon the estimates of revenues, expenses and income, but, it is believed that it would be negligible.

Any person desiring to be heard or to make any protest with reference to said supplement should on or before April 15, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have heretofore filed petitions to intervene, notices of intervention, or protests in the instant docket or in the consolidated proceeding in Docket No. CP76-314, need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9950 Filed 4-1-77;8:45 am]

[Docket No. ER77-246]

KENTUCKY POWER CO.

Changes in Rates and Charges

MARCH 29, 1977.

Take notice that American Electric Power Service Corporation (AEP) on

March 18, 1977, tendered for filing on behalf of its affiliate, Kentucky Power Company (Kentucky Company), a letter of agreement dated March 1, 1977 to the Interconnection Agreement dated May 14, 1963 between Kentucky Power Company and East Kentucky Power Cooperative, Inc., designated Kentucky Company rate schedule FPC No. 14.

AEP states that the letter of agreement provides for a minimum energy charge for Emergency Service of "three ($0.03) cents" per kilowatt-hour, proposed to become effective May 1, 1977. A similar letter agreement between Illinois Power Company and I&M was submitted to the Commission as a proposed settlement of FPC Docket No. ER76-21 and on September 8, 1976 the Commission issued an order approving this settlement making it effective as of March 2, 1976. AEP also states that since the use of Emergency Service under the proposed minimum charge cannot be accurately determined or estimated, it is impossible to determine or estimate the increase in revenues resulting from the letter of agreement.

Copies of the filing were served upon East Kentucky Power Cooperative, Inc. and the Kentucky Public Service Commission.

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 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 April 8, 1977. 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9934 Filed 4-1-77;8:45 am]

[Docket No. E77-81]

EMERGENCY NATURAL GAS ACT OF 1977

Emergency Order

On March 29, 1977, Texas Gas Transmission Corporation (Texas Gas), as agent for certain of its customers,[1] filed, pursuant to Section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), an application for authorization to transport natural gas which it is purchasing for certain of its customers and to construct the facilities necessary to receive the gas into its pipeline system.

Texas Gas, as agent, executed a contract on February 5, 1977, with National Exploration Company (National) for the purchase of approximately 1,000 Mcfd from the South Roanoke Field, Jefferson Davis Parish, Louisiana. The total price to be paid by Texas Gas, as agent, is $2.25 per MMBtu. Thus, the proposed price is fair and equitable in accordance with Order No. 2.

Texas Gas will construct a meter station, side valve and related facilities adjacent to Texas Gas' pipeline in Jefferson Davis Parish, Louisiana, at an estimated cost of $9,500. These costs will be paid on a pro-rata basis by Texas Gas' customers which receive these volumes. In addition, Texas Gas' proposed transportation rates are based upon the cost data supporting the settlement rates in Texas Gas' most recent Federal Power Commission rate case in Docket No. RP76-17 and the retention of a percent of the transported volumes for compressor fuel and company use and loss. I find no basis on which to fix other charges since the parties have agreed upon the transportation charges and payment of the construction costs.

Based upon the foregoing, Texas Gas is authorized to purchase gas, as agent, from National, to construct facilities to receive such gas and to transport such gas for certain of its customers. This authorization is conditioned on (i) Texas Gas' submission of the names of the customers for which it is acting as agent, (ii) those customers agreeing to submit reports as required by Order No. 4 and (iii) such customers certifying that they are entitled to purchase gas under the provisions of Order No. 6.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Texas Gas and National. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

MARCH 30, 1977.

[FR Doc.77-10004 Filed 4-1-77;8:45 am]

[Docket No. RP76-91]

MONTANA-DAKOTA UTILITIES CO.

Availability of Draft Environmental Impact Statement

MARCH 30, 1977.

Take notice that copies of the Draft Environmental Impact Statement prepared by the Commission's Staff in connection with the proposal of Montana-Dakota Utilities Co. in Docket No. RP76-91 to implement on its interstate pipeline system a scheme of natural gas delivery curtailments has been published and is available for review and comment pursuant to the requirements of the National Environment Policy Act of 1969 and Section 2.82(b) of the Commission's General Policy and Interpretations (18 CFR 2.82(b)). The Draft Environmental Impact Statement is on file with the Commission and open to public inspection at its Office of Public Information, 825 North Capitol Street NE., Washington, D.C. 20426. Copies may be ordered from the Commission's Office of Public Information, Washington, D.C. 20426.

Any comments on the Draft Environmental Impact Statement shall be filed with the Commission on or before May 16, 1977, and mailed to the following address:

Secretary, Federal Power Commission, Washington, D.C 20426.

All parties filing comments with the Commission on the Draft Environmental Statement should transmit ten copies of their comments to the Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, D.C. 20006.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-10005 Filed 3-31-77;10:21 am]

[Docket No. ER77-241]

KENTUCKY UTILITIES CO.

Facilities Agreement

MARCH 28, 1977.

Take notice that on March 14, 1977, Kentucky Utilities Company (KU) tendered for filing Kentucky-Indiana Pool Facilities Agreement No. 3, dated June 18, 1974, among East Kentucky Rural Electric Cooperative Corporation, Indianapolis Power and Light Company, Public Service Company of Indiana, and KU. The agreement is in connection with the Kentucky-Indiana Pool Planning and Operating Agreement dated July 9, 1971, among the same parties. The latter agreement is designated as KU's Rate Schedule FPC No. 89.

KU states that the purposes of the agreement being filed are, among other things, to provide for an additional interconnection point between the members, and to determine what facilities are to be provided by each member, and how the operating expenses associated with the facilities are to be determined. KU further states that such an additional interconnection point was anticipated and referred to in the above mentioned agreement dated July 9, 1971.

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 or 1.10). All such petitions or protests should be filed on or before April 8, 1977. Protests will be considered by the Commission 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 must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9930 Filed 4-1-77;8:45 am]

[1] These customers are local distribution companies and interstate pipelines as defined in §§ 2(1),(5) of the Act (91 Stat. 4).

[Docket No. E77-80]

EMERGENCY NATURAL GAS ACT OF 1977

Emergency Order

On March 25, 1977, Tennessee Gas Pipeline Company (Tennessee) filed, pursuant to section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), a request for an order authorizing certain emergency purchases of natural gas for which Tennessee had entered into an oral agreement on or prior to March 3, 1977. Tennessee furnished additional information with respect to some of the proposed purchases in a supplemental filing on March 29, 1977. For the reasons set forth below, I grant in part and deny in part Tennessee's application.

Tennessee is currently serving uses of natural gas classified in Federal Power Commission (FPC) Priorities 4 through 9 (18 CFR 2.78 (a)(1)(iv)-(ix)). Thus, under Order No. 6 (February 22, 1977), Tennessee is not eligible to make these proposed purchases unless it can satisfy the criteria of "Colorado Interstate Gas Company," Docket No. E77-31 (February 28, 1977), "Transwestern Pipeline Company," Docket No. E77-79 (March 28, 1977), "El Paso Natural Gas Company," Docket No. E77-53 (March 10, 1977); "Northern Natural Gas Company," Docket No. E77-49 (March 7, 1977); "Natural Gas Pipeline Company of America," Docket No. E77-48 (March 4, 1977); "United Gas Pipe Line Company," Docket No. E77-33 (March 2, 1977). Whether Tennessee has satisfied the "Colorado Interstate" criteria is to be determined at the time Tennessee determined that it was serving directly or indirectly any uses classified in Priorities 4 through 9. "Transwestern Pipeline," supra; "Columbia Gas Transmission Corporation," Docket No. E77-71 (March 24, 1977).

According to Tennessee's filing, it first learned on March 3, 1977, that certain of its customers were serving uses specified in Priorities 4 through 9. Tennessee's petitions indicate that only the proposed purchase from Texaco Inc. (Texaco) at the Roma Field, Starr County, Texas, satisfies the "Colorado Interstate" criteria. I will therefore approve this proposed sale. The other proposed purchases do not satisfy the "Colorado Interstate" criteria, and Tennessee is not eligible to make these purchases under Order No. 6.

Tennessee will purchase approximately 800 to 1000 Mcfd from Texaco at a price of $2.25 per MMBtu. This price is fair and equitable in accordance with Order No. 2.

Texaco will deliver this gas to Gulf Energy & Development Corporation (Gulf Energy) which will deliver the gas to Tennessee. Gulf Energy will charge 23.63 cents per Mcf, subject to refund, pursuant to rates filed with the FPC. I find no reason to prescribe other transportation charges since the parties have agreed on such charges.

Pursuant to section 6(a) of the Act, I authorize Texaco to sell natural gas from the Roma Field on the terms and conditions set for in Tennessee's filings in this proceeding. Pursuant to section 6 (c)(1) of the Act, I authorize Gulf Energy to transport and deliver gas to Tennessee.

Tennessee shall submit weekly reports as required by Order No. 4.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Tennessee, Texaco, Gulf Energy, C&K Petroleum Inc., Signal Petroleum Co., Clovelly Oil Company, Goodhope Refining Company, McCormick Exploration Company, The Dow Chemical Company, ON Coast Petroleum Company, Forman Exploration Company, Mitchell Energy and Development Corporation, Edwin L. Cox, and Tex-Can Resources. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

MARCH 30, 1977.

[FR Doc.77-10093 Filed 4-1-77;8:45 am]

[Docket No. E77-38]

EMERGENCY NATURAL GAS ACT OF 1977

Supplemental Emergency Order

On March 25, 1977, as supplemented by petition submitted on March 28, 1977, Columbia Gas Transmission Corporation (Columbia) filed, pursuant to section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), an application for authorization to (i) divert gas purchased from Delhi Gas Pipe Line Corporation (Delhi) under the March 1, 1977 authorization in this proceeding to Pacific Lighting Service Company (Pacific) and Pacific Gas & Electric Company (PG&E), (ii) have such gas transported by El Paso Natural Gas Company (El Paso), and (iii) amend the March 1, 1977 authorization to permit Columbia to purchase up to an average of 60,000 Mcfd from the commencement of deliveries through July 31, 1977. Columbia proposes these changes to permit it to use the subject volumes to satisfy its repayment obligations to Pacific and PG&E and the repayment obligation of the Columbia Distribution Companies (Columbia Distribution).[1] These obligations total approximately 5.095 Bcf.[2] For the reasons set forth below, I grant Columbia's petition for a supplemental order.

Columbia states that it will make volumes from Delhi available to Columbia Distribution to permit Columbia Distribution to satisfy its repayment obligation. Columbia Distribution will pay Columbia $2.25 per MMBtu for all Delhi volumes used to satisfy its repayment obligation and a proportional share of all transportation charges. Columbia will divert the Delhi volumes to Pacific and PG&E until all repayment obligation is satisfied and will then resume the transportation of the Delhi volumes to its system. Columbia further states that it is able to divert the Delhi volumes because of other purchases under the Act and warm weather in the areas served by its system which have resulted in significant improvement in its storage inventory.

Delhi will deliver these volumes to El Paso for Columbia's account in Pecos County, Texas. El Paso will transport and deliver the appropriate volumes to Pacific and PG&E at existing delivery points on the Arizona-California border. El Paso will charge 1.0 cent per Mcf delivered plus 5 percent of the volumes received from Delhi for shrinkage. Since the parties have agreed to the transportation charges to be paid, I find no basis for prescribing other charges.

Columbia also requests that the March 1, 1977 authorization which authorized purchases up to 60,000 Mcfd, be amended to authorize purchases up to an average of 60,000 Mcfd. Columbia states that Delhi has been unable to deliver the full 60,000 Mcfd on many days because of other systems demands and that Delhi has agreed to deliver volumes in excess of 60,000 Mcfd on certain days so that volumes for the remaining term will average 60,000 Mcfd.

Pursuant to section 6(a)(1) of the Act, I authorize Columbia to divert volumes purchased from Delhi to Pacific and PG&E to satisfy Columbia's and Columbia Distribution's repayment obligations to such companies and Columbia Distribution to reimburse Columbia for all Delhi volumes used to satisfy Columbia Distribution's repayment obligation. Pursuant to section 6(c)(1) of the Act, I authorize El Paso to receive volumes from Delhi for transportation and delivery to Pacific and PG&E for the account of Columbia and Columbia Distribution. Such transportation and delivery shall be on the terms and at the charges agreed to by the parties. The March 1, 1977 authorizaton in this proceeding is further amended to authorize Delhi to deliver up to an average of 60,000 Mcfd of natural gas from the date of this order through July 31, 1977. To the extent not inconsistent with the provisions of this order, the provisions of the March 1, 1977 order in this proceeding remain in full force and effect.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon

[1] Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of New York, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Virginia, Inc. and Columbia Gas of West Virginia, Inc. Columbia's petition refers only to Columbia Gas of Kentucky, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of West Virginia, Inc.

[2] Columbia acquired approximately (i) 2.641 Bcf from Pacific in Docket No. E77-10 and (ii) 1.425 Bcf from PG&E in Docket No. E77-21. Columbia Distribution acquired approximately 1.029 Bcf from Pacific in Docket No. E77-30.

Columbia, Columbia Distribution, Pacific, PG&E, and El Paso. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95–2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

[FR Doc.77–10092 Filed 4–1–77;8:45 am]

FEDERAL RESERVE SYSTEM

HELMERICH & PAYNE, INC.

Prior Certification Pursuant to the Bank Holding Company Tax Act of 1976

Helmerich and Payne, Inc., Tulsa, Oklahoma ("H&P") has requested a prior certification pursuant to section 1101(b) of the Internal Revenue Code (the "Code"), as amended by section 2 (a) of the Bank Holding Company Tax Act of 1976, that its proposed divestiture of substantially all of the 85,510 shares of Utica Bankshares Corporation, Tulsa, Oklahoma ("Bankshares"), presently held by H&P, through the pro rata distribution of such shares to the common shareholders of H&P, is necessary or appropriate to effecutate the policies of the Bank Holding Company Act (12 U.S.C. 1841 et seq.) ("BHC Act"). H&P proposes to distribute to its shareholders one share of Bankshares for each 50 shares of H&P held by such shareholders. H&P shareholders who would be entitled to fractional interests in Bankshares will receive cash in lieu of such fractional interests. H&P anticipates that because it will not distribute fractional shares, it will, after the distribution, remain in possession of approximately 0.6 per cent of the total outstanding shares of Bankshares.

In connection with this request, the following information is deemed relevant, for purposes of issuing the requested certification: [1]

1. H&P is a corporation organized under the laws of the State of Delaware on February 3, 1940.

2. On July 7, 1970, H&P controlled 36.6 percent of the outstanding voting shares of Utica National Bank and Trust Company, Tulsa, Oklahoma ("Bank").

3. H&P became a bank holding company on December 31, 1970, as a result of the 1970 Amendments to the BHC Act, by virtue of its control at that time of more than 25 percent of the outstanding voting shares of Bank, and it registered as such with the Board in August 1971.

4. H&P holds property acquired by it on or before July 7, 1970, the disposition of which would be necessary or appropriate to effectuate section 4 of the BHC Act if H&P were to continue to be a bank holding company beyond December 31, 1980, which property is "prohibited property" within the meaning of section 1103 (c) of the Code.

5. On or about February 1, 1974, H&P sold 12,500 shares of voting stock of Bank, thereby reducing to approximately 23 per cent of Bank's outstanding voting stock the number of shares of such stock controlled by H&P. Subsequent to that date, H&P requested a determination by the Board that it was no longer a bank holding company. However, on July 11, 1974, H&P was advised that the Legal Division of the Board and the Federal Reserve Bank of Kansas City had concluded that H&P had not established that it no longer controlled or exercised a controlling influence over the management or policies of Bank. This conclusion was based in part upon the fact that H&P still held approximately 23 per cent of the voting shares of Bank; that three persons who were officers or directors of H&P served as directors of Bank; and that no other individual or organization controlled more than 9 per cent of Bank's voting stock.[2]

6. H&P has, continuously since its registration as a bank holding company, remained subject to the BHC Act and has conducted its affairs as a bank holding company. Specifically, on January 14, 1975, it filed with the Board, and the Board accepted, an irrevocable declaration, pursuant to § 225.4(d) of the Board's Regulation Y, that it will cease to be a bank holding company by January 1, 1981; on March 3, 1975, the Board approved an application filed by H&P as a bank holding company pursuant to section 3(a)(3) of the BHC Act to acquire control of 22.2 per cent of the voting shares of Bankshares in connection with the reorganization of Bank into a wholly-owned subsidiary of Bankshares; and during 1975 and 1976 H&P filed with the Board all of the reports required of it under the BHC Act.

7. H&P has indicated that it will terminate all interlocking relationships between H&P and its subsidiaries, on one hand, and Bankshares and its subsidiaries, including Bank, on the other hand, within six months following the distribution of H&P's shares of Bankshares.

On the basis of the foregoing information, it is hereby certified that:

(A) H&P is a qualified bank holding corporation, within the meaning of subsection (b) of section 1103 of the Code, and satisfies the requirements of that subsection;

(B) the shares of Bankshares that H&P proposes to distribute to its shareholders are all or part of the property by reason of which H&P controls (within the meaning of § 2(a) of the BHC Act) a bank or bank holding company; and

(C) the distribution of such shares is necessary or appropriate to effectuate the policies of the BHC Act.

This certification is based upon the representations made to the Board by H&P and upon the facts set forth above. In the event the Board should hereafter determine that facts material to this certification are otherwise than as represented by H&P, or that H&P has failed to disclose to the Board other material facts, it may revoke this certification. This certification is granted upon the condition that no later than six months after the distribution by H&P of its shares of Bankshares, no person who is an employee with management functions, officer or director (including an advisory or honorary director) of H&P or any subsidiary of H&P shall at the same time serve in any such capacity with Bankshares or any subsidiary of Bankshares, including Bank.

By order of the Board of Governors, acting through its General Counsel, pursuant to delegated authority, (12 C.F.R. 265.2(b)(3)), effective March 25, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77–9903 Filed 4–1–77;8:45 am]

JACOBUS CO., ET AL.

Order Approving Formation of a Bank Holding Company and Acquisition of Two Bank Holding Companies

In the matter of the Jacobus Company, Inland Heritage Corporation and Inland Beloit Corporation.

The Jacobus Company, Wauwatosa, Wisconsin, and its 45.4 per cent owned subsidiary, Inland Heritage Corporation, Wauwatosa, Wisconsin (hereinafter jointly referred to as "Applicant"), both of which are bank holding companies within the meaning of the Bank Holding Company Act, have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to acquire all of the voting shares of Financial Network Corporation ("FNC"), a one-bank holding company that owns 95.4 per cent of the voting shares of The Beloit State Bank ("Beloit Bank"), and to acquire all the voting shares of Community Holding Corporation ("CHC"), a one-bank holding company that owns 75.3 per cent of the voting shares of Community Bank of Beloit ("Community Bank"), all of which are located in Beloit, Wisconsin. The proposed acquisition of FNC and CHC would be effected through the formation of a new holding company to be named Inland Beloit Corporation, Milwaukee, Wisconsin, a corporation that is to be wholly owned by Inland Heritage Corporation and for which a section 3(a)(1) application has been filed with the Board. The proposed acquisitions would involve the merger of FNC and CHC into Inland Beloit Corporation, giving Inland Beloit Corporation direct ownership of FNC and CHC. As the parent companies of Inland Beloit Corporation, The Jacobus Company and Inland Heritage Corporation would thereby gain indirect ownership of FNC and CHC. FNC and CHC serve no purpose other than to hold the stock of their respective banks in corporate form, and Inland Beloit Corporation serves no

[1] This information derives from H&P's correspondence with the Board concerning its request for this certification, H&P's Registration Statement filed with the Board pursuant to the BHC Act, and other records of the Board.

[2] In fact, although members of one family owned approximately 9 per cent of Bank's voting stock at that time, no single individual or organization controlled more than 5 per cent of Bank's voting stock.

purpose other than to facilitate the acquisition of FNC and CHC. Accordingly, the proposed acquisition of FNC and CHC by Inland Beloit Corporation is treated herein as the proposed acquisition of Beloit Bank and Community Bank by Applicant.

Notice of the applications, 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 applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

By Order dated February 7, 1977, the Board denied Applicant's previous applications to acquire Beloit Bank and Community Bank.[1] Applicant's current applications differ from its earlier applications only with respect to their financial aspects.

Applicant presently controls four banks with aggregate deposits of $146.8 million.[2] Applicant's acquisition of Beloit Bank and Community Bank (aggregate deposits of $85.6 million) would represent Applicant's initial entry into the Janesville-Beloit banking market, and would result in Applicant controlling approximately 21.9 per cent of the deposits therein.[3] For reasons cited in the Board's earlier Order, the Board concludes that consummation of the proposed acquisitions would not have any significant adverse effects on existing or potential competition.

While competitive considerations were found to be consistent with approval of the proposed acquisitions, the Board was concerned with the financial aspects of Applicant's earlier proposal and concluded that the adverse financial considerations involved warranted denial of those applications. In its February 7th Order, the Board noted that the proposed acquisitions would result in a substantial addition ($3.6 million) to Applicant's already high level of long-term debt, and stated that it was concerned that Applicant would not be able to meet the increased debt servicing requirements and and also maintain and strengthen the capital of its existing subsidiary banks. The Board concluded that Applicant should direct its financial resources toward strengthening its existing subsidiaries before seeking further expansion of its banking interests.

In the context of Applicant's current proposal, the Board regards the financial and managerial resources and future prospects of Applicant, its subsidiaries, and the banks to be acquired, as generally satisfactory and consistent with approval of the applications. Applicant's current applications contain a substantially stronger financial proposal than that previously considered, and the Board is of the view that it would enable Applicant to meet the increased debt servicing requirements without placing additional funding requirements on its existing subsidiary banks. Pursuant to its revised financial plan, Applicant intends to promptly reduce the acquisition debt from $4.8 million to $1.3 million, and to bolster the capital positions of two of its existing subsidiary banks and of Beloit Bank by amounts totaling $1.25 million. Applicant would also maintain approximately $0.7 million as a reserve for future capital contributions to subsidiary banks which would be made as the need arose.[4] Accordingly, in view of the substantially revised financial aspects of the proposal, the Board concludes that banking factors are consistent with approval of the applications.

In its earlier Order, the Board noted that considerations relating to the convenience and needs of the community to be served were not sufficient to outweigh the adverse financial factors involved with the proposal. In view of the improved financial considerations reflected herein, it now appears that the proposed affiliation of the two Beloit banks with Applicant would enhance their operations and thereby benefit the residents of the area served by the two banks. Accordingly, convenience and needs considerations are consistent with approval of the applications. It is the Board's judgment that the proposed acquisitions would be in the public interest and that the applications should be approved.

On the basis of the record, the applications are 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 Chicago, pursuant to delegated authority.

By the order of the Board of Governors,[5] effective March 25, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-9904 Filed 4-1-77;8:45 am]

[1] 42 FEDERAL REGISTER 9059.

[2] All banking data are as of December 31, 1975, unless otherwise indicated.

[3] The Janesville-Beloit banking market is approximated by Rock County.

[4] In order to effect these actions, Applicant, in addition to using existing funds, has committed to issue and has received subscriptions for $2.0 million in convertible debentures, and has committed to sell $1.5 million in additional common stock of Inland Heritage Corporation.

[5] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell and Partee. Absent and not voting: Governors Jackson and Lilly.

SUMITOMO BANK, LTD.

Order Approving Acquisition of Additional Shares of Bank

The Sumitomo Bank, Limited, Osaka, Japan, 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 exercise preemptive rights to acquire additional voting shares of Central Pacific Bank, Honolulu, Hawaii ("Bank"). As a result of the exercise of these rights, Applicant would continue to hold 13.7 percent of the voting shares of 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 in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant presently owns 13.7 percent of the voting shares of Bank. With deposits of approximately $240 million, Bank controls 8.5 percent of the total deposits held by commercial banks in Hawaii and is the third largest bank in the State.[1] Applicant proposes to acquire 6,867 additional voting shares of Bank through the exercise of its preemptive rights in connection with a new issue of Bank's voting shares. If all of Bank's new shares are purchased, Applicant's percentage ownership of shares of Bank will not increase as a result of the proposal. Consummation of the proposal would not have any adverse effect on existing or potential competition, nor would it increase the concentration of banking resources or have any adverse effect on other banks in the area. Thus, competitive considerations are consistent with approval of the application.

The financial condition and managerial resources of Applicant and Bank are considered satisfactory and the future prospects for each appear favorable. Thus, the banking factors are consistent with approval of the application. Although there will be no immediate change or increase in the services offered by Bank as a result of the proposed transaction, the considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that the proposed transaction would be consistent with the public interest and that the application should be approved.

Under section 3(d) of the Bank Holding Company Act [12 U.S.C. 1842(d)] the Board may not approve an application by a bank holding company under section 3 of the Act to acquire shares of any "additional bank" located outside of the State in which the operations of the bank holding company's banking subsidiaries were principally conducted as of July 1, 1966, or the date on which it became a bank holding company, whichever is later, unless such acquisition is specifically authorized by the statute laws of the State in which the bank whose shares are to be acquired is located. Applicant became a bank holding company on December 31, 1970, by virtue of its ownership of a majority of the voting shares of The Sumitomo Bank of California, San Francisco, California, and thus, California is the State of Applicant's principal banking operations. The statute laws of the State of Hawaii do not specifically authorize the acquisition of shares or assets of a

[1] All banking data are as of December 31, 1975.

State bank by an out-of-State bank holding company. Thus, the Board may only approve the subject application if Bank is not considered an "additional bank" for purposes of section 3(d).

Applicant's investment in Bank originated in 1954, prior to the enactment of the Bank Holding Company Act. Since section 3(d) is prospective in its application, that investment was effectively grandfathered at the time Applicant became a bank holding company in 1970. Consummation of the proposed transaction would enable Applicant to maintain its present interest in Bank.

The Board has considered the legislative history of section 3(d), particularly the intent of that section to prevent the interstate expansion of the commercial banking operations of bank holding companies, and has determined that, based on the particular facts and circumstances of this case, Bank should not be considered an "additional bank" for purposes of that section. Approval of this application would not permit Applicant either to acquire control of an additional bank or to expand its grandfathered interest in Bank. However, in keeping with the policy of section 3(d), this approval is granted subject to the condition that, in the event all of Bank's newly issued shares are not subscribed, Applicant will only acquire and hold such shares as are necessary in order to maintain its present interest in Bank.

In a letter of this date to Applicant, the Board has issued a preliminary determination, based upon the rebuttable presumptions of control in § 225.2(b)(1) of Regulation Y [12 CFR 225.2(b)(1)], that Applicant exercises a controlling influence over the management or policies of Bank. The Board's decision to approve the subject application was made independent of that preliminary determination of control, and does not signify a Board decision on any further action that may result from such preliminary determination.

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 San Francisco pursuant to delegated authority.

By order of the Board of Governors,[1] effective March 29, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-9905 Filed 4-1-77;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Coldwell, Jackson, Partee, and Lilly. Absent and not voting: Governors Gardner and Wallich.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

CELLULAR AND MOLECULAR BASIS OF DISEASE REVIEW COMMITTEE

Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cellular and Molecular Basis of Disease Review Committee, National Institute of General Medical Sciences, June 6-10, 1977, National Institutes of Health, Building 31, Conference Room 4, Bethesda, Maryland.

This meeting will be open to the public on June 6, 1977, from 9 a.m. to 11 a.m. for background information and discussion of issues relevant to the Cellular and Molecular Basis of Disease Program of the National Institute of General Medical Sciences. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6), the meeting will be closed to the public on June 6, 1977, from 11 a.m. to adjournment June 10, 1977, for the review, discussion, and evaluation of individual grant applications. These applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Paul Deming, Research Reports Officer, NIGMS, National Institutes of Health, Room 9A05, Westwood Building, Bethesda, Maryland 20014 (Telephone: 301/496-7301) will provide summaries of meetings and rosters of committee members.

Dr. Lee Van Lenten, Executive Secretary, CMBD Review Committee, NIGMS, National Institutes of Health, Room 907, Westwood Building, Bethesda, Maryland 20014 (Telephone: 301/496-7518) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-863, General Medical Sciences.)

Date: March 28, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.77-9898 Filed 4-1-77;8:45 am]

INFECTIOUS DISEASE COMMITTEE

Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Infectious Disease Committee, National Institute of Allergy and Infectious Diseases on April 22 in Building 31A, Conference Room 4, at the National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. until 9:00 a.m. on April 22 for the discussion of general policy matters and administrative reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and Section 10(d) of P.L. 92-463, the meeting of the committee will be closed to the public from 9:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications and individual contract proposals. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, NIAID, National Institutes of Health, Building 31, Room 7A32, Bethesda, Maryland 20014, (301) 496-5717, will furnish rosters of committee members and summaries of the meetings. Dr. James A. Ferguson, Executive Secretary, Infectious Disease Committee, NIAID, National Institutes of Health, Westwood Building, Room 706, Bethesda, Maryland 20014, (301) 496-7465, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.856, National Institutes of Health.)

Date: March 29, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.77-9896 Filed 4-1-77;8:45 am]

NATIONAL ADVISORY EYE COUNCIL

Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, May 26, 27, and 28, 1977, Building 31, Conference Room No. 7, National Institutes of Health, Bethesda, Maryland.

This meeting will convene each day at 9:00 a.m. and will be open to the public from 9:00 a.m. until 11:00 a.m. on May 26 and 27, for opening remarks by the Director, National Eye Institute, discussion of procedural matters, and a presentation by the intramural staff of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public from 11:00 a.m. until adjournment on Thursday, May 26 and Friday, May 27, and the entire day on May 28 until adjournment for the review, discussion and evaluation

of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Julian Morris, Head, Office of Scientific Reports and Program Planning, National Eye Institute, Building 31, Room 6A–25, AC 301–496–5248 will provide summaries of meetings and rosters of committee members. Dr. William F. Raub, Associate Director for Extramural and Collaborative Programs, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, 13.868, 13.869, 13.870, and 13.871, National Institutes of Health.)

Dated: March 28, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77–9895 Filed 4–1–77;8:45 am]

NATIONAL ADVISORY NEUROLOGICAL AND COMMUNICATIVE DISORDERS AND STROKE COUNCIL

Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Neurological and Communicative Disorders and Stroke Council, National Institutes of Health, May 26, 27, and 28, 1977, at 9:00 a.m. in Building 31–C, Conference Room 6, Bethesda, Md. 20014. The meeting will be open to the public from 9:00 a.m. until 1:00 p.m. on May 26, 1977, and from 9:00 a.m. until the conclusion of the meeting on May 28, 1977, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available. In accordance with the provision set forth in Sections 552b(c)(4), and 552b(c)(6) of Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:00 p.m. on May 26, 1977, until the conclusion of the meeting that day, and from 9:00 a.m. until 5:00 p.m. on May 27, 1977, for review, discussion and evaluation of individual initial pending and renewal research grant applications and applications for Teacher-Investigator Awards and Research Career Development Awards. The portion of the meeting being closed involves the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

The Chief, Office of Scientific and Health Reports, Mrs. Ruth Dudley, Building 31, Room 8A03, NIH, NINCDS, Bethesda, Maryland 20014, Telephone: (301) 496–5751, will furnish summaries of the meeting and rosters of committee members.

Dr. O. Malcolm Ray, Executive Secretary, Federal Building, Room 1020C, Bethesda, Maryland 20014, Telephone: (301) 496–9234, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.851, 13.852, 13.853, 13.854, National Institutes of Health.)

Date: March 28, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77–9899 Filed 4–1–77;8:45 am]

NATIONAL DIABETES ADVISORY BOARD

Meeting

Notice is hereby given of a change in the meeting date of the National Diabetes Advisory Board, National Institute of Arthritis, Metabolism, and Digestive Diseases, which was published in the FEDERAL REGISTER on March 24, 1977, 42 FR 15972.

This Board was to have convened at 9:00 a.m. on April 15, 1977 only, but now it will meet on April 16, 1977 also, from 9 a.m. to adjournment at the address originally stated.

The meeting will be open to the public both days from 9 a.m. to adjournment.

Date: March 28, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77–9897 Filed 4–1–77;8:45 am]

Assistant Secretary for Education

EDUCATION STATISTICS

Comments on Collection of Information and Data Acquisition Activity

Pursuant to Section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The National Center for Education Statistics, the National Institute of Education and the U.S. Office of Education have proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to comply with paragraph (g)(2)(B) of the "Control of Paperwork" amendment which provides that each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a 30-day period before the transmittal of the request to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collection of information and data acquisition activity.

These data acquisition activities are subject to review by the HEW Education Data Acquisition Council and the Office of Management and Budget.

Descriptions of the proposed collections of information and data acquisition activities follow below.

Written comments on the proposed activities are invited. Comments should refer to the specific sponsoring agency and form number and must be received on or before May 4, 1977, and should be addressed to Administrator, National Center for Education Statistics, ATTN: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue SW., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202–245–1022.

Dated: March 30, 1977.

MARIE D. ELDRIDGE,
Administrator, National Center
for Education Statistics.

DESCRIPTION OF A PROPOSED COLLECTION INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Update of the Public Library Universe.

2. AGENCY/BUREAU/OFFICE

National Center for Education Statistics.

3. AGENCY FORM NUMBER

NCES 2349–1.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

* * * "The (National) Center (for Education Statistics) shall furnish such special statistical compilations and surveys as the Committees on Labor and Public Welfare and on Appropriations of the Senate and the Committees on Education and Labor and on Appropriations of the House of Representatives may request."

(Sec. 406(f)(1)(A) of the General Education Provisions Act (20 U.S.C. 1221–1).)

* * * "The (National) Center (for Education Statistics) shall * * * collect, collate, and, from time to time, report full and complete statistics on the conditions of education in the United States * * *"

(Sec. 501(a) of Pub. L. 93–380 (20 U.S.C. 1223e–1).)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

The data provided by an update of the public library universe would be used by the National Center for Education Statistics to generate a probability sample for the Public Library Survey, Library General Information Survey (LIBGIS) III, FY 77. An accurate current listing of public libraries is essential because the public library universe tape is run against the U.S. Bureau of the Census City Reference File to stratify the universe by location, region and population. These data will also be used by the Office of Libraries and Learning Resources and the Regional Library Officers of the U.S. Office of Education. The National Commission on Libraries and Information Science will use these data in support of its mandated National Library inventory, and in preparation for the White House Conference on Libraries and Information Services. Other Federal agencies have used these data for various projects in which communication with the public sector was directed through the public libraries throughout the United States. Such projects have been conducted by the Department of the Navy and the American Revolution Bicentennial Administration.

7. DATA COLLECTION PLAN

a. Method of collection: Mail.
b. Time of collection: Spring 1977.
c. Frequency: 3 year interval.

8. RESPONDENTS

a. Type: State Library Agencies.
b. Number: 56.
c. Estimated average man-hours per respondent: .5.

9. INFORMATION TO BE COLLECTED

A computer printout of each State Library agency's public libraries will be mailed to the State Library Agencies for review. Corrections, deletions, and additions may be made directly on the printout. Information sought is library name, address and zip code, and population of area served.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Survey of Special Libraries Serving State Government.

2. AGENCY/BUREAU/OFFICE

National Center for Education Statistics.

3. AGENCY FORM NUMBER

NCES 2394-1, 2394-2.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

* * * "The (National) Center (for Education Statistics) shall furnish such special statistical compilations and surveys as the Committees on Labor and Public Welfare and on Appropriations of the Senate and the Committees on Education and Labor and on Appropriations of the House of Representatives may request."
(Sec. 406(f)(1)(A) of the General Education Provisions Act (20 U.S.C. 1221-1).)

* * * "The (National) Center (for Education Statistics) shall * * * collect, collate, and, from time to time, report full and complete statistics on the conditions of education in the United States * * *
(Sec. 501(a) of Pub. L. 93-380 (Sec. 406(b) of the General Education Provisions Act (20 U.S.C. 1221e-1).)

The National Commission on Libraries and Information Science (NCLIS) requested data from this survey in support of their mandated national library inventory, and in preparation for The White House Conference on Library and Information Services. The legislation supporting these mandates are Pub. L. 91-345 and Pub. L. 93-568.

The National Commission on New Technological Uses of Copyrighted Works (CONTU) requested National Center for Education Statistics assistance in collecting data pertinent to and in direct support of their mission, as spelled out in Pub. L. 93-573.

5. VOLUNTARY/OBLIGATORY NATURE OF THE RESPONSE

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

The data, to be collected from special libraries of State governments, are essential for management uses on the State level. The establishment of size and location of resources and subject specialization will be of importance to other libraries and researchers. For the above reasons, the Association of State Library Agencies (ASLA) has endorsed this survey, and together with the Chief Officers of State Library Agencies (COSLA) have recommended that the data requested in the survey collection instrument be collected.

Through the use of the Library General Information Survey system of standardized core data items, direct comparison of those libraries may be made with other libraries which have been surveyed under this system i.e., Public Libraries, College and University Libraries, Federal Libraries, and Special Libraries in Commerce and Industry. This will provide NCES with additional input to United Nations Educational, Scientific, and Cultural Organizations (UNESCO).

The data gathered by this survey will provide core data on receipts, expenditures, resources, staffing, reference and loan transactions, facilities, etc. For the first time, this survey will identify sources of similar subject matter which will stimulate inter-library loans, and identify subject resources for cooperatives and networks.

NCLIS will use the data of NCES surveys which will become part of the "National Inventory of Library Needs" in conjunction with The White House Conference on Libraries. CONTU will use the data for its report to Congress on the uses of copyrighted data in libraries. The National Library of Medicine will use the data to identify health science resources of special libraries in State governments.

The data will be used also by administrators, educators, researchers, and libraries in identifying similar interests and sources of interlibrary exchange information and sharing of resources.

7. DATA ACQUISITION PLAN

a. Method of collection: Mail.
b. Time of collection: Verification survey—April-May 1977. Data Collection Survey—June-August 1977.
c. Frequency: Four year interval.

8. RESPONDENTS

Phase I—Verification of Universe

a. Type: State Library Agencies.
b. Number: 56.
c. Estimated average man-hours per respondent: .5.

Phase II—Data Collection Survey

a. Type: State agencies and departmental libraries.
b. Number: Approximately 2500 (sample).
c. Estimated average man-hours per respondent: .833.

9. INFORMATION TO BE COLLECTED

Phase I—Verification Survey

The names, addresses of State government libraries will be collected.

Phase II—Data Collection Survey

Information on expenditures, staff and resources will be collected. Specific information on photocopying and health science holdings will also be gathered.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Survey of State Library Agencies.

2. AGENCY/BUREAU/OFFICE

National Center for Education Statistics.

3. AGENCY FORM NUMBER

NCES 2395.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

* * * "The (National) Center (for Education Statistics) shall furnish such special statistical compilations and surveys as the Committees on Labor and Public Welfare and on Appropriations of the Senate and the Committees on Education and Labor and on Appropriations of the House of Representatives may request."

(Sec. 406(f)(A) of the General Education Provisions Act (20 U.S.C. 1221-1).)

* * * "The (National) Center (for Education Statistics) shall * * * collect, collate, and, from time to time, report full and complete statistics on the conditions of education in the United States * * *"

(Sec. 501(a) of Pub. L. 93-380, Sec. 406(b) of the General Education Provisions Act (20 U.S.C. 1221e-1).)

The National Commission on Libraries and Information Science (NCLIS) requested data from this survey in support of their mandated National library inventory, and in preparation for The White House Conference on Library and Information Services. The legislation supporting these mandates are Pub. L. 91-345 and Pub. L. 93-568.

The National Commission on New Technological Uses of Copyrighted Works (CONTU) has requested National Center for Education Statistics (NCES) assistance in collecting data pertinent to and in direct support of their mission, as spelled out in Pub. L. 93-573.

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

The data will be used by NCES, National Institutes of Health, National Library of Medicine, CONTU, college and university students, research staff, from State agencies and the private sector to determine the status of existing resources and plan for future needs.

State agencies will also be able to use these data in administering the various Federal library programs and in the planning and development of networks.

This will be the first time in depth information about State library agencies will be available to administrators of Federal programs, educators, and researchers in the public and private sectors.

7. DATA ACQUISITION PLAN

a. Method of collection: Mail.
b. Time of collection: April-July 1977.
c. Frequency: 5 year interval.

8. RESPONDENTS

a. Type: State library agencies.
b. Number: 56.
c. Estimated average man-hours per respondent: 1.

9. INFORMATION TO BE COLLECTED

The data collected will be receipts, expenditures, personnel, resources (books, periodicals, microforms, audiovisual materials etc.) utilization, physical facilities, activities, functions, services, and consortia or networks arrangements.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Library Cooperatives, Consortia, and Networks Survey.

2. AGENCY/BUREAU/OFFICE

National Center for Education Statistics.

3. AGENCY FORM NUMBER

NCES 2396-1, 2396-2.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

* * * "The (National) Center (for Education Statistics) shall furnish such special statistical compilations and surveys as the Committees on Labor and Public Welfare and on Appropriations of the Senate and the Committees on Education and Labor and on Appropriations of the House of Representatives may request." (Sec. 406(f)(1)(A) of the

General Education Provisions Act (20 U.S.C. 1221-1).)

* * * "The (National) Center (for Education Statistics) shall * * * collect, collate, and, from time to time, report full and complete statistics on the conditions of education in the United States * * *" (Sec. 501 (a) of Pub. L. 93-380 (Sec. 406(b) of the General Education Provisions Act (20 U.S.C. 1221e-1)).)

The Higher Education Act (HEA), Title II B, provides Federal funds "* * * to eligible parties to support research and demonstration projects relating to the improvement of libraries or the improvement of training in librarianship, including the development of new techniques, systems and equipment for processing, storing, and distributing information and for the dissemination of information derived from such research and demonstration."

The National Commission on Libraries and Information Science (NCLIS) requested data from this survey in support of their mandated National library inventory, and in preparation for The White House Conference on Library and Information Services. The legislation supporting these mandates are Pub. L. 91-345 and Pub. L. 93-568.

The National Commission on New Technological Uses of Copyrighted Works (CONTU) requested NCES assistance in collecting data pertinent to and in direct support of their mission, as spelt out in Pub. L. 93-573.

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

There is no comprehensive, nationwide, directory or statistical report of the library cooperatives, consortia, and networks, available, although the Federal Government, State governments, and local governments have been supporting this relatively new type of library organization at an increasing rate for some ten years. This survey will remedy this gap in our knowledge. The purpose of the survey is to collect and report data on the impact of computers on libraries and information centers, and to help assess the results of the Federal legislation designed to promote and support library cooperatives, consortia, and networks at the national multi-State, State, and local levels. At present, these organizations are spreading and interconnecting, forming linkages with Federal, State, and local libraries, and no directory and no statistical survey of their operations exist, nationally or regionally; only State networks have been surveyed in some degree.

This information will be used by the Office of Libraries and Learning Resources of the Office of Education to provide basic data for the drafting of new legislation for library cooperatives, consortia, and networks; to provide data for comparison purposes (i.e. so that these organizations that receive Federal monies can be compared with the ones that do not receive Federal monies); and to provide a statistical base so that when the survey is repeated in a few years, trends will be able to be determined for both the Federally funded and the non-Federally funded categories of these organizations.

State and local governments will use the information provided by this survey for the same purposes, at their levels. The academic, public, and special libraries that are either members and users or are potential users of the services of these organizations, will use the information for evaluation of the services provided by the library cooperatives, consortia, and networks available to them, as well as the comprehensiveness and cost of such services, as related to their expenditures for and use of such services in the future.

This information is also needed by the audiovisual, microform, computer, and other library-support industries in making decisions respecting the manufacturing and marketing of their products and services.

7. DATA ACQUISITION PLAN

	Universe data	Pretest	Actual survey
a. Method of collection	Update of printout	Questionnaire	Questionnaire.
b. Time of collection	April to July 1977	April to May 1977	February to August 1978.
c. Frequency	4 to 5 yr		4 to 5 yr.

8. RESPONDENTS

Universe Survey

a. Type: Chief State Library Officers.
b. Number: 51.
c. Estimated Average Man-Hours Per Respondent: .333.

Actual Survey of Library Cooperatives, Consortia, and Networks

a. Type: Library cooperatives, Consortia, and Networks.
b. Number: Between 700 and 1700 (best estimate: 1,000).
c. Estimated Average Man-Hours Per Respondent: .5.

9. INFORMATION TO BE COLLECTED

Universe Survey: Name and address of organization; name, title and telephone number of chief officer.

Actual Survey of Organizations: Staff, receipts, expenditures, governance, years operational, and services/activities.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

California Beginning Teacher Evaluation Study:
A. Teacher Attitude Questionnaire.
B. Demographic Data Form.

2. AGENCY/BUREAU/OFFICE

National Institute of Education.

3. AGENCY FORM NUMBER

NIE 182 A-B.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

"(2) The Institute shall, in accordance with the provisions of this section, seek to improve education in the United States through concentrating the resources of the Institute on the following priority research and development needs—

"(A) Improvement in student achievement in the basic educational skills, including reading and mathematics;

"(B) Overcoming problems of finance, productivity, and management in educational institutions;

"(C) Improving the ability of schools to meet their responsibilities to provide equal educational opportunities for students of limited English-speaking ability, women, and students who are socially, economically, or educationally disadvantaged;

"(D) Preparation of youths and adults for entering and progressing in careers; and

"(E) Improved dissemination of the results of, and knowledge gained from, educational research and development, including assistance to educational agencies and institutions in the application of such results and knowledge." (Sec. 405(b)(2), the General Education Provisions Act as amended, Pub. L. 94-482, 20 U.S.C. 1221e.)

"(e)(1) In order to carry out the objectives of the Institute, the Director is authorized, through the Institute, to conduct educational research; collect and disseminate the findings of educational research; train individuals in educational research; assist and foster such research, collection, dissemination, or training through grants, or technical assistance to, or jointly financed cooperative arrangements with, public or private organizations, institutions, agencies, or individuals; promote the coordination of such research and research support within the Federal Government; and may construct or provide (by grant or otherwise) for such facilities as he determines may be required to accomplish such purposes. As used in this subsection, the term 'educational research' includes research (basic and applied), planning, surveys, evaluations, investigations, experiments, developments, and demonstrations in the field of education (including career education)." (Sec. 405(e)(1), General Education Provisions Act, Pub. L. 94-482, 20 U.S.C. 1221e.)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Voluntary.

6. HOW INFORMATION COLLECTED WILL BE USED

In order to assist in research and the acquisition of new knowledge both parts of the above data collection and analysis will be used to categorize teachers and students so that further correlations may be drawn between teacher and student behavior and the variables (teacher attitudes and student socioeconomic status) to be assessed. Strict correlations will not be attempted but it is felt that information on these two variables can be useful within the context of all other teacher and student variables to be measured in other parts of the study.

7. DATA ACQUISITION PLAN

a. Method of Collection: Other—hand delivered by field worker, teacher completes form and returns to field worker.
b. Time of Collection: Late spring, 1977.
c. Frequency: One time only.

8. RESPONDENTS

a. Type: Teachers, elementary-secondary (Teacher Attitude Questionnaire).
b. Number: Sample (60).
c. Estimated Average Man-Hours Per Repondent: .20.
a. Type: Teachers, elementary/secondary (Demographic Data Form).
b. Number: Sample (60).
c. Estimated Average Man-Hours Per Respondent: .17.

9. INFORMATION TO BE COLLECTED

a. Teachers (Teacher Attitude Questionnaire)—will collect information on teachers' attitudes about reading and mathematics and their attitudes about instructing stu-

dents and training other teachers in these areas.

b. Teachers (Demographic Data Form)—will collect information on the occupation(s) of one or both of the parents of target and other students in each teacher's classroom.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Educational Opportunity Centers Financial Status and Performance Reports.

2. AGENCY/BUREAU/OFFICE

U.S. Office of Education, Bureau of Postsecondary Education, Division of Student Services and Veterans Program.

3. AGENCY FORM NUMBER

OE 366.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

* * * Sec. 417B(b)(4) a program of paying up to 75 percentum of the cost of establishing and operating Educational Opportunity Centers which—

(A) Serve areas with major concentrations of low-income populations by providing, in coordination with other applicable programs and services—

(i) Information with respect to financial and academic assistance available for persons in such areas desiring to pursue a program of postsecondary education;

(ii) Assistance to such persons in applying for admission to institutions, at which a program of postsecondary education is offered, including preparing necessary applications for use by admission and financial aid officer; and

(iii) Counseling services and tutorial and other necessary assistance to such persons while attending such institutions; and

(B) Serve as recruiting and counseling pools to coordinate resources and staff efforts of institutions of higher education and of other institutions offering programs of postsecondary education, in admitting educationally disadvantaged persons. * * * (Pub. L. 92-318; 20 U.S.C. 1070d-1.)

"This Circular promulgates standards for obtaining consistence and uniformity among Federal agencies in the administration of grants to, and other agreements with, public and private institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations * * * Each Federal sponsoring agency shall require recipients to use the standardized Financial Status Report to report the status of funds for all nonconstruction projects or programs * * * Recipients shall submit a Performance Report (technical report) for each agreement" * * * (OMB Circular No. A-110)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Required to obtain or maintain benefits.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

The reports will be used to secure performance and financial information from grant-supported projects. The information will be used (a) to assess and monitor project effectiveness, and (b) to determine if the program is meeting the needs of the target populations intended and as a corollary to provide base information for planning future program needs and modifications.

7. DATA ACQUISITION PLAN

a. Method of collection: Mail.

b. Time of collection: Spring and summer, fall and winter.

c. Frequency: Annually.

8. RESPONDENTS

a. Type: Grant-supported projects in postsecondary institutions and nonprofit organizations.

b. Number: 13.

c. Estimated average man-hours per respondent: 16.

9. INFORMATION TO BE COLLECTED

Information/data collected are as follows:

(a) Description of actual accomplishments in terms of goals of the projects.

(b) Number of participants: By age; by sex; by ethno-racial background; by type of school enrolled in; by reason for dropping out. Also requested is the total number for each of the following: Physically disabled participants; veterans who are participants; participants receiving counseling, tutoring, or other assistance; participants who began or reentered postsecondary studies.

(c) Financial information required on the Office of Management and Budget (OMB) standard financial status report.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Special Programs for the Disadvantaged: Financial Status and Performance Reports.

2. AGENCY/BUREAU/OFFICE

U.S. Office of Education, Bureau of Postsecondary Education, Division of Student Services and Veterans' Programs.

3. AGENCY FORM NUMBER

OE 1231.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

* * * "Sec. 417A.(a). The Commissioner shall, in accordance with the provisions of this subpart, carry out a program designed to identify qualified students from low-income families, to prepare them for a program of postsecondary education, and to provide special services for such students who are pursuing programs of postsecondary education." * * * (Pub. L. 92-188; 20 U.S.C. 1070d).

Authorization for Reports: "Only the following forms will be authorized for obtaining financial information from recipients Financial Status Report * * * Each Federal sponsoring agency shall require recipients to use the standardized Financial Status Report to report the status of funds for all nonconstruction projects or programs." (OMB Circular No. A-110, Attachment G.3).

"Recipients shall submit a performance report (technical report) for each agreement" * * * (OMB Circular No. A-110, Attachment M.3).

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Required to obtain or maintain benefits.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

Information collected will be used as the basis for making and justifying funding decisions in the OE regional offices; determining project compliance with eligibility criteria imposed by program legislation; and checking compliance with the Special Services regulation to have the ethno/racial composition of the students served reflect within a maximum 10 percent variance the ethno/racial composition of the students eligible to be served.

The data collected also serve as an effective measure of project accountability as indicated by project accomplishments: Number of clients served as compared with number proposed to be served; number of Talent Search clients placed in postsecondary education institutions and other education/training activities; number of clients prevented from dropping out of school; number of dropouts returned to school; number of clients receiving adequate financial assistance to enter postsecondary education institutions; kinds of services provided to Special Services clients; and client retention in Special Services projects. Detailed summary information maintained in the Program office serves as a data base from which to prepare budget reports and to respond to program information requests from Congress, Office of Management and Budget, the Department, various other Bureau programs, and other sources.

7. DATA ACQUISITION PLAN

a. Method of collection: Mail.

b. Time of collection: Winter and summer.

c. Frequency: Semiannually.

8. RESPONDENTS

a. Type: Directors of talent search projects.

b. Number: Grantee universe (118).

c. Estimated Average man-hours per respondent: .5.

a. Directors of special services projects.

b. Grantee universe (330).

c. Estimated average man-hours per respondent: .5.

9. INFORMATION TO BE COLLECTED

a. Performance reporting—both talent search and special services project directors:

1. Number of clients assisted.

2. Distribtuion of clients by program eligibility criteria.

3. Distribution of clients by ethno-racial background.

4. Distribution of clients by sex.

5. Number of veterans assisted.

6. Distribtuion of clients by educational status at beginning of program year.

b. Performance reporting—talent search project directors only:

1. Number of clients placed in postsecondary schools and types of schools where placed.

2. Number of clients assisted in entering other types of educational training programs.

3. Number of school dropouts returned to school or other educational programs, and number prevented from dropping out of school.

4. Number of clients placed in upward bound and special services programs.

5. Adequacy of financial aid for clients accepted in a postsecondary education program.

6. Number of clients who have delayed pursuing a postsecondary education for a period exceeding 12 months.

c. Performance reporting—special services project directors only:

1. Number of clients assisted by type of project activity.

2. Client retention in project as indicated by number of clients who left project for given reasons.

d. Financial reporting—both talent search and special services project directors: Items appearing on the standard financial status report, OMB Circular No. A-110.

DESCRIPTION OF PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Student loan application supplement.

2. AGENCY/BUREAU/OFFICE

U.S. Office of Education, office of guaranteed student loans.

3. AGENCY FORM NUMBER

OE 1260.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

* * * "Sec. 428(a)(4). Each holder of a loan with respect to which payments of interest are required to be made by the Commissioner shall submit to the Commissioner, at such time or time and in such manner as he may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Commissioner to determine the amount of the payment which he must make with respect to that loan." (Pub. L. 89-329, as amended; 20 U.S.C. 1078)

* * * "Sec. 498(a). Notwithstanding any other provision of law, no grant, or loan guarantee authorized under this title may be made unless the student to whom the grant, loan, or loan guarantee is made has filed with the institution of higher education which he intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), an affidavit stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance at such institution." * * * (Pub. L. 92-318; 20 U.S.C. 1088g)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Required to obtain or maintain benefits.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

This information will be used to perform two functions:

(1) To determine eligibility of student for federal payments to reduce student interest costs.

(2) To establish amount of loan approved for the student.

7. DATA ACQUISITION PLAN

a. Method of collection: mail.

b. Time of collection: usually late summer/early fall.

c. Frequency: Annually.

8. RESPONDENTS

a. Type: Students.

b. Number: 30,000.

c. Estimated average man-hours per respondent: .167.

a. Type: Financial aid officers.

b. Number: 1,500.

c. Estimated average man-hours per respondent: .167.

a. Type: Financial institutions.

b. Number: 3,700

c. Estimated average man-hours per respondent: .083.

9. INFORMATION TO BE COLLECTED

a. Students: Notarized signature on affidavit.

b. Financial aid officers: Cost of education, financial support available, recommended loan amount.

c. Financial institutions: Amount of loan approved.

[FR Doc.77-9951 Filed 4-1-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[Docket No. N-77-747]

NATIONAL INSURANCE DEVELOPMENT PROGRAM ADVISORY BOARD

Public Meeting

The purpose of this notice is to announce that the Acting Federal Insurance Administrator, U.S. Department of Housing and Urban Development, Washington, D.C. 20410, will hold the quarterly Public Meeting of the National Insurance Development Program Advisory Board in Room 10233 of the Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. on Thursday, April 28, 1977, commencing at 10 a.m.

The National Insurance Development Program Advisory Board, established under the authority of Section 1202 of the National Housing Act, enacted by the Urban Property Protection and Reinsurance Act of 1975 (Pub. L. 94-13, April 8, 1975), advises the Secretary of existing or potential problems of unavailability of essential property insurance, and other matters related to FAIR (Fair Access to Insurance Requirements) Plan operations and riot reinsurance rates and coverage.

The effectiveness of the private sector to provide essential property insurance on reasonable terms and conditions at reasonable rates is a matter of deep concern.

The Federal Insurance Administration is charged with the responsibility to assure that the programs authorized under the Urban Property Protection and Reinsurance Act of 1968, as amended, aid the insurance purchasing consumer.

The Chairman and Acting Federal Insurance Administrator, J. Robert Hunter, announces that the quarterly Public Meeting of the Advisory Board will be held on Apirl 28, 1977, to consider the following:

(A) Review of minutes from January 26, 1977 meeting.

(B) Proposed solutions to the availability problem (including higher cost which contributes to making insurance unavailable) such as:

(1) Full insurance availability;

(2) Federal subsidy through federal stamp program;

(3) FAIR plans, automobile assigned risk pools and joint underwriting associations through self-supporting programs.

(C) Disaster insurance.

(D) New riot reinsurance contract.

(E) Proposed changes in federal crime insurance program.

(F) Other matters.

The meeting is open to the public. Public attendance may be limited depending on available space. Any member of the public may file a written statement before, during or after the meeting. To the extent that time permits, interested persons will be allowed public presentation or oral statements at the meeting.

All communications concerning this meeting should be addressed to Acting Federal Insurance Administrator, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Issued in Washington, D.C. on March 31, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-10139 Filed 4-1-77;9:36 am]

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

ELLENSBURG SERVICE

Public Meeting

This notice is published to notify interested citizens of a public meeting to be held by the Bonneville Power Administration on Thursday, May 5, 1977, at 8:00 p.m. in the City-County Silver Circle Community Center, 506 South Pine, Ellensburg, Washington.

The environmental impact of constructing between two and four miles of new 115-kV transmission line and the construction of a new substation will be described. Comments on these proposed new facilities will be received from the public.

All interested parties are urged to attend. All comments are welcomed in order to assist the administration in fully evaluating the environmental factors pertinent to this particular aspect of BPA's Fiscal Year 1978 Program. Comments received will be conisdered in the preparation of the Final Environmental Statement.

The purpose of the above project is to service growing commercial, industrial, and residential electric loads in the Ellensburg area.

BPA proposes to build between two and four miles of new 115-kV transmission line and a new substation occupying approximately two acres of land. One alternative would require approximately one-half mile of new access road.

Limitations on land use in the area of the right-of-way and the substation location could be expected to result from constructing the facility. Vegetation removal would total approximately four acres. Some erosion and sedimentation would occur. Minor short-term disturbances to agricultural land would also occur. In addition, there would be some visual impact as well as noise and other minor disturbances during construction.

In addition to the nonconstruction alternative, with its lack of environmental impacts and resultant inability to adequately service the anticipated electrical load growth in the Ellensburg area, three alternative transmission line locations have been identified. The locations of the various alternatives and the environmental impact associated with each are more thoroughly presented in the Draft Facility Location Supplement on Ellensburg Service.

Copies of the Draft Facility Location Supplement describing the proposal are available for inspection in the library of the Headquarters Office of BPA, 1002 N.E. Holladay Street, Portland, Oregon 97232; the BPA Washington, D.C., Office in the Interior Building, Room 5600, and at the Spokane Area Office, U.S. Courthouse, W. 920 Riverside Avenue, Spokane, Washington 99201.

Dated: March 31, 1977.

WILLIAM H. CLAGETT IV,
Assistant Administrator.

[FR Doc.77-10042 Filed 4-1-77;8:45 am]

Bureau of Land Management

CRAIG, MONTROSE, CANON CITY-GRAND JUNCTION TEAM LEADERS BRANCH OF ADJUDICATION, DIVISION OF TECHNICAL SERVICES COLORADO STATE OFFICE

Redelegation of Authority

1. Pursuant to authority contained in redelegation of authority, published in FEDERAL REGISTER, 42 FR 15372, No. 54—Monday, March 21, 1977 (FR Doc. 77-8333 Filed 3-18-77, 8:45 a.m.), I hereby redelegate to the Leaders, Craig, Montrose and Canon City-Grand Junction Teams, Branch of Adjudication, in the Division of Technical Services, authority to take action on the following matters:

Sections 2.2(b), 2.3(a), 2.5 (b) and (c), 2.6 (a) through (j) and (l), and 2.9 (a) through (f), (h) through (s), (u), (x), and (y), of Part II of Bureau Order No. 701, supra.

2. Effective date. This redelegation will become effective April 6, 1977.

JACK G. LORTS,
Acting Chief, Branch of Adjucations.

Approved:
DALE R. ANDRUS,
State Director.

[FR Doc.77-9900 Filed 4-1-77;8:45 am]

Fish and Wildlife Service

PATUXENT WILDLIFE RESEARCH CENTER

Endangered Species Permit Receipt of Request for Amendment

A permit authorizing the taking of eggs of Puerto Rican Parrot (*Amazona vittata*) was issued on December 3, 1975, to the Patuxent Wildlife Research Center, Laurel, Maryland (Dr. Lucille Stickel, Director).

A notice containing the application for the permit was published in the FEDERAL REGISTER on August 4, 1975 (40 FR 32766-68-69-70-71), soliciting public comments for a period of 30 days.

A notice of the issuance of the permit was published on March 9, 1976 (41 FR 10103-04).

Under date of March 24, 1977, the Patuxent Wildlife Research Center submitted a request for changes in the condition of this permit. Published herewith is a copy of the request for changes which will be considered as an amendment to this permit. This request is being considered pursuant to Section 13.23, Title 50 Code of Federal Regulations (see 39 FR 1162).

OMB NO. 42-R1575

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Withdrawal of one drop of blood from each 1977 Puerto Rican parrot chick, and retention of two male parrot chicks for captive propagation. If blood analysis procedure is unsuccessful, three developing feathers must be obtained for karyotyping to determine sex to obtain two male parrots to even sex ratio of the captive population in the Puerto Rican

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Patuxent Wildlife Research Center
Laurel, Maryland 20811
301-776-4880

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
N/A
☐ MR. ☐ MRS. ☐ MISS ☐ MS. | HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Wildlife Research Center
Dr. Lucille F. Stickel, Director
Patuxent Wildlife Research Center
Laurel, Maryland 20811
Tel: 301-776-4880, Ext. 7211

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
U.S. Fish and Wildlife Service
Department of the Interior

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
N/A

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Aviary, P. O. Box 21
Luquillo Experimental Forest
Palmer, Puerto Rico 00721

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number(s))
PRT 8-86-B-C, PRT 8-85-C, PRT 8-169-C, PRT 2-913-BA, PRT 2-197

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of document(s))

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$ N/A

10. DESIRED EFFECTIVE DATE
April 15, 1977

11. DURATION NEEDED
Through June 15, 1977

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
See attachment (memorandum)

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (Do not print) Lucille F. Stickel | DATE 3/25/77

3-200 GPO 895-042

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Chief, Wildlife Permit Office
Attn: Larry LaRochelle

DATE: March 24, 1977

FROM : Director, Patuxent Wildlife Research Center
Laurel, Maryland

SUBJECT: Authorization for an exemption to the 30-day Federal Register publication requirement

As Dr. Ray Erickson informed Mr. Larry LaRochelle on Wednesday, March 23rd, the Puerto Rican Parrot (Amazona vittata) is one of the most seriously endangered birds in the world. Essential actions are in progress and steps are being proposed which, if delayed, could result in even greater impairment of the prospects of survival of this species. Approval of the following proposed exemption to the 30-day Federal Register publication requirement is requested on the basis of the justification which follows.

The wild population of Puerto Rican Parrots has been fluctuating at about 15-20 individuals for the last 6 years. A captive population of the species has been established to guard against calamitous loss of the wild population (e.g., from a hurricane) and to serve as stock for augmenting the existing wild population, and for establishing new wild populations of the species. Total captive stock now includes 11 birds, 9 of which are in Puerto Rico and 2 of which are at Patuxent. Of these 11 birds, 7 are now old enough to be breeders and 3 have laid eggs although there has as yet been no successful reproduction in captivity. Unfortunately, it now appears that the sex ratio of captives is biased toward females. Through egg-laying evidence and through karyotype analyses run on feather pulp by personnel of the Houston Zoo we now know that at least 5 of the mature birds are female, and there is only one certain male among the remaining 6 captives. Of the 5 captives still of uncertain sex, 3 are of sufficiently sub-normal quality that their potential for eventual breeding is in considerable doubt. Thus, regardless of what sex these unknowns turn out to be, there is a shortage of healthy males in the captive population.

The genetic base for reproduction among the captives is also very limited. Among the 11 birds, there are 6 family stocks represented, but only 3 of the stocks are represented by birds with clear breeding

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potential. One pair of parrots in the wild, the West Fork pair, is as yet unrepresented by progeny in captivity, and it is of crucial importance to the success of the captive program that we obtain representation from this pair, especially if males can be identified before final taking of young. The West Fork pair laid an unusually large clutch of 4 eggs this spring and all 4 eggs have proved fertile. Two have been taken into captivity under existing permit authority, and the resulting hatchlings, now a few days old, are being hand-raised at the field station. These two birds are, of course, of unknown sex, but if sex of these birds and their siblings still in the wild can be quickly determined, it will be possible through juggling of members of the brood between the wild and the field station to selectively obtain two males (should they exist) and still allow the pair to fledge two young in the wild.

Until the present there has been no safe, simple, and quick way of sexing parrots in captivity, and we have been separating pairs out largely on a self-selection basis. One such pair that reached maturity this year has turned out to consist of two females, one of which has produced five eggs, and the other has just started laying. The karyotype sexing we have been pursuing with personnel of the Houston Zoo for the past 2 years has been relatively slow, often requires repeated sampling, although it gives reliable results when completed.

Just last week we learned that Dr. Ellen Rasch of Marquette University has developed a fast sexing method which requires only one drop of blood smeared on a glass slide to distinguish sex of young or old birds through DNA density differentials in the two sexes. The technique has been used so far with success on various species of cranes and poultry, and there are good reasons to hope it may also prove successful with parrots. If so, it represents a real breakthrough because it allows sexing with an absolute minimum of disturbance or potential injury to the birds, at a minimum of expense of time and effort on the part of researchers.

Yesterday, we sent blood smears of 4 Hispaniolan Parrots of known sex to Dr. Rasch, and she has promised results within two weeks as to whether the technique is workable with this species. Since the Hispaniolan Parrot is very closely related to the Puerto Rican Parrot, we assume that success with this species would be a good indication of probable success with the Puerto Rican Parrot.

What we propose is the following: We believe it to be essential to obtain two additional males for the captive population, preferably from the West Fork pair of parrots, since this pair is as yet unrepresented in captivity. We would like to take blood samples from the West Fork nestlings and from the rest of the known and unknown-sexed parrots already in captivity for sexing by Dr. Rasch. Should it turn out that there are not two males in the West Fork brood of 4, we would like to seek male nestlings from the other two currently active pairs in the wild to make up a total of two males to be brought into captivity this spring.. It will be necessary to mark each nestling with food coloring on down-feathers during the period in which sex-determination is being made; so that the young will be later identifiable when sexes have been determined.

Should it turn out that the blood smear technique of Dr. Rasch does not prove successful in sexing the parrots, we have obtained a commitment from the San Diego Zoo to send a member of its staff, Dr. Baumgartel, to Puerto Rico for karyotype sexing of nestlings from feather pulp. To use the feather pulp technique, nestlings will have to be at least 5-6 weeks old, as no large flight feathers are sufficiently developed before this age.

Since with either technique, we have only a few weeks within which to perform the necessary procedures (young in the nests will have fledged within 8 weeks of today), we would appreciate an exemption to the 30-day Federal Register publication requirement and expeditious consideration of this proposal. Under our current permit the above operations are not specifically mentioned. However, because the situation facing the Puerto Rican Parrot is so desperate, we believe that this request is in keeping with the spirit of the intent of the authority under which an exemption can be approved. The procurement from the wild of two male Puerto Rican Parrot chicks this spring was discussed with and unanimously concurred in by the Puerto Rican Parrot Recovery Team during its most recent meeting in mid-March 1977. The Commonwealth representative on this Recovery Team, Mr. Herbert Rafaelle, indicated that the Commonwealth permit authorizes this procedure on an emergency basis.

Lucille F. Stickel

Lucille F. Stickel

In keeping with the spirit of the Endangered Species Act of 1973, this notice is being published to allow public comment on the request for an amendment. Interested persons may comment on this amendment by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. Please refer to PRT 8-86-B-C when submitting comments. All relevant comments received within 30 days of the date of publication will be considered.

Dated: March 30, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch
Federal Wildlife Permit Office.

[FR Doc.77-9956 Filed 4-1-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-27]

CHICORY ROOT—CRUDE AND PREPARED

Termination of Investigation

WASHINGTON, D.C.

Notice is hereby given that, by order of the presiding officer in this matter, Judge Myron R. Renick, investigation No. 337-TA-27, Chicory Root—Crude and Prepared, is terminated.

Copies of the order of the presiding officer and his reasons therefor are available in the Office of the Secretary of the United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

Issued: March 30, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-9996 Filed 4-1-77;8:45 am]

WATCHES AND WATCH MOVEMENTS FROM INSULAR POSSESSIONS

Determination of Apparent U.S. Consumption and of Quotas for Duty-Free Entry

In accordance with headnote 6(c) of schedule 7, part 2, subpart E, of the Tariff Schedules of the United States (TSUS), the U.S. International Trade Commission has determined that the apparent U.S. consumption of watch movements for the calendar year 1976 was 66,608,000 units. The number of watches and watch movements, the product of the Virgin Islands, Guam, and American Samoa, which may be entered free of duty during calendar year 1977 under headnote 6(b) of subpart E of the TSUS is as follows:

Virgin Islands	6,476,000 units
Guam	616,000 units
American Samoa	309,000 units

By order of the Commission.

Issued: MARCH 30, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-9997 Filed 4-1-77;8:45 am]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

ADVISORY COMMITTEE ON JOINT BOARD ACTUARIAL EXAMINATIONS

Meeting

Notice is hereby given that the Advisory Committee on Joint Board Actuarial Examinations will meet in the Continental Plaza Hotel, North Michigan at Delaware, Chicago, Illinois on April 19, 1977 at 9:00 a.m.

The purposes of the meeting are to discuss topics, syllabi and questions which may be recommended for inclusion in the Joint Board's examinations in actuarial mathematics and methodology referred to in Title 29, United States Code, section 1242(a)(1)(B), and to review other actuarial examinations in order to make recommendations regarding such examinations' adequacy to demonstrate the education and training in actuarial mathematics and methodology required for enrollment by Title 29, United States Code, section 1242(a)(1).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portion of the meeting dealing with discussion of questions which may appear on the Joint Board's examinations with fall within the exceptions to the open meeting requirement set forth in Title 5, United States Code, section 552(c)(9)(B), and that the public interest requires that such portion be closed to public participation.

The portion of the meeting dealing with examination topics, syllabi, and other actuarial examinations will commence at approximately 2:00 p.m. and will be open to the public as space is available. Time permitting, after discussion of agenda subjects by Committee members, interested persons may make statements germane to these subjects. Persons wishing to make oral statements should advise the Committee Management Officer in writing prior to the meeting to aid in scheduling the time available and should submit the written text or, at a minimum, an outline, of comments they propose to make orally. Such comments will be restricted to ten minutes in length. Any interested persons may file a written statement for consideration by the Committee by sending it to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, D.C. 20220.

LESLIE S. SHAPIRO,
Advisory Committee Management Officer Joint Board for the Enrollment of Actuaries.

MARCH 31, 1977.

[FR Doc.77-10028 Filed 4-1-77;8:45 am]

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

NATIONAL CRIME INFORMATION CENTER ADVISORY POLICY BOARD

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Crime Information Center (NCIC) Advisory Policy Board will be held on May 12-13, 1977, at the Sheraton Four Ambassadors Hotel, Miami, Florida. The meeting will begin at 9 a.m. and terminate at 5 p.m. each day.

The purpose of this meeting will be to discuss matters relating to NCIC which are presented to the Board. In addition, the Board will receive a report on the NCIC Computerized Criminal History Technical Conference held in Washington, D.C., during the first week of April, 1977.

The meeting will be open to the public. Persons who wish to make statements and ask questions of the Board members must file written statements or questions at least twenty-four hours prior to the beginning of the meeting. All questions or statements shall be delivered to the person of the Designated Federal Employee or the Assistant Director, Administrative Services Division, FBI, Washington, D.C.

Additional information may be obtained from Mr. Frank B. Buell, Chief, NCIC Section, Administrative Services Division, FBI Headquarters, Washington, D.C. 20535, telephone 202-324-2606.

Minutes of the meeting will be available upon request from the above designated FBI official.

CLARENCE M. KELLEY,
Director.

[FR Doc.77-9925 Filed 4-1-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-566, STN 50-567]

TENNESSEE VALLEY AUTHORITY (YELLOW CREEK NUCLEAR PLANT UNITS 1 AND 2)

Before the Atomic Safety and Licensing Board.

A prehearing conference; order pursuant to section 2.751a of the Commission's Regulations will be held in the above-captioned matter on April 19, 1977, at 2 p.m., at the Alcorn County Courthouse, 600 Waldron Street, Corinth, Mississippi.

Dated: March 29, 1977 at Bethesda, Md.

For the Atomic Safety and Licensing Board.

JOHN M. FRYSIAK,
Chairman.

[FR Doc.77-9870 Filed 4-1-77;8:45 am]

ENVIRONMENTAL SURVEY OF THE REPROCESSING AND WASTE MANAGEMENT PORTIONS OF THE LWR FUEL CYCLE

Availability of Public Comments and Responses

Notice is hereby given that a report, "Public Comments and Task Force Responses Regarding the Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle," NUREG-0216, prepared by the

Commission's Office of Nuclear Material Safety and Safeguards, and a Staff paper entitled "Response to Comments on a Paper Entitled 'Impacts of Later Reversing a Decision to Adopt or Not to Adopt an Interim Rule Permitting Construction or Operation of Nuclear Power Plants'" (hereinafter "Response to Comments on Impacts Document") are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in local public document rooms associated with individual nuclear power plants.

On October 18, 1976, the Commission published in the FEDERAL REGISTER a notice of a proposed revision to Table S-3 of 10 CFR Part 51 and announced at the same time the availability of the document on which the proposed revision would be based—"Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle," NUREG-0116. In addition, in the notice the Commission referenced an analysis entitled "Impacts of Later Reversing a Decision to Adopt or Not to Adopt an Interim Rule Permitting Construction or Operation of Nuclear Power Plants." This notice solicited comments on the proposed rule change, NUREG-0116, and the impact analysis.

NUREG-0216, which is now being made available, contains responses to the comments received on NUREG-0116 from Federal, State, and local officials and from interested members of the public. It also provides additional information on the environmental impacts of reprocessing and waste management which has either become available since the publication of NUREG-0116 or which adds requested clarification to the information in that document.

Copies of NUREG-0216 may be purchased from the National Technical Information Service, Springfield, Virginia 22161; printed copy, $11.75; microfiche, $3.

Single copies of "Responses to Comments on Impacts Document" may be obtained without charge, to the extent of supply, by writing the Division of Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland, this 18th day of March 1977.

For the Nuclear Regulatory Commission.

WILLIAM P. BISHOP,
Chief, Waste Management Branch, Division of Fuel Cycle and Material Safety.

NOTE: This document is republished without change from the issue of April 1, 1977.

[FR Doc.77-9517 Filed 3-31-77;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 March 28, 1977 (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

Veterans Interested in Federal Jobs—Veterans' Jobs Questionnaire, single time, 150 VRA applicants from monthly VRA lists, Tracey Cole, 395-5870.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

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DEPARTMENT OF COMMERCE

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EXTENSIONS

DEPARTMENT OF COMMERCE

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- Sea Grant Control, NOAA 90-1, annually, universities, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-10023 Filed 4-1-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 9695; 812-4086]

E. I. DU PONT DE NEMOURS AND CO.

Order Exempting Proposed Transaction

MARCH 25, 1977.

Notice is hereby given that that E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, Delaware 19898, ("Applicant"), a Delaware corporation, has filed an application pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of Section 17(a) of the Act Applicant's proposed grant to Toyo Products Company, Ltd. ("Toyo"), a Japanese corporation, of an exclusive right, with the right to grant similar rights to others, to use certain technology relating to the manufacture of spandex fiber. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that Toyo, a manufacturer of spandex fibers since 1966, seeks to acquire exclusive rights to use certain technology ("Sight Box Insert Technology") developed by Applicant to increase productive capacity of spandex fiber spinning machinery. Spandex fibers are described by Applicant as elastic textile yarns which have, in part, replaced cut rubber filaments in apparel markets.

The application states that the Applicant and Toyo have executed an agreement (the "Agreement") providing for the grant to Toyo of an exclusive right, with the right to grant similar rights to others, to use Sight Box Insert Technology in Japan in the manufacture of spandex fiber. Applicant submits that the Agreement is subject to (1) receipt of the order requested herein, and (2) approval by appropriate Japanese governmental authorities. Applicant states that the Agreement has been submitted to those authorities, and that their approval is expected shortly. Pursuant to the Agreement, Toyo proposes to pay Applicant $.20 per kilogram of spandex fiber packed by Toyo (or any other person to whom Toyo has granted the aforementioned rights) which have been produced through the use of Sight Box Insert Technology, provided that such payments shall not exceed a total of $400,000.

The application states that Christiana Securities Company ("Christiana"), a

non-diversified, closed-end management investment company registered under the Act, owns approximately 27.8% of the outstanding common stock of Applicant, which in turn owns 50% of the outstanding common stock of Toyo. The application further states that the remaining 50% of Toyo's outstanding common stock is owned by Toray Industries, Inc., a Japanese corporation. Applicant concludes that both Applicant and Toyo are (1) presumed to be controlled by Christiana, and (2) affiliated persons of Christiana, for purposes of the Act.

Section 17(a) of the Act provides, in part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, knowingly to sell to or purchase from such registered company, or any company controlled by such company, any security or other property. Applicant states that the proposed grant to Toyo of the exclusive rights to use Sight Box Insert Technology may be prohibited by Section 17(a) and therefore requests an order exempting that proposed grant from the provisions of Section 17(a).

Section 17(b) of the Act provides that the Commission, upon application shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Applicant asserts that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, and that the payments under the Agreement reasonably reflect the value of the technical information conveyed by the Agreement.

Applicant states (1) that Toyo is interested in Sight Box Insert Technology as a means of increasing its spandex fiber manufacturing capacity and believes the potential market for such fiber in Japan is favorable; (2) that Toyo does not maintain a research and development organization and, therefore, must purchase new technology from others; and (3) that, by granting such technology to Toyo, Applicant will provide itself with an opportunity to capitalize on its Sight Box Insert Technology in the Japanese market.

Finally, Applicant submits that the proposed transaction is consistent with the policies of Christiana and with the general purposes of the Act.

Notice is further given that any interested person may, not later than April 18, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-9979 Filed 4-1-77;8:45 am]

[Rel. No. 19962; 70-5994]

JERSEY CENTRAL POWER & LIGHT CO.

Issuance and Sale of First Mortgage Bonds at Competitive Bidding

MARCH 25, 1977.

Notice is hereby given that Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, ("Jersey Central"), an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Jersey Central proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, up to $60,000,000 principal amount of First Mortgage Bonds, to mature in 30 years. The interest rate (which will be a multiple of ⅛ of 1%) and the price (which will be not less than 98% and not more than 101% of the principal amount of the Bonds, plus accrued interest from May 1, 1977, to the date of delivery) will be determined by competitive bidding. The bonds will be issuer under the Indenture, dated as of March 1, 1946, between Jersey Central and Citibank, N.A., Trustee, as heretofore supplemented and amended, and as to be further supplemented and amended by a Thirty-First Supplemental Indenture to be dated as of May 1, 1977. None of the Bonds may be redeemed at the option of Jersey Central prior to May 1, 1982, if the funds for such redemption are obtained at an interest cost lower than the yield of the Bonds, except under certain circumstances.

The proceeds (exclusive of any premium or discount and accrued interest) from the sale of the Bonds will be applied to the payment at or before maturity of a portion of Jersey Central's $80,000,000 of short-term bank loans expected to be outstanding at the date of sale of the Bonds, or for construction purposes, or to reimburse Jersey Central's treasury for funds previously expended therefrom for such purposes. The estimated cost of Jersey Central's 1977 construction program is $220,000,000 (including allowance for funds used during construction). At March 16, 1977, Jersey Central had short-term bank loans outstanding of $25,400,000.

The fees and expenses to be incurred by Jersey Central in connection with the proposed transaction are estimated at $160,000, including legal fees of $34,000. The fees and expenses of counsel for the underwriters, to be paid by the successful bidders, will be supplied by amendment. It is stated that the Board of Public Utility Commissioners of New Jersey has jurisdiction over the proposed transaction, and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than April 19, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-9980 Filed 4-1-77;8:45 am]

[Rel. No. 19959; 31-758]

LYKES BROS., INC.

Application for Exemption

MARCH 25, 1977.

Notice is hereby given that Lykes Bros., Inc., 512 Florida Avenue, Tampa, Florida 33602 ("Lykes"), a holding company, has filed an application on behalf of itself and each of its subsidiaries as such under Sections 3(a)(1) and 3(a)(3) of the Public Utility Holding Company Act of 1935 ("Act"). All interested persons are referred to the application, which is summarized below, for a complete statement concerning the requested exemption.

Lykes, a Florida corporation, is directly or through its nonutility subsidiaries indirectly engaged in cattle ranching, meat packing, dairy, citrus and sugar processing, stevedoring and construction. Lykes' manufacturing and processing activities are carried on primarily in Florida. On a nonconsolidated basis, Lykes reported total assets at December 31, 1976 of $57 million, including investments in and advances to nonutility subsidiaries of $28.8 million. Lykes' corporate operating revenues for the period then ended were $114.6 million.

Lykes has nine nonutility subsidiaries, of which the Bank of Clearwater (81% owned) and Lykes Pasco Packing Company (97.5% owned) are the largest. The Bank of Clearwater has total assets of $130 million and operating income for the twelve months ended December 31, 1976, of $8 million. At September 30, 1976, Lykes Pasco reported total assets of $67.9 million and sales for the year then ended of $131.3 million.

Lykes is a holding company, as defined under Section 2(a)(7) of the Act. It owns substantially all of the capital stock of Peoples Gas System, Inc. ("Peoples"), a statutory gas utility company. Lykes acquired control of Peoples in June 1976, and is continuing to purchase the publicly-held minority stock interest in Peoples which remains outstanding.

Peoples supplies natural gas and, through two wholly-owned subsidiaries, liquefied petroleum gas (LP Gas) to approximately 126,000 customers in Dade and Broward counties on the southeastern coast of Florida and Hillsborough County on Florida's west coast. It serves, among other communities, Miami Beach, Fort Lauderdale, Pompano Beach and Tampa. At September 30, 1976, Peoples had total utility plant of $45.5 million and, for the twelve months then ended, $24.9 million of operating revenues, of which approximately 90% was attributable to the sale of natural gas. The company is subject to the jurisdiction of the Florida Public Service Commission.

Lykes claims an exemption under Section 3(a)(1) of the Act. It states that both it and Peoples are organized under Florida law and that all of Peoples' income and substantially all of Lykes' income are derived from operations in Florida. Lykes also asserts an exemption under Section 3(a)(3). It claims that it is only incidentially a holding company, being primarily engaged in nonutility businesses and not deriving a material part of its income from Peoples.

In anticipation of its acquisition of Peoples, Lykes filed a statement claiming exemption under Section 3(a)(1) of the Act pursuant to Rule 2 of the General Rules and Regulations, promulgated thereunder. By letter dated December 22, 1976, the Secretary of the Commission notified Lykes, pursuant to Rule 6, that a question exists as to whether Lykes is entitled to the claimed exemption. The letter also advised Lykes that its claim to exempt status would terminate 30 days after such notice unless, in the interim, it should choose to file a formal application under Section 3(a) requesting the Commission to issue, after notice and opportunity for hearing, an exemption order for itself and its subsidiaries. Lykes filed such application on January 12, 1977. Pending a determination, which either grants or denies its application, Lykes is and will remain an exempt holding company under Section 3(c) of the Act.

Notice is further given that any interested person may, not later than April 25, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including notice of the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-9981 Filed 4-1-77;8:45 am]

[Rel. No. 9698; 811-1888]

MERCURY GROWTH FUNDS, INC.

Proposal To Terminate Registration

MARCH 28, 1977.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare, by order on its own motion, that Mercury Growth Funds, Inc., Suite 314 Professional Bldg., 215 Franklin Street, Monterey, California 93040 ("Fund"), registered under the Act as an open-end investment company, has ceased to be an investment company as defined in the Act.

The Fund registered under the Act on June 11, 1969. Information contained in the files of the Commission indicates that the Fund filed a registration statement under the Securities Act of 1933 (File No. 2-33687) on June 23, 1969. This registration statement did not become effective, and was ordered abandoned by the Commission on July 20, 1972. Thus, the Fund has never engaged in a public distribution of its securities. The State of Delaware, the state under which the Fund was organized, voided the Fund's corporate charter on April 15, 1972, for non-payment of taxes. The Fund has never filed any of the periodic reports required by the Act, and communications sent to the Fund's last known address by the Staff of the Commission have been returned as undeliverable. Thus, it appears that the Fund is not currently engaged in the business of an investment company, and that its corporate existence has terminated.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given tha any interested person may, not later than April 25, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request, or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-9982 Filed 4-1-77;8:45 am]

[Release No. 34-13409; File No. SR-MSE-76-20]

MIDWEST STOCK EXCHANGE, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 20, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF PROPOSED RULE CHANGE

(New material italicized; deleted material bracketed)

ARTICLE XX

Rule 4: Midwest Stock Exchange Rules [Audited Financial Questionnaires].

[Rule 4. Each member organization using the facilities of the Midwest Stock Exchange Clearing Corporation or doing business with the public shall,

(a) File at least annually answers to a financial questionnaire in such form as the Exchange may prescribe certified by an independent public accountant and supplemented by the financial statements prescribed by Paragraph (k) and Paragraph (b)(4) of Rule 17a-5 of the Securities Exchange Act of 1934.

(i) The audit of the affairs of each such member organization made in connection with the certified answers to financial questionnaire must be made during each calendar year by an independent public accountant qualified under Rule 17a-5(f) of the Securities Exchange Act of 1934 and acceptable to the Exchange.

(ii) The audit required by this Rule may be conducted as of the end of the member organization's fiscal year, the end of the calendar year or on a surprise basis on a date to be selected by the independent public accountant without prior notice to the member organization or any other date which meets the approval of the Exchange. If a member organization chooses to have its audit conducted as of the end of its fiscal or calendar year or as of another date approved by the Exchange it shall have its audit done as of the same date in each calendar year. If the member organization elects to have its audit conducted on a surprise basis, on or before January 10 of each year, it shall cause its independent public accountant to notify the Exchange of the quarter of that calendar year in which such audit will take place and subsequently to notify the Exchange promptly of any change to a different quarter and specify the reasons therefor, and to notify the Exchange at the time it commences the audit.

(iii) If a member organization changes its fiscal year end or chooses to change its audit date from a calendar to a fiscal year end or from a fiscal to a calendar year end prompt notification must be given to the Exchange. Changes in other Exchange approved audit dates must have the prior written approval of the Exchange.

(iv) The audit required under this Rule shall be made in accordance with generally accepted auditing standards and shall include the minimum audit requirements of the Exchange and the Securities and Exchange Commission. The original audit and all working papers relative thereto shall be retained by the independent public accountant as a part of their records for three years after completion and such audit shall be subject to examination by the Exchange.

(b) File with the Exchange one copy of the statements furnished customers as required by Paragraphs (m) and (n) of Rule 17a-5 of the Securities Exchange Act of 1934 at the same time that these statements are furnished to customers.

(c) File a statement of its financial and operational condition in such form as may be prescribed by the Exchange and as of the end of any calendar month or months within the calendar year as requested by the Exchange. The reports required by this Paragraph will be due on or before the 15th calendar day following the date of the report unless a specific temporary extension of time has been granted by the Exchange.

(d) File a copy of an agreement evidencing the engagement of an independent public accountant to conduct the audit as required by this Rule. Whenever a change of independent public accountant is made the member organization shall, no more than 15 days following the termination of such engagement, file with the Exchange, with a copy to the independent public accountant, a notice stating the date of notification of the termination of the engagement. Such notice shall also include details of any disagreements between the member organization and the independent public accountant during the 24 months preceding termination of their agreement on any matters of accounting principles or practices, financial statement disclosure, auditing procedure or compliance with applicable rules of the Exchange, which disagreements, if not resolved to the satisfaction of such independent public accountant, would have caused him to make reference to the subject matter of the disagreements in connection with his opinion. The member organization shall also request the independent public accountant whose engagement has been terminated to furnish a letter addressed to the Exchange, with a copy to the member organization, stating whether such independent public accountant agrees with the statements contained in the notice to the Exchange by the member organization and, if he does not agree, stating the particulars with which he does not agree. Within 30 days after such termination a signed copy of an agreement with another independent public accountant pertaining to future audits shall be furnished to the Exchange. Suggested guides for the required agreements with independent public accountants are available from the Exchange on request.]

Financial Operational Reports

Rule 4. Each member organization doing any business in securities with others than members of a national securities exchange or who uses the facilities of the Midwest Clearing Corporation or Midwest Securities Trust Company shall:

(a) File a financial and operational report in such form and within such time period as prescribed by 17 CFR 240.17a-5 and Rule 3 of this Article. "Notwithstanding the foregoing, if the Exchange is not the designated examining authority for such member, and the member's designated examining authority has agreed to submit such data to the Exchange within a reasonable period of time after such member is required to file with its designated examining authority, the requirements of this Paragraph (a) shall be deemed to have been met."

(b) File annually financial statements and schedules certified by an independent public accountant acceptable to the Exchange in accordance with the requirements of 17 CFR 240.17a-5.

(i) The original audit and all working papers relative thereto shall be retained by the independent public accountant as a part of their records for three years after completion and such records shall be subject to examination by the Exchange at the office of the member organization or of the Exchange.

(ii) A copy of an agreement, satisfactory to the Exchange, evidencing the engagement of an independent public accountant to conduct the audit required by this Rule shall be filed with the Exchange no later than December 10 of each year to cover the following calendar year. Such agreement must be dated no later than December 1 and may be effective until cancelled or a new agreement may be filed each year. "Notwithstanding the foregoing, a copy of the audit agreement need not be filed with the Exchange if an agreement, satisfactory to the member's designated examining authority, has been filed with such designated examining authority."

(iii) If any information, report or statement is required to be filed with the Securities and Exchange Commission pursuant to paragraphs (c), (f)(2), (f)(4), (h)(2), (i)(1) or (m) of 17 CFR 240.17a-5, a copy thereof shall be filed concurrently with the Exchange.

(c) cause an audit to be made of its accounts by an independent public accountant, acceptable to the Exchange, in accordance with the requirements of 17 CFR 240.17a-5 and file the results of such audit with the Exchange at such other times as the Exchange for good cause, may require.

Interpretations and Policies

01. A suggested guide for the agreement with the independent public accountant required by paragraph (b)(ii) of this Rule 4 is reproduced below. Other provisions, not inconsistent with the provisions of this suggested guide, may also be included at the discretion of the individual member organization and its independent public accountant.

_____, 19____
(Date)

To: (Name of Member Organization).
Gentlemen:
WE (I) hereby agree:

(1) to conduct an audit of your financial statements for the period ended _____, 19____, the end of your (Calendar) (Fiscal) year (and each year thereafter) ** in accordance with applicable requirements of the Midwest Stock Exchange, Incorporated (Exchange) and the Securities and Exchange Commission (SEC);*

*(2) to notify the Exchange in writing (each year)** no later than five business days after the audit date that the audit has commenced;*

(3) to notify the Exchange in advance of the commencement of any substantial interim work which would result in a hardship on your organization should the Exchange conduct an examination of your organization concurrently; and

(4) to submit to the Exchange and the SEC, financial statements, schedule(s) and report(s) based upon the audit in accordance with Exchange and SEC requirements.

Very truly yours

_____
(Signature of Independent Public Accountant)

Agreement acknowledged:

(Name of Member Organization)

By ---

(Signature and Title of General Partner, Officer or Member)

Date: ---

**Indicate which is applicable.*
***Delete this phrase to make agreement applicable to an Audit in a single year.*

EXCHANGE STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the proposed rule change would be to adopt the FOCUS Reporting System by reference; retain the right of the Exchange to examine audit working papers; retain the requirement that the agreement with the independent public accountant meet minimum Exchange requirements and that the date filed with the Securities and Exchange Commission on changes of accountants be also filed with the Exchange; and add a provision that the Exchange may require an audit at any time.

The proposed rule change enhances the Exchange's capacity to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder.

Comments were neither solicited nor received.

The Midwest Stock Exchange, Incorporated believes that no burden has been placed on competition.

On or before May 9, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before April 25, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 28, 1977.

[FR Doc.77-9985 Filed 4-1-77;8:45 am]

[Release No. 34-13407; File No. SR-NSCC 77-3]

NATIONAL SECURITIES CLEARING CORP.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on March 15, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

It is proposed that the second sentence of Paragraph 8 of the Certificate of Incorporation of National Securities Clearing Corporation (NSCC) be amended as follows:

(Brackets indicate deletions and *italics* indicate new material)

The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is [2 Broadway, New York, New York 10006] *55 Water Street, New York, New York 10041.*

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to change from 2 Broadway, New York, New York 10006 to 55 Water Street, New York, New York 10041 the post office address to which the Secretary of State of New York shall mail a copy of any process against NSCC served upon him.

Comments on the proposed rule change have neither been received nor solicited.

NSCC believes that no burdens will be placed on competition.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying at the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before April 25, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 25, 1977.

[FR Doc.77-9986 Filed 4-1-77;8:45 am]

[Release No. 34-13410; File No. SR-MSTC-77-3]

MIDWEST SECURITIES TRUST CO.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on March 28, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Dividend Reinvestment Program (DRP) is a service for the automatic reinvestment of cash dividends due on security positions held by Midwest Securities Trust Company ("MSTC") on behalf of participants. In recent years numerous issuers have implemented plans for the automatic reinvestment of dividends paid on securities issued by them. Some of these reinvestments are suitable for MSTC processing.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

Participants who have securities on deposit as of record date may authorize MSTC to reinvest the dividend from all or a portion of the record date position on such security. Upon receipt of the reinvestment plan payment (full shares, plus cash in lieu of fractional shares) a deposit is made to the participant's position and cash in lieu of fractional shares is disbursed via check or cash adjustment.

The DRP will enhance the safeguarding of securities through the encourage-

ment of certificate immobilization because the participant can reinvest its dividends without withdrawing certificates from the depository.

The proposed rule change represents an equitable allocation of fees.

Comments have neither been solicited nor received.

The proposed rule change will impose no burden on competition.

On or before May 9, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before April 25, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 29, 1977.

[FR Doc.77-9984 Filed 4-1-77;8:45 am]

[Release No. 34-13408; File No. SR-NESDTCO-77-5]

NEW ENGLAND SECURITIES DEPOSITORY TRUST CO.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on March 24, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Proposed Rule Change sets forth the procedures and agreements pursuant to which New England Securities Depository Trust Company ("NESDTCO") will become, and act as, a participant in The Depository Trust Company ("DTC").

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to establish NESDTCO as a participant in DTC in order that, through the NESDTCO-DTC linkage, participants in NESDTCO will be able to receive and deliver securities between New York and Boston on either a book-entry or physical transfer basis while certificates representing their security holdings are retained in controlled locations.

The proposed rule change relates to the capacity of NESDTCO (A) to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible in that it will permit NESDTCO's participants to make safe and inexpensive securities receipts and deliveries between New York and Boston through the NESDTCO-DTC linkage while certificates representing their securities holdings are retained in controlled locations, and (B) to carry out the purposes of Section 17A of the Act by promoting the prompt and accurate clearance and settlement of securities transactions, doing away with the unnecessary costs involved in inefficient procedures for clearance and settlement, taking advantage of new data processing and communications techniques and linking NESDTCO and DTC clearing and settlement procedures.

No comments on the proposed rule change have been solicited or received.

NESDTCO believes that there will be no burden on competition imposed by the proposed rule change.

On or before May 9, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before _____.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 28, 1977.

[FR Doc.77-9987 Filed 4-1-77;8:45 am]

[Rel. No. 19963; 70-5995]

OHIO POWER CO.

Agreement With Municipal Authority for Construction of Pollution Control Equipment Financed by Sale of Revenue Bonds

MARCH 28, 1977.

Notice is hereby given that Ohio Power Company, 301 Cleveland Avenue, S.W., Canton, Ohio 44702 ("Ohio Power"), an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration with this Commission designating Sections 9(a) and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44(b)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio Power states that in order to comply with prescribed environmental quality control standards of the State of West Virginia it has been and will be necessary to construct certain high efficiency electrostatic precipitators for particulate emission control and related facilities (the "Project") to be installed on Units 2, 4, and 5 at its Phillip Sporn Generating Station. It is estimated that the Project will cost approximately $80,000,000, of which at December 31, 1976 approximately $17,000,000 had been expended. By resolutions adopted on March 11, 1975 and October 13, 1976, Mason County, West Virginia ("County") determined that it would authorize and issue one or more series of its pollution control revenue bonds ("Revenue Bonds") in a maximum amount of $80,000,000 to finance the acquisition, construction and installation of the Project.

Ohio Power proposes to enter into an agreement of sale ("Agreement") with the County whereby the County will construct and install the facilities comprising the Project. To finance the Project, the County will issue Revenue Bonds in an initial principal amount of $30,000,000 ("Series A Bonds") and additional Revenue Bonds in principal amounts presently estimated not to exceed $50,000,000, sufficient to cover construction cost of the Project. The proceeds from the sale of the Series A Bonds will be deposited by the County with The Charleston National Bank (Charleston, West Virginia), as trustee ("Trustee") under an indenture to be entered into between the County and the Trustee (the "Indenture") pursuant to which the Series A Bonds are to be issued and secured. Such proceeds will be applied to payment of the cost of construction of the Project,

The Agreement will also provide for the sale of the Project to Ohio Power, the payment by Ohio Power of the purchase price in semi-annual installments over a term of years, and the assignment and pledge to the Trustee of the County's interest in, and of the monies receivable by the County under, the Agreement.

The Agreement will provide that each installment of the purchase price for the project payable by Ohio Power will be in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as will enable the County to pay, when due: (i) the interest on the Series A Bonds, any additional bonds and any refunding bonds, (ii) the principal amount of the Series A Bonds, any additional bonds and any refunding bonds payable at the time of their respective stated maturities, and (iii) amounts, including any accrued interest, payable in connection with any mandatory redemption of the Series A Bonds, any additional bonds or any refunding bonds. The Agreement will also obligate Ohio Power to pay the fees and charges of the Trustee, as well as certain administrative expenses of the County. The Agreement will further provide that Ohio Power may prepay the purchase price of the Project in whole: (i) upon the occurrence of certain events by paying amounts sufficient to redeem all Revenue Bonds then outstanding, the fees and expenses of the Trustee, and all other amounts payable under the Indenture, or (ii) at any time by depositing monies in the Bond Fund (as defined in the Indenture) or delivering to the Trustee governmental obligations sufficient in either case to provide for the release of the Indenture in accordance with its terms. Upon prepayment of the entire purchase price of the Project, Ohio Power may terminate the Agreement. Ohio Power may also prepay the purchase price in part, such payments to be paid to the Trustee for deposit in the Bond Fund, credited against the purchase price, and used for the redemption of outstanding Revenue Bonds in the manner and to the extent the outstanding Revenue Bonds are redeemable or subject to purchase as provided in the Indenture.

Ohio Power proposes to convey the electrostatic precipitators and related equipment, to the extent they have already been constructed and are then in place at the plant site ("Existing Facilities"), subject to its First Mortgage Lien, to the County. The Existing Facilities will thereupon become a part of the Project. Ohio Power will receive from the proceeds from the sale of the Series A Bonds an amount equal to Ohio Power's original cost of the Existing Facilities. The proceeds so received will be added by Ohio Power to its general corporate funds and will be used to prepay unsecured short-term debt, and for construction.

It is contemplated that the Series A Bonds will be sold by the County pursuant to arrangements with a group of underwriters represented by Goldman, Sachs & Co. In accordance with the laws of the State of West Virginia, the interest rate to be borne by the Series A Bonds will be fixed by the County Commission of the County.

Although Ohio Power will not be a party to the underwriting arrangements for the Series A Bonds, Ohio Power will not enter into the Agreement unless the terms of the Series A Bonds and their sale by the County are satisfactory to it.

Ohio Power has been advised that the annual interest rates on obligations, the interest on which is tax exempt, historically have been and can be expected at the time of issue of the Series A Bonds to be 1½% to 2½% lower than the rates on obligations of like tenor and comparable quality, the interest on which is fully subject to federal income tax.

The Series A Bonds will be dated on or about the first day of the month in which they are issued, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. It is expected that the Series A Bonds will not be redeemable at the option of the County within 10 years from their issue date except under certain circumstances. Series A Bonds will be subject to mandatory redemption under the circumstances and terms specified in the Indenture.

Fees and expenses incident to the proposed disposition of the Existing Facilities and the acquisition of the Project (as distinguished from and excluding fees and expenses incident to the sale of the Series A Bonds by the County payable out of the proceeds of such sale) will be supplied by amendment. It is stated the Public Utility Commission of Ohio has jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than April 22, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulniatos promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notice and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-9983 Filed 4-1-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1287; Amdt. No. 2]

MARYLAND

Declaration of Disaster Loan Area

The above numbered Presidential Declaration (See 42 FR 8253 and 42 FR 15392), amendment No. 1 is amended by extending the filing date for physical damage until close of business on April 28, 1977, and for economic injury until the close of business on November 28, 1977.

Date: March 25, 1977.

ROGER H. JONES,
Acting Administrator.

[FR Doc.77-9890 Filed 4-1-77;8:45 am]

[Declaration of Disaster Loan Area No. 1308]

MICHIGAN

Declaration of Disaster Loan Area

Baraga, Delta, Dickinson, Houghton, Iron, Marquette, Menominee, Ontonagon, and adjacent counties within the State of Michigan constitute a disaster area because of physical damage to wells resulting from drought which occurred during the Spring of 1976 through March 14, 1977. Eligible persons, firms and organizations may file applications for loans for physical damage as a result of drought until the close of business on May 26, 1977, and for economic injury until the close of business on December 27, 1977, at:

Small Business Administration,
District Office,
477 Michigan Avenue,
McNamara Bldg.,
Detroit, Mich. 48226.

or other locally announced locations.

Date: March 25, 1977.

ROGER H. JONES,
Acting Administrator.

[FR Doc.77-9889 Filed 4-1-77;8:45 am]

ADVISORY COUNCILS

Annual Comprehensive Review

The President's Memorandum of February 25, 1977, to Heads of Executive Departments and Agencies, expressed his concern about the number and usefulness of Federal advisory committees, and ordered a governmentwide zero-based review of all committees. The President also ordered that each agency should provide for open and public participation in its review process to the maximum extent consistent with an expeditious review.

The current goals of the advisory councils are:

a. To bring together leaders representing the 9.7 million small businesses (both full and part time) of the nation and 3.5 million farmers to provide a dialogue between people, organizations, and the Federal Government to stimulate a common sense of purposefulness oriented to the role and needs of the nation's small businesses.

b. To bring about a greater degree of awareness of the significance of small business throughout this nation's history and a greater recognition that the nation's future is, in large part, related to the opportunity to establish and success of small business.

c. To bring to the attention of the President, Congress, the Governors, and other leaders of the country through the Administrator that a balanced and prosperous economy must include viable small business and that small business not be unduly penalized simply because it is small.

d. To involve the nation's university community with government and the small business private enterprise system in a partnership-for-growth and productivity.

e. To aid the Small Business Administration, as the government representative and advocate of small business, in achieving a stature and role commensurate with the significance of the nation's small business community.

Public comments and recommendations concerning the advisory councils of the Small Business Administration may be addressed to Anthony S. Stasio, Acting Assistant Administrator for Advocacy and Public Communications, c/o Ms. K. Drew, U.S. Small Business Administration, 1441 L Street NW., Room 1034, Washington, D.C. 20416.

Comments should be received by April 11, 1977.

Dated: March 30, 1977.

ANTHONY S. STASIO,
Acting Assistant Administrator for Advocacy and Public Communications, Small Business Administration.

[FR Doc.77-9957 Filed 4-1-77;8:45 am]

SYRACUSE DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Syracuse District Advisory Council will hold a public meeting at 9 a.m., Friday, May 6, 1977, at the Fort Orange Club, 110 Washington Avenue, Albany, New York, 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 J. Wilson Harrison, District Director, U.S. Small Business Administration, Room 1073, Federal Building, 100 South Clinton Street, Syracuse, New York, 13202, (315) 473-3460.

Dated: March 30, 1977.

ANTHONY S. STASIO,
Acting Assistant Administrator for Advocacy and Public Communications.

[FR Doc.77-9958 Filed 4-1-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD No. 77-048]

EQUIPMENT, CONSTRUCTION, AND MATERIALS

Approval Notice

1. Certain laws and regulations (46 CFR Chapter I) require that various items of lifesaving, firefighting and miscellaneous equipment, construction, and materials used on board vessels, subject to Coast Guard inspection, on certain motorboats and other recreational vessels, and on the artificial islands and fixed structures on the outer Continental Shelf be of types approved by the Commandant, U.S. Coast Guard. The purpose of this document is to notify all interested persons that certain approvals have been granted as herein described during the period from December 14, 1976 to January 25, 1977 (List No. 1-77). These actions were taken in accordance with the procedures set forth in 46 CFR 2.75-1 to 2.75-50.

2. The statutory authority for equipment, construction, and material approvals is generally set forth in sections 367, 375, 390b, 416, 481, 489, 526p, and 1333 of Title 46, United States Code, section 1333 of Title 43, United States Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U. S. Coast Guard with respect to these approvals (49 CFR 1.46(b)). The specifications prescribed by the Commandant, U.S. Coast Guard for certain types of equipment, construction, and materials are set forth in 46 CFR Parts 160 to 164.

3. The approvals listed in this document shall be in effect for a period of 5 years from the date of issuance, unless sooner cancelled or suspended by proper authority.

SIGNALS, DISTRESS, COMBINATION FLARE AND SMOKE HAND, FOR MERCHANT VESSELS

Approval No. 160.023/4/0, signal distress, combination flare and smoke, hand-held, Propellex's drawing Model 13, Revision A dated October 7, 1969, manufactured by Propellex Company, P.O. Box 387, Edwardsville, Illinois 62025, effective January 13, 1977. (It is an extension of Approval No. 160.023/4/0 dated February 23, 1972.)

DAVITS FOR MERCHANT VESSELS

Approval No. 160.032/150/4, Type B-47 mechanical davit, straight boom with sheath screw; approved for a maximum working load of 9,450 lbs. per set (4,725 lbs. per arm); identified by general arrangement dwg. 80049, Rev. C dated January 15, 1969 and drawing list dated December 10, 1976, manufactured by Lake Shore, Inc., Iron Mountain, Michigan 49801, effective December 17, 1976. (It supersedes Approval No. 160.032/150/3 dated February 10, 1972 to show drawing revisions.)

Approval No. 160.032/175/0, gravity davit, Type CG-220-2G, approved for a maximum working load of 22,000 pounds per set (11,000 pounds per arm) using 2-part falls; identified by general arrangement dwg. DA-9159, Rev. A dated December 6, 1966, and drawing list dated March 10, 1967, manufactured by Carroll Engineering Company, 313 State Street, Box 711, Perth Amboy, New Jersey 08862, effective January 12, 1977. (It is an extension of Approval No. 160.032/175/0 dated February 1, 1972.)

Approval No. 160.032/203/0, Type GRA gravity davit; approved for a maximum working load of 21,000 lbs. per set (10,500 lbs. per arm); identified by general arrangement drawings F-102798, F-102799, and drawing list D-402077, manufactured by Watercraft America, Inc., P.O. Box 307, Mims, Florida 32754, effective January 25, 1977.

Approval No. 160.032/208/0, Type ORD/DHM (MK II) fixed gravity davit; approved for a maximum working load of 20,380 lbs. per set (10,190 lbs. per arm) using single-part falls; identified by Schat Davits, Ltd. general arrangement drawing F-102876 dated October 6, 1976 and drawing list D402218, undated, manufactured by Watercraft America, Inc., P.O. Box 307, Mims, Florida 32754, effective January 11, 1977.

MECHANICAL DISENGAGING APPARATUS, LIFEBOAT, FOR MERCHANT VESSELS

Approval No. 160.033/61/2, Rottmer type releasing gear, approved for maximum working load of 8700 pounds per hook, identified by disengaging apparatus No. 501-111, Rev. A dated July 26, 1976 and drawing list MDA-501-111, Revision A, dated August 6, 1976, manufactured by Whittaker Corporation, Survival Systems Division, 5159 Baltimore Drive, La Mesa, California 92041, effective January 12, 1977. (It supersedes Approval No. 160.033/61/2 dated May 20, 1975 to show new drawing list incorporating minor changes.)

Approval No. 160.033/64/0, Rottmer type releasing gear, approved for maximum working load of 25,100 pounds per hook, identified by disengaging apparatus drawing No. 502-111, Revision A, dated August 16, 1976 and disengaging apparatus master drawing list CA5000-111, Revision A, dated August 16, 1976, manufactured by Whittaker Corporation, Survival Systems Division, 5159 Baltimore Drive, La Mesa, California 92041, effective January 12, 1977. It supersedes Approval No. 160.033/64/0 dated April 12, 1976, revised to show new drawing list incorporating minor changes.

LIFEBOATS

Approval No. 160.035/89/4, 16.0' x 5.71' x 2.3' steel, oar-propelled lifeboat, 9-person[1] capacity, identified by general

[1] Approved for 12-person capacity for replacement lifeboats, 46 CFR 160.035-13(c). Marking, Weights: (steel gunwale) Condition "A"=1,050 pounds; Condition "B"=3,615 pounds, manufactured by Lane Lifeboat Division of Lane Marine Technology, Inc., 150 Sullivan Street, Brooklyn, New York 11231, effective January 13, 1977. (It is an extension of Approval No. 160.035/89/4 dated February 28, 1972.)

arrangement and construction dwg. No. 49R–1612 dated August 27, 1950 and revised January 28, 1972. If mechanical disengaging apparatus is fitted, it shall be of an approved type and the installation in this particular lifeboat shall be approved by the Commandant.

Approval No. 160.035/178/7, 16.0' x 5.5' x 2.38' steel, oar-propelled lifeboat, 9-person [2] capacity, identified by construction and arrangement dwg. No. 16–1, Rev. F dated January 27, 1972, for limited service use dwg. No. 16–1C dated January 31, 1947, 46 CFR 160.035–13(c) Marking, Weights: Condition "A"=1,070 pounds; Condition "B"=2,918 pounds, if mechanical disengaging apparatus is fitted, it shall be of an approved type and the installation in this particular lifeboat shall be approved by the Commandant.

Approval No. 160.035/338/2, 28.0' x 9.0' x 3.96' aluminum, oar-propelled lifeboat, 59-person capacity, identified by general arrangement drawing No. 28–IE Rev. E dated February 9, 1972, alternate aluminum interior, 45 CR 160.035–13(c) Marking, Weights: Wood Interior: Condition "A"=3,120 pounds; Condition "B"=13,901 pounds, Aluminum Interior: Condition "A"=3,055 pounds; Condition "B"=13,836 pounds, manufactured by Marine Safety Equipment Corporation, Foot of Wyckoff Road, Farmingdale, New Jersey 07727, effective January 13, 1977. (It is an extension of Approval No. 160.035/338/2 dated February 18, 1972.)

Approval No. 160.035/428/3, 24.0' x 8.0' x 3.58' fibrous glass reinforced plastic (FRP) motor-propelled Class 1, lifeboat, 37-person capacity identified by construction and arrangement dwg. No. WBA–9029 Rev. "E" dated December 23, 1975 and drawing list for 24 foot open lifeboat dated September 14, 1976, 46 CFR 160.035–13(c) Marking, Weights: Condition "A"=3,690 pounds; Condition "B"=10,707 pounds, manufactured by Welin Davit and Boat Division, Lake Shore, Inc., 3614 Kennedy Road, So. Plainfield, New Jersey 07080, effective January 24, 1977. (It supersedes Approval No. 160.035/428/2 dated December 19, 1973 to show updated drawing list.)

Approval No. 160.035/444/1, 28.0' x 9.0' x 3.96' aluminum, hand-propelled life boat, 59-person capacity, identified by general arrangement dwg. No. 28–1F, Rev. D dated February 10, 1972, Alternate Aluminum Interior, 46 CFR 160.035–13(c) Marking, Weights: Wood Interior: Condition "A"=3,450 pounds; Condition "B"=14,195 pounds, aluminum Interior: Condition "A"=3,660 pounds; Condition "B"=14,405 pounds, manufactured by Marine Safety Equipment Corporation, Foot of Wyckoff Road, Farmingdale, New Jersey 07727, effective January 13, 1977. (It is an extension of Approval No. 160.035/444/1 dated February 22, 1972).

Approval No. 160.035/449/2, 26.0' x 9.0' x 3.83' aluminum, motor-propelled lifeboat without radio cabin or searchlight (Class 1), 48-person capacity, identified by general arrangement dwg. No. 26–15 Rev. D dated November 20, 1969, or motor-propelled lifeboat with a searchlight and without radio cabin (Class 2), identified by general arrangement dwg. No. 26–18 dated October 16, 1969, to be fitted with Rottmer Type S–1 Release Gear 160.033/39/3 or Rottmer Type B–1 Release Gear 160.033/52/0, 46 CFR 160.035–13(c) Marking, Weights: Class 1 Condition "A"=3,765 pounds; Condition "B"=12,881 pounds, Class 2 Condition "A"=3,765 pounds; Condition "B"=13,050 pounds, manufactured by Marine Safety Equipment Corporation, Foot of Wyckoff Road, Farmingdale, New Jersey 07727, effective January 13, 1977. (It is an extension of Approval No. 160.035/449/2 dated February 15, 1972).

Approval No. 160.035/474/4, Model 1401 survival capsule, 11.2' diameter x 3.35' depth, fibrous glass reiforced plastic (FRP) motor-propelled, totally enclosed model, 14-person capacity, alternate for lifeboat, inflatable life raft or life float identified by master drawing list for Model 1401, revision D dated November 12, 1976, master drawing list for Model 1000, revision D dated November 12, 1976, and general arrangement drawing CA-1401–101, revision B dated September 30, 1975, approved for use only on artificial islands, fixed structures, and drilling rigs, both self-propelled semi-submersible and nonself-propelled, Marking, Weights: Condition "A"=2,310 pounds; Condition "B"=5,483 pounds, manufactured by Whittaker Corporation, Survival Systems Division, 5159 Baltimore Drive, La Mesa, California 92041, effective January 12, 1977. (It supersedes Approval No. 160.035/474/3 dated October 20, 1975 to show revision of drawing lists.)

Approval No. 160.035/479/1, 24.0' x 8.0' x 3.5' F.R.P., motor-propelled lifeboat, without radio cabin (Class 2), 37-person capacity, identified by construction and arrangement dwg. No. P–24–LE, Rev. 8, dated August 6, 1976, and drawing list DL–P–24–LE, Rev. C, dated December 10, 1976, Marking, Weights: Condition "A"=4,265 pounds; Condition "B"=11,328 pounds, manufactured by Marine Safety Equipment Corporation, Foot of Wyckoff Road, Farmingdale, New Jersey 07727, effective January 12, 1977. (It supersedes Approval No. 160.035/479/0 dated October 23, 1974, revised to show alternate engine.)

Approval No. 160.035/480/3, Model CA2801, 14.0' diameter x 4.8' depth fibrous glass reinforced plastic (FRP) motor propelled, totally enclosed "Brucker" survival capsule fitted with Farymann S30M engine, 28 person capacity, as alternate for lifeboat, inflatable life raft or life float, identified by Master Drawing List for Model CA2801, Revision E dated November 12, 1976 and by general & equipment arrangement drawing No. CA2801–101, revision B dated August 4, 1975, approved for use only on artificial islands, fixed structures, and drilling rigs, both self-propelled semi-submersible and nonself-propelled, Marking, Weights: Condition "A"=4,350 pounds; Condition "B"=9,562 pounds, manufactured by Whittaker Corporation, Survival Systems Division, 5159 Baltimore Drive, La Mesa, California 92042, effective January 12, 1977. (It supersedes Approval No. 160.035/480/2 dated October 20, 1975 to show revision of Master Drawing List.)

Approval No. 160.035/483/1, Model CA5001, 19.75' x 14.0' x 5.12' fibrous glass reinforced plastic (FRP) motor propelled, totally enclosed survival capsule fitted with Perkins 4.154 diesel engine, 50 person capacity, as alternate for lifeboat, inflatable life raft or life float, identified by master drawing list for Model CA5001, Revision B dated December 9, 1976 and general arrangement drawing CA5001–101 dated November 12, 1976, approved for use only on artificial islands, fixed structures, and drilling rigs, both self-propelled, semi-submersible and nonself-propelled, 46 CFR 160.035–13(c) Marking, Weights: Condition "A"=7,491 pounds; Condition "B"=17,100 pounds, manufactured by Whittaker Corporation, Survival Systems Division, 5159 Baltimore Drive, La Mesa, California 92041, effective January 12, 1977. (It supersedes Approval No. 160.035/483/0 dated April 12, 1976, revised to delete Model CA5000 and update drawing list.)

Inflatable Life Rafts

Approval No. 160.051/95/0, 10-person inflatable life raft, MK–5 Series; identified by general arrangement drawing CJH/MN/10 dated October 4, 1976 and drawing list dated September 22, 1976, inflation system can use either steel or aluminum cylinders, raft satisfies temperature-exposure inflation requirements of 46 CFR 160.051–5(e)(11) as per Federal Register dated March 13, 1974, manufactured by Patten/Pan-Avion Division of American Safety Flight Systems, Inc., P.O. Box 480213, Miami, Florida 33148, for C. J. Hendry Company, 139 Townsend Street, San Francisco, California 94107, effective December 14, 1976.

Approval No. 160.051/96/0, 12-person inflatable life raft, MK–5 Series; identified by general arrangement drawing CJH/MN/12 dated October 4, 1976 and drawing list dated September 22, 1976, inflation system can use either steel or aluminum cylinders, manufactured by C. J. Hendry Company, 139 Townsend Street, San Francisco, California 94107 or by Patten-Pan Avion Division of American Safety Flight Systems, Inc., P.O. Box 480213, Miami, Florida 33148 under subcontract for C. J. Hendry Company, effective January 11, 1977.

Marine Buoyant Device

Approval No. 160.064/14/0, 18½-inch ring buoy, vinyl coated PVC foam, manufactured in accordance with U.S.C.G. Specification Subpart 160.064 and UL/MD report file No. MQ–33, Type IV PFD, manufactured by Tuffy Products, Inc., 540 West Third Street, Bloomsburg, Pennsylvania 17815, effected January 14,

[2] Approved for 12-person capacity as a replacement in kind for an existing lifeboat requiring 12-person capacity, manufactured by Marine Safety Equipment Corporation, Foot of Wyckoff Road, Farmingdale, New Jersey 07727, effective January 13, 1977. (It is an extension of Approval No. 160.035/178/7 dated March 27, 1972.)

1977. (It is an extension of Approval No. 160.064/14/0 dated March 23, 1972.)

Approval No. 160.064/322/0, child medium, Canoe/Kayak vest, model No. SSV–800, cloth covered PVC foam, manufactured in accordance with U.S.C.G. Specification Subpart 160.064 and UL/MD report file No. MQ–29, Type III PFD, manufactured by Stearns Manufacturing Company, Division Street at Thirtieth, St. Cloud, Minnesota 56301, effective January 14, 1977. (It is an extension of Approval No. 160.064/322/0 dated March 14, 1972.)

Approval No. 160.064/323/0, adult, Canoe/Kayak vest, model No. SSV–900, cloth covered PVC foam, manufactured in accordance with U.S.C.G. Specification Subpart 160.064 and UL/MD report file No. MQ–29, Type III PFD, manufactured by Stearns Manufacturing Company, Division Street at Thirtieth, St. Cloud, Minnesota 56301, effective January 14, 1977. (It is an extension of Approval No. 160.064/323/0 dated March 14, 1972.)

Fire-Protective Systems

Approval No. 161.002/11/2, audible and visual supervised photoelectric optical smoke detection system, Model ESDS–2, one through seventy lines on main cabinet with wheelhouse annunciator, normally furnished with three supervised alarm bells, with provisions for addition of a fourth supervised alarm bell, General Testing Labs report 3808 dated June 20, 1969 and report 380–1 dated August 21, 1969, drawings 56086, 82458, 93336, 93353–93356, 93362, 93429, 93484, 93496, 97865, 97875–97900, 97930, 97932, 97943, 97946, 97995–98014, 98022–98024, 98035, 98036, 98042, 98043, 98050, 98073, 98079–98083, 98095, 98096, 98101, 98102, 98107, 98121, 98165–98179, 98181, 98182, 98184, 98185, 98187–98194, 98210–98214, 98217, 98225, 98226, 98231–98243, 98246–98248, 98267–98273, 98275–98277, 98294–98297, 98299–98314, 98319, 98321, 98343, 98349–98356, 98370, 98371, Norris Test Report dated June 1, 1970, manufactured by The Ansul Company, 1 Stanton Street, Marinette, Wisconsin 54143, formerly Norris Industries, effective December 15, 1976. (It is an extension of Approval No. 160.002/11/2 dated December 22, 1971 and change of name of manufacturer.)

Safety Valves (Power Boilers)

Approval No. 162.001/279/0, Style HC–MS–75 carbon steel body pop safety valve nozzle type, exposed spring fitted with cover 2000 p.s.i. primary service pressure rating and 675° F maximum temperature with standard inlet flange or optional inlet flange, approved for sizes 1½", 2", 2½" and 3", manufactured by Crosby Valve and Gage Company, Wrentham, Massachusetts 02093, effective January 24, 1977. (It is an extension of Approval No. 162.001/279/0 dated December 17, 1971.)

Approval No. 162.001/280/0, Style HC–MS–76 carbon steel body pop safety valve nozzle type, exposed spring fitted with cover 2000 p.s.i. primary service pressure rating and 750° F maximum temperature with standard inlet flange or optional inlet flange, approved for sizes 1½", 2", 2½" and 3", manufactured by Crosby Valve and Gage Company, Wrentham, Massachusetts 02093, effective January 24, 1977. (It is an extension of Approval No. 162.001/280/0 dated December 17, 1971.)

Approval No. 162.001/281/0, Style HCA–MS–77 alloy steel body pop safety valve nozzle type, exposed spring fitted with cover 2000 p.s.i. primary service pressure rating and 900° F maximum temperature with standard inlet flange; 1750 p.s.i. primary service pressure rating and 900° F maximum temperature with optional inlet flange, approved for sizes 1½", 2", 2½" and 3", manufactured by Crosby Valve and Gage Company, Wrentham, Massachusetts 02093, effective January 24, 1977. (It is an extension of Approval No. 162.001/281/0 dated December 17, 1971.)

Approval No. 162.001/282/0, Style HCA–MS–78 alloy steel body pop safety valve nozzle type, exposed spring fitted with cover 1655 p.s.i. primary service pressure rating and 1050° F maximum pressure with standard inlet flange; 995 p.s.i. primary service pressure rating and 1050° F maximum temperature with optional inlet flange, approved for sizes 1½", 2", 2½" and 3", manufactured by Crosby Valve and Gage Company, Wrentham, Massachusetts 02093, effective January 24, 1977. (It is an extension of Approval No. 162.001/282/0 dated December 17, 1971.)

Approval No. 162.001/287/0, Style HNP–MS–55 carbon steel body pilot safety valve, nozzle type, exposed spring fitted with spring cover, 1500 p.s.i. primary service pressure rating 650°F. maximum temperature, approved for sizes 1½" and 2", previously issued as U.S.C.G. Approval No. 162.001/259/0, given new approval number because of confusion arising from both styles HNP–MS–55 and HNP–MS–75 being covered by U.S.C.G. Approval No. 162.001/259/1, manufactured by Crosby Valve and Gage Company, Wrentham, Massachusetts 02093, effective January 24, 1977. (It supersedes Approval No. 162.001/287/0 dated January 11, 1971.)

Pressure Vacuum Relief Valves for Tank Vessels

Approval No. 162.017/118/0, Waukesha Bearings type HS–M, sizes 4", 6", 8" and 10" high velocity pressure-vacuum relief valve with bronze valve body and flame screen body, flame screen body and valve body must be bolted together, use of a spool piece or other separation is not permitted, manufactured by Waukesha Bearings Corporation, P.O. Box 798, Waukesha, Wisconsin 53186, effective December 17, 1976.

Safety relief valves, liquefied compressed gas, approval No. 162.018/80/1

Type	Seat	Inlet size	Orifice	MAWP[1] in pounds per square inch gage
81	Plastic	¾", 1", 1½"	Dash 2 through 8	2,160
		1¼", 2"	F, G, H, J	2,160
83	O-ring	¾", 1", 1½"	Dash 2 through 8	2,160
		1½", 2"	F, G, H, J	2,160

1. The seat material shall be compatible with the intended service (chemistry, temperature), 2. refer to manufacturers literature for actual orifice area, nozzle coefficient for all sizes to 0.816, 3. service temperatures for the body and seat materials shall be as indicated on AGCO dwg. 3–5424, body materials may require impact testing for service temperatures below 0° F., weld procedure qualifications and welder qualifications must be in accordance with 46 CFR Part 57 and to the satisfaction of the Officer in Charge, Marine Inspection in Houston, Texas, manufactured by Anderson, Greenwood and Company, P.O. Box 1097, Bellaire, Texas 77401, effective January 19, 1977. (It supersedes Approval No. 162.018/80/1 dated January 25, 1974.)

Backfire Flame Control, Gasoline Engines; Flame Arresters; for Merchant Vessels and Motorboats

Approval No. 162.041/99/0, Onan Model 145B393 backfire flame arrester for gasoline engines, with the following major components:

Resonator
Disc Assembly
Adapter Assembly
Flame Arrester Tube Assembly
Spacer-Resonator Adapter

minor modification to Model 145B354, Certificate of Approval 162.041/16/0 to fit Zenith 1408 carburetor, manufactured by Onan Division, Onan Corporation, 1400 73rd Avenue, N.E., Minneapolis, Minnesota 55432, effective January 25, 1977. (It is an extension of Approval No. 162.041/99/0 dated February 2, 1972.)

Approval No. 162.041/100/0, Onan Model 145B386 backfire flame arrester for gasoline engines, with the following major components:

Resonator
Disc Assembly
Adapter Assembly
Flame Arrester Tube Assembly
Spacer-Resonator Adapter

minor modification to Model 145B354, Certificate of Approval 162.041/16/0 to fit Walbro carburetor, manufactured by Onan Division, Onan Corporation, 1400 73rd Avenue, N.E., Minneapolis, Minnesota 55432, effective January 25, 1977. (It is an extension of Approval No. 162.041/100/0 dated February 2, 1972.)

Deck Coverings for Merchant Vessels

Approval No. 164.006/2/0, SELBALITH magnesite type deck covering identical to that described in National Bureau of Standards Test Report No. TG–3610–1215; FR 1779 dated July 2, 940, approved for use without other in-

sulating material as meeting Class A–60 requirements in a 1½-inch thickness, manufactured by Selby, Battersby & Company, 5220 Whitby Avenue, Philadelphia, Pennsylvania 19143, effective January 12, 1977. (It is an extension of Approval No. 164.006/2/0 dated February 3, 1972.)

STRUCTURAL INSULATIONS FOR MERCHANT VESSELS

Approval No. 164.007/1/0, "48" C. G. Felt, mineral wool type structural insulation to that described in National Bureau of Standards Test Report No. TG 3610–1372; FR–2235 dated April 1, 1944, bats and blankets approved for use without other insulating material to meet Class A–60 requirements in thicknesses and densities as follows:

3 inches at 8 pounds per cubic foot density
4 inches at 6 pounds per cubic foot density

manufactured by Forty-Eight Insulations, Inc., Aurora, Illionis 60504, effective January 12, 1977. (It is an extension of Approval No. 164.007/1/0 dated February 3, 1972.)

INCOMBUSTIBLE MATERIALS FOR MERCHANT VESSELS

Approval No. 164.009/7/0, Gold bond A–C board, asbestos cement board type incombustible material identical to that described in National Gypsum Co. letter dated June 4, 1943, manufactured by National Gypsum Company, Buffalo, New York 14202, effective January 13, 1977. (It is an extension of Approval No. 164.009/7/0 dated March 1, 1972.)

Approval No. 164.009/153/0, Birma Products Corporation "Birma Spiral Duct Insulation—Aluminum faced" identical to that described in Birma Products Corporation letter dated January 31, 1972, manufactured by Birma Products Corporation, Jernee Mill Road, Sayreville, New Jersey 08872, effective January 13, 1977. (It is an extension of Approval No. 164.009/153/0 dated March 13, 1972.)

Approval No. 164.009/192/0, continuous molded pipe insulation identical to that described in the National Bureau of Standards Report No. 3919 dated August 17, 1976, in density of 5.6 pounds per cubic foot, manufactured by Owens-Corning Fiberglas Corporation, 900 17th Street, NW., Washington, D.C. 20006, Plant: Newark Ohio, effective January 11, 1977. (It supersedes Approval No. 164.009/192/0 dated September 22, 1976 to show change of plant location.)

Approval No. 164.009/193/0, Two-piece molded pipe insulation identical to that described in the National Bureau of Standards Report No. 3919 dated August 17, 1976, in density of 5.6 pounds per cubic foot, manufactured by Owens-Corning Fiberglas Corporation, 900 17th Street, NW., Washington, D.C. 20006, Plant: Newark, Ohio effective January 11, 1977. (It supersedes Approval No. 164.009/193/0 dated September 22 1976 to show change of plant location.)

Approval No. 164.009/194/0, "Refrasil" silicone dioxide cloth fabric, Type UC100–48, in thickness of 0.018 inch and weight of 18 oz./square yard, and type UC100–96, in thickness of 0.054 inch and weight of 34 oz./square yard, identical to that described in the National Bureau of Standards Test Report No. FR3923, dated November 5, 1976, manufactured by Hitco, Materials Division, 1600 West 135th Street, Gardena, California 90249, effective January 18, 1977.

INTERIOR FINISHES FOR MERCHANT VESSELS

Approval No. 164.012/15/0, Pressure-sensitive tape (aluminum foil) in 2 mil thickness, to be applied with manufacturer's adhesive LA–8100, manufactured by Morgan Adhesives Company, 4560 Darrow Road, Stow, Ohio 44224, effective January 18, 1977.

Dated: March 29, 1977.

H. G. LYONS,
Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc.77-9924 Filed 4-1-77;8:45 am]

Federal Aviation Administration

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA) SPECIAL COMMITTEE 132—AIRBORNE AUDIO SYSTEMS & EQUIPMENT

Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the RTCA Special Committee 132—Airborne Audio Systems & Equipment to be held April 27–28, 1977, RTCA Conference Room 261, 1717 H Street, NW., Washington, D.C. commencing at 9:30 a.m. The Agenda for this meeting is as follows: (1) Chairman's comments; (2) Approval of Minutes of First Meeting Held January 10–11, 1977; (3) Consideration of New Inputs from Members; (4) Assignment of Tasks; (5) Informal Working Group Sessions, and (6) Summaries of Working Group Sessions.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, RTCA Secretariat, 1717 H Street, NW., Washington, D.C. 20006; 202–296–0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on March 25, 1977.

KARL F. BIERACH,
Designated Officer.

[FR Doc.77-9859 Filed 4-1-77;8:45 am]

National Highway Traffic Safety Administration

TRUCK AND BUS SAFETY SUBCOMMITTEES

Public Meeting

As published in the FEDERAL REGISTER on March 28, 1977 the Truck and Bus Safety Subcommittees wil be meeting on April 14 from 1 p.m. to 5 p.m. and on April 15 from 8 a.m. to 12 noon at the Sheraton National Motor Hotel in Arlington, Virginia.

The following supplemental information on the agenda items. On April 14 the subcommittees will divide into the following task forces:

100, 200 and 300 Series FMVSS—to discuss requirements, problems and operational experiences with FMVSS 121 parking and emergency brake systems for trailers.

Operations and Driver—to discuss driver training, maintenance training and maintenance as they relate to FMVSS 121.

R&D and Government Operations—to review and analyze past, present and proposed FHWA and NHTSA research and development related to trucks and buses. In addition they will explore the relationship between Federal Highway Administration (FHWA), Bureau of Motor Carrier Safety (BMCS), and National Highway Traffic Safety Administration (NHTSA) as it affects truck and bus safety.

On April 15 from 8 a.m. to 12 noon the full subcommittees will meet to discuss the previous day's work, formulate appropriate recommendations to submit to the Secretary and discuss future task force agendas.

Attendance is open to the interested public but limited to the space available. With the approval of the Task Force Chairmen, members of the public may present positions, data or information at the meeting. Any member of the public may present a written statement to the subcommittees at any time. This meeting is subject to the approval of the appropriate DOT officials.

Additional information may be obtained from the NHTSA Executive Secretary, Room 5215, 400 Seventh Street SW. (DOT Headquarters Building), Washington, D.C. 20590, telephone 202–426–2872.

Issued in Washington, D.C. on March 30, 1977.

WILLIAM H. MARSH,
Executive Secretary.

[FR Doc.77-9922 Filed 4-1-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Public Debt Series—No. 8–77]

7 PERCENT TREASURY NOTES SERIES E–1982

Interest Rate

MARCH 30, 1977.

The Secretary of the Treasury announced on March 29, 1977, that the in-

terest rate on the notes described in Department Circular—Public Debt Series—No. 8–77, dated March 22, 1977, will be 7 percent per annum. Accordingly, the notes are hereby redesignated 7 percent Treasury Notes of Series E–1982. Interest on the notes will be payable at the rate of 7 percent per annum.

DAVID MOSSO,
Fiscal Assistant Secretary.

[FR Doc.77–9959 Filed 4–1–77;8:45 am]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON JUDICIAL REVIEW

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States, to be held at 2 p.m., April 18, 1977 in the 7th floor Conference Room of Covington and Burling, 888 16th Street, NW., Washington, D.C. 20006.

The Committee will meet to consider, for the first time, an ongoing study of "Judicial Review of Customs Service Actions," by Professor Peter M. Gerhart. Other Conference business of a general nature may also be discussed.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037, at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this Committee meeting contact Jeffrey Lubbers, 202–254–7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

MARCH 28, 1977.

[FR Doc.77–9891 Filed 4–1–77;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

SHIPPERS ADVISORY COMMITTEE

Rescheduled Meeting

The April 5, 1977, meeting of the Shippers Advisory Committee, announced in the March 21, 1977, issue of the FEDERAL REGISTER (42 FR 15356), is canceled. At its meeting of March 29, 1977, the committee recommended amendment of the current regulations which it considers appropriate in the current supply situation, and requested that the meeting scheduled for April 5 be canceled.

Pursuant to the provisions of 10(a)(2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of meetings 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 April 19 and 26, 1977.

The meetings 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 meetings and other information pertaining to the meetings may be obtained from Frank D. Trovillion, Manager, Growers Administrative Committee, P.O. Box R, Lakeland, Florida 33802; telephone 813–682–3103.

Dated: March 31, 1977.

WILLIAM T. MANLEY,
Acting Administrator.

[FR Doc.77–10104 Filed 4–1–77;10:15 am]

Federal Grain Inspection Service

GRAIN STANDARDS

Michigan Grain Inspection Point

Notice is hereby given that the J. P. Magers, Inc., which is designated under section 7(f) of the U.S. Grain Standards Act (7 U.S.C. 79(f)) to operate as an official agency at Battle Creek, Michigan, has changed its name to Grain Inspection Services Inc. The change in name does not involve a change in management or ownership.

Done in Washington, D.C., on March 29, 1977.

WILLIAM T. MANLEY,
Interim Administrator.

[FR Doc.77–9913 Filed 4–1–77;8:45 am]

Packers and Stockyards Administration

BAKERSFIELD CATTLE AUCTION BAKERSFIELD, CALIFORNIA, ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	*Date of posting*
CA–103 Bakersfield Cattle Auction, Bakersfield, Calif.	July 29, 1970.
GA–179 Tobesofkee Livestock, Inc., Macon, Ga.	May 1, 1975.
PA–111 Bell's Sales Arena, Dillsburg, Pa.	Nov. 19, 1969.
TX–109 Austin Livestock Auction, Inc., Austin, Tex.	Apr. 2, 1957.
TX–192 North Houston Livestock Auction, Inc., Houston, Tex.	Sept. 30, 1968.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule relieving a restriction and may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective on April 4, 1977.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 29th day of March 1977.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.77–9914 Filed 4–1–77;8:45 am]

Soil Conservation Service

UPPER RED ROCK CREEK WATERSHED PROJECT, OKLA.

Availability of Negative Declaration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for a portion of the Upper Red Rock Creek Watershed project, Garfield, Noble, Kay and Grant Counties, Oklahoma.

The environmental assessment of this federal action indicates that this portion of the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with this portion of the project. As a result of these findings, Mr. Roland R. Willis, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this portion of the project.

The project concerns a plan for watershed protection and flood prevention. The planned works of improvement covered by this negative declaration include conservation land treatment supplemented by 20 single-purpose floodwater retarding structures.

The negative declaration is being filed with the Council on Environmental Quality and copies are being sent to various federal, state, and local agencies. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, USDA Building, Farm Road and Brumley Street, Stillwater, Oklahoma 74074. A limited number of copies of the negative declaration is available from the same address to fill single copy requests.

No administrative action on implementation on the proposal will be taken until April 19, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Public Law 83-566, 16 USC 1001-1008.)

Dated: March 24, 1977.

JAMES W. MITCHELL,
Director, Watersheds Division,
Soil Conservation Service.

[FR Doc.77-9892 Filed 4-1-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 360]

Assignment of Hearings

MARCH 30, 1977.

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 142291, MDI, Inc., now being assigned June 7, 1977 (1 day), at Minneapolis, Minnesota, in a hearing room to be later designated.

MC 113678 (Sub-629), Curtis, Inc., now being assigned June 8, 1977 (1 day), at Minneapolis, Minnesota, in a hearing room to be later designated.

MC 118202 (Sub-60), Schultz Transit, Inc., now being assigned June 9, 1977 (2 days), at Minneapolis, Minnesota, in a hearing room to be later designated.

AB-1 (Sub-29), Chicago and Northwestern Transportation Company Abandonment Between Hayward and Bayfield, Also Between Ashland Junction and Ashland, all in Sawyer, Ashland, and Bayfield Counties, Wisconsin, now being assigned June 13, 1977 (1 week), at Ashland, Wisconsin, in a hearing room to be later designated.

No. 36420, Joint-Line Routing of Coal, CR and LN RR's, now being assigned for hearing on April 19, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 112617 Sub No. 145, Liquid Transporters, Inc., now being assigned June 6, 1977 (1 week), at Louisville, Kentucky, in a hearing room to be later designated.

MC 116915 Sub 28, Eck Miller Transportation Corp., now being assigned June 1, 1977 (1 day), at Louisville, Kentucky, in a hearing room to be later designated.

MC 116254 Sub 166, Chem-Haulers, Inc., MC 112617 Sub 346, Liquid Transporters, Inc., and MC 112595 Sub 64, Ford Brothers, Inc., now being assigned June 2, 1977 (2 days), at Louisville, Kentucky, in a hearing room to be later designated.

MC-C 9106, Freightways Express, Inc. *v.* Seco Trucking, Inc., now being assigned June 2, 1977 (1 day), at Memphis, Tennessee, in a hearing room to be later designated.

MC 142066 Sub 1, Theophane Lawrence Schlegel and Diana Gayle Schlegel, d.b.a. Central Pacific Freight Lines, now being assigned April 25, 1977 (3 days), for continued hearings at Salem, Oregon, and will be held in Conference Room A, Labor and Industries Building.

MC 111594 (Sub-72), CW Transport, Inc., now being assigned May 4, 1977 (1 day), at Chicago, Illinois, in Room 1319 Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 140850 (Sub-2), Jersey Steward Trucking, Inc., now being assigned May 5, 1977 (2 days), at Chicago, Illinois, in Room 1319 Everett McKinley Dirksen Building, 219 South Dearborn Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-9991 Filed 4-1-77;8:45 am]

[Notice No. 145]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before May 4, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-76930, filed March 23, 1977. Transferee: Grandview Enterprises, Inc., 8265 North Borthwick Ave., Portland, Oreg. 97217. Transferor: William W. Williams, 8265 N. Borthwick, Port Orchard, Wash. 98366. Applicant's representative: George Kargianis, Attorney-at-law, 2120 Pacific Building, Seattle, WA 98104. Authority sought for purchase by transferee of the operating rights of transferor set forth in Permits Nos. MC-136089 (Sub-No. 1), MC-136089 (Sub-No. 2), and MC-136089 (Sub-No. 4), issued by the Commission July 9, 1973, March 13, 1973, and December 7, 1976, respectively, as follows: Cleaning and chemical compounds, in containers, from Barberton, Ohio, to points in Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, North Dakota, South Dakota, Texas, Utah, Wyoming, Washington, and Oregon, limited to a transportation service to be performed under a continuing contract, or contracts, with Malco Products, Inc, and finished plastic products, from Akron, Ohio, to points in Washington, Oregon, California, Colorado, Montana, New Mexico, Nevada, North Dakota, South Dakota, Idaho, Texas, Arizona, Wyoming, and Utah, limited to a transportation service to be performed under a continuing contract, or contracts with Cardinal Plastics, a division of Scott & Fetzer Company. Transferee presently holds authority from this Commission under Permit No. MC-139588. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76933, filed March 25, 1977. Transferee: H & M Transport, Inc., 3032 S. El Dorado, Stockton, Calif. 95206. Transferor: Douglas S. Whyte and Tony I. Cenbrano, d.b.a. Molasses Truck Service, P.O. Box 2147, Stockton, Calif. 95201. Applicants' representative: Arden Riess, 319 East Charter Way, P.O. Box 6067, Stockton, Calif. 95206. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC-119175 (Sub-No. 1), issued August 11, 1961, authorizing the transportation of liquid molasses, with or without additives, in bulk, in tank vehicles, from Richmond and Stockton, Calif., to points in Nevada, and those set forth in Permit No. MC-140270 (Sub-No. 2) issued July 25, 1975, authorizing the transportation of natural spring water, potable, in bulk, in tank vehicles, from Mill Creek, Calif., to Las Vegas, Henderson, and Boulder City, Nev., restricted to a transportation service to be performed under a continuing contract or contracts with Five Springs Water Company. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b) of the Act.

No. MC-FC-76976, filed February 11, 1977. Transferee: Wayne's Heritage Tours of America, Inc., 809 West 26th St., Erie, Pa. 16502. Transferors: William W. Lacock, d.b.a. Heritage Tours of Pennsylvania, 809 West 26th St., Erie, Pa. 16502; Wayne C. Lacock, d.b.a. Wayne Travel Service, 1031 Jenkins Arcade, Pit-

tsburgh, Pa. 15222. Applicants' representative: S. Harrison Kahn, Attorney-at-Law, Suite 733 Investment Building, Washington, D.C. 20005. Authority sought for purchase by transferee of the operating rights of transferors set forth in Licenses Nos. MC–12613 (Sub-No. 2), MC–12613 (Sub-No. 5), and MC–12531, issued January 21, 1974, June 16, 1975, and May 1, 1953, respectively, authorizing operations as a broker at Pittsburgh, Pa., in connection with the transportation of passengers and their baggage, in round-trip all expense tours, restricted to passengers moving by motor vehicle or by any combination of motor vehicle and other means of transportation, beginning and ending at Pittsburgh, Pa., or points within 25 miles of Pittsburgh and extending to all points in the United States, including the District of Columbia; operations as a broker at Fredonia, Mercer, and Sharon, Pa., in connection with the transportation of passengers and their baggage, in special charter operations, beginning and ending at points in Clarion, Clearfield, Crawford, Jefferson, Lawrence, and Mercer Counties, Pa., and extending to points in the United States, including Alaska and Hawaii; operations as a broker at Lake City, Pa., in connection with the transportation of passengers and their baggage, in special and charter operations, in all expense round-trip tours, beginning and ending at points in Erie and Warren Counties, Pa., and extending to points in the United States (except points in Alaska and Hawaii); and operations as a broker at Erie, Pa., in connection with the transportation of passengers and their baggage, in special and charter operations in round-trip tours, beginning and ending at Erie, Pa., and extending to points in the United States, except Alaska and Hawaii. Transferee presently holds no authority from this Commission.

No. MC–FC–76983 filed February 22, 1977. Transferee: Hub City Transfer & Storage Co., Inc., 200 East 3rd, Centralia, Washington, 98531. TRANSFEROR: William F. Conrad, d.b.a. Hub City Transfer & Storage Co., 200 East 3rd, Centralia, Washington, 98531, Applicant's representative: George H. Hart, 1100 IBM Building, Seattle, Washington, 98101, Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–1798 and MC–1798 (Sub-No. 4), issued April 27, 1959, and July 29, 1969, as follows: General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, Between Centralia, Wash., and Chehalis, Wash.; Household goods as defined by the Commission, Between points in Lewis and Thurston Counties, Wash., on the one hand, and, on the other, points in Oregon; and General commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, Between Centralia and Chehalis, Wash., on the one hand, and, on the other, the Centralia Steam Electric plant site of Pacific Power and Light Company, in Lewis County, Wash., and the Skookumchuck Damsite of Pacific Power and Light Company, in Thurston County, Wash. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76987, filed February 23, 1977. Transferee: C M T, Inc., 5565 East 52nd Avenue, Commerce City, Colorado 80022. Transferor: J. B. Montgomery, Inc., A Delaware Corporation, 5565 East 52nd Avenue, Commerce City, Colorado 80022. Applicant's representative: Charles W. Singer, Attorney at Law, 2440 East Commercial Blvd., Fort Lauderdale, Florida 33308. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate No. MC–140024, issued December 24, 1975, as follows: Meats, meat products, and meat by-products, and articles distributed by meat packinghouses from the plant site of Minden Beef Company at or near Minden, Nebr., to points in California, Idaho, Nevada, Oregon, Utah, and Washington. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC–FC–76988, filed February 22, 1977. Transferee: Lone Star Travelers, Inc., P.O. Box 52130, Houston, Texas. Transferor: Howard Warren Torrible, d.b.a. Houston Gray Line Tours, 6800 Main Street, Houston, Texas 77030. Applicant's Representative: S. Harrison Kahn, Attorney at Law, Suite 733, Investment Building, Washington, D.C. 20005. Application sought for purchase by transferee of License No. MC–12736 issued June 14, 1961 as a broker at Houston, Texas in connection with the transportation of passengers and their baggage in round-trip sightseeing tours beginning and ending at Houston, Texas and extending to points in the United States (except Alaska and Hawaii) but including ports of entry on the United States-Canada boundary line. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority.

No. MC–FC–76989, filed February 23, 1977. Transferee: Harvey G. Nobel, d.b.a. Gilch's Service, 1253 Black Horse Pike, Runnemede, New Jersey 08078. Transferor: George Gilch, Catherine B. Gilch, Executrix, 2961 David Road, Runnemede, New Jersey 08078. Applicant's representative: J. Raymond Clark, Attorney at Law, Suite 1150, 600 New Hampshire Avenue, NW., Washington, D.C. 20037. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–135798, issued November 30, 1972, as follows: Wrecked and disabled motor vehicles between points in Camden, Gloucester, Burlington, and Salem Counties, New Jersey, on the one hand, and, on the other, points in Connecticut, Virginia, New York, Pennsylvania, Delaware, Maryland, and the District of Columbia. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76990, filed February 25, 1977. Transferee: Rouse's Body Shop, Inc., E. 19 Ermina, Spokane, Washington 99207. Transferor: Custom Towing, Inc., E. 34 Trent, Spokane, Washington 99202. Applicant's representative: Donald A. Ericson, Attorney at Law, 708 Old National Bank Building, Spokane, Washington 99201. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–112570 issued June 5, 1964, as follows: Wrecked and disabled motor vehicles, and recovered, stolen, or repossessed automobiles between Spokane, Wash., on the one hand, and, on the other, points in Idaho and specified counties in Montana, and specified points in Washington. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a (b).

No. MC–FC–76998 filed February 28, 1977. Transferee: Mid-Way Transportation, Inc., 8800 Oakdale, Waco, Texas, 76710. Transferor: D. G. Armstrong, d.b.a. Mid-Way Transportation Co., 8800 Oakdale, Waco, Texas 76710. Applicants' representative: Thomas F. Sedberry, 1102 Perry-Brooks Bldg., Austin, Texas 78701. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–140676 (Sub-No. 1), issued May 19, 1976, as follows: Brick and tile, from points in that part of Texas on and east of a line beginning at the Texas-Oklahoma State line and proceeding along U.S. Highway 283 to junction U.S. Highway 67 at or near Coleman, Tex., thence along U.S. Highway 67 to San Angelo, Tex., thence along U.S. Highway 277 to the United States-Mexico Boundary line at or near Del Rio, Tex. (Except points in Dallas and Tarrant Counties, Tex.), to points in Louisiana, Mississippi, Alabama, and Florida. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a (b).

No. MC–FC–76999 filed February 22, 1977. Transferee: Robinson Truck Line, Inc., Highway 50 West, West Point, Mississippi 39773. Transferor: William A. Robinson, Henry Clay Robinson, Jr., Richard Ray Robinson, and Frank Taylor Robinson, A Partnership, d.b.a. Robinson Truck Lines, Highway 50 West, West Point, Mississippi 39773. Applicants' representative: Robert B. Marshall, Jr., 203 Jordan Avenue, P.O. Box 835, West Point, Mississippi 39773. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate Nos. MC–16502, MC–16502 (Sub-No. 17) and MC–16502 (Sub-No. 19), issued November 11, 1974, September 4, 1975, and October 12, 1975, as follows: *General commodities*, except those of unusual value, classes A and B explo-

sives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, over regular routes, Serving the site of the United States Navy Jet Air Base near Meridian, Miss., an as off-route point in connection with carrier's regular-route operations authorized herein, Serving the facilities of Slate Springs Glove Company at or near Lynville, Miss., as an off-route point in connection with carrier's regular route operations authorized herein. Between Scooba, Miss., and Electric Mills, Miss., serving all intermediate points: From Scooba over U.S. Highway 45 to Electric Mills, and return over the same route; *General commodities*, except those of unusual value, classes A and B explosives, liquors, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over regular routes, Between Memphis, Tenn., and Starkville, Miss., serving all intermediate points between Okolona and Starkville, Miss., including Okolona, and the off-route points of Egypt, Gibson, Prairie, Tibbee, Mayhew, State College, Sessums, Artesia, Billups, Bent Oak, and Columbus, Miss., points on Mississippi Highway 10 between West Point, Miss., and junction Mississippi Highway 10 and Alternate U.S. Highway 45 (formerly Mississippi Highway 45W), not including West Point: From Memphis over U.S. Highway 78 via New Albany, Miss., to Tupelo, Miss., thence over U.S. Highway 45 to junction Alternate U.S. Highway 45 (formerly Mississippi Highway 45W), thence over Alternate U.S. Highway 45 to junction U.S. Highway 82, thence west over U.S. Highway 82 to Starkville, and return over the same route.

Between junction Alternate U.S. Highway 45 (formerly Mississippi Highway 45W), and U.S. Highway 82, and Macon, Miss., serving the intermediate point of Crawford, Miss., and off-route point of Brookville, Miss.: From junction Alternate U.S. Highway 45 (formerly Mississippi Highway 45W), and U.S. Highway 82 over Alternate U.S. Highway 45 to junction U.S. Highway 45, thence over U.S. Highway 45 to Macon, and return over the same route. Serving Columbus Air Base, Miss., as an off-route point in connection with carrier's regular-route operations authorized herein between Memphis, Tenn., and Starkville, Miss.; *General commodities*, except those of unusual value, classes A and B explosives, liquors, household goods as defined by the Commission, and commodities requiring special equipment, Between Macon, Miss., and De Kalb, Miss., serving the intermediate points of Shuqualak, Wahalak, and Scooba, Miss.: From Macon over U.S. Highway 45 to Scooba, Miss., thence over Mississippi Highway 16 to De Kalb, and return over the same route; MC-16502 Sub-17—*General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), Serving the facilities of Weyerhaeuser Company, near Columbus, Miss., as an off-route point in connection with carrier's authorized regular-route operations between Memphis, Tenn., and Macon, Miss.; MC 16502 Sub-19—*Phosphorus pentasulfide*, in containners, From Columbus, Miss., to Port Arthur, Tex .Transferee presently holds no authority from this Commission. Application has not been filed from temporary authority under section 210a(b).

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-9090 Filed 4-1-77;8:45 am]

WABASH RAILROAD CO., ET AL.

Abandonment of Rail Lines

MARCH 21, 1977.

In the matter of the Wabash Railroad Company and Norfolk and Western Railway Company abandonment between Fairbury and Clay in Livingston County, Illinois, AB 10 (Sub-No. 6); Illinois Central Gulf Railroad Company abandoment between Saxony and Pontiac, in Livingston County, Illinois, AB 43 (Sub-No. 20); Illinois Central Gulf Railroad Company abandonment between Flanagan and Minonk-Junction in Livingston and Woodford Counties, Illinois, AB 43 (Sub-No. 21).

The Interstate Commerce Commission hereby gives notice that its section of Energy and Environment has concluded that the proposed abandonments if approved by the Commission, do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the diversion of the traffic presently moving over the lines would not appreciably affect ambient environmental conditions in the affected corridors and tributary territory. A serious adverse impact on rural and community development would not be expected to result from the proposed abandonments. No historic or archeological sites are involved in the proposed actions.

This conclusion is contained in a staff-prepared environmental threshold survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before May 4, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-9092 Filed 4-1-77;8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409), 5 U.S.C. 552b(e)(3).

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1

AGENCY HOLDING THE MEETING: Civil Aeronautics Board.

TIME AND DATE: 10 a.m., April 6, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue N.W., Washington, D.C. 20428.

SUBJECT: Oral Argument, Docket 28004, Pacific Overseas Fares Investigation.

STATUS: Open.

PERSON TO CONTACT:
Phyllis T. Kaylor, The Secretary, (202) 673–5068.

[S–79–77 Filed 3–30–77;4:50 pm]

2

AGENCY HOLDING THE MEETING: Civil Aeronautics Board.

TIME AND DATE: 10 a.m., April 5, 1977.
PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Docket 30314, Part 370—Employee Responsibilities and Conduct.

STATUS: Open.

PERSON TO CONTACT:
Phyllis T. Kaylor, The Secretary, (202) 673–5068.

SUPPLEMENTARY INFORMATION: Those persons who previously filed individual or joint comments in Docket 30314 are invited to present their views orally to the Board at the April 5, 1977, meeting. For this purpose, information copies of a draft revised Part 370 prepared by the Office of General Counsel following the March 24, 1977 Board Meeting will be available at the Board's Publications Services Division, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. 20428 after 1:00 p.m., March 30, 1977.

Individuals who filed designed separate comments may request the opportunity to address the Board. In the interests of time, those persons who filed joint comments are encouraged to select one speaker to represent the group. Persons who filed joint comments may also present their individual views to the Board, but if many such requests are received, it may be necessary to limit the amount of time for each such speaker.

All requests for presentation time must be made in writing to the Secretary no later than noon, Friday, April 1, 1977. Each request should specify the name of the individual or group filing the written comment and the name of the person who will address the Board. Persons who filed comments jointly but wish to address the Board as individuals must so note on their request. If desired, telephone numbers may be provided.

The order of speakers and time per speaker will be announced on Monday morning, April 4, 1977. The Secretary will notify each speaker of the schedule.

[S–80–77 Filed 3–30–77;4:50 pm]

3

AGENCY HOLDING THE MEETING: Federal Communications Commisison.

TIME AND DATE: 9:30 a.m., Wednesday, Apri 6, 1977.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda and item No.	*Subject*
General—1	Early formation of 1979 WARC Delegation.
Common carrier—1	Memorandum opinion and notice of proposed rulemaking concerning uniform settlement rates on parallel international communications routes.
Renewal—1	Bureau's analysis of supplemental information filed pursuant to the Commission's memorandum opinion and order, 61 FCC 2d 523 (1976), by Station WHK, Cleveland, Ohio (BR–285).
Television—1	Petition for reconsideration of action denying an application for review of action by Broadcast Bureau dismissing an application for changes in the facilities of KRSD–TV, Rapid City, S.D. (BPCT–4077).
Compliants and Compliance—1	Application for review, filed on Oct. 28, 1976, by Melbourne A. Noel, Jr. of the Broadcast Bureau's ruling Oct. 14, 1976, denying his complaint against WLS–TV and radio, WBBM–TV and radio, WMAQ–TV, WGN–TV and radio and WLAK(FM), Chicago, Ill.
Special—1	Proposed rule changes in Part 73 to permit the use, on a permissive basis, of circular or elliptical polarization for television broadcast transmissions (Docket No. 20802).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, Jr., FCC Public Information Officer, telephone number (202) 632–7260.

Issued: March 30, 1977.

[S–77–77 Filed 3–30–77;4:50 pm]

4

AGENCY HOLDING THE MEETING: Federal Home Loan Bank Board.

Pursuant to the Government in the Sunshine Act of 1976, 5 U.S.C. 552b(e)(2) and (3), announcement is made of a change of subject matter of a portion of a Board meetng scheduled to be held on March 31, 1977, at 9:30 a.m., in room 630. Mr. Garth Marston and Mr. Grady Perry, Jr., constituting the entire membership of the Board, hereby determine by recorded vote that Board business requires such change and that no earlier announcement of such change was possible. The announcement of this change and the vote of each member upon such change is being made at the earliest practicable time.

The changes are as follows:

1. Consideration of Proposal by Heizer Corporation, Chicago, Illinois, to Acquire Buckeye Savings Association, Forest

Park, Ohio is Withdrawn from the Agenda.

2. Application for Bank Membership and Insurance of Accounts by Liberty Savings and Loan Association, Warrenton, Viginia, is Added to the Agenda for the Open Meeting.

Mr. Robert Marshall (202-376-3012) is the Board official designated to respond to requests for information pertaining to such meeting.

The Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[S-73-77 Filed 3-30-77;2:17 pm]

5

AGENCY HOLDING THE MEETING: Federal Power Commission.

MARCH 29, 1977.

The following items are added to the Commission meeting of March 31, 1977, upon the affirmative vote of Chairman Dunham, and Commissioners Smith, Holloman, and Watt.

G-23 Docket No. CP73-206, Consolidated Gas Supply Corporation
G-24 Docket No. CP77-213, Mid Louisiana Gas Company
G-25 Docket No. G-11138, Texas Gas Transmission Company and Southern Natural Gas Company

KENNETH F. PLUMB,
Secretary.

[S-78-77 Filed 3-30-77;4:50 pm]

6

AGENCY HOLDING THE MEETING: Federal Reserve System.

On Wednesday, April 6, 1977, at 10 a.m. a meeting of the Board of Governors of the Federal Reserve System will be held at the Board's offices at 20th Street and Constitution Avenue NW., Washington, D.C., to consider the following items of official Board business:

1. Amendments to the Federal Reserve System's retirement, thrift, and long-term disability income plan. (This matter was originally scheduled at a meeting on March 23, 1977).

2. Issues regarding electronics funds transfer systems in preparation for anticipated testimony before the Congress. (This matter was originally scheduled at a meeting on April 1, 1977.)

3. Any agenda items carried forward from a previously announced closed meeting.

This meeting will be closed to public observation because the items fall under exemptions contained in the Government in the Sunshine Act (5 U.S.C. 552b(c)). Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, March 29, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-71-77 Filed 3-30-77;1:29 pm]

7

AGENCY HOLDING THE MEETING: Foreign Claims Settlement Commission.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notices in regard to the scheduling of open meetings and oral hearings for the transaction of routine Commission business and other matters specified, as follows:

Date and time	*Subject matter*
Wed., Apr. 13, 1977, at 10 a.m.	Oral hearings on objections to decisions issued under the Hungarian Claims Program.
Thurs., Apr. 14, 1977, at 10 a.m.	Oral hearings on objections to decisions issued under the Hungarian Claims Program.
Fri., Apr. 15, 1977, at 10:30 a.m.	Consideration of Hungarian Claims.
Thurs., Apr. 21, 1977, at 10 a.m.	Oral hearings on objections to decisions issued under the Hungarian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Executive Director, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, D.C. 20579. Telephone: 202/653-6156.

Dated at Washington, D.C., on March 28, 1977.

FRANCIS T. MASTERSON,
Executive Director.

[S-76-77 Filed 3-30-77;2:54 pm]

8

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

In accordance with the requirements of the Government in the Sunshine Act and the Commission's rules implementing the Act, this Notice identifies an additional meeting scheduled for March 29, 1977.

ADDITIONAL CLOSED MEETING

By unanimous vote on March 28, 1977, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's rules that Commission business requires that the following closed meeting be held on less than one week's notice to the public. The need for the meeting did not arise until the conclusion of discussion of this same subject on March 28, and immediate additional discussion is required so that the matter can be handled promptly.

TUESDAY, MARCH 29

10:30 a.m.—Discussion of the Seabrook Opinion (Closed Meeting). (Authority to Close: 5 U.S.C. 552b(d)(1) and 5 U.S.C. 552b(c)(10) and §§ 9.105(a) and 9.104(a)(10) of the Commission's rules.)

The meeting will involve discussion of the drafting of an opinion in a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, and will be a continuation of the closed meeting held on this subject on Monday, March 28.

(On March 3, 1977, the Commission unanimously voted to close meetings on Seabrook for up to 30 days after March 18, the date of the initial meeting.)

Those persons expected to be in attendance are:

The Commissioners and members of their personal staffs; Peter L. Strauss, General Counsel and members of his office; Benjamin Huberman, Director of Policy Evaluation and members of his office.

Samuel J. Chilk, Secretary and members of his staff. (One or more persons may also attend to operate recording or transcribing equipment.)

The meeting will be held in the Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C. For further information, contact Walter Magee, Office of the Secretary, telephone (202) 634-1410.

Dated this 29th day of March 1977, at Washington, D. C.

For the Commission.

JOHN C. HOYLE,
Assistant Secretary of the Commission.

[S-72-77 Filed 3-30-77;1:30 pm]

9

AGENCY HOLDING THE MEETING: Occupational Safety and Health Review Commission.

In accordance with 29 CFR 2203.3(d)(1) (regulations under the Government in the Sunshine Act), announcement is made of the following Commission meeting:

DATE: April 4, 1977.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

TIME: 2:30 p.m.

PROPOSED AGENDA: Discussion of specific cases in the Commission adjudication process.

Under 29 CFR 2203.3(c)(4), this meeting is subject to being closed by a vote of the Commissioners taken at the beginning of such meeting. Two Commissioners must vote to close or the meeting will remain open. The only matters to be discussed at this meeting will be specific cases in the Commission adjudication process. Under 29 CFR 2203.3(b)(10), the identity of the cases to be discussed is exempt from disclosure, and the

meeting may be closed upon a proper vote taken.

For information on this meeting and all other Commission meetings, call Ms. Nori Heuberger (202) 634-7970, or Mrs. Lottie Richardson (same phone number).

Dated: March 7, 1977.

For the Commission,

PAUL R. WALLACE,
Counsel to the Commission.

[S-74-77 Filed 3-30-77;2:17 pm]

10

AGENCY HOLDING THE MEETING: Occupational Safety and Health Review Commission.

In accordance with 29 CFR 2203.3(d) (1) (regulations under the Government in the Supnshine Act), announcement is made of the following Commission meeting:

DATE: April 8, 1977.

PLACE: Room 1101, 1825 K Strret NW., Washington, D.C.

TIME: 9:30 a.m.

PROPOSED AGENDA: Discussion of possible revisions in the Commission's rules of procedure.

This meeting will be open.

For information on this meeting and all other Commission meetings, call Mrs. Nori Heuberger (202) 634-7970, or Ms. Lottie Richardson (same phone number).

Dated: March 30, 1977.

For the Commission,

PAUL R. WALLACE,
Counsel to the Commission.

[S-75-77 Filed 3-30-77;2:17 pm]

11

AGENCY HOLDING THE MEETING: U.S. Railroad Retirement Board.

TIME AND DATE: 10 a.m., April 12, 1977.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois, 60611.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED: (1) Information Requested from the Social Security Administration necessary for the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(2) Censorship of Union Publications.

(3) Personnel Information Processing System (PIPS).

(4) Decision of Administrative Law Judge, Social Security Administration, Holding That an Individual Can Split His Continuous Military Service under the Railroad Retirement Act and the Social Security Act.

(5) Scope of the Board's Authority Concerning Employee Details Under the Railroad Unemployment Insurance Act—General Counsel Opinion L-77-181.

(6) Proposal for Weekly Microfiching of the Bureau of Unemployment and Sickness Insurance Master File.

(7) Nomination of Board Employee to Attend the Civil Service Commission Course "Writting the Lanuage of the Collectively Bargained Agreement."

(8) Continuance of the Board's Only Advisory Committee, the Actuarial Advisory Committee with Respect to the Railroad Retirement Account.

(9) Transfer of Screening and Development Functions from the Bureau of Retirement Claims to the Bureau of Supply and Service.

CONTACT PERSON FOR MORE INFORMATION:

R. F. Butler, Secretary of the Board, Telephone No. (312) 387-4920.

[S-70-77 Filed 3-30-77;1:28 pm]

12

AGENCY HOLDING THE MEETING: Consumer Product Safety Commission.

TIME AND DATE: Monday, April 4, 1977, 4 p.m.

PLACE: 3rd Floor Hearing Room, 1111 18th St. NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will meet with Igor Kamlukin of Briggs & Stratton, at his request, to discuss deadman controls for power lawn mowers. The Commission is scheduled to vote on a proposed consumer product safety standard for power lawn mowers at its April 7, 1977 meeting. In voting on March 30, 1977 to hold this April 4 meeting, the Commission also determined that Agency business requires waiving the usual seven days advance notice.

CONTACT PERSON FOR MORE INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th St. NW., Washington, D.C. 20207, telephone (202) 634-7700

[S-83-77 Filed 3-31-77;4:06 pm]

federal register

MONDAY, APRIL 4, 1977

PART II



DEPARTMENT OF DEFENSE

Office of the Secretary

■

CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER M—MISCELLANEOUS

[DoD Instruction 6010.8 and 6010.8–R]

PART 199—IMPLEMENTATION OF THE CIVILIAN AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Pursuant to Chapter 55 of title 10, United States Code, Department of Defense Directive 5136.1 as amended, comprehensive regulations implementing the "Civilian Health and Medical Program of the Uniformed Services" (CHAMPUS) were adopted and made effective on January 10, 1977, through approval of Department of Defense Instruction 6010.8 by the Assistant Secretary of Defense for Health Affairs. The adopting Instruction and regulations were concurred in on January 10, 1977, by the Assistant Secretary for Health of the Department of Health, Education, and Welfare. The adopting Instruction and regulations will constitute a new Part 199 to Title 32 of the Code of Federal Regulations.

The adopting Instruction cancelled numerous memorandums and policy statements which previously governed CHAMPUS. Although some of the policies, practices, and procedures contained in those cancelled memorandums and statements have been rescinded or altered in substance by issuance of the new regulations, many have been retained and incorporated in the adopted regulations.

The new regulations comprehensively outline the authorities and responsibilities for the administration of CHAMPUS and identify eligible CHAMPUS beneficiaries and authorized CHAMPUS providers. They also establish the scope of authorized benefits for both the "Basic Program" and the "Program for the Handicapped" of CHAMPUS and set forth substantive and procedural requirements for the submission, review, and payment of claims filed under them. In addition, the regulations fix rules and procedures governing situations where benefits under other programs overlap or duplicate those under CHAMPUS, and they establish an administrative-appeals process which includes informal review, reconsideration of an informal review, and, in certain circumstances, appeal to, or formal review by, the Office of the Civilian Health and Medical Program for the Uniformed Services (OCHAMPUS). In some cases, appealing parties are entitled to an administrative hearing by a hearing officer as part of the appeal process.

Pursuant to a court order issued in the United States District Court for the Northern District of Georgia in the case of *Edison* v. *Department of Defense*, the regulations pertaining to the administrative-appeals process were previously published in Volume 41 of the FEDERAL REGISTER at page 47505 on September 29, 1976, to give public notice and to invite public comment. Only a few comments were received, generally expressing concern over the minimum-dollar requirements for various levels of appeal. In recognition of this concern, the requirements have been adjusted downward so that a CHAMPUS contractor's decision is final only in cases involving amounts in dispute of $50.00 or less (down from $100.00 or less) and so that there is a right to an administrative hearing by a hearing officer in cases involving amounts in dispute in excess of $300.00 (down from $500.00). In addition, the time to file an amended request for a hearing was extended from 10 to 30 days, and the requirement that a transcript be prepared and a copy provided to an appealing party for all hearings was changed to a requirement that all hearings be taped and a duplicate tape be provided to an appealing party upon request. Other minor changes have also been made for clarification and technical purposes.

With the exception of the sections pertaining to the administrative-appeals process (§ 199.16), the regulations were adopted without use of the proposed rulemaking process (see 32 CFR Part 296). The proposed rulemaking process was not used, because the regulations which do not concern the administrative-appeals process were still being developed until recently. When these regulations were developed, it was determined that further delay in their adoption would be contrary to the public interest (32 CFR 296.2(d)(4)). Among other things, the absence of comprehensive regulations for CHAMPUS has led to administrative difficulties and, in some cases, litigation regarding basic issues like eligibility to benefits, scope of authorized benefits, minimum standards and requirements for authorized providers, acceptable provider billing practices, and reasonable provider charges. In view of these and other problems relating to the administration of CHAMPUS which derive at least in part from the lack of comprehensive implementation, adoption at the earliest practicable date was deemed necessary.

In recognition of the value of public comment, written comments on the adopted regulations comprising new Part 199 are invited until June 3, 1977. Changes resulting from comments received during the 60-day period which operate to increase the rights, benefits, or privileges currently provided in the adopted regulations will be effective retroactively to this date insofar as administratively feasible.

Written comments on these regulations shall include the name and address of the submitting person and reasons for recommended changes. The comments should be submitted to:

Deputy Assistant Secretary of Defense (Health Resources and Programs), Room 3E182, the Pentagon, Washington, D.C. 20301.

32 CFR Chapter I is amended by adding a new Part 199, reading as follows:

Sec.
199.1 Purpose.
199.2 Cancellations.
199.3 Applicability and scope.
199.4 Policy.
199.5 Responsibilities.
199.6 Effective date and implementation.
199.7 General provisions.
199.8 Definitions.
199.9 Eligibility.
199.10 Basic program benefits.
199.11 Program of the handicapped.
199.12 Authorized providers.
199.13 Claims submission, review and payment.
199.14 Double coverage.
199.15 Federal Medical Care Recovery Act.
199.16 Appeal and hearing procedures.

AUTHORITY: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

§ 199.1 Purpose.

This Instruction:

(a) Authorizes publication of DoD Regulation 6010.8–R, "Civilian Health and Medical Program of the Uniform Services (CHAMPUS)."

(b) Sets forth the policies and procedures for:

(1) Dependents of active duty members of the Uniformed Services,

(2) Retired members of the Uniformed Services,

(3) Dependents of retired members of the Uniformed Services, and

(4) Dependents of deceased active duty or deceased retired members of the Uniformed Services.

(c) Furnishes medical benefits to dependents of active duty members of the Armed Forces of the foreign NATO nations, who, in connection with their official duties, are stationed in or passing through the United States.

§ 199.2 Cancellations.

Any memorandum or instruction not consistent with the policies of this Part, is hereby superseded. Insofar as DoD Directive 6010.4, "Dependents' Medical Care," April 25, 1962 (27 FR 5591, 13 Jun 62), only that section or sections applicable to the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) is hereby superseded and cancelled.

§ 199.3 Applicability and scope.

The provisions of this Part, apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereinafter referred to collectively as "DoD Components"); and, by agreement, to the Coast Guard, the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Commissioned Corps of the U.S. Public Health Service.

§ 199.4 Policy.

(a) Regulations pertaining to the administration of the CHAMPUS, which have a substantial and direct impact on the CHAMPUS public, shall be promulgated as an enclosure to this Instruction and published in the FEDERAL REGISTER, in accordance with DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public." December 23, 1974 (32 CFR 286b).

(b) DoD Directive 5105.46[1] "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974, provides that the Assistant Secretary of Defense (Public Affairs)[2] in coordination with the Assistant Secretary of Defense (Health Affairs) and the Director, OCHAMPUS shall ensure the conveyance of information regarding CHAMPUS programs and services to potential users.

§ 199.5 Responsibilities.

(a) Section 1073 of 10 U.S.C., Chapter 55, provides that the Secretary of Defense shall administer the Program for the Uniformed Services under his jurisdiction, and the Secretary of Health, Education and Welfare shall administer the Program for the Coast Guard (when the Coast Guard is not operating as a service in the Navy), and for the Commissioned Corps of the National Oceanic and Atmospheric Administration and for the U.S. Public Health Service.

(b) Sections 1079 and 1086 of 10 U.S.C., Chapter 55, provide that the Secretary of Defense and the Secretary of Health, Education, and Welfare, shall jointly prescribe regulations for the administration of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

(c) The Secretary of Defense in accordance with DoD Directive 5136.1, "Assistant Secretary of Defense (Health and Environment)" (under revision), as modified by the Secretary's Memorandum, March 5, 1976,[3] concerning organizational changes within the Office of the Secretary of Defense, provides that the Assistant Secretary of Defense (Health Affairs)[2] shall develop, issue and maintain regulations, as necessary and appropriate to fulfill the Secretary of Defense responsibility to administer 10 U.S.C., Chapter 55.

(d) DoD Directive 5136.1,[1] "Assistant Secretary of Defense (Health and Environment)" (under revision), also provides that the Assistant Secretary of Defense (Health Affairs) shall provide policy, guidance, management control and coordination (including coordination with the Department of Health, Education, and Welfare as required) for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) as authorized under 10 U.S.C., Chapter 55.

(e) The Director, Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), or his designee, shall:

(1) Convey appropriate OCHAMPUS information to providers of care, practitioners, professional societies, health industry organizations, CHAMPUS contractors, and others who have need of such information, including CHAMPUS beneficiaries, in accordance with DoD Directive 5105.46[1] "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974 and cited Deputy Secretary of Defense Memorandum, "CHAMPUS Information Program," September 21, 1973;

(2) Establish and maintain, for the functions assigned in DoD Directive 5105.46,[1] "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974 an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1,[1] "Department of Defense Directive System," March 7, 1961.

§ 199.6 Effective date and implementation.

For purposes of administering the CHAMPUS Program this part became effective as a Department of Defense Issuance on January 10, 1977.

§ 199.7 General provisions.

(a) *Purpose.* This Regulation prescribes policies and procedures for the administration of the Civilian Health and Medical Program of the Uniformed Services (hereinafter referred to as "CHAMPUS") for the following Uniformed Services: the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the U.S. Public Health Service (USPHS) and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA).

(b) *Applicability.*—(1) *Geographic.* This regulation is applicable geographically within the States of the United States, the District of Columbia, Puerto Rico, the Territories, and in all foreign countries unless specific exceptions are granted in writing by the Director, OCHAMPUS (or a designee).

(2) *Agency.* The provisions of this regulation apply throughout the Department of Defense, the Coast Guard, the Commissioned Corps of the National Oceanic and Atmospheric Administration, and the Commissioned Corps of the U.S. Public Health Service.

(c) *Authority and responsibilities.*—(1) *Legislative authority.*—(i) *Joint regulations.* Chapter 55 of Title 10, United States Code, authorizes the Secretary of Defense and the Secretary of Health, Education, and Welfare to jointly prescribe regulations for the administration of CHAMPUS.

(ii) *Administration.* Chapter 55 also authorizes the Secretary of Defense to administer CHAMPUS for the Army, Navy, Air Force, and Marine Corps under DoD jurisdiction and the Secretary of Health, Education, and Welfare to administer CHAMPUS for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and for the Commissioned Corps of the National Oceanic and Atmospheric Administration and the U.S. Public Health Service.

(2) *Organizational delegations and assignments.*—(i) *Assistant Secretary of Defense (Health Affairs).* The Secretary of Defense, by DoD Directive 5136.1[1], "Assistant Secretary of Defense (Health and Environment)," (under revision) delegated authority to the Assistant Secretary of Defense (Health Affairs) to provide policy guidance, management control and coordination (including coordination with the Department of Health, Education, and Welfare) as required for CHAMPUS and to develop, issue and maintain Regulations with the coordination of the Military Departments as necessary and appropriate. Additional implementing authority is contained in DoD Directive 5105.46[1], "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974.

(ii) *Department of Health, Education, and Welfare.* The Secretary of Health, Education, and Welfare has delegated authority to the Assistant Secretary for Health, Department of Health, Education, and Welfare (DHEW), to consult with the Secretary of Defense or a designee and to approve and issue joint regulations implementing Chapter 55, Title 10, United States Code (Dependents' Medical Care Act, as amended). This delegation is effective April 19, 1976 (39 FR 18698, May 6, 1976).

(iii) *Office of CHAMPUS (OCHAMPUS).* By DoD Directive 5105.46,[1] "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974, OCHAMPUS was established as an Office, Secretary of Defense field activity under the policy guidance and direction of the Assistant Secretary of Defense (Health Affairs). The Director, OCHAMPUS, is directed to execute the following responsibilities and functions:

(*a*) Supervise and administer the programs and missions to: (*1*) Provide technical direction and guidance on organizational, administrative, and operational matters.

(2) Conduct studies and research activities in the health care area to assist in formulating policy required to guide OCHAMPUS in carrying out its programs.

(3) Enter into agreements through the Department of Defense with respect to the Military Departments or other U.S. Government entities, as required, for the effective performance of CHAMPUS.

(*4*) Supervise and administer OCHAMPUS financial management activities to include:

(*i*) Formulating budget estimates and justifications to be submitted to the Deputy Assistant Secretary of Defense (Administration) for inclusion in the overall budget for the Office of the Secretary of Defense.

(*ii*) Assuring the establishment and maintenance of necessary accounting records and the submission of required financial reports to the Deputy Assistant Secretary of Defense (Administration).

[1] Filed as part of original. Extra copies available from Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120, Atten.: Code 300.

[2] This particular function was transferred from the Assistant Secretary of Defense (Manpower and Reserve Affairs) to the Assistant Secretary of Defense (Public Affairs) when Information Armed Forces (IAF) and its functions were transferred by Secretary of Defense Memorandum, February 20, 1976. (Copy filed as part of original.)

[3] One of the changes accomplished by the March 5, 1976 Memorandum was to change the designation of the Assistant Secretary of Defense (Health and Environment) to the Assistant Secretary of Defense (Health Affairs).

(*iii*) Assuring the effective execution of approved budgets.

(*5*) Contract for claims processing services, studies and research, supplies, equipment, and services necessary to carry out the CHAMPUS programs.

(*6*) Monitor claims adjudication and processing contracts to ensure that CHAMPUS Contractors are fulfilling their obligations.

(*7*) Convey appropriate CHAMPUS information to providers of care, practitioners, professional societies, health industry organizations, fiscal agents, hospital contractors, and others who have need of such information.

(*8*) Collect, maintain, and analyze Program cost and utilization data appropriate for preparation of budgets, fiscal planning, and as otherwise needed to carry out CHAMPUS programs and missions.

(*9*) Arrange for the facilities, logistical and administrative support to be provided by the Military Departments.

(*10*) Execute such other functions as appropriate to administer the programs and missions assigned.

(*b*) Direct and control the office, activities and functions of OCHAMPUSEUR.

NOTE: The Director, OCHAMPUS may also establish similar offices for OCHAMPUSSO and OCHAMPUSPAC.

(*c*) Develop for issuance, subject to approval by the Assistant Secretary of Defense (Health Affairs), such policies or regulations as required to effectively administer and manage the CHAMPUS Program.

(d) *The Uniformed Services Health Benefits Committee.* (1) The Uniformed Services Health Benefits Committee, established by DoD Directive 5105.46, advises the Assistant Secretary of Defense (Health Affairs) and considers questions of policy with respect to CHAMPUS, facilitates exchanges of information among the Assistant Secretary of Defense (Health Affairs), the Director, OCHAMPUS, and the Uniformed Services, and provides advice and recommends policy to the Assistant Secretary of Defense (Health Affairs) on CHAMPUS operations.

(2) The Uniformed Services Health Benefits Committee consists of:

(i) A chairman, who is also the Deputy Assistant Secretary of Defense (Health Resources and Programs);

(ii) One representative from each of the Uniformed Services; and

(iii) The Director, OCHAMPUS, who serves as the Executive Secretary of the Committee.

(e) *Issuance of Identification Cards: Uniformed Services.* Each of the Uniformed Services is responsible for the issuance of identification cards to dependents of members of the Uniformed Services on active duty, to retired members of the Uniformed Services and their dependents, and dependents of deceased active duty and deceased retired members of the Uniformed Services as appropriate. (Refer to Chapter III of this regulation, "Eligibility".)

D. *Medical Benefits Program.* The CHAMPUS is a program of medical benefits provided by the Federal Government under public law to specified categories of individuals who are qualified for these benefits by virtue of their relationship to one of the seven Uniformed Services. Although similar in structure in many of its aspects, CHAMPUS is not an insurance program in that it does not involve a contract guaranteeing the indemnification of an insured party against a specified loss in return for a premium paid. Further, CHAMPUS is not subject to those state regulatory bodies or agencies which control the insurance business generally.

(e) *Program funds.* The funds used by the CHAMPUS Program are appropriated funds furnished by the Congress through the annual Appropriations Act for the Department of Defense and the Department of Health, Education, and Welfare. These funds are further disbursed by agents of the Government under contracts negotiated by the Director, OCHAMPUS (or a designee), under the provisions of the Armed Services Procurement Regulation (ASPR). These agents (referred to in this Regulation as "CHAMPUS Contractors") receive claims against the Program and adjudicate the claims under the provisions of this Regulation and in accordance with administrative procedures and instructions set forth in their contracts. The funds expended for CHAMPUS benefits are Federal funds provided CHAMPUS Contractors solely to pay CHAMPUS claims and are not a part of or obtained from the CHAMPUS Contractor's funds related to other programs or insurance coverage. CHAMPUS Contractors are reimbursed for the adjudication and payment of CHAMPUS claims at a fixed rate set forth in their contracts.

NOTE: Where a CHAMPUS contract has not yet been competitively procured, or where award was made on an emergency basis, administrative expenses are or may be on a cost-reimbursement rather than fixed-price basis. In such instances, reimbursement is is limited to those administrative expenses incurred and directly related to the administration of the CHAMPUS Program.

(f) *Claims adjudication and processing.* The Director, OCHAMPUS is responsible for making such arrangements as are necessary to adjudicate and process CHAMPUS claims worldwide.

(1) *The United States.*—(i) *Contracting out.* The primary method of processing CHAMPUS claims in the United States is through competitively procured, fixed-price contracts. The Director, OCHAMPUS (or a designee) is responsible for the issuance of appropriate Requests for Proposals (REP's) and the evaluation and award of such contracts for the purpose of adjudicating and processing CHAMPUS claims (and related supporting activities). Such contracts may be negotiated for a period of up to 1 year with the option to renew for 2 successive one-year periods. Under unusual circumstances (as set forth in Section III of ASPR), the Director, OCHAMPUS (or a designee) is authorized to negotiate such a CHAMPUS claims adjudication and processing agreement on an emergency contracting basis, generally limited to a six-month period with option to renew for one subsequent six-month period. Unless otherwise specifically approved by the ASD (HA), at the end of the second six-month period, such emergency award must be terminated and a contract awarded on the basis of competitive procurement.

NOTE: If necessary, an emergency award may be made on a cost-reimbursement rather than a fixed-price basis.

(ii) *In-house.* The Director, OCHAMPUS (or a designee) is authorized to adjudicate and process certain CHAMPUS claims in-house at OCHAMPUS, when it is determined to be in the best interests of the Program subject to considerations set forth in Office of Management and Budget Circular A–76. Such in-house claims processing may involve a special or unique type of claim (such as claims for dental care, or inpatient stays in residential treatment centers, or claims under the Program for the Handicapped) or all claims for a specific geographic area.

(2) *Outside the United States.*—(i) *Option: Special Subsidiary Office or contracting out.* For adjudicating and processing CHAMPUS claims for services and/or supplies provided outside the United States the Director, OCHAMPUS (or a designee) has the option of either setting up a special subsidiary claims paying operation (such as OCHAMPUS EUR) or contracting out in the same manner as described in paragraph (f)(1)(i) of this section. Such claims paying operations are reviewed periodically to determine whether current arrangements continue to be appropriate and the most effective.

(ii) *Support agreements.* In those situations outside the United States which demand special arrangements, the Director, OCHAMPUS may enter into support agreements through the Department of Defense with any of the Military Departments or other Government agency to process CHAMPUS claims in specific geographic locations. Such agreements may be negotiated for such period of time as the Director, OCHAMPUS (or a designee) may determine to be necessary to meet identified special demands.

(g) *Regulation: Recommendations for change.* The Director, OCHAMPUS (or a designee) shall establish procedures for receiving and processing recommendations for changes to this regulation from interested parties.

(h) *CHAMPUS claim forms.* The Director, OCHAMPUS (or a designee) is responsible for the development and/or updating of all CHAMPUS claim forms, application forms, information request forms, etc., necessary in the administration of the CHAMPUS Program as set forth in this Regulation, the CHAMPUS Operating Manual, or such other implementing instructions, procedures, etc., as may be issued.

(i) *CHAMPUS handbook.* The Director, OCHAMPUS (or a designee) shall develop a Program document designated as the "CHAMPUS Handbook". Such "CHAMPUS Handbook" shall be the of-

ficial summary of this Regulation. The "CHAMPUS Handbook" shall be updated at least every 2 years, as of January 1.

(j) *Program integrity.* The Director, OCHAMPUS (or a designee) shall oversee all CHAMPUS personnel, contractors, providers and beneficiaries with respect to validation of the Program's operation in compliance with this regulation. The Director, OCHAMPUS (or a designee), shall accomplish this by means of proper delegation of authority, separation of responsibilities, establishment of reports, performance evaluations, internal and external management and fiscal audits, personal or delegated reviews of Program responsibilities, taking affidavits, exchange of information among state and Federal governmental agencies, insurers, providers and associations of providers, and such other means as may be appropriate to the circumstances. Compliance with this regulation shall include compliance with specific contracts and agreements, regardless of form, as well as general instructions, such as the CHAMPUS Operating Manual, and other instructions, procedures, criteria, etc. relating to Program operation.

(k) *Role of the CHAMPUS advisor (CA).* The CHAMPUS Advisor is appointed (generally by the Commander of a Uniformed Services Medical Treatment Facility) to service as an advisor to patients and staff in matters involving CHAMPUS. The CHAMPUS Advisor may assist beneficiaries (or sponsors) in applying for CHAMPUS benefits, in the preparation of claims and otherwise assist beneficiaries in their relations with OCHAMPUS and CHAMPUS Contractors. However, the CHAMPUS Advisor is not responsible for CHAMPUS policies and procedures and has no authority to make benefit determinations or obligate Government funds. Advice given to beneficiaries as to determination of benefits or level of payment is not binding on OCHAMPUS or CHAMPUS Contractors.

(l) *Cooperation and Exchange of Information with Other Federal Programs.* The Director, OCHAMPUS (or a designee), will disclose to appropriate officers or employees of the Department of Health, Education, and Welfare:

(1) *Investigation for Fraud.* The name and address of any physician or other individual being actively investigated for possible fraud in connection with CHAMPUS, and the nature of such suspected fraud. An active investigation exists when there is significant evidence supporting an initial complaint but there is need for further investigation.

(2) *Unnecessary Services.* The name and address of any provider of medical services, organization, or other person found, after consultation with an appropriate professional association or appropriate peer review body, to have provided unnecessary services. Such information will be released only for the purpose of conducting an investigation or prosecution, or for the administration of Titles XVIII and XIX of the Social Security Act, provided that the information will be released only to the agency's enforcement branch and that the agency will preserve the confidentiality of the information received and will not disclose such information for other than Program purposes.

(m) *Disclosure of Information to the Public.* Records and information acquired in the administration of CHAMPUS are records of the Department of Defense and may be disclosed in accordance with 32 CFR Parts 286, 286a, 286b, and 297, which constitute the applicable Departmental Directives implementing the Freedom of Information Act and the Privacy Act.

(n) *Transitional Authority.* It is recognized that there will be a transitional period after the effective date of this Regulation during which full implementation of all its provisions is accomplished. To facilitate such transitional implementation, and notwithstanding any other provisions of this Regulation, the Director, OCHAMPUS (or a designee) is granted the following transitional authority:

(1) *Basic Program Benefits.* Basic Program benefits (refer to § 199.10) being provided for continuing inpatient care as of the effective date of this regulation, which are not authorized under this regulation, may continue in effect for a reasonable period of time except that in no event shall such transitional benefits continue beyond ninety (90) days after the date of notification to the beneficiary (or sponsor) and provider that such benefits will no longer be payable.

(2) *Program for the Handicapped Benefits.* Program for the Handicapped benefits (refer to § 199.11) being provided for continuing inpatient care as of the effective date of this regulation which are not authorized under this regulation, may continue in effect for a reasonable period of time except that in no event shall such transitional benefits continue beyond 90 days after the date of notification to the beneficiary (or sponsor) and provider that such benefits will no longer be payable, or June 30, 1977, whichever occurs later.

(3) *Application of Required Rules and Procedures.* Certain rules and/or procedures required under the terms of this regulation may be phased-in over a period of time (rather than attempt to implement immediately) if it is determined necessary to permit OCHAMPUS and/or CHAMPUS Contractors to develop appropriate operational capability to implement such provisions.

NOTE.—CHAMPUS Contractors will be specifically advised as to those provisions of the Regulation which will be phased-in on a transitional basis.

(4) *Overall time limit on transitional period.* It is the intent that OCHAMPUS and the CHAMPUS Contractors make all reasonable effort to fully implement all provisions of this regulation as expeditiously as possible; in any event transitional authority granted under paragraph (n) of this section shall terminate 24 months from the effective date of this regulation.

NOTE.—Claims for outpatient care or new inpatient cases (or new inpatient episodes of an on-going case) received on and after the effective date of this regulation, and which include services and/or supplies provided after the effective date of this Regulation, shall be adjudicated on the basis of this regulation irrespective of the transitional authority granted in paragraph (n) of this section.

(o) *Discretionary Authority.* When it is determined to be in the best interest of the CHAMPUS Program, the Director, OCHAMPUS (or a designee) is granted discretionary authority to waive a requirement(s) of this regulation, except that any requirement specifically set forth in Chapter 55, Title 10, United States Code, or otherwise imposed by law, may not be waived. It is the intent that such discretionary authority be used only under very unusual and limited circumstances and not to deny any individual any right, benefit or privilege provided to him or her by statute or this regulation. Any such exception granted by the Director, OCHAMPUS (or a designee) shall apply only to the individual circumstance and/or case involved and will in no way be construed to be precedent setting.

(p) *Equality of Benefits.* All claims submitted for benefits under the CHAMPUS Program shall be adjudicated in a consistent, fair and equitable manner without regard to the rank or rate of the sponsor.

§ 199.8 Definitions.

(a) *General.* In an effort to be as specific as possible as to the word and intent of the CHAMPUS Program, the following definitions have been developed. While many of the definitions are general in nature and some assign meaning to relatively common terms within the health insurance environment, others are applicable only to CHAMPUS; however, they all appear in this regulation solely for the purpose of the CHAMPUS Program. Except when otherwise specified, the definitions in this section apply generally throughout this regulation.

(b) *Specific Definitions.*—(1) *Absent Treatment.* "Absent Treatment" means services performed by Christian Science practitioners for a person when the person is not physically present.

NOTE.—Technically, "Absent Treatment" is an obsolete term. The current Christian Science terminology is "Treatment Through Prayer and Spiritual Means," which is employed by a bona fide Christian Science Practitioner either with the beneficiary being present or absent. However, in order to be considered for coverage under CHAMPUS, the beneficiary must be physically present when a Christian Science service is rendered, regardless of the terminology used.

(2) *Accidental Injury.* "Accidental Injury" means physical bodily injury resulting from an external force, blow or fall, or the ingestion of a foreign body or harmful substance, such as iodine or bleach, requiring immediate medical treatment. Accidental injury also includes animal and insect bites and sunstrokes. For the purpose of CHAMPUS, the breaking of a tooth or teeth does not constitute a physical bodily injury.

(3) *Active Duty.* "Active Duty" means full-time duty in the Uniformed Service of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance while in the active Military Service, at a school designated as a service school by law or by the Secretary of the Military Department concerned.

(4) *Active Duty Member.* "Active Duty Member" means a person on active duty in a Uniformed Service under a call or order that does not specify a period of 30 days or less.

(5) *Acupuncture.* "Acupuncture" means the practice (most frequently employed by the Chinese) of inserting needles into various body parts to pierce specific peripheral nerves for the production of counter-irritation to relieve the discomfort of pain, induce surgical anethesia or for other treatment purposes.

NOTE.—Acupuncture is not covered by CHAMPUS.

(6) *Adjunctive Dental Care.* "Adjunctive Dental Care" means that dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition. Adjunctive dental care does not include preventive, routine, restorative or prosthodontic dental care; nor does it include emergency dental care except as it may otherwise qualify as adjunctive.

(7) *Admission.* "Admission" means the formal acceptance by a hospital or other authorized institutional provider of a CHAMPUS beneficiary for the purpose of occupying a bed with the reasonable expectation that the patient will remain on inpatient status at least 24 hours, with the registration and assignment of an inpatient number or designation. Institutional care in connection with in/out (ambulatory) surgery is not included within the meaning of "admission" whether or not an inpatient number or designation is assigned by the facility.

(8) *Adopted Child.* "Adopted Child" means a child taken into one's own family by legal process and treated as one's own child. In case of adoption, CHAMPUS eligibility begins as of 12:01 a.m. of the day of the final adoption decree.

NOTE.—There is no CHAMPUS benefit entitlement during any interim waiting period.

(9) *Ambulance.* "Ambulance" means a specifically designed and equipped, professionally operated, land vehicle which contains at a minimum a stretcher, linens, first aid supplies, oxygen equipment and such other lifesaving equipment required by state law or applicable local law, and manned by personnel trained to render first aid treatment. Voluntary ambulances or such vehicles as medicabs or ambicabs do not qualify as professional ambulances.

NOTE.—The reference to voluntary ambulance is intended to mean the situation in which the organization that operates the vehicle does not issue a legally binding bill for services rendered but rather requests a contribution. If a legally binding bill is issued, it is not a "voluntary" ambulance for purposes of CHAMPUS even if manned (in whole or in part) by voluntary personnel.

(10) *Ambulatory.* "Ambulatory" means: (i) A walking patient or one who is able to walk or ambulate in a wheelchair as opposed to requiring confinement to a bed; or (ii) An outpatient.

(11) *Amount in Dispute.* "Amount in Dispute" means the amount of money owed by or paid by a CHAMPUS beneficiary for medical services and/or supplies specifically in connection with an appeal situation. In determining the amount, only those charges which are related to potentially coverable services and supplies can be included. Further, in the same computation, only the CHAMPUS-determined reasonable charge/cost amounts will be considered to be in dispute for purposes of determining whether or not an appeal can be filed.

(12) *Anesthesia Services.* "Anesthesia Services" means the administration of an anesthetic agent by injection or inhalation, the purpose and effect of which is to produce surgical anesthesia characterized by muscular relaxation, loss of sensation, or loss of consciousness, when administered by or under the direction of a physician or dentist in connection with otherwise covered surgery or obstetrical care, or shock therapy. Anesthesia services do not include hypnosis or acupuncture.

(13) *Appealing Party.* "Appealing Party" means a CHAMPUS beneficiary or sponsor, a participating provider of services or their duly designated representative. In addition, an appealing party includes a provider (or representative) that has been denied approval by CHAMPUS as an authorized provider.

(14) *Appropriate Medical Care.* "Appropriate Medical Care" means: (i) That medical care where the medical services performed in the treatment of a disease or injury, or in connection with an obstetrical case, are in keeping with the generally acceptable norm for medical practice in the United States;

(ii) The authorized individual professional provider rendering the medical care is qualified to perform such medical services by reason of his or her training and education and is licensed and/or certified by the state where the service is rendered or appropriate national organization or otherwise meets CHAMPUS standards; and

(iii) The medical environment in which the medical services are performed is the minimum level adequate to provide the required medical care.

(15) *ASD(HA).* "ASD(HA) means the Assistant Secretary of Defense for Health Affairs.

(16) *Attending Physician.* "Attending Physician" means the physician who has the primary responsibility for the medical diagnosis and treatment of the patient. A consultant, an assistant-at-surgery or an anesthesiologist is not an attending physician. Under very extraordinary circumstances, because of the presence of complex, serious and multiple, but unrelated, medical conditions, a patient may have more than one attending physician concurrently rendering medical treatment during a single period of time.

(17) *Authorized Provider.* "Authorized Provider" means a hospital or institutional provider, physician or other individual professional provider, or other provider of services and/or supplies specifically authorized to provide benefits under CHAMPUS in § 199.12, "Authorized Providers."

(18) *Basic Program.* "Basic Program" means the primary medical benefits authorized under Chapter 55 of Title 10, United States Code, and as set forth in § 199.10. In general, the Basic Program covers medical services and supplies necessary and essential to the diagnosis and treatment of illness and injury rendered by hospitals, physicians, and other authorized providers. Treatment may be for medical, surgical, obstetrical or nervous and mental conditions. It specifically does not cover custodial, domiciliary and preventive care, eyeglasses or hearing aids, and is subject to such other conditions, limitations and exclusions set forth in the Regulation.

(19) *Beneficiary.* "Beneficiary" means an individual who has been determined to be eligible for CHAMPUS benefits, as set forth in § 199.9.

(20) *Beneficiary Liability.* "Beneficiary Liability" means the legal obligation of a beneficiary/patient, his or her estate, or responsible family member to pay for the costs of medical care or treatment received. Specifically for the purposes of services and supplies covered by CHAMPUS, beneficiary liability includes any annual deductible amount, cost-sharing amounts, or, in those instances where a provider does not submit a claim on a participating basis on behalf of the beneficiary/patient, amounts above the CHAMPUS-determined reasonable cost/charge. Beneficiary liability also includes any expenses for medical and/or related services and supplies not covered by CHAMPUS.

(21) *Brace.* "Brace" means an orthopedic appliance or apparatus (an orthosis) used to support, align, or hold parts of the body in correct position. For the purposes of CHAMPUS, it does not include orthodontic appliances or other dental appliances.

(22) *CHAMPUS.* "CHAMPUS" means the Civilian Health and Medical Program of the Uniformed Services as authorized in Chapter 55, Title 10, United States Code.

(23) *CHAMPUS Advisor (CA).* "CHAMPUS Advisor (CA)" means those individuals located at Uniformed Services medical facilities (on occasion at other locations) and assigned the responsibility for providing CHAMPUS information, information concerning availability of care from the Uniformed Services direct medical care system, and generally assisting beneficiaries (or sponsors). The term also includes "Health Benefits Counselor" and "Health Benefits Advisor."

(24) *Chemotherapy.* "Chemotherapy" means the administration of approved antineoplastic drugs for the treatment of malignancies (cancer) via perfusion, infusion or parenteral methods of administration.

(25) *CHAMPUS Contractor.* "CHAMPUS Contractor" means an organization with which the Director, OCHAMPUS, has entered into a contract for the adjudication and processing of CHAMPUS claims and the performance of related support activities.

(26) *Child.* A "Child" means an unmarried legitimate child, adopted child, stepchild, or illegitimate child, who otherwise meets the requirements (including age requirements) set forth in (b)(2)(iii) (and its subparts) of § 199.9, "Eligibility."

(27) *Chiropractor.* "Chiropractor" means a practitioner of chiropractic (also called chiropraxis): Essentially a system of therapeutics based upon the claim that disease is caused by abnormal function of the nerve system. It attempts to restore normal function of the nerve system by manipulation and treatment of the structures of the human body, especially those of the spinal column.

NOTE.—Services of chiropractors are not covered by the CHAMPUS Program.

(28) *Christian Science Nurse.* "Christian Science Nurse" means an individual who has been accredited as a Christian Science Nurse by the Department of Care of the First Church of Christ, Scientist, Boston, Massachusetts, and listed (or eligible to be listed) in the Christian Science Journal at the time the service is provided. The duties of such Christian Science Nurses are spiritual and are non-medical and non-technical nursing care performed under the direction of an accredited Christian Science practitioner. There exist two levels of Christian Science Nurse accreditation:

(i) *Graduate Christian Science Nurse.* This accreditation is granted by the Department of Care of the First Church of Christ, Scientist, Boston, Massachusetts, after completion of a three-year course of instruction and study.

(ii) *Practical Christian Science Nurse.* This accreditation is granted by the Department of Care of the First Church of Christ, Scientist, Boston, Massachusetts, after completion of a 1 year course of instruction and study.

(29) *Christian Science Practitioner.* "Christian Science Practitioner" means an individual who has been accredited as a Christian Science Practioner by the First Church of Christ, Scientist, Boston, Massachusetts, and listed (or eligible to be listed) in the "Christian Science Journal" at the time the service is provided. An individual who attains this accreditation has demonstrated results of his or her healing through their faith and prayer rather than by medical treatment. Instruction is executed by an accredited Christian Science teacher and is continuous.

(30) *Christian Science Sanitorium.* "Christian Science Sanitorium" means a sanitorium either operated by the First Church of Christ, Scientist or listed and certified by the First Church.

(31) *Chronic Medical Condition.* "Chronic Medical Condition" means a medical condition which is not curable but which is under control through active medical treatment. Such chronic conditions may have periodic acute episodes and may require intermittent inpatient hospital care. However, a chronic medical condition can be controlled sufficiently to generally permit continuation of some activities of persons who are not ill (i.e., work, school, etc.).

(32) *Chronic Renal Disease (CRD).* "Chronic Renal Disease" means the end stage of renal disease which requires a continuing course of dialysis or a kidney transplantation to ameliorate uremic symptoms and maintain life.

(33) *Civil Rights Act.* "Civil Rights Act" means the Federal law which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any activity receiving Federal financial assistance. For the purposes of the Civil Rights Act only, the United States includes the 50 states, the District of Columbia, Puerto Rico, Virgin Islands, American Samoa, Guam, Wake Island, Canal Zone, and the territories and possessions of the United States.

NOTE.—Title VI of the Civil Rights Act of 1964 is specifically applicable to institutional providers under the CHAMPUS Program.

(34) *Clinical Psychologist.* "Clinical Psychologist" means a psychologist who is duly licensed or certified, has a doctoral degree in clinical psychology and a minimum of two years of supervised experience in clinical psychology in an appropriate clinical setting or is listed in the "National Register of Health Services Providers" established and published by the American Psychological Association.

(35) *Combined Daily Charge.* "Combined Daily Charge" means a billing procedure by an inpatient facility which uses an inclusive flat rate covering all professional and ancillary charges without any itemization.

(36) *Complications of Pregnancy.* "Complications of Pregnancy" means one of the following when commencing or exacerbating during the term of the pregnancy:

(i) Caesarean delivery; hysterotomy.

(ii) Pregnancy terminating before expiration of 26 weeks, except a voluntary abortion.

(iii) False labor or threatened miscarriage.

(iv) Nephritis or pyelitis of pregnancy.

(v) Hyperemesis gravidarum.

(vi) Toxemia.

(vii) Aggravation of a heart condition or diabetes.

(viii) Premature rupture of membrane.

(ix) Ectoptic pregnancy.

(x) Hemorrhage.

(xi) Other conditions as may be determined by the Director, OCHAMPUS (or a designee).

(37) *Confinement.* "Confinement" means that period of time from the day of admission to a hospital or other institutional provider, to the day of discharge, transfer, or separation from the facility, or death. Successive admissions may also qualify as one confinement provided not more than 60 days have elapsed between the successive admissions, except that successive admissions related to a single maternity episode shall be considered one (1) confinement regardless of the number of days between admissions.

(38) *Congenital Anomaly.* "Congenital Anomaly" means a condition existing at or from birth, which is a significant deviation from the common form or norm and is other than a common racial or ethnic feature. For purposes of CHAMPUS, congenital anomalies do not include anomalies relating to teeth (including malocclusion or missing tooth buds) or structures supporting the teeth, or to any form of hermaphroditism and/or sex gender confusion. Examples of congenital anomalies are harelip, birthmarks, webbed fingers or toes, or such other conditions that the Director, OCHAMPUS (or a designee), may determine to be congenital anomalies.

NOTE.—Also refer to paragraph (e)(7) of § 199.10 of this regulation ("Transsexualism and Hermaphroditism").

(39) *Conjoint Therapy.* "Conjoint Therapy" means the active involvement of persons other than the patient (father, mother, stepfather, stepmother or guardian, if the patient is a child; and husband or wife if the patient is an adult) in the psychiatric therapeutic treatment of the patient where the attending physician documents such involvement as being clearly necessary for the medical management of the primary case. (Conjoint therapy may also be referred to as collateral visits.)

(40) *Consulation.* "Consultation" means a deliberation with a specialist physician or dentist requested by the attending physician primarily responsible for the medical care of the patient, with respect to the diagnosis or treatment in any particular case. A consulting physician or dentist may perform a limited examination of a given system or one requiring a complete diagnostic history and examination. In order to qualify as a consultation, a written report to the attending physician of the findings of the consultant is required.

(41) *Consulting Physician or Dentist.* "Consulting Physician or Dentist" means a physician or dentist, other than the attending physician, who performs a consultation.

(42) *Consultation Services.* "Consultation Services" means services of a consulting physican. Staff consultations required by rules and regulations of the medical staff of a hospital or other institutional provider do not qualify as consultation services.

(43) *Coordination of Benefits.* "Coordination of Benefits" means the co-

ordination, on a primary/secondary payer basis, of the payment of CHAMPUS benefits with the payment of benefits made by the double coverage plan, to the end that there is no duplication of benefits paid between the double coverage plan and CHAMPUS.

(44) *Cosmetic, Reconstructive and/or Plastic Surgery.* "Cosmetic, Reconstructive and/or Plastic Surgery" means that surgery which can be expected primarily to improve the physical appearance of a beneficiary, and/or which is performed primarily for psychological purposes, and/or which restores form, but does not correct or materially improve a bodily function.

(45) *Cost-Sharing.* "Cost-Sharing" means the amount of money for which the beneficiary (or sponsor) is responsible in connection with otherwise covered inpatient and outpatient services (other than the annual fiscal year deductible or disallowed amounts) as set forth in paragraph (f) of § 199.10, "Basic Program Benefits" and paragraph (b) of § 199.11, "Program for the Handicapped." Cost-sharing may also be referred to as "co-payment" or "co-insurance."

(46) *Custodial Care.* "Custodial Care" means that care rendered to a patient (i) who is mentally or physically disabled and such disability is expected to continue and be prolonged, and (ii) who requires a protected, monitored and/or controlled environment whether in an institution or in the home, and (iii) who requires assistance to support the essentials of daily living, and (iv) who is not under active and specific medical, surgical and/or psychiatric treatment which will reduce the disability to the extent necessary to enable the patient to function outside the protected, monitored and/or controlled environment. A custodial care determination is not precluded by the fact that a patient is under the care of a supervising and/or attending physician and that services are being ordered and prescribed to support and generally maintain the patient's condition, and/or provide for the patient's comfort, and/or assure the manageability of the patient. Further, a custodial care determination is not precluded because the ordered and prescribed services and supplies are being provided by a R.N. or L.P.N.

NOTE.—The determination of custodial care in no way implies that the care being rendered is not required by the patient; it only means that it is the kind of care that is not covered under the CHAMPUS Basic Program.

(47) *Day/Night Center.* "Day/Night Center" means a program of services for the diagnosis, care, and treatment of persons with psychiatric disorders that provides a planned medical therapeutic program for patients who do not require full-time hospitalization but who need broader programs than are possible through outpatient visits. Patients may participate in such programs on a day or night basis but not both programs (to do so would constitute inpatient psychiatric hospitalization). Such programs must vest patient care under the supervision of a professional staff of licensed physicians. Such programs must also be operated under the auspices of, either by contract or direct administration, a hospital accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or a community mental health center.

NOTE.—The term, "Day/Night Center," is frequently inappropriately used to connote a single free-standing facility. More so, this term is synonymous with the term "Partial Hospitalization" as defined in the Community Mental Health Center Act of 1963 and its subsequent amendments and refers to the organization of a program of services to psychiatric patients.

(48) *Days.* "Days" means calendar days.

(49) *Deceased Service Member.* "Deceased Service Member" means a person who was, at the time of his or her death, an active duty member of a Uniformed Service under a call or order that did not specify a period of 30 days or less; or a retiree of a Uniformed Service.

(50) *Deductible.* "Deductible" means payment by a beneficiary of the first fifty ($50.00) dollars of the CHAMPUS-determined reasonable costs/charges for otherwise covered outpatient services and/or supplies provided in any one fiscal year; or for a family, the aggregate payment by two or more beneficiaries who submit claims, of the first one hundred ($100.00) dollars.

(51) *Deductible Certificate.* "Deductible Certificate" means a statement issued to the beneficiary (or sponsor) by a CHAMPUS Contractor certifying to deductible amounts satisfied by a CHAMPUS beneficiary for any applicable fiscal year.

(52) *Dentist.* "Dentist" means Doctor of Dental Medicine (D.M.D.) and Doctor of Dental Surgery (D.D.S.).

(53) *Dependent.* "Dependent" means a person who bears any of the following relationships to an active duty member (under a call or order that does not specify a period of thirty (30) days or less), retiree, or deceased active duty member or retiree, of a Uniformed Service, i.e., lawful spouse, unremarried widow or widower, or child; or a spouse and child of an active duty member of the armed forces of foreign NATO nations. (Refer to § 199.9, "Eligibility.")

(54) *Deserter/Desertion Status.* A service member is a deserter, or in a desertion status, when the Service concerned has made an administrative determination to that effect, or the member's period of unauthorized absence has resulted in a court-martial conviction of desertion. Administrative declarations of desertion are normally made when a member has been an unauthorized absentee for over 30 days, but particular circumstances may result in an earlier declaration. Entitlement to CHAMPUS benefits ceases as of 12:01 a.m. on the day following the day the desertion status is declared. Benefits are not to be authorized for treatment received during a period of unauthorized absence which results in a court-martial conviction for desertion. Dependent eligibility for benefits is reestablished when a deserter is returned to military control and continues, even though the member may be in confinement, until any discharge is executed. In cases where a deserter status is later found to have been erroneously determined, the status of deserter is considered never to have existed, and the member's dependents will have been continuously eligible for benefits under the Program.

(55) *Diagnostic Admission.* "Diagnostic Admission" means an admission to a hospital or other authorized institutional provider, or an extension of a stay in such a facility, primarily for the purpose of performing diagnostic tests, examinations, and procedures.

(56) *DSM, II.* "DSM, II" means a technical reference, "Diagnostic and Statistical Manual of Mental Disorders."

(57) *Doctor of Dental Medicine (D.M.D.).* "Doctor of Dental Medicine" means a person who has received a degree in dentistry, i.e., that department of the healing arts which is concerned with the teeth, oral cavity, and associated structures.

(58) *Doctor of Medicine (M.D.).* "Doctor of Medicine" means a person who has graduated from a college of allopathic medicine, and who is legally entitled to use the designation M.D.

(59) *Doctor of Osteopathy (D.O.).* "Doctor of Osteopathy" means a practitioner of osteopathy, i.e., a system of therapy founded by Andrew Taylor Still (1828–1927) and based on the theory that the body is capable of making its own remedies against disease and other toxic conditions, when it is in normal structural relationship and has favorable environmental conditions and adequate nutrition. It utilizes generally accepted physical, medicinal, and surgical methods of diagnosis and therapy, while placing chief emphasis on the importance of normal body mechanics and manipulative methods of detecting and correcting faulty structure.

(60) *Domiciliary Care.* "Domiciliary Care" means inpatient institutional care provided to the beneficiary, not because it is medically necessary, but because the care in the home setting is not available, is unsuitable and/or members of the patient's family are unwilling to provide the care. Institutionalization because of abandonment constitutes domiciliary care.

NOTE: Examples of domiciliary care situations are where a beneficiary is initially institutionalized and remains in an institution because there is no other family member or other person available in the home (care not available), the family home contains an alcoholic who is not sufficiently responsible (care is unsuitable), or where a family member(s) is capable but refuses to provide the care (unwilling). Domiciliary care is not covered under either the CHAMPUS Basic Program or PPTH.

(61) *Donor.* "Donor" means an individual who supplies living tissue or material to be used in another body, such as a person who furnishes a kidney for renal transplant.

(62) *Double Coverage.* "Double Coverage" means a situation in which a

CHAMPUS beneficiary also has entitlement to insurance, medical service, a health and medical plan, or other government program through employment, law, membership in an organization or as a student (including entitlement by reason of being retired from an organization or group), which in whole or in part duplicates CHAMPUS benefits, but not including entitlement to receive care from the Uniformed Services Medical Care System.

(63) *Double Coverage Plan.* "Double Coverage Plan" means the specific organization, insurance policy, government program, etc., under which a CHAMPUS beneficiary has entitlement to medical benefits which in whole or in part duplicate CHAMPUS benefits. For the purposes of CHAMPUS, the following are not included within the definition of "Double Coverage Plan":

(i) Medicaid; or

(ii) Privately purchased, non-group coverage; or

(iii) Coverage specifically designed to supplement CHAMPUS benefits (i.e., covering the deductible and cost sharing amounts not paid by CHAMPUS); or

(iv) Entitlement to receive care from the Uniformed Services Medical Care System.

(64) *Durable Medical Equipment.* "Durable Medical Equipment" means equipment for which the reasonable charge is over one hundred ($100.00) dollars and which:

(i) Is medically necessary for the treatment of a covered illness of injury;

(ii) Improves the function of a malformed body member, or retards further deterioration of a patient's physical condition;

(iii) Is person-particular and not useful to any person in the absence of illness or injury;

(iv) Is primarily and customarily used to serve a medical purpose rather than primarily for transportation, comfort or convenience;

(v) Can withstand repeated use;

(vi) Provides the medically appropriate level of performance and quality for the medical condition present (i.e., non-luxury, non-deluxe); and

(vii) Is other than eyeglasses, spectacles, or other lenses, optical devices, hearing aids, or communication devices.

(65) *Emergency Inpatient Admission.* "Emergency Inpatient Admission" means an unscheduled, unexpected, medically necessary admission to a hospital or other authorized institutional provider for treatment of a medical condition meeting the definition of medical emergency and which is determined to require immediate inpatient treatment by the attending physician.

(66) *Essentials of Daily Living.* "Essentials of Daily Living" means care which consists of providing food (including special diets), clothing and shelter; personal hygiene services; observation and general monitoring; bowel training and/or management; safety precautions; general preventive procedures (such as turning to prevent bedsores); passive exercise; companionship; recreation; transportation; and such other elements of personal care which can reasonably be performed by an untrained adult with minimal instruction and/or supervision.

(67) *Experimental.* "Experimental" means medical care that is essentially investigatory or an unproven procedure or treatment regimen (usually performed under controlled medicolegal conditions) which does not meet the generally accepted standards of usual professional medical practice in the general medical community. The conduct of biomedical or behavioral research involving human subjects at risk to physical, psychological or social injury is experimental medicine. For the purposes of CHAMPUS, any medical services or supplies provided under a scientific research grant, either public or private, are classified as "experimental." (Financial grants-in-aid to an individual beneficiary are not considered grants for this purpose.) Use of drugs and medicines not approved by the Food and Drug Administration for general use by humans (even though approved for testing on human beings) is also considered to be experimental. However, if a drug or medicine in the "U.S. Pharmacopeia" and/or "National Formulary" (and requires a prescription), it is not considered experimental even if it is under investigation by the Food and Drug Administration as to its effectiveness.

NOTE: In areas outside the United States, standards comparable to those of the U.S. Food and Drug Administration is the CHAMPUS objective.

(68) *Extramedical Individual Providers of Care.* "Extramedical Individual Providers of Care" means a marriage and family counselor, a pastoral counselor, a Christian Science Practitioner, or a Christian Science Nurse.

(69) *Fiscal Year.* "Fiscal Year" means the Federal government's twelve-month accounting period which currently runs from October 1, of one year through September 30 of the following year.

NOTE: Prior to October 1, 1976, the fiscal year ran July 1, to June 30.

(70) *Full-Time Course of Higher Education.* "Full-Time Course of Higher Education" means a complete, progressive series of studies to develop knowledge, skill, mind, character, etc., by formal schooling at a college or university, and which meets the criteria set out in § 199.9. In order to qualify as full-time, the student must be carrying a course load of a minimum of twelve (12) semester credit hours or equivalent credit hours.

(71) *General Staff Nursing Service.* "General Staff Nursing Service" means all nursing care (other than that provided by private duty nurses), including but not limited to general duty nursing, emergency room nursing, recovery room nursing, intensive nursing care, and group nursing arrangements performed by nursing personnel on the payroll of the hospital or other authorized institution.

(72) *Good Faith Payments.* "Good Faith Payments" means those payments made to civilian sources of medical care who provided medical care to persons purporting to be eligible beneficiaries but who are subsequently determined to be ineligible for CHAMPUS benefits. (The ineligible person usually possesses an erroneous or illegal identification card.) In order to be considered as good faith payments, the civilian source of care must have exercised reasonable precautions in identifying a person claiming to be an eligible beneficiary.

(73) *Handicapped, Program for the (PFTH).* "Program for the Handicapped" means the special program set forth in § 199.11, whereby dependents of active duty members receive supplemental benefits for the moderately or severely mentally retarded and the seriously physically handicapped, over and above those medical benefits available under the CHAMPUS Basic Program.

(74) *Hospital, Acute Care (General and Special).* "Hospital, Acute Care (General and Special)" means an institution which:

(i) Is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for the medical or surgical diagnosis and treatment of illness, injury, or bodily malfunction.

(ii) Maintains clinical records on all inpatients (and outpatients if the facility operates an outpatient department or emergency room).

(iii) Has bylaws in effect with respect to its operations and medical staff.

(iv) Provides 24 hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times.

(v) Has in effect a hospital utilization review plan.

(vi) In the case of an institution in a State in which State or applicable local law provides for the licensing of hospitals, the hospital:

(*a*) Is licensed pursuant to such law, or

(*b*) Is approved by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing.

(vii) Has in effect an operating plan and budget.

(viii) Is accredited by the Joint Commission on Accreditation of Hospitals and/or meets such other requirements as the Secretary of Health, Education, and Welfare or the Director, OCHAMPUS, finds necessary in the interest of the health and safety of individuals who are admitted to and furnished services in the institution.

(75) *Hospitals, Long Term (Tuberculosis, Chronic Care, Rehabilitation, etc.).* "Hospitals, Long Term" means an institution which is primarily engaged in providing, by or under the supervision of a physician, appropriate medical or surgical services for the diagnosis and treatment of the illness or condition in which the institution specializes (i.e., tuberculosis and chronic diseases or conditions). Such long term hospitals must otherwise meet the same provisions as outlined in the definition of "Hospitals, Acute Care, General and Special."

NOTE.—Custodial or domiciliary care cases are not covered under CHAMPUS whether or not the long term hospital qualified under CHAMPUS.

(76) *Hospitals, psychiatric.* "Psychiatric Hospital" means an institution which is primarily engaged in providing psychiatric services for the diagnosis and treatment of mental illness and conditions. There are two major categories of psychiatric hospitals:

(i) Private psychiatric hospitals, which includes both proprietary and not-for-profit institutions.

(ii) Psychiatric hospitals controlled, financed and operated by departments or agencies of either the Federal, state, or local governments.

In order for the services of a private psychiatric hospital to be covered, the hospital must comply with the provisions outlined in the definition, "Hospital, Acute Care, General and Special," except that all private psychiatric hospitals must be accredited by the JCAH in order for their services to be cost-shared under CHAMPUS.

(77) *ICU.* "ICU" means an intensive care unit in a hospital.

(78) *Illegitimate Child.* "Illegitimate Child" means a child not recognized as a lawful offspring; example, a child born of parents not married to each other.

(79) *Immediate Family.* "Immediate Family" means the spouse, natural parent, child and sibling, adopted child and adoptive parent, stepparent, stepchild, stepbrother and stepsister, father-in-law, mother-in-law of the beneficiary or provider as appropriate. For purposes of this definition only, to determine who may render services to a beneficiary, the step-relationship continues to exist even if the marriage upon which the relationship is based terminates through divorce or death of one of the parents.

(80) *Independent Laboratory.* "Independent Laboratory" means a freestanding laboratory approved for participation under Medicare and certified by the Social Security Administration.

(81) *Infirmaries.* "Infirmaries" means facilities operated by student health departments of colleges and universities to provide inpatient and/or outpatient care to enrolled students. When specifically approved by the Director, OCHAMPUS (or a designee), a boarding school infirmary is also included.

(82) *Initial Determination.* "Initial Determination" means a formal decision on the part of an individual in a CHAMPUS Contractor's office or in OCHAMPUS who has reviewed a claim, or a formal request for benefits under a provision of this Program. An initial determination may be in the form of a payment or rejection (in whole or in part) of a claim; or approval or disapproval of an application for a benefit; or a termination of a benefit.

(83) *Initial Payment.* "Initial Payment" means the extension of benefits prior to determination of primary/secondary payer status.

(84) *In-Out Surgery.* "In-Out Surgery" means that surgery performed in the outpatient department of a hospital or other institutional provider, in a physician's office or the office of another individual professional provider, in a clinic, or in a "freestanding," ambulatory surgical center which does not involve a formal inpatient admission for a period of twenty-four (24) hours or more.

(85) *Inpatient.* "Inpatient" means a patient who has been admitted to a hospital or other authorized institution for bed occupancy for purposes of receiving necessary medical care, with the reasonable expectation that the patient will remain in the institution at least twenty-four (24) hours, and with the registration and assignment of an inpatient number or designation. Institutional care in connection with in/out (ambulatory) surgery is not included within the meaning of inpatient whether or not an inpatient number or designation is made by the hospital or other institution. If death occurs prior to actual inpatient admission (such as in the emergency room), no inpatient admission exists even though had the patient lived, an inpatient admission would have occurred.

(86) *Inpatient Medical Care.* "Inpatient Medical Care" means the attending physician's medical (not surgical or maternity) care rendered to an inpatient confined as a bed patient in a hospital or other authorized institution, including intensive or prolonged inpatient medical care, inpatient psychotherapy or inpatient physiatry.

(87) *Intensive Care Unit (ICU).* "Intensive Care Unit" means a special segregated unit of a hospital in which patients are concentrated, by reason of serious illness, usually without regard to diagnosis. Special lifesaving techniques and equipment are regularly and immediately available within the unit, and patients are under continuous observation by a nursing staff specially trained and selected for the care of this type patient. The unit is maintained on a continuing rather than an intermittent or temporary basis. It is not a post-operative recovery room nor a post-anesthesia room. In some large or highly specialized hospitals, the ICU's may be further refined for special purposes, such as for respiratory conditions, cardiac surgery, coronary care, burn care or neurosurgery. For the purposes of CHAMPUS, these specialized units would be considered ICU's if they otherwise conformed to the definition of an intensive care unit.

(88) *Intern.* "Intern" means a graduate of a medical or dental school serving in a hospital in preparation for being licensed to practice medicine or dentistry.

(89) *I.C.D.A.* "I.C.D.A." means a technical reference, "International Classification of Diseases, Adapted."

(90) *JCAH.* "JCAH" means the Joint Commission on Accreditation of Hospitals.

(91) *Laboratory and Pathological Services.* "Laboratory and Pathological Services" means laboratory and pathological examinations (including machine diagnostic tests which produce hard copy results) ordered by the attending physician when necessary to, and rendered in connection with, medical, obstetrical or surgical diagnosis or treatment of an illness or injury.

(92) *Last Pay.* "Last Pay" means a double coverage situation where the tests set forth in paragraph (b)(8) of § 199.14, "Double Coverage," do not apply and the specified medical benefits plan (either CHAMPUS or the double coverage plan) is always the secondary payer.

(93) *Legitimized Child.* "Legitimized Child" means a formerly illegitimate child who is considered legitimate by reason of qualifying actions recognized in law.

(94) *Licensed Practical Nurse (LPN).* "Licensed Practical Nurse" means a person who is specially prepared in the scientific basis of nursing, who is a graduate of a school of practical nursing, whose qualifications have been examined by a state board of nursing and who has been legally authorized to practice as a licensed practical nurse (LPN) under the supervision of a physician.

(95) *Licensed Vocational Nurse (LVN).* "Licensed Vocational Nurse" means a person who is specifically prepared in the scientific basis of nursing, who is a graduate of a school of vocational nursing, whose qualifications have been examined by a state board of nursing and who has been legally authorized to practice as a licensed vocational nurse (LVN) under the supervision of a physician.

(96) *Long Term Hospital Care.* "Long Term Hospital Care" means any inpatient hospital stay in excess of 30 days.

(97) *Management Plan.* "Management Plan" means a detailed description of the medical history of, and proposed therapy for, a CHAMPUS beneficiary seeking benefits under the Program for the Handicapped as set forth in § 199.11. A management plan must include, as a minimum, a diagnosis (either ICDA or DSM II); detailed reports of prior treatment, family history, social history, history of handicapping condition and physical examination; diagnostic test results; consultant's (if any) reports; proposed therapeutic approach and modality (including anticipated length of time the proposed modality will be required); prognosis; problem list; and all-inclusive current or anticipated monthly charges related to the proposed management plan. If the management plan involves the transfer of a beneficiary from a hospital or another inpatient facility, medical records related to that inpatient stay are also required as a part of the management plan documentation.

(98) *Marriage and Family Counselor.* "Marriage and Family Counselor" means a person who has completed a recognized graduate professional education with the minimum of an earned Master's degree from an accredited educational institution in an appropriate behavioral science field or mental health discipline and meets the experience requirements set forth in § 199.12, "Authorized Providers."

(99) *Maternity Care.* "Maternity Care" means care and treatment related to conception, delivery and abortion, in-

cluding prenatal and postnatal care (generally through the sixth post-delivery week); and also including treatment of the complications of pregnancy.

(100) *Medicaid.* "Medicaid" means those medical benefits authorized under Title XIX of the Social Security Act, as amended, provided to welfare recipients and the medically indigent through programs administered by the various states.

(101) *Medical.* "Medical" means the generally used term which includes the concept of (or being related to) "medical, surgical and obstetrical" care or condition or services, etc.; unless specifically stated in this regulation that the term is more restrictive.

NOTE.—For example of a more restrictive use, refer to Subparagraph (86) of this section, definition of "Inpatient Medical Care."

(102) *Medical Emergency.* "Medical Emergency" means the sudden and unexpected onset of a medical condition or the acute exacerbation of a chronic condition which is threatening to life, limb or sight, and requires immediate medical treatment and/or which manifests painful symptomatology requiring immediate palliative efforts to alleviate suffering. Medical emergencies include heart attacks, cardiovascular accidents, poisoning, convulsions, kidney stones, and such other acute medical conditions as may be determined to be medical emergencies by the Director, OCHAMPUS (or a designee).

(103) *Medically Necessary.* "Medically Necessary" means the appropriate level of services and supplies (i.e., frequency, extent, and kinds) adequate to the diagnosis and treatment of illness or injury (including maternity care). Medically necessary includes the concept of appropriate medical care.

(104) *Medical Supplies and Dressings (Consumables).* "Medical Supplies and Dressings (Consumables)" means necessary medical/surgical supplies (exclusive of durable medical equipment) which do not withstand prolonged, repeated use and which are needed for the proper medical management of a condition for which benefits are otherwise authorized under CHAMPUS, on either an inpatient or outpatient basis. Examples would include disposable syringes for a diabetic, colostomy sets, irrigation sets, Ace bandages, etc.

(105) *Medicare.* "Medicare" means those medical benefits authorized under Title XVIII of the Social Security Act, as amended, provided to persons 65 years or older, certain disabled persons, or persons with chronic renal disease, through a national program administered by the Social Security Administration, Bureau of Health Insurance

(106) *Mental Retardation.* "Mental Retardation" means subnormal general intellectual functioning and is associated with impairment of either learning and social adjustment or maturation, or both. The diagnostic classification of moderate and severe mental retardation relates to IQ as follows:

(i) *Moderate.* Moderate mental retardation—IQ 36–51.

(ii) *Severe.* Severe mental retardation—IQ 35 and under.

(107) *Midwife.* "Midwife" means a person who has been specially trained in the area of obstetrics, who assists in childbirth (but who is not a physician), and who holds a valid State license or certificate.

(108) *Missing in Action (MIA).* "Missing in Action" means a battle casualty whose whereabouts and status are unknown, provided the absence appears to be involuntary and the individual is not known to be in a status of unauthorized absence.

NOTE.—Claims for eligible CHAMPUS beneficiaries whose sponsor is classified as MIA are processed as dependents of active duty service members.

(109) *National Oceanic and Atmospheric Administration (NOAA).* "National Oceanic and Atmospheric Administration" means the agency within the U.S. Department of Commerce which has a Commissioned Corps which is classified as members of the "Uniformed Services."

(110) *NATO Countries.* "NATO Countries" means Belgium, Canada, Denmark, France, Federal Republic of Germany, Greece, Iceland, Italy, Luxemburg, the Netherlands, Norway, Portugal, Turkey, the United Kingdom, and the United States.

(111) *NATO Member.* "NATO Member" means a military member of an armed force of a foreign NATO nation who is on active duty and who in connection with official duties, is stationed in or passing through the United States. The foreign NATO nations are Belgium, Canada, Denmark, France, Federal Republic of Germany, Greece, Iceland, Italy, Luxemburg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom.

NOTE: Spouses and children of NATO members are eligible for CHAMPUS benefits while officially accompanying the NATO member who is in the United States on official business.

(112) *Naturopath.* "Naturopath" means a person who practices naturopathy, i.e., a drugless system of therapy making use of physical forces such as air, light, water, heat, massage, etc.

NOTE: Services of a Naturopath are not covered by CHAMPUS.

(113) *Nervous and Mental Disorders.* "Nervous and Mental Disorders" means the specific psychiatric conditions described in the "American Psychiatric Association's Diagnostic and Statistical Manual—Mental Disorders," (DSM II).

(114) *Nonavailability Statement.* "Nonavailability Statement" means a certification by a commander (or a designee) of a Uniformed Services inpatient medical care facility recorded on DD Form 1251 generally for the reason that the needed medical care being requested by a CHAMPUS beneficiary cannot be provided at the facility concerned because the necessary resources are not available.

(115) *Non-Participating Provider.* "Non-Participating Provider" means a hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider, which/who furnished medical services and/or supplies to a CHAMPUS beneficiary but who did not sign the CHAMPUS claim form and submit it on behalf of the beneficiary/patient. A non-participating provider looks to the beneficiary (or sponsor) for payment of his or her charge, not CHAMPUS. In such cases CHAMPUS pays its benefits to the beneficiary (or sponsor), not the provider.

(116) *OCHAMPUS.* "OCHAMPUS" means the Office of the Civilian Health and Medical Program for the Uniformed Services (located at Denver, Colorado 80240) and is the managing agency for the CHAMPUS Program.

(117) *OCHAMPUSEUR.* "OCHAMPUSEUR" means the Office of Civilian Health and Medical Program of the Uniformed Services for Europe (located at Karlsrude Str. 144, Heidelberg, West Germany). It is a subsidiary office to the OCHAMPUS, and is the office where CHAMPUS claims for Europe, Africa, and the Middle East are adjudicated and processed.

(118) *OCHAMPUSPAC.* "OCHAMPUSPAC" means the Office of Civilian Health and Medical Program of the Uniformed Services for the Pacific Area, located at 1504 Kapiolani Boulevard (or Post Office Box 860), Honolulu, Hawaii, % Hawaii Blue Shield. This office handles claims for the Pacific area, except Korea and Thailand.

(119) *OCHAMPUSSO.* "OCHAMPUSSO" means the Office of Civilian Health and Medical Program of the Uniformed Services for the Southern Hemisphere located at 3301 Dodge Street, Omaha, Nebraska 68131, % Mutual of Omaha. This office handles claims for Canada, Mexico, South America, Central America, Bermuda and the West Indies.

(120) *Official Formularies.* "Official Formularies" means a book of official standards for certain pharmaceutics and preparations which are not included in the U.S. Pharmacopeia.

(121) *Optometrist (Doctor of Optometry).* "Optometrist (Doctor of Optometry)" means a person trained and licensed to examine and test the eyes and to treat visual defects by prescribing and adapting corrective lenses and other optical aids, and by establishing programs of exercises.

(122) *Oral Surgeon (D.D.S. or D.M.D.).* "Oral Surgeon (D.D.S. or D.M.D.)" means a person who has received a degree in dentistry and who limits his or her practice to oral surgery, i.e., that branch of the healing arts which deals with the diagnosis and the surgical correction and adjunctive treatment of diseases, injuries and defects of the mouth, the jaws, and associated structures.

(123) *Orthopedic Shoes.* "Orthopedic Shoes" means those shoes prescribed by an orthopedic surgeon to effect changes in foot or feet position and alignment and which are not an integral part of a brace.

(124) *Other Allied Health Professionals.* "Other Allied Health Profes-

sionals" means a clinical psychologist, a Doctor of Optometry, a Doctor of Podiatry or Surgical Chiropody, a Registered Nurse (R.N.), a Licensed Practical or Vocational Nurse (LPN or LVN), a licensed midwife, a licensed, registered physical therapist, a psychiatric and/or clinical social worker, audiologist or speech therapist.

(125) *Other Specialized Treatment Facilities (STFs).* "Other Specialized Treatment Facilities (STFs)" means certain specialized medical treatment facilities, either inpatient or outpatient, other than those specifically defined, which provide courses of treatment prescribed by a doctor of medicine or osteopathy; where the patient is under the supervision of a doctor of medicine or osteopathy during the entire course of the inpatient admission or the outpatient treatment; where the type and level of care and services rendered by the institution are otherwise authorized in this regulation; where the facility meets all licensing and/or other certification requirements which are extant in the jurisdiction in which the facility is geographically located; and which is accredited by the Joint Commission on Accreditation if an appropriate accreditation program for the given type of facility is available; and which is not a nursing home, intermediate facility, home for the aged or other institution of similar purpose.

(126) *Outpatient.* "Outpatient" means a patient who has not been admitted to a hospital or other authorized institution as an inpatient.

(127) *Outpatient Care.* "Outpatient Care" means any medical services rendered to other than a person confined as a registered bed patient in a hospital or other authorized institution (i.e., medical care provided in the home or office, or in the outpatient department of a hospital, infirmary, or other authorized institution).

(128) *Participating Provider.* "Participating Provider" means a hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider, which furnished services or supplies to a CHAMPUS beneficiary and which has agreed, by act of signing and submitting a CHAMPUS claim form, to accept the CHAMPUS-determined reasonable cost/charge as the total charge (even though less than the actual billed amount), whether paid for fully by the CHAMPUS allowance or requiring cost-sharing by the beneficiary (or sponsor).

(129) *Party to a Hearing.* "Party to a Hearing" means an appealing party or parties and CHAMPUS.

(130) *PFTH.* "PFTH" means Program for the Handicapped as set forth in § 199.11.

(131) *Pharmacist.* "Pharmacist" means a person who is specially trained in the scientific basis of pharmacology and who is licensed to prepare and sell or dispense drugs and compounds and to make up prescriptions ordered by a physician.

(132) *Physiatry Services.* "Physiatry Services" means the treatment of disease or injury by physical means such as massage, hydrotherapy, or heat.

(133) *Physical Handicap.* "Physical Handicap" means a physical condition of the body, which meets the following criteria:

(i) *Duration.* The condition is expected to result in death, or has lasted, or with reasonable certainty is expected to last, for a minimum period of 12 months; and

(ii) *Extent.* The condition is of such severity as to preclude the individual from engaging in substantially basic productive activities of daily living expected of unimpaired persons of the same age group.

(134) *Physical Therapist.* "Physical Therapist" means a person who is specially trained in the skills and techniques of physical therapy (i.e., the treatment of disease by physical agents and methods such as heat, massage, manipulation, therapeutic exercise, hydrotherapy and various forms of energy such as electrotherapy and ultrasound), who has been legally authorized (i.e., registered) to administer treatments prescribed by a physician and who is legally entitled to use the designation registered physical therapist. A physical therapist may also be called a physiotherapist.

(135) *Physician.* "Physician" means Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.).

(136) *Podiatrist (Doctor of Podiatry or Surgical Chiropody).* "Podiatrist" means a person who has received a degree in podiatry (formerly called chiropody), i.e., that specialized field of the healing arts that deals with the study and care of the foot, including its anatomy, pathology, and medical and surgical treatment.

(137) *Preauthorization.* "Preauthorization" means written preapproval required under this Regulation for admissions to institutions (other than hospitals), specified surgery, adjunctive dental care and all services and supplies under the Program for the Handicapped.

(138) *Prescription Drugs and Medicines.* "Prescription Drugs and Medicines" means those drugs and medicines which at the time of use, were approved for general use by humans by the U.S. Food and Drug Administration as listed in the "U.S. Pharmacopeia" and "National Formulary", which were commercially available and which by law of the United States require a physician's or dentist's prescription, except that it includes insulin for known diabetics whether or not a prescription is required.

NOTE.—The fact that the U.S. Food and Drug Administration has approved a drug for testing on humans would not qualify it within this definition.

(139) *Preventive Care.* "Preventive Care" means diagnostic and/or medically indicated essentially preventive procedures not directly related to an illness, an injury, or a definitive set of symptoms. Preventive care includes (but is not limited to) well baby care (other than a newborn examination), immunizations, annual physical examinations or screening procedures such as chest X-rays and pap smears performed on the basis of periodic, preventive evaluation rather than on the basis of presenting symptoms.

NOTE.—Preventive care is not covered by CHAMPUS.

(140) *Primary Payer.* "Primary Payer" means the plan or program whose medical benefits are first payable in a double coverage situation, by virtue of the circumstances of the beneficiary's entitlement under either CHAMPUS or the double coverage plan first satisfying one of the three following tests. (Such tests are applied in the order set forth. If both medical benefit plans or programs, including CHAMPUS, meet the first two tests, the third test is applied.)

(i) *Test One.* The beneficiary's entitlement to the medical benefits plan or program, including CHAMPUS, is based upon the fact he or she is an employee, retired person, member of an organization or student; or

(ii) *Test Two.* The beneficiary's entitlement to the medical benefit plan or program, including CHAMPUS, is based upon the fact he or she is a child of a male employee, male retired person, male member of an organization or a male student; or

(iii) *Test Three.* The medical benefits plan or program, including CHAMPUS under which the beneficiary has been continuously entitled to benefits for the longest period of time (i.e., earliest effective date of coverage).

(141) *Prisoner of War.* "Prisoner of War" means a person who is captured during combat and held captive.

(142) *Private Duty (Special) Nursing Services.* "Private Duty (Special) Nursing Services" means skilled nursing services rendered to an individual patient requiring intensive medical care. Such private duty (special) nursing must be an actively practicing Registered Nurse (RN) or licensed Practical or Vocational Nurse (LPN or LVN), only when the medical condition of the patient requires intensified skilled nursing services (rather than primarily providing the essentials of daily living) and when such skilled nursing care is ordered by the attending physician.

(143) *Privately Purchased Plan.* "Privately Purchased Plan" means a privately purchased, non-group medical benefits coverage which the CHAMPUS beneficiary (or sponsor) purchases, provided such entitlement to purchase does not result because of law, employment, membership in an organization or student status.

(144) *Private Room.* "Private Room" means a room with one (1) bed and which is designated as a private room by the hospital or other authorized institutional provider.

(145) *Prosthetic Device (Prosthesis).* "Prosthetic Device (Prosthesis)" means an artificial substitute for a missing body part.

(146) *Provider.* "Provider" means a hospital or other institutional provider, physician or other individual profes-

sional provider, or other provider of services and/or supplies.

(147) *Psychiatric Services.* "Psychiatric Services" means individual or group psychotherapy.

(148) *Radiation Therapy Services.* "Radiation Therapy Services" means the treatment of diseases by X-ray, radium or radioactive isotopes when ordered by the attending physician.

(149) *Reasonable Charge.* "Reasonable Charge" means the CHAMPUS-determined level of payment to physicians, other individual professional providers and other providers, based on one of the approved reimbursement methods set forth in (e)(3) of § 199.12 "Authorized Providers."

(150) *Reasonable Cost.* "Reasonable Cost" means the CHAMPUS-determined level of payment to hospitals or other institutions, based on one of the approved reimbursement methods set forth in (e)(1) and (2) of § 199.12 "Authorized Providers."

(151) *Referral.* "Referral" means the act or an instance of referring a CHAMPUS beneficiary to another authorized provider to obtain necessary medical treatment. Under CHAMPUS, only a physician may make referrals.

(152) *Registered Nurse.* "Registered Nurse" means a person who is specially prepared in the scientific basis of nursing, who is a graduate of a school of nursing, and who is registered for practice after examination by a state board of nurse examiners or similar regulatory authority, who holds a current, valid license and who is legally entitled to use the designation R.N.

(153) *Representative.* "Representative" means any person who has been designated by the appealing party as counsel or advisor, or who is otherwise eligible to serve as the appealing party's counsel or advisor.

(154) *Resident.* "Resident" means a graduate physician or dentist who has an M.D. or D.O. degree or D.D.S. or D.M.D. degree, respectively, is licensed to practice, and who chooses to remain on the house staff of a hospital in order to get further training that will qualify him or her for a medical or dental specialty.

(155) *Residential Treatment Centers for Emotionally Disturbed Children (RTC's).* "Residential Treatment Centers" means institutions (or distinct units of an institution) existing specifically for round-the-clock, long-term psychiatric treatment of emotionally disturbed children who have sufficient intellectual potential for responding to active psychiatric treatment, for whom outpatient treatment is not appropriate and for whom inpatient treatment is determined to be the treatment of choice. RTC's do not provide domiciliary and/or custodial care, but rather, must be able to provide a total therapeutically planned group living and learning situation within which individual psychotherapeutic approaches are integrated. To be approved by CHAMPUS, private RTC's must:

(i) Be accredited by the Joint Commission on Accreditation of Hospitals under the Commission Standards for Psychiatric Facilities Serving Children and Adolescents; and

(ii) Have entered into a Participation Agreement with OCHAMPUS which requires that the RTC will comply with the CHAMPUS Standards for Psychiatric Residential Treatment Centers Serving Children and Adolescents. The current CHAMPUS Standards for Residential Treatment Centers are provided as Appendix A to this regulation.

(156) *Retiree.* "Retiree" means a member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniformed Service.

(157) *RTC.* "RTC" means a residential treatment center for emotionally disturbed children.

(158) *Secondary Payer.* "Secondary Payer" means the medical benefit coverage determined not to be the primary payer (i.e., have first pay obligation) by virtue of applying the tests set forth in paragraph (b) of § 199.14, "Double Coverage."

(159) *Semi-Private Room.* "Semi-Private Room" means a room containing at least two beds but no maximum number. Therefore, if a room is publicly designated as a semi-private accommodation by the hospital or other authorized institutional provider and contains multiple beds, it qualifies as a semi-private room for the purposes of CHAMPUS.

(160) *Skilled Nursing Facility.* "Skilled Nursing Facility" means an institution (or a distinct part of an institution) which is primarily engaged in providing to inpatients, medically necessary skilled nursing care and which:

(i) Has policies which are developed with the advice of (and with provisions for review of such policies on a periodic basis by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical services it provides.

(ii) Has a physician, a registered professional nurse, or a medical staff responsible for the execution of such policies.

(iii) Has a requirement that the medical care of each patient must be under the supervision of a physician, and provides for having a physician available to furnish necessary medical care in case of an emergency.

(iv) Maintains clinical records on all patients.

(v) Provides 24-hour skilled nursing service which is sufficient to meet nursing needs and has at least one registered professional nurse employed full-time.

(vi) Provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals.

(vii) Has in effect a utilization review plan that is operational and functioning.

(viii) In the case of an institution in a state in which state or applicable local law provides for the licensing of this type facility, the institution:

(*a*) Is licensed pursuant to such law, or

(*b*) Is approved by the agency of such state or locality responsible for licensing such institutions, as meeting the standards established for such licensing.

(ix) Has in effect an operating plan and budget.

(x) Meets such provisions of the most current edition of the Life Safety Code of the National Fire Protection Association as are applicable to nursing facilities; except that if the Secretary of Health, Education, and Welfare has waived, for such periods as deemed appropriate, specific provisions of such code which, if rigidly applied, would result in unreasonable hardship upon a skilled nursing facility.

(161) *Skilled Nursing Service.* "Skilled Nursing Service" means a service which can only be furnished by an RN (or LPN or LVN), and is required to be performed under the supervision of a physician in order to assure the safety of the patient and achieve the medically desired result. Examples of skilled nursing services are intravenous or intramuscular injections, levine tube or gastrostomy feedings, or tracheotomy aspiration and insertion. Skilled nursing services are other than those services which primarily provide support for the essentials of daily living or which could be performed by an untrained adult with minimum instruction and/or supervision.

(162) *Spectacles, Eyeglasses, Lenses.* "Spectacles, Eyeglasses, Lenses" means a pair of lenses which help to correct faulty vision, usually in a frame; but also including contact lenses.

(163) *Special Tutoring.* "Special Tutoring" means that teaching or instruction provided by a private teacher to an individual usually in a private or separate setting to enhance the educational development of an individual in one or more study areas.

(164) *Sponsor.* "Sponsor" means an active duty member, retiree, or deceased active duty member or retiree, of a Uniformed Service upon whose status his or her dependents' eligibility for CHAMPUS is based.

(165) *Spouse.* "Spouse" means a lawful husband or wife regardless of whether or not dependent upon the active duty member or retiree.

(166) *Student Status.* "Student Status" means a dependent of a member or former member of a Uniformed Service, who has not passed his or her twenty-third (23rd) birthday, and is enrolled in a full-time course of study in an institution of higher learning.

(167) *Suppliers of Portable X-Ray Services.* "Suppliers of Portable X-Ray Services" means a supplier which meets the conditions of coverage of the Medicare Program, set forth in 20 CFR 405.1411 through 1416 (as amended) or the Medicaid Program in the state in which the covered service is provided.

(168) *Surgery.* "Surgery" means medically appropriate operative procedures, including related pre-operative and post-operative care; reduction of fractures and dislocations; injection and needling procedures of the joints; laser surgery of the eye; and those certain procedures listed in paragraph (c)(2)(i) of § 199.10 "Basic Program Benefits."

(169) *Timely Filing.* "Timely Filing" means the filing of CHAMPUS claims within the prescribed time limits set forth in this Regulation.

(170) *Treatment Plan.* "Treatment Plan" means a detailed description of the medical care being rendered or anticipated being rendered a CHAMPUS beneficiary seeking approval for inpatient benefits, for which preauthorization is required as set forth in paragraph (b) of § 199.10, "Basic Program Benefits." A treatment plan must include, as a minimum, a diagnosis (either ICDA or DSM II); detailed reports of prior treatment, medical history, family history, social history and physical examination; diagnostic test results; consultant's (if any) reports; proposed treatment by type (i.e., surgical, medical, psychiatric, etc.); a description of who is or will be providing treatment (by discipline and/or specialty); anticipated frequency, medications and specific goals of treatment; type of inpatient facility required and why (including length of time the proposed treatment, and the related inpatient stay will be required); and prognosis. If the treatment plan involves the transfer of a beneficiary/patient from a hospital or another inpatient facility, medical records related to that inpatient stay are also required as a part of the treatment plan documentation.

(171) *Treatment Rooms.* "Treatment Rooms" means the emergency room, operating room, recovery room, special treatment rooms, and hyperbaric chamber and all related necessary medical staff and equipment so designated and maintained by the hospital or other authorized institution on a continuing basis.

(172) *Uniformed Services.* "Uniformed Services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and the Commissioned Corps of the U.S. Public Health Service.

(173) *United States.* "United States" means the fifty (50) states and the District of Columbia.

(174) *United States Public Health Service (USPHS).* "United States Public Health Service (USPHS)" means an agency within the U.S. Department of Health, Education, and Welfare which has a Commissioned Corps which are classified as members of the "Uniformed Services."

(175) *Veteran.* "Veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

NOTE.—Unless the veteran is eligible for "retired pay," "retirement pay" or "retainer pay," which refers to payments of a continuing nature and are payable at fixed intervals from the Government for military service, neither they or their dependents are eligible for benefits under the CHAMPUS.

(176) *Veterans Benefits.* "Veterans Benefits" means those medical benefits authorized under Chapter 17, Title 38, United States Code, available to veterans of the Military Services with service-connected illnesses or injuries, through programs administered by the Veterans Administration.

(177) *Well Baby Care.* "Well Baby Care" means preventive, routine-type care and includes physical examinations and associated services to assess the general state of health of an infant rather than for the purpose of diagnosis or treatment. It is not intended to include newborn examinations, PKU tests or newborn circumcisions.

(178) *Widow or Widower.* "Widow or Widower" means a person who was a spouse at the time of the death of the active duty member or retiree and who has not remarried.

(179) *Workmen's Compensation Benefits.* "Workmen's Compensation Benefits" means medical benefits available under any workmen's compensation law (including the Federal Employees Compensation Act), occupational disease law, employers liability law, or any other legislation of similar purpose, or under the maritime doctrine of maintenance, wages and cure.

(180) *X-Ray Services.* "X-Ray Services" means an X-ray examination from which an X-ray film is produced, ordered by the attending physician when necessary to and rendered in connection with medical or surgical diagnosis or treatment of an illness or injury.

§ 199.9 Eligibility.

(a) *General.* This section sets forth those persons who, by the provisions of Chapter 55 of Title 10, United States Code, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. For additional statements concerning the special requirements of the Program for the Handicapped refer to § 199.11. A determination that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Other sections of this Regulation set forth additional requirements which must be met before any CHAMPUS benefits may be extended. Additionally, the Use of CHAMPUS may be denied if a Uniformed Service medical facility capable of providing the needed care is available.

(b) *Persons eligible*—(1) *Retiree.* A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniformed Service.

(2) *Dependent.* A person who bears one of the following relationships to an active duty member (under a call or order that does not specify a period of 30 days or less), to a retiree, or to a deceased person who, at the time of death, was an active duty member or a retiree, or NATO member.

(i) *Spouse.* A lawful husband or wife regardless of whether or not dependent upon the active duty member or retiree.

(ii) *Widow or Widower.* A person who was a spouse at the time of death of the active duty member or retiree and who has not remarried.

NOTE.—Unremarried widow or widower is not an eligible dependent of a NATO member.

(iii) *Child.* To be eligible the child must be unmarried and a member of one of the classes set forth in paragraphs (b)(2)(iii)(*a*) or (*b*) of this section and who also meets the requirements of paragraph (b)(2)(iii)(*c*) of this section.

(*a*) *Child of active duty member.* (*1*) A legitimate child.

(*2*) An adopted child whose adoption has been legally completed.

(*3*) A legitimate stepchild.

(*4*) An illegitimate child of a male member whose paternity has been judicially determined or an illegitimate child of record of a female member who has been judicially directed to support the child.

(*5*) An illegitimate child of a male active duty member whose paternity has not been judicially determined, or an illegitimate child of record of a female active duty member, (*i*) who resides with or in a home provided by the member, and (*ii*) who is and continues to be dependent upon the member for over fifty (50) percentum of his or her support.

(*6*) An illegitimate child of the spouse of an active duty member (i.e., the active duty member's stepchild) (*i*) who resides with or in a home provided by the active duty member or the parent who is the spouse of the member, and (*ii*) who is and continues to be dependent upon the member for over fifty (50) percentum of his or her support.

(*b*) *Child of retiree, or deceased member or retiree.* (*1*) A legitimate child.

(*2*) An adopted child whose adoption has been legally completed.

(*3*) A legitimate stepchild.

(*4*) An illegitimate child of a male retiree whose paternity has been judicially determined or an illegitimate child of record of a female retiree who has been judicially directed to support the child.

(*5*) An illegitimate child of a male retiree, or deceased male member or retiree whose paternity has not been judicially determined, or an illegitimate child of record of a female retiree, or deceased female member or retiree (*i*) who resides with or in a home provided by the retiree, or which was being provided by the deceased member or retiree at the time of death, and (*ii*) who is and continues to be dependent upon the retiree for over fifty (50) percentum of his or her support or who was so dependent on the deceased member or retiree at the time of death.

(*6*) An illegitimate child of the spouse of a retiree or deceased member or retiree (i.e., the retiree's stepchild or stepchild of a deceased member or retiree at the time of death) (*i*) who resides with or in a home provided by the retiree or the parent who is the spouse of the retiree or was the spouse of the deceased member or retiree, at the time of death and (*ii*) who is and continues to be dependent upon the retiree for over fifty (50) percentum of his or her support or

who was so dependent on the deceased member or retiree at the time of death.

(c) *Additional Requirements for a Child Who is a Member of One of the Classes in (1) and (2) Above.* The child must not be married. Additionally he or she must fall in one of the following three age groups:

(1) Not passed his or her twenty-first (21st) birthday.

(2) Passed his or her twenty-first (21st) birthday but incapable of self-support because of a mental or physical incapacity that existed prior to his or her twenty-first (21st) birthday and dependent on the member or retiree for over fifty (50) percentum of his or her support or dependent upon the member or retiree for over fifty (50) percent of his or her support on the date of the member's or retiree's death. Such incapacity must be continuous. If the incapacity significantly improves or ceases at anytime after age 21, even if such incapacity subsequently reoccurs, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity. If the child was not mentally or physically handicapped at his or her twenty-first (21st) birthday, but becomes so incapacitated after that time, no CHAMPUS eligibility exists on the basis of the incapacity.

(3) Passed his or twenty-first (21st) birthday but not his or her twenty-third (23rd) birthday, dependent upon the member or retiree for over fifty (50) percentum of his or her support or dependent upon the member or retiree for over fifty (50) percentum of his or her support on the date of the member's or retiree's death, and pursuing a fulltime course of education in an institution of higher learning approved by the Secretary of Defense or the Secretary of Health, Education, and Welfare (as appropriate) or by a state agency under Title 38, U.S.C., Chapter 34 (Veterans' Educational Assistance) and Chapter 35 (War Orphans' and Widows' Educational Assistance) of Title 38, United States Code.

NOTE.—Courses of education offered by institutions listed in "Education Directory, Part 3, Higher Education" and "Accredited Higher Institutions" issued periodically by the Office of Education, Department of Health, Education, and Welfare meet the criteria approved by the Secretary of Defense or Secretary of Health, Education, and Welfare (refer to paragraph (b)(2)–(iii)(c)(3) of this section). For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a State agency pursuant to Chapters 34 and 35 of Title 38, U.S.C., a statement may be obtained from the Office of Education, Department of Health, Education, and Welfare, Washington, D.C. 20202.

(c) *Beginning dates of eligibility—*(1) *General.* The beginning date of eligibility for a person is dependent upon two factors: The beginning date of eligibility for the class to which the person belongs and the date the person became a member of the class. Those who join the class after the class became eligible attain individual eligibility on the date they join the class.

(2) *Beginning dates of class eligibility.* (i) *Spouse, legitimate child, adopted child, or (legitimate) stepchild of an active duty member.* (a) For the medical benefits authorized by the Dependents' Medical Care Act of 1956—December 7, 1956.

(b) For outpatient medical benefits under the Basic Program—October 1, 1966.

(c) For inpatient medical benefits under the Basic Program—January 1, 1967.

(d) For benefits under the Program for the Handicapped—January 1, 1967.

(ii) *Retiree.* For medical benefits under the Basic Program—January 1, 1967.

NOTE.—Retirees and their dependents are not eligible for benefits of the Program for the Handicapped.

(iii) *Spouse, Legitimate Child, Adopted Child, or (Legitimate) Stepchild of a Retiree or of a Deceased Member or Retiree; Widow or Widower of Deceased Member or Retiree.* For medical benefits under the Basic Program—January 1, 1967.

NOTE.—These classes do not have eligibility for benefits of the Program for the Handicapped.

(iv) *Illegitimate Child of a Male Active Duty Member or Retiree (or Deceased Member or Retiree) Whose Paternity Has Been Judicially Determined or an Illegitimate Child of Record of a Female Active Duty Member or Retiree (or Deceased Member or Retiree) Who Has been Judicially Directed to Support the Child.* For all benefits for which otherwise eligible—August 31, 1972.

(v) *Illegitimate Child of Male Active Duty Member or Retiree (or Deceased Male Member or Retiree) Whose Paternity Has Not Been Judicially Determined, or an Illegitimate Child of Record of a Female Active Duty Member or Retiree (or Deceased Female Member or Retiree) Who Resides With or in a Home Provided by the Active Duty Member or Retiree (or Which Was Being Provided by the Deceased Member or Retiree at the Time of Death) and Who Is Dependent on the Member for Over Fifty (50) Percentum of His or Her Support (or Was so Dependent on the Deceased Member or Retiree at the Time of Death).* For all benefits for which otherwise eligible—January 1, 1969.

(vi) *Illegitimate Child of the Spouse of an Active Duty Member or Retiree (i.e., the Member or Retiree's Stepchild or Stepchild of a Deceased Member or Retiree at the Time of Death) Who Resides With or In a Home Provided by the Active Duty Member or Retiree, or the Parent Who Is the Spouse of the Active Duty Member or Retiree (or Was the Spouse of the Deceased Member or Retiree at the Time of Death) and Who is Dependent Upon the Active Duty Member or Retiree for Over Fifty (50) Percentum of His or Her Support (or Was so Dependent on the Deceased Member or Retiree at the Time of Death).* For medical benefits under the Basic Program—January 1, 1969. For benefits under the Program for the Handicapped, Dependents of an Active Duty Member only—January 1, 1969.

NOTE.—Retirees or their dependents do not have eligibility for benefits of the Program for the Handicapped.

(d) *Dual coverage.* In those circumstances where an active duty member is also the dependent of another active duty member, a retiree or a deceased active duty member or retiree, "Dual Coverage," i.e., entitlement to direct care from the Uniformed Services Medical Care System and CHAMPUS is the result. Since the active duty status is primary and it is the intent that all medical care be provided an active duty member through the Uniformed Services Medical Care System, CHAMPUS eligibility in such "Dual Coverage" situations is therefore terminated as of 12:01 a.m. on the day following the day Dual Coverage commences. (However, any dependent children in a marriage of two active duty persons or an active duty member and a retiree, are CHAMPUS eligible in the same manner as dependent children of a marriage involving only one CHAMPUS sponsor.) Should a spouse or dependent in such a dual coverage situation leave active duty status, that person's CHAMPUS eligibility is reinstated as of 12:01 a.m. of the day active duty ends, if he or she is otherwise eligible as a dependent of a CHAMPUS sponsor.

(e) *Changes in and termination of eligibility—*(1) *Changes in Status of Active Duty Member.* When an active duty member's period of active duty ends (for any reason other than retirement or death), his or her dependents lose their eligibility as of 12:01 a.m. of the day following the day the active duty ends. Entitlement to CHAMPUS benefits also ceases as of 12:01 a.m. of the day following the day a member is placed in desertion status. The member's dependent regains eligibility when the member is returned to military control. A member serving a sentence of confinement in conjunction with a sentence of a punitive discharge, is still considered on active duty until such time as the discharge is executed.

(2) *Change in status of retiree.* Should a retiree cease to be entitled to retired, retainer, or equivalent pay for any reason, that person and his or her dependents lose their eligibility as of 12:01 a.m. of the day following the day the retiree ceases to be entitled to such pay unless such persons are otherwise eligible. A retiree who simply waives his or her retired, retainer or equivalent pay is still considered a retiree for the purposes of CHAMPUS eligibility.

(3) *Change in status of dependent—*(i) *Divorce.* A spouse separated from an active duty member or retiree by a final divorce decree loses all eligibility based on his or her former marital relationship as of 12:01 a.m. of the day following the day the divorce becomes final. The eligibility of the member's or retiree's own children (including adopted and eligible illegitimate children) is unaffected by the divorce. An unadopted stepchild, however, loses eligibility with the

termination of the marriage, also as of 12:01 a.m. of the day following the day the divorce becomes final.

(ii) *Annulment.* A spouse whose marriage to an active duty member or retiree is dissolved by annulment loses eligibility as of 12:01 a.m. of the day following the date the court grants the annulment order. The fact that the annulment legally declares the entire marriage void from its inception does not affect the termination date of CHAMPUS eligibility. In the unusual situation where there are children, the eligibility of the member's or retiree's own children (including adopted and eligible illegitimate children) is unaffected by the annulment. An unadopted stepchild, however, loses eligibility with the annulment of the marriage, also as of 12:01 a.m. on the day following the day the court grants the annulment order.

(iii) *Adoption.* A child of an active duty member or retiree who is adopted by a person other than a person whose dependents are eligible for CHAMPUS benefits, while the active duty member or retiree is living, thereby severing the legal relationship between the child and the sponsor, loses eligibility as of 12:01 a.m. of the day following the day the adoption becomes final. However, an adoption occurring after the death of an active duty member or retiree would not result in loss of the child's eligibility, since there would be no termination of the legal relationship between the child and the deceased sponsor.

(iv) *Marriage of child.* A child of an active duty member or retiree who marries a person whose dependents are not eligible for CHAMPUS, loses eligibility, as of 12:01 a.m. on the day following the day of the marriage. However, should the marriage be terminated, by death, divorce, or annulment before the child is 21 years of age, the child again becomes a CHAMPUS eligible dependent (as of 12:01 a.m. of the day following the day of the occurrence which terminates the marriage) and continues up to age 21, if the child does not remarry before that time. If the marriage terminates after the child's twenty-first (21st) birthday there is no reinstatement of CHAMPUS eligibility unless based on other entitlement.

(v) *Marriage of widow or widower.* The remarriage of a widow or widower of an active duty member or retiree to a person whose dependents are not eligible for CHAMPUS terminates his or her CHAMPUS eligibility as of 12:01 a.m. of the day following the day of marriage. Even if such remarriage should terminate for any reason, CHAMPUS benefits cannot be reinstated. However, the child of the widow or widower who was the stepchild of the deceased active duty member or retiree at the time of death continues to have CHAMPUS eligibility in the same manner as other classes of dependent children.

(vi) *Attainment of entitlement to hospital insurance benefits (Part A) under Medicare.* Retirees and all other CHAMPUS eligible persons except dependents of active duty members lose their eligibility for CHAMPUS if, upon reaching age 65, or because of disability or chronic renal disease, they become entitled to Hospital Insurance Benefits (Part A) of Medicare. This is true even though the persons attaining such status live outside the United States where Medicare benefits are not available.

(a) *Loss of CHAMPUS Eligibility: Age 65.* All CHAMPUS beneficiaries, except dependents of active duty members, automatically lose CHAMPUS eligibility at age 65 on the assumption that they have become eligible for Medicare. If the person is not entitled to Part A of Medicare, he or she must file a Social Security Administration "Notice of Disallowance" certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued.

(b) *Loss of CHAMPUS eligibility: Chronic renal disease and disability—(i) Chronic renal disease.* Medicare coverage begins with the third (3rd) month after the month a course of maintenance dialysis begins, or with the month in which a patient enters the hospital to prepare to receive a transplant (providing the transplant is performed that month or the next month), whichever occurs sooner. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease.

Example. If a course of dialysis began on January 1, Medicare coverage would be effective on April 1. If the course of maintenance dialysis began on January 31, Medicare coverage would still be effective April 1.

(ii) *Disability.* Each case relating to Medicare eligibility resulting from being disabled requires individual investigation. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a disabled person.

(c) *Reinstatement of CHAMPUS eligibility.—(i) Over Age 65.* Beneficiaries who lose their CHAMPUS eligibility because they reached age 65 and were eligible for Part A cannot be reinstated under CHAMPUS.

(ii) *Chronic renal disease.* Medicare eligibility ceases for chronic renal disease patients twelve (12) months after the month in which a successful kidney transplant takes place or in which the course of maintenance dialysis ends. At this point CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card indicating renewed eligibility for civilian Uniformed Services medical care.

NOTE.—If a transplant should fail later than 12 months after surgery, the CHAMPUS beneficiary/patient must undergo another 3 month period of outpatient maintenance dialysis, at which time CHAMPUS benefits will again cease and Medicare eligibility be reestablished.

(iii) *Disability.* Some disabilities are permanent, others temporary. Each case must be reviewed individually. Where disability ends and Medicare eligibility ceases, CHAMPUS eligibility resumes if the person is otherwise still eligible. Again, he or she is required to take action to obtain a new CHAMPUS identification card.

(d) *Other Medicare entitlement.* Entitlement only to Supplementary Medical Insurance (Part B) of Medicare, but not Part A, or to Part A through the Premium-HI provision (provided for under the 1972 Amendments to the Social Security Act), does not affect CHAMPUS eligibility for any class of beneficiary. The only impact relates to double coverage. (Refer to § 199.14, "Double Coverage.")

(vii) *Disabling illness or injury of child age 21 or 22 who has eligibility based on his or her student status.* A child 21 or 22 years of age who is pursuing a full-time course of higher education and who either during the school year or between semesters suffers a disabling illness or injury with resultant inability to resume attendance at the institution, remains eligible for CHAMPUS medical benefits for 6 months after the disability is removed or until the student passes his or her twenty-third (23rd) birthday, whichever occurs first. However, if recovery occurs before the twenty-third (23rd) birthday and there is resumption of a full-time course of higher education, CHAMPUS benefits can be continued until the twenty-third (23rd) birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years of age in full-time student status. Unless an incapacitating condition existed prior to, and at the time of, a dependent child's twenty-first (21st) birthday, a dependent child 21 or 22 years of age in student status does not have eligibility related to mental or physical incapacity as described in paragraph (b) (2) (iii) (c) (ii) of this section.

(f) *Actions required upon change in or termination of eligibility status.*—(1) *Separation from active duty.*—(i) *DD Form 1407.* Members being processed for separation or release from active duty, including those being retired, must complete Section I, DD Form 1407 (Dependent Medical Care) and DD Form 1173 (Statement), indicating whether they have a dependent receiving benefits under CHAMPUS.

(ii) *Actions required when dependent receives CHAMPUS benefits.—(a) Requirement to notify CHAMPUS offices.* When the DD Form 1407 (or Form PHS 3209) indicates that a member has a dependent receiving CHAMPUS benefits, the Commander processing the member will notify appropriate CHAMPUS officials as soon as posible but not later than the date of release. Notification is not required if the member simply transfers to another active duty status through reenlistment, commissioning, or other similar personnel action.

(b) *Contents of notification.* The notification, sent by message or other expeditious means, should contain the name and address of the dependent; the name, grade, service number, and social

security number of the member; date of the member's separation or release from active duty; and the names and addresses of all known civilian providers of care.

(c) *CHAMPUS official to whom notification is to be sent.* (1) Notifications will, in every instance, be sent to the Director, OCHAMPUS (or a designee). Notification will also be sent to OCHAMPUSEUR when care being provided includes areas assigned to that office.

(2) *Desertion of active duty member.* When an active duty member is administratively placed in a desertion status, the Commander responsible, if there is reason to believe that the member has a dependent receiving CHAMPUS benefits, will implement the notification procedure descriped in paragraph (f)(1)(ii) of this section, if the Commander has or can obtain the pertinent information.

(3) *Death of active duty member.* Upon death of an active duty member, the organization Commander will implement the notification procedure prescribed in paragraph (f)(1)(ii) of this section, if there is reason to believe that the member has a dependent receiving medical care from civilian sources.

(4) *Change in status of a dependent of active duty member.* When a Commander learns that a dependent of a member of the command is receiving CHAMPUS benefits and that the status of the dependent has changed so that the dependent is no longer entitled to such benefits, the notification procedures prescribed in paragraph (f)(1)(ii) of this section will be followed.

(5) *Termination of retiree status.* When a retiree ceases to be entitled to retired, retainer, or equivalent pay, the official responsible for making such a determination will notify CHAMPUS officials as outlined in paragraph (f)(1)(ii)(c) of this section. The notification will include the name, grade, service number, social security number, and last known address of the retiree and the names and relationships of his or her dependents and their addresses of record.

(g) *Determination of eligibility status*—(1) *Eligibility determination responsibility of uniformed services.* Determination of a person's eligibility as a CHAMPUS beneficiary is the responsibility of the Uniformed Service of which the active duty member, retiree, or deceased member or deceased retiree is or was, a member, or in the case of dependents of a NATO military member, the service which sponsors the NATO member. For the purposes of Program integrity the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility determination of a specific individual where there is reason to question the eligibility status. In such cases a report on the result of the review and any action taken will be submitted to the Director, OCHAMPUS (or a designee).

(2) *Procedures for determination of eligibility.* Procedures for the determination of eligibility and issuance of identification cards evidencing that eligibility are prescribed by the following documents:

(i) *Department of Defense.* DoD Instruction 1000.13,[1] "Identification Cards for Issue to Members of the Armed Forces, their Dependents and Other Qualified Personnel," May 23, 1972.

(ii) *Army.* AR 606-5,[1] Identification Cards, Tags, and Badges.

(iii) *Navy.* (a) BUPERS Manual,[1] articles 4620150 (active duty members) and 462050 (retired members).

(b) BUPERSINST 1750.5 series,[1] Uniformed Services Identification and Privilege Card (DD Form 1173); regulations governing.

(iv) *Marine Corps.* (a) MCO in P1900 series,[1] Separation and Retirement Manual (DD Form 2MC-RETIRED).

(b) MCO in 1750 series,[1] Uniformed Services Identification and Privilege Card (DD Form 1173).

(v) *Air Force.* AFR 30-20,[1] Issue and Control of Identification Cards.

(vi) *U.S. Public Health Service.* CC29.2,[1] Personnel Instruction 1 and 2.

(vii) *Coast Guard.* Personnel Manual [1] (CG 207, Chapter 13, Section E and Chapter 18, Section C).

(viii) *National Oceanic and Atmospheric Administration.* No published regulations. Identification cards are issued by Headquarters, NOAA, or the applications are verified by Headquarters, NOAA, and presented to any Uniformed Service facility for issuance of a card.

(h) *Identification required*—(1) *Retired personnel.* The gray colored DD Form 2 (with letter suffix denoting branch of service) (RET) (Identification Card) is the prescribed identification for retired members of all the Uniformed Services except the Commissioned Corps of the Public Health Service when seeking benefits under CHAMPUS. The gray colored PHS-1866-3 (Ret) (Identification Card) is prescribed for retired members of the Public Health Service.

NOTE.—The red colored DD Form 2 (Res) Identification and Privilege Card is not acceptable identification for CHAMPUS.

(2) *Dependents.* DD Form 1173 (Uniformed Services Identification and Privilege Card) is prescribed for identification of dependents seeking benefits under CHAMPUS. Application for a DD Form 1173 will be made by submitting a DD Form 1172 (Application for Uniformed Services Identification and Privilege Card) as prescribed by the appropriate directive listed in paragraph (g)(2) of this section. It is incumbent upon each member and retired member to insure that his or her eligible dependents obtain and keep in their possession a DD Form 1173 and that a new DD Form 1173 be obtained prior to expiration date shown on the form for those dependents whose eligibility continues beyond that date.

NOTE.—DD Forms 1173 which do not have an affirmative entry in item 15b thereof, are not acceptable identification for CHAMPUS benefits.

§ 199.10 Basic program benefits.

(a) *General.* The CHAMPUS Basic Program is essentially a supplemental Program to the Uniformed Services direct medical care system. In many of its aspects, the Basic Program is similar to private medical insurance programs, and is designed to provide financial assistance to CHAMPUS beneficiaries for certain prescribed medical care obtained from civilian sources.

(1) *Scope of benefits.* Subject to any and all applicable definitions, conditions, limitations, and/or exclusions specified or enumerated in this regulation, the CHAMPUS Basic Program will pay for medically necessary services and supplies required in the diagnosis and treatment of illness or injury, including maternity care. Benefits include specified medical services and supplies provided to eligible beneficiaries from authorized civilian sources such as hospitals, other authorized institutional providers, physicians and other authorized individual professional providers as well as professional ambulance services, prescription drugs, authorized medical supplies and rental of durable equipment.

(2) *Persons eligible for basic program benefits.* Those persons eligible to receive the Basic Program benefits are as set forth in § 199.9, "Eligibility." Any person determined to be an eligible CHAMPUS beneficiary is eligible for Basic Program benefits.

(3) *Authority to act for CHAMPUS.* The authority to make benefit determinations and authorize the disbursement of funds under the Program is restricted to the Director, OCHAMPUS, designated OCHAMPUS staff, Director, OCHAMPUSEUR, and/or CHAMPUS Contractors. No other individuals or agents (such as physicians, staff members of hospitals, CHAMPUS Advisors, etc.) have such authority.

(4) *Status of patient controlling for purposes of cost-sharing.* Benefits for covered services and supplies as described in this section will be extended on either an inpatient or outpatient cost-sharing basis, in accordance with the status of the patient at the time the covered services and supplies were provided, unless otherwise specifically designated (such as for ambulance service or maternity care). For cost-sharing provisions, refer to paragraph (f) of this section.

(5) *Right to information.* As a condition precedent to the provision of benefits hereunder, OCHAMPUS and/or its CHAMPUS Contractors shall be entitled to receive information from a physician or hospital or other person, institution, and/or organization (including a local, state or Federal Government agency) providing services or supplies to the beneficiary for which claims or request for approval for benefits are submitted. Such information and records may relate to the attendance, testing, monitoring, or examination or diagnosis of, or treatment rendered, or services and supplies furnished to, a beneficiary and shall be necessary for the accurate and efficient administration of CHAMPUS benefits. In addition, before a determination on a request for preauthorization or claim or benefits, a beneficiary (or sponsor) must provide particular additional information rele-

vant to the requested determination when necessary. The recipient of such information shall in every case hold such records confidential except when: (i) Disclosure of such information is specifically authorized by the beneficiary/patient; (ii) disclosure is necessary to permit authorized Governmental officials to investigate and prosecute criminal actions; or (iii) disclosure is specifically authorized or required under the terms of the Privacy Act and/or Freedom of Information Act. (Refer to paragraph (m) of § 199.7, "General.") For the purposes of determining the applicability of and implementing the provisions of §§ 199.14 and 199.15, "Double Coverage" and "Federal Medical Care Recovery Act" respectively, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS and/or CHAMPUS Contractors may, without consent or notice to any beneficiary (or sponsor), release to any person, organization, governmental agency, provider or other entity any information with respect to any beneficiary when such release constitutes a routine use duly published in the FEDERAL REGISTER in accordance with the Privacy Act (5 U.S.C. 552a). Before an individual's claim of benefits will be adjudicated, the individual must furnish to CHAMPUS that information which may reasonably be expected to be in his or her possession and which is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim.

(6) *Physical examinations.* The Director, OCHAMPUS (or a designee) may require a beneficiary to submit to one or more medical (including psychiatric) examinations to determine the beneficiary's entitlement to benefits for which application has been made or for otherwise authorized medically necessary services and supplies required in the diagnosis and/or treatment of an illness or injury (including maternity). When a medical examination has been requested, CHAMPUS will withhold payment of any pending claims(s) or action on any preauthorization requests for that particular beneficiary. If the beneficiary refuses to agree to the requested medical examination, or unless prevented by a medical reason acceptable to OCHAMPUS, the examination is not performed within 90 days of initial request, all pending claim(s) for services and supplies will be denied. A denial of payment for services and/or supplies provided prior to (and related to) the request for a physical examination, is not subject to reconsideration. The medical examination(s) and required beneficiary travel related to performing the requested medical examination will be at the expense of CHAMPUS. The medical examination may be performed by a physician(s) in a Uniformed Services medical facility or by an appropriate civilian physician, as determined and selected by the Director, OCHAMPUS (or a designee), who is responsible for making such arrangements as are necessary, including necessary travel arrangements.

(7) *Timely filing of claims.* All claims submitted for benefits under this section must be filed with the appropriate CHAMPUS Contractor no later than December 31 of the calendar year immediately following the one in which the covered service or supply was rendered. Failure to timely file a claim automatically waives all rights to any benefits for such services and/or supplies. (Refer to § 199.13, "Claims Submission, Review and Payment.")

(8) *Double coverage: Third party liability.* Where double coverage exists or where there is third party liability, all claims submitted for benefits under this section are also specifically subject to the provisions of § 199.14 or § 199.15, "Double Coverage", "Federal Medical Care Recovery Act," respectively.

(9) *Nonavailability statements (DD Form 1251).* In some geographic locations (or under certain special circumstances) it is necessary for a CHAMPUS beneficiary to determine whether the required medical care (primarily nonemergency, inpatient care) can be provided through a Uniformed Service facility. If the required medical care cannot be provided the hospital commander (or a designee) will issue a Nonavailability Statement (DD Form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) *Rules applicable to issuance of nonavailability statement (DD Form 1251).* The Assistant Secretary of Defense (Health Affairs) is responsible for promulgating rules and regulations for the issuance of Nonavailability Statements.

NOTE.—Applicable rules and regulations relating to Nonavailability Statements change, depending on the situation. For example, currently Section 750, Pub. L. 94-212 and Section 742, Pub. L. 94-419 relating to FY 76 and FY 77 respectively, restrict the use of CHAMPUS funds for payment of nonemergency civilian inpatient care if the required care is available at a Uniformed Services hospital within a 40-mile radius of the patient's residence. Therefore, CHAMPUS beneficiaries who reside within a 40-mile radius of a Uniformed Services hospital must first seek non-emergency inpatient care in the Uniformed Service hospital.

(ii) *Beneficiary responsibility.* The beneficiary is responsible for securing information as to whether or not he or she resides in a geographic area which requires obtaining a Nonavailability Statement. Information concerning current rules and regulations may be obtained from the Offices of the Army, Navy and Air Force Surgeon General, or a CHAMPUS Advisor, or the Director, OCHAMPUS (or a designee), or from the appropriate CHAMPUS Contractor.

(iii) *Rules in effect at time civilian medical care is provided apply.* The applicable rules and regulations regarding Nonavailability Statements in effect at the time the civilian care is rendered apply in determining whether a Nonavailability Statement is required.

(iv) *Nonavailability statement (DD Form 1251) must be filed with applicable claim.* When a claim is submitted for CHAMPUS benefits which includes services for which a Nonavailability Statement was issued, the statement must be submitted along with the claim form.

(10) *Utilization review: Quality assurance.* Prior to the extension of any CHAMPUS benefits under the Basic Benefit Program as outlined in this section, claims submitted for medical services and supplies rendered CHAMPUS beneficiaries are subjected to review for quality and appropriate untilization. The Director, OCHAMPUS (or a designee), is responsible for utilization review and quality assurance activities and shall issue such generally accepted standards, norms and criteria as are necessary to assure compliance. Such utilization review and quality assurance standards, norms and criteria shall include (but not be limited to) need for inpatient admission, length of inpatient stay, level of care, appropriateness of treatment, level of institutional care required, etc. Implementing instructions, procedures and guidelines may provide for retrospective, concurrent and prospective review, requiring both inhouse and external review capability on the part of both CHAMPUS Contractors and OCHAMPUS.

(11) *Implementing instructions.* The Director, OCHAMPUS (or a designee), shall issue a CHAMPUS Operating Manual and such other instructions, procedures, guidelines, standards and/or criteria as may be necessary to implement the intent of this regulation.

(b) *Institutional benefits*—(1) *General.* Benefits may be extended for those covered services and supplies described in paragraph (b) of this Section provided by a hospital or other authorized institutional provider (as set forth in § 199.12 "Authorized Providers"), when such services and supplies are ordered, directed and/or prescribed by a physician and provided in accordance with good medical practice and established standards of quality. Such benefits are subject to any and all applicable definitions, conditions, limitations, exceptions and/or exclusions as may be otherwise set forth in this or other sections of this Regulation.

(i) *Billing practices.* To be considered for benefits under this section, covered services and supplies must be provided and billed for by a hospital or other authorized institutional provider. Such billings must be fully itemized and sufficiently descriptive to the satisfaction of CHAMPUS. In the case of continuous care, claims should be submitted to the appropriate CHAMPUS Contractor at least every 30 days (i.e., monthly) either by the beneficiary (or sponsor) or on a participating basis, directly by the facility on behalf of the beneficiary/patient. (Refer to § 199.13, "Claims Submission, Review and Payment.")

(ii) *Preauthorization.* Except for admissions to authorized institutions which

qualify as hospitals, infirmaries or Christian Science Sanitoriums (in the event CHAMPUS benefits again become available for the latter type of institution), in order for benefits to be extended for otherwise covered services and/or supplies, preauthorization is required.

(a) *Admissions to Skilled Nursing Facilities (SNFs).* A preauthorization request for transfer or initial admission to a skilled nursing facility is processed by the CHAMPUS Contractor serving the area where the skilled nursing facility is located. Wherever possible the preauthorization request should be submitted prior to admission to a SNF. However, the beneficiary/patient (or sponsor) has up to 10 days after such admission in which to submit the request along with a treatment plan. If the stay in the skilled nursing facility is determined to be appropriate under the provisions of this regulation, benefits will be extended retroactive to the date of admission to the facility. If the stay in the skilled nursing facility is determined not to qualify under the provisions of this regulation, benefits will be denied as of the date of notice of such denial.

(b) *Admissions to authorized institutions requiring preauthorization (other than Skilled Nursing Facilities).* A preauthorization request for admission to an institution which requires such preauthorization (other than a skilled nursing facility) is processed by OCHAMPUS. If the beneficiary (or sponsor) elects to proceed with such an admission prior to receiving written authorization from OCHAMPUS, authorization may be subsequently requested. However, if the stay related to subsequent request for authorization is determined to be appropriate (in whole or in part) under the provisions of this Regulation, benefits may be extended, but only retroactively to the date the preauthorization request was received at OCHAMPUS.

(c) *Initial preauthorization: Limited to 30 days.* Initial preauthorization is limited to up to 30 days of inpatient care. The inpatient stay must continue to be reviewed and reevaluated. If so specified by CHAMPUS, such recertification process shall be repeated every 30 days, or at such other time period as may be determined by OCHAMPUS, for the purpose of determining the appropriateness of care and whether or not the case continues to be eligible for benefits.

(d) *Other preauthorization requirements.* (1) An approved preauthorization must specify the services and/or supplies the approval covers.

(2) An approved preauthorization is valid for only 90 days from date of issuance.

(3) If the preauthorized services and/or supplies are not obtained within the 90 day period, a new preauthorization request is required. However, unless due to unusual medical circumstances, the fact that the initially preauthorized services and/or supplies were not obtained during the specified time limit shall require a very careful review of a new request.

(4) Preauthorization is required for each admission to a skilled nursing facility, even though related to an ongoing medical condition.

(5) A preauthorization may set forth other special limits or requirements as indicated by the particular case and/or situation for which the preauthorization is being issued.

Example. An approved preauthorization for placing a child in a Residential Treatment Center may require that the initial medical review (to determine the necessity for continuing the stay) be made every 14 days.

(6) All preauthorization requests are responded to in writing and notification of approval or denial is sent by certified mail to the beneficiary (or sponsor) and, where applicable, to the provider.

NOTE—For otherwise covered admissions to Residential Treatment Centers for emotionally disturbed children (RTC's), the proximity of the facility to the residence of the parent(s) and/or guardian will be a consideration in whether or not the authorization will be granted. If there is a CHAMPUS-approved facility closer to the parents, admission to the closer facility may be recommended.

(iii) *Approved treatment plan.* Except for an initial inpatient admission in those institutions which qualify as hospitals, preauthorization described in paragraph (b) (ii) of this section includes the submission of a detailed treatment plan. Such treatment plan is subject to approval in keeping with the CHAMPUS Operating Manual and such other instructions, procedures or guidelines issued or caused to be issued by the Director, OCHAMPUS (or a designee). Preauthorization will not be granted unless the request for approval includes a treatment plan. If the preauthorization request involves transfer from a hospital, the medical records related to the hospital stay should be submitted along with the treatment plan.

(iv) *Long term hospital care.* Even though the initial admission did not require preauthorization, any hospital stay anticipated to continue over 30 days requires recertification as of the 30th day. In order for the recertification process to be accomplished, on or before the 21st day, a treatment plan must be submitted for review and evaluation, including copies of the medical record covering the previous period of hospitalization. When a treatment plan is approved, such approval shall include a schedule of review and reevaluation for recertification of the continuing inpatient stay at least 30 days (or as designated by the Director, OCHAMPUS, or a designee) for the purpose of determining appropriateness of care and whether or not the beneficiary's inpatient hospital stay continues to be eligible for benefits. Should review of the case indicate that the beneficiary/patient is being institutionalized primarily in connection with any special studies or project and/or that the approved treatment plan has not been followed and/or that misinformation was provided and/or pertinent information was omitted for the purpose of receiving preauthorization, the beneficiary and provider shall be immediately notified that benefits for the inpatient stay are being terminated. Benefits extended in error will be recouped in accordance with the procedures set forth in § 199.13, "Claims Submission, Review and Payment."

(v) *Beneficiary/patient (or sponsor) and/or provider responsible for complete and timely request for preauthorization and/or submission of treatment plan.* Although a provider may actually prepare and make the submission to CHAMPUS, it ultimately remains the responsibility of the beneficiary (or sponsor) to assure that any request for preauthorization and/or submission of a treatment plan is made in a timely manner and in conformance with this Regulation.

NOTE: The Director, OCHAMPUS (or a designee) may issue special instructions on the handling of emergency requests which may be applied to limited exception situations.

(vi) *Related services and supplies.* Covered services and supplies must be rendered in connection with and directly related to a covered diagnosis and/or definitive set of symptoms requiring otherwise authorized medically necessary treatment.

(vii) *Inpatient: Appropriate level required.* For purposes of inpatient care, the level of institutional care for which Basic Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment. If an appropriate lower level care facility would be adequate but is not available in the general locality, benefits may be continued in the higher level care facility but CHAMPUS institutional benefit payments shall be limited to the reasonable cost that would have been incurred in the appropriate lower level care facility, as determined by the Director, OCHAMPUS (or a designee). If it is determined that the institutional care can reasonably be provided in the home setting, no CHAMPUS institutional benefits are payable.

(viii) *General or special education not covered.* Services and supplies related to the provision of either regular or special education are not covered. Such exclusion applies whether a separate charge is made for education or whether it is included as a part of an overall combined daily charge of an institution. In the latter instance, that portion of the overall combined daily charge related to education must be determined, based on the reasonable costs of the educational component, and deleted from the institution's charges before CHAMPUS benefits can be extended. The only exception to this circumstance is when appropriate education is not available from or not payable by the cognizant public entity. Each such situation must be referred to the Director, OCHAMPUS (or a designee) for a review and a determination of the applicability of CHAMPUS benefits.

(2) *Covered hospital service and supplies.*—(i) *Room and board.* Includes special diets, laundry services, and other general housekeeping support services. (Inpatient only.)

(ii) *General staff nursing services.*

(iii) *Intensive Care Unit.* Includes specialized units such as for respiratory conditions, cardiac surgery, coronary care, burn care or neurosurgery. (Inpatient only.)

(iv) *Operating room: Recovery room.* Operating room and recovery room, including other special treatment rooms and equipment; and hyperbaric chamber.

(v) *Drugs and medicines.* Includes sera, biologicals and pharmaceutical preparations (including insulin) which are listed in the official formularies of the institution or facility at the time of use. (In order to be considered as an inpatient supply, drugs and medicines must be consumed during the specific period the beneficiary/patient is a registered inpatient. Drugs and medicines prescribed for use outside the hospital, even though prescribed and obtained while still a registered inpatient, will be considered to be outpatient supplies and the provisions of paragraph (d) of this section apply.)

(vi) *Durable medical equipment: Medical supplies and dressings.* Includes durable medical equipment, medical supplies essential to a surgical procedure (such as artificial heart valve, artificial ball and socket joint, etc.), sterile trays, casts, and orthopedic hardware. Use of durable medical equipment is restricted to an inpatient basis.

NOTE: If durable medical equipment is to be used on an outpatient basis or continued in outpatient status after use as an inpatient, benefits will be provided as set forth in paragraph (d) of this section and cost-sharing will be on an outpatient basis (refer to paragraph (a)(4) of this § 199.10).

(vii) *Diagnostic Services.* Includes clinical laboratory examinations, X-ray examinations, pathological examinations, and machine tests which produce hardcopy results. Also includes computer-assisted tomography (CAT Scanning) under certain limited conditions.

(viii) *Anesthesia.* Includes both the anesthetic agent and its administration.

(ix) *Blood.* Includes blood, plasma and its derivatives (including equipment and supplies) and its administration.

(x) *Radiation therapy.* Includes radioisotopes.

(xi) *Physical therapy.*

(xii) *Oxygen.* Includes equipment for its administration.

(xiii) *Intravenous Injections.* Includes solution.

(xiv) *Shock Therapy.*

(xv) *Chemotherapy.*

(xvi) *Renal/peritoneal dialysis.*

(xvii) *Psychological evaluation tests.* When required by the diagnosis.

(xviii) *Other medical services.* Includes such other medical services as may be authorized by the Director, OCHAMPUS (or a designee): *Provided,* They are directly related to the diagnosis and/or definitive set of symptoms and rendered by a member of the institution's medical and/or professional staff (either salaried or contractual) and billed for by the hospital.

(3) *Covered services and supplies provided by special medical treatment institutions and/or facilities, other than hospitals or Residential Treatment Centers*—(i) *Room and board.* Includes special diets, laundry services and other general housekeeping support services. (Inpatient only.)

(ii) *General Staff Nursing Services.*

(iii) *Drugs and medicines.* Includes sera, biologicals and pharmaceutical preparations (including insulin) which are listed in the official formularies of the institution or facility at the time of use. (In order to be considered as an inpatient supply, drugs and medicines must be consumed during the specific period the beneficiary is a registered inpatient. Drugs and medicines prescribed for use outside the authorized institutional provider, even though prescribed and obtained while still a registered inpatient, will be considered to be outpatient supplies and the provisions of paragraph (d) of this section apply.)

(iv) *Durable medical equipment: Medical supplies and dressings.* Includes durable medical equipment, sterile trays, casts, and orthopedic hardware as well as dressings. Use of durable medical equipment is restricted to an inpatient basis.

NOTE: If the durable medical equipment is to be used on an outpatient basis or continued in outpatient status after use as an inpatient, benefits will be provided as set forth in paragraph (d) of this section, and cost-sharing will be on an outpatient basis. (Refer to paragraph (a)(4) of this § 199.10.)

(v) *Diagnostic services.* Includes clinical laboratory examinations, X-ray examinations, pathological examinations, and machine tests which produce hard copy results.

(vi) *Blood.* Includes blood plasma and its derivatives (including equipment and supplies) and its administration.

(vii) *Physical Therapy.*

(viii) *Oxygen.* Includes equipment for its administration.

(ix) *Intravenous injections.* Includes solution.

(x) *Shock therapy.*

(xi) *Chemotherapy.*

(xii) *Psychological evaluation tests.* When required by the diagnosis.

(xiii) *Renal/Peritoneal dialysis.*

(xiv) *Other medical services.* Such other medical services as may be authorized by the Director, OCHAMPUS (or a designee), provided they are directly related to the diagnosis and/or definitive set of symptoms and rendered by a member of the institution's medical and/or professional staff (either salaried or contractual) and billed for by the authorized institutional provider of care.

(4) *Services and supplies provided by Residential Treatment Centers (RTC's)*—(i) *Room and board.* Includes use of residential facilities such as food service (including special diets), laundry services, supervised reasonable recreational and social activity services, and other general services as may be deemed appropriate by the Director, OCHAMPUS (or a designee).

(ii) *Patient assessment.* Includes the assessment of each child or adolescent accepted by the RTC, including clinical consideration of each of his or her fundamental needs, i.e., physical psychological, chronological age, developmental level, family, educational, social, environmental and recreational.

(iii) *Diagnostic services.* Includes clinical laboratory examinations, X-ray examinations, pathological examinations and machine tests which produce hard copy results.

(iv) Psychological evaluation tests.

(v) *Drugs and medicines.* Includes sera, biologicals and pharmaceutical preparations (including insulin) which are listed in the official formularies of the Residential Treatment Center at the time of use. (In order to be considered as an inpatient supply, drugs and medicines must be consumed during the specific period the beneficiary is an inpatient. Drugs and medicines prescribed for use outside the Residential Treatment Center will be considered to be outpatient supplies and paragraph (d) of this section applies.)

(vi) *Other necessary medical care.* Emergency medical services or other authorized medical care may be rendered by the Residential Treatment Center provided it is professionally capable of doing so and meets those standards required by the Director, OCHAMPUS (or a designee). However, it is intended that a Residential Treatment Center should primarily render those services and supplies directly related to treatment of the mental condition requiring the inpatient stay.

(5) *Extent of institutional benefits.*—(i) *Inpatient room accommodation*—(a) *Semi-private.* The reasonable costs for room and board furnished an individual patient are payable for semi-private accommodations in a hospital or other authorized institution, subject to appropriate cost-sharing provisions. (Refer to paragraph (f) of this section.) A semi-private accommodation is a room containing at least two (2) beds but no maximum number. Therefore, if a room is publicly designated by the institution as a semi-private accommodation and contains multiple beds, it qualifies as semi-private for the purpose of CHAMPUS.

(b) *Private.* A private room is a room with one (1) bed and which is designated as a private room by the hospital or other authorized institutional provider. The reasonable cost of a private room accommodation is covered only under the following conditions:

(1) Where its use is medically required and when the attending physician certifies that a private room is medically necessary for the proper care and treatment of a patient; and/or

(2) When a patient's medical condition requires isolation; or

(3) When a patient (in need of immediate inpatient care but not requiring a private room) is admitted to a hospital or other authorized institution which has semi-private accommodations, but

at the time of admission, such accommodations are occupied.

(4) When a patient is admitted to an acute care hospital (general or special) without semi-private rooms.

(c) *Duration of private room stay.* The reasonable cost of private accommodations will be allowed under the circumstances described in paragraph (b)(5)(i)(b) of this section until the individual's condition no longer requires the private room for medical necessity purposes and/or medical isolation reasons; or, in the case of the patient not requiring a private room, when a semi-private accommodation becomes available; or, in the case of an acute care hospital (general or special) which does not have private rooms, for the duration of an otherwise covered inpatient stay.

(d) *Hospital (except an acute care hospital, general or special) or other authorized institutional provider without semi-private accommodations.* When a beneficiary/patient is admitted to a hospital (except an acute care hospital, general or special) or other institution which has no semi-private accommodations, for any inpatient day where the patient qualifies for use of a private room (as set forth in paragraphs (b)(5)(i)(b) (1) and (2) of this section), the reasonable cost of private accommodations will be allowed. For any inpatient day in such a hospital or other authorized institution where the patient does not medically require the private room, the reasonable cost of semi-private accommodations will be allowed, such reasonable costs to be determined by the Director, OCHAMPUS (or a designee).

(ii) *Successive inpatient admissions.* Successive inpatient admissions shall be deemed one (1) inpatient confinement for the purpose of computing the active duty dependent's share of the inpatient institutional charges, provided not more than 60 days have elapsed between the successive admissions. Successive inpatient admissions related to a single maternity episode shall be considered one confinement, regardless of the number of days between admissions. For the purpose of applying benefits, successive admissions will be determined separately for maternity admissions and admissions related to an accidental injury. (Refer to paragraph (f) of this section.)

(iii) *Nonavailability statement related to maternity care.* If a beneficiary received services and supplies as a registered inpatient from a hospital or other authorized institution, related to maternity care and/or the actual delivery, without securing a required Nonavailability Statement, CHAMPUS benefits are not available for any costs related to that maternity care.

NOTE.—If it is anticipated that any part of the maternity care is to be obtained from a civilian source (even if the beneficiary plans to deliver on an outpatient basis), as soon as the pregnancy has been established, the beneficiary is encouraged to obtain a Nonavailability Statement, if one is required in her geographic area. This will protect the beneficiary from incurring expenses in connection with unforeseen inpatient maternity care without a required Nonavailability Statement.

(iv) *General staff nursing services.* General staff nursing services cover all nursing care (other than that provided by private duty nurses), including but not limited to general duty nursing, emergency room nursing, recovery room nursing, intensive nursing care, and group nursing arrangements. Only nursing services provided by nursing personnel on the payroll of the hospital or other authorized institution are eligible under paragraph (b) of this section. If a nurse who is not on the payroll of the hospital or other authorized institution is called in specifically to care for a single patient (individual nursing) or more than one patient (group nursing), whether the patient is billed for the nursing services directly or through the hospital or other institution, such services constitute private duty (special) nursing services and are not eligible for benefits under this paragraph (b)(5)(iv) (the provisions of paragraph (c)(2)(xiv) of this section would apply).

(v) *Intensive care unit (ICU).* An intensive care unit is a special separate unit of a hospital in which patients are concentrated, by reason of serious illness, usually without regard to diagnosis. Special lifesaving techniques and equipment are regularly and immediately available within the unit, and patients are under continuous observation by a nursing staff specially trained and selected for the care of this type patient. The unit is maintained on a continuing rather than an intermittent or temporary basis. It is not a post-operative recovery room nor a post-anesthesia room. In some large or highly specialized hospitals, the ICU's may be further refined for special purposes, such as for respiratory conditions, cardiac surgery, coronary care, burn care or neurosurgery. For purposes of CHAMPUS, these specialized units would be considered ICU's if they otherwise conformed to the definition of an intensive care unit.

(vi) *Treatment rooms.* Standard treatment rooms include emergency room, operating room, recovery room, special treatment rooms, and hyperbaric chamber and all related necessary medical staff and equipment. In order to be recognized for purposes of CHAMPUS, such treatment rooms must be so designated and maintained by the hospital or other authorized institution on a continuing basis. A "treatment room" set up on an intermittent or temporary basis would not be so recognized.

(vii) *Drugs and medicines.* Drugs and medicines are included as a supply of a hospital or other authorized institution only under the following conditions:

(a) They represent a cost to the facility rendering treatment;

(b) They are furnished to a patient receiving treatment, and are directly related to that treatment; and

(c) They are ordinarily furnished by the facility for the care and treatment of inpatients.

(viii) *Durable medical equipment: Medical supplies and dressings.* Durable medical equipment and medical supplies and dressings are included as a supply of a hospital or other authorized institution only under the following conditions:

(a) If ordinarily furnished by the facility for the care and treatment of patients; and

(b) Is specifically related to, and in connection with, the condition for which the patient is being treated; and

(c) Is ordinarily furnished to a patient for use in the hospital or other authorized institution (except in the case of a temporary or disposable item); and

(d) Use of durable medical equipment is limited to those items provided while the patient is an inpatient. (If such equipment is provided for use on an outpatient basis, the provisions of paragraph (d) of this section apply.)

(ix) *Transitional use items.* Under certain circumstances, a temporary or disposable item may be provided by use beyond an inpatient stay, when such item is medical necessary to permit or facilitate the patient's departure from the hospital or other authorized institution or which may be required until such time as the patient can obtain a continuing supply; or in cases where it would be unreasonable or impossible from a medical standpoint to discontinue the patient's use of the item at the time of termination of his or her stay as an inpatient.

(x) *Computer-assisted tomography scanning (CAT scanning) diagnostic services.* Use of both the "general purpose" whole (full) body, and the "dedicated" head (brain) CAT scanners to examine the head, may be covered. Use of computerized tomography on parts of the body other than the head is not covered.

(a) CAT scanner procedures must be consistent with the diagnosis and symptoms, and performed after other appropriate noninvasive and less costly means of diagnosis have been exhausted.

(b) Further, benefits shall be extended only for those scanning procedures performed on a CAT scanner located in an acute general hospital, owned by such hospital and operated by the hospital staff, and, if applicable to the jurisdiction where located, approved by the regional health planning agency.

(xi) *Anesthetics and oxygen.* Anesthetics and oxygen and their administration are considered a service and/or supply if furnished by the hospital or other authorized institution, or by others under arrangements made by the facility under which the billing for such services is made through the facility.

(6) *Emergency Inpatient hospital services.* In the case of a medical emergency, benefits can be extended for medically necessary inpatient services and supplies provided to a beneficiary by a hospital, including hospitals which do not meet CHAMPUS standards, or comply with the provisions of Title VI of the Civil Rights Act or satisfy other conditions herein set forth. In a medical emergency, medically necessary inpatient services and supplies are those services and supplies which are necessary to prevent the death or serious impairment of

the health of the individual, and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available and equipped to furnish such services. The availability of benefits depend upon the three following separate findings and continue only so long as the emergency exists, as determined by medical consultants to the contractor and/or CHAMPUS. If the case qualified as an emergency at the time of admission, and the emergency is subsequently determined to no longer exist, benefits will be extended up through the date of notice to the beneficiary and provider that CHAMPUS benefits are no longer payable in that unathorized institutional provided.

(i) *Existence of medical emergency.* A determination that a medical emergency existed with regard to the patient's condition;

(ii) *Immediate admission required.* A determination that the condition causing the medical emergency required immediate admission to a hospital to provide the emergency care; and

(iii) *Closest hospital utilized.* A determination that diagnosis and/or treatment was received at the most accessible (closest) hospital available and equipped to furnish the medically necessary care.

(c) *Professional services benefit.*—(1) *General.* Benefits may be extended for those covered services described in this paragraph (c) of this section, which are provided in accordance with good medical practice and established standards of quality by physicians or other authorized individual professional providers, as set forth in § 199.12, "Authorized Providers." Such benefits are subject to any and all applicable definitions, conditions, exceptions, limitations and/or exclusions as may be otherwise set forth in this or other sections of this regulation. Except as otherwise specifically authorized, in order to be considered for benefits under this paragraph (c) of this section, the described services must be rendered by a physician or prescribed, ordered and medically referred by a physician to other authorized individual professional providers. Further, except under specifically defined circumstances, there should be an attending physician in any episode of care. (For example, certain services of a clinical psychologist are exempt from this requirement. For these exceptions refer to § 199.12, "Authorized Providers.")

(i) *Billing practices.* To be considered for benefits under this paragraph (c) of this section, covered professional services must be personally performed by the physician or other authorized individual professional provider, who is other than a salaried or contractual staff member of a hospital or other authorized institution, and who ordinarily and customarily bills on a fee-for-service basis for professional services rendered. Such billings must be fully itemized and sufficiently descriptive, to the satisfaction of CHAMPUS. For continuing professional care, claims should be submitted to the appropriate CHAMPUS Contractor at least every 30 days (i.e., monthly), either by the beneficiary (or sponsor), or directly by the physician or other authorized individual professional provider on behalf of a beneficiary/patient. (Refer to § 199.13, "Claims Submission, Review and Payment.")

(ii) *Services must be related.* Covered professional services must be rendered in connection with and directly related to a covered diagnosis and/or definitive set of symptoms requiring medically necessary treatment.

(2) *Covered services of physicians and other authorized individual professional providers.* (i) *Surgery.* Surgery means operative procedures, including related pre-operative and post-operative care; reduction of fractures and dislocations; injection and needling procedures of the joints; laser surgery of the eye; and including the following procedures:

Laryngoscopy
Bronchoscopy
Thoracoscopy
Catheterization of the heart
Arteriograph, Thoracic Lumbar
Esophagoscopy
Gastroscopy
Proctoscopy
Sigmoidoscopy
Peritoneoscopy
Cystoscopy
Colonoscopy
Upper G.I. Panendoscopy
Encephalograph
Myelography
Discography
Visualization of intracranial aneurysm by intracarotid injection of dye, with exposure of carotid artery, unilateral
Ventriculography
Insufflation of uterus and Fallopian tubes for determination of tubal patency (Rubin's test of injection of radiopaque medium or for dilation)
Introduction of opaque media into the cranial arterial system, preliminary to cerebral arteriography, or into vertebral and subclavian systems
Intraspinal introduction of air preliminary to pneumoencephalography
Intraspinal introduction of opaque media preliminary to myelography
Intraventricular introduction of air preliminary to ventriculography

NOTE.—The Director, OCHAMPUS (or a designee) shall determine such additional procedures which may fall within the intent of this definition of "surgery."

(ii) *Surgical assistance.* Surgical assistance means a physician who assists the operating surgeon in the performance of a covered surgical service when such assistance is certified as necessary by the attending surgeon, when the type of surgical procedure being performed is of such complexity and seriousness as to require a surgical assistant, and when interns, residents, or other house staff are not available to provide the surgical assistance services in the speciality area required.

(iii) *Inpatient medical care.* Inpatient medical care means the attending physician's medical (not surgical or maternity) care rendered to an inpatient confined as a bed patient in a hospital or other authorized institution, including intensive or prolonged inpatient medical care, inpatient psychotherapy or inpatient physiatry.

(iv) *Outpatient care.* Outpatient care means any medical services rendered in the home and office, or medical care rendered in the outpatient department of a hospital or other authorized institution.

(v) *Psychiatric services.* Psychiatric services means individual or group psychotherapy.

(vi) *Consultation services.* Consultation services means services of a consulting physician. Staff consultations required by rules and regulations of the medical staff of a hospital or other authorized institution do not qualify for benefits under this paragraph (c)(2)(vi).

(vii) *Anesthesia service.* Anesthesia service means the administration of an anesthetic agent by injection or inhalation, the purpose and effect of which is to produce surgical anesthesia characterized by muscular relaxation, loss of sensation, or loss of consciousness, when administered by or under the direction of a physician or dentist in connection with otherwise covered surgery or obstetrical care, or shock therapy. Anesthesia services do not include hypnosis or acupuncture.

(viii) *Radiation therapy services.* Radiation therapy services means the treatment of diseases by X-ray, radium or radioactive isotopes when ordered by the attending physician.

(ix) *X-ray services.* X-ray services means an X-ray examination for which an X-ray film is produced, ordered by the attending physician when necessary to and rendered in connection with medical or surgical diagnosis or treatment of an illness or injury. Under this paragraph (c) of this section, X-ray service does not include CAT scanning.

(x) *Laboratory and pathological services.* Laboratory and pathological services means laboratory and pathological examinations (including machine diagnostic tests which produce hard copy results) ordered by the attending physician when necessary to and rendered in connection with medical or surgical diagnosis or treatment of an illness or injury.

(xi) *Physiatry services.* Physiatry services means the treatment of disease or injury by physical means such as massage, hydrotherapy, or heat, when performed by or ordered by the attending physician.

(xii) *Maternity care.* Maternity care means care and treatment related to conception, delivery and abortion, including prenatal and postnatal care.

(xiii) *Other medical care.* Other medical care includes, but is not limited to, hemodialysis, inhalation therapy, shock therapy and chemotherapy. The Director, OCHAMPUS (or a designee), shall determine those additional medical services for which benefits may be extended under this paragraph (c)(2)(xiii).

NOTE.—A separate professional charge for the oral administration of an approved antineoplastic drug is not covered.

(xiv) *Private duty (special) nursing services.* Private duty (special) nursing services are skilled nursing services ren-

dered to an individual patient requiring intensified medical care.

(3) *Extent of professional benefits*—(i) *Multiple surgery.* In cases of multiple surgical procedures performed at the same time, benefits shall be determined as follows:

(*a*) If such multiple surgical procedures are for related conditions (whether or not, in the case of cutting procedures, such care is performed through the same surgical opening or by the same surgical approach), benefits shall be limited to that part of the surgical care for which the greatest amount is payable under the applicable reimbursement method (refer to paragraph (e) of this section of this regulation, "Authorized Providers"). For the purposes of CHAMPUS, all procedures performed through the same surgical approach shall be considered to be related conditions.

(*b*) If the multiple surgical procedures are for unrelated conditions, benefits shall be extended as follows:

(*1*) One-hundred (100) percentum of the CHAMPUS-determined reasonable charge for the major surgical procedure; and

(*2*) Fifty (50) percentum of the CHAMPUS-determined reasonable charge for each of the other surgical procedures; or

(*3*) Except that, if the multiple surgical procedures involve the fingers or toes, benefits for the first surgical procedure shall be at one hundred (100) percentum of the CHAMPUS-determined reasonable charge; the second at fifty (50) percentum; and the third and subsequent at twenty-five (25) percentum.

(ii) *Different types of inpatient care: Concurrent.* If a beneficiary receives inpatient medical care during the same admission in which he or she also receives surgical care or maternity care, the beneficiary shall be entitled to the greater of the CHAMPUS-determined reasonable charge for either the inpatient medical care or surgical or maternity care received, as the case may be, but not both; except that the provisions of this paragraph (c)(3)(ii) shall not apply if such inpatient medical care is for a diagnosed condition requiring inpatient medical care not related to the condition for which surgical care or maternity care is received, and is received from a physician other than the one rendering the surgical care or maternity care.

NOTE.—This provision is not meant to imply that in those situations where extra time and special effort are required due to post-surgical or post-delivery complications, the attending physician may not request special consideration for a higher than usual charge.

(iii) *Need for surgical assistance.* Surgical assistance is payable only if it is medically necessary as determined by the primary surgeon. Further, in order for benefits to be extended for surgical assistance service, the attending physician (surgeon) may be required to certify in writing to the nonavailability of a qualified intern, resident or other house physician. When a claim is received for a surgical assistant involving the following circumstances, special review is required to ascertain whether the surgical assistance service meets the medical necessity and other requirements of this paragraph (c):

(*a*) If the surgical assistance occurred in a hospital that has a residency program in a specialty appropriate to the surgery;

(*b*) If the surgery was performed by a team of surgeons;

(*c*) If there were multiple surgical assistants; or

(*d*) If the surgical assistant was a partner of or from the same group of practicing physicians as the attending surgeon.

(iv) *Aftercare following surgery.* Except for those diagnostic procedures classified as surgery in this paragraph (c) of this section, and injection and needling procedures involving the joints, the benefit payments made for surgery (regardless of the setting in which it is rendered) include normal aftercare, whether the aftercare is billed for by the physician or other authorized individual professional provider on a global, all-inclusive basis, or billed for separately. The extent of normal aftercare for each surgical procedure is generally based upon local practice.

(v) *Cast and sutures: Removal.* The benefit payments made for the application of a cast or of sutures normally covers the post-operative care including the removal of the cast or sutures. In instances when the application is made in one geographical location and the removal of the cast or sutures must be done in another geographical location, a separate benefit payment may be provided for the removal. The intent of this provision is to provide a separate benefit only when it is impossible for the beneficiary to use the services of the provider that originally applied the cast. Benefits are not available for the services of a second provider if those services could have reasonably been rendered by the individual professional provider who initially applied the cast or sutures.

(vi) *Inpatient medical care: Concurrent.* If during the same admission a beneficiary receives inpatient medical care (non-surgical, non-maternity) from more than one physician, additional benefits may be provided for such concurrent care if required because of the severity and complexity of the beneficiary's condition. Any claim for concurrent medical care must be reviewed before extending benefits in order to ascertain the medical condition of the beneficiary at the time the concurrent medical care was rendered. In the absence of such determination, benefits are payable only for inpatient medical care rendered by the attending physician.

(vii) *Consultants who become the attending surgeon.* In many instances, the surgical consultant assumes the case shortly following a consultation, becomes the attending physician, and performs the surgery. If the surgery is performed within 3 days of the date of the consultation, by the same physician who performed the consultation, the consultation is then considered to be a part of the preoperative examination which is an integral part of the surgery and a separate benefit is not payable for the consultation. If more than 3 days elapse between the consultation and surgery (performed by the same physician), benefits may be extended for the consultation, subject to review.

(viii) *Anesthesia administered by the attending physician.* A separate benefit is not payable for anesthesia administered by the attending physician (surgeon or obstetrician) or dentist, or by the surgical or obstetrical or dental assistant.

(ix) *Psychiatric procedures.*—(*a*) *Maximum therapy per twenty-four (24)-hour period: inpatient and outpatient.* Generally, CHAMPUS benefits are limited to no more than one (1) hour of individual and/or group psychotherapy in any twenty-four (24)-hour period, inpatient or outpatient. However, for the purpose of crisis intervention only, CHAMPUS benefits may be extended for up to two (2) hours of individual psychotherapy during a twenty-four (24)-hour period.

(*b*) *Psychotherapy: Inpatient.* In addition, if individual or group psychotherapy, or a combination of both, is being rendered to an inpatient on an ongoing basis (i.e., non-crisis intervention), benefits are limited to no more than five (5) one-hour therapy sessions (in any combination of group and individual therapy sessions) in any seven (7) day period.

(*c*) *Review and evaluation: outpatient.* All outpatient psychotherapy (group or individual) are subject to review and evaluation at eight (8) session (visit) intervals. Such review and evaluation is automatic in every case at the initial eight (8) session (visit) interval and at the twenty-four (24) session (visit) interval (assuming benefits are approved up to twenty-four (24) sessions). More frequent review and evaluation may be required if indicated by the case. In any case where outpatient psychotherapy continues to be payable up to sixty (60) outpatient psychotherapy sessions, it must be referred to peer review before any additional benefits are payable. In addition, outpatient psychotherapy is generally limited to a maximum of two (2) sessions per week. Before benefits can be extended for more than two (2) outpatient psychotherapy sessions per week, peer review is required.

(x) *Physical therapy.* To be covered, physical therapy must be related to a covered medical condition. If performed by other than a physician, the beneficiary/patient must be referred by a physician and the physical therapy rendered under the supervision of a physician.

(*a*) Outpatient physical therapy is generally limited to a 60 day period, 2 physical therapy sessions per week, in connection with each medical condition. In order for CHAMPUS benefits to be extended for physical therapy rendered for a longer period of time than 60 days,

and/or for more than 2 sessions per week, submission by the attending physician of documentation as to medical necessity and the reasonably anticipated results of such therapy is required.

(b) General exercise programs are not covered even if recommended by a physician. Passive exercises and/or range of motion exercises are not covered except when prescribed by a physician as an integral part of a comprehensive program of physical therapy.

(xi) *Maternity care: Cost-sharing.* Notwithstanding any other provisions of this section, except paragraph (d)(3)(i) of this section "ambulance," all otherwise covered services and/or supplies related to a maternity case shall be cost-shared on the basis of the status (or intended status) of the maternity patient at the time of delivery (or other termination of the pregnancy).

(a) If the beneficiary plans that the delivery will be on an inpatient basis, all covered services and supplies directly related to the maternity care shall be cost-shared as inpatient services, including the pre- and post-natal care.

(b) If the beneficiary plans that the delivery will be on an outpatient basis, all covered services and supplies directly related to the maternity care shall be cost-shared as outpatient services, including the delivery itself.

(c) When a patient plans an inpatient delivery, but delivers or otherwise terminates the pregnancy at home or enroute to the hospital or other authorized institution, benefits will be extended as if the pregnancy had terminated on an inpatient basis.

(d) When a patient plans an outpatient (home) delivery, but delivers or otherwise terminates in an inpatient setting, all covered services and/or supplies directly related to the maternity care shall be cost-shared on an inpatient basis providing that a Nonavailability Statement (DD 1251), if required, has been obtained. In the absence of a required Nonavailability Statement, no benefits are payable.

(e) If a beneficiary obtains a Nonavailability Statement and receives any part of her prenatal care from a civilian provider, then moves to another geographic location and subsequently delivers in a Uniformed Services hospital, the prenatal care received from the civilian source shall be cost-shared on an inpatient basis, inasmuch as it was related to an inpatient delivery.

(f) In those maternity cases where complications arise during the term of the pregnancy (refer to paragraph (c)(3)(xii) of this section), which require active medical treatment, otherwise covered medical services and supplies directly related to the complication of pregnancy will be cost-shared on the same basis as the related maternity care. This special cost-sharing proviso is limited to a period not to exceed 6 weeks following termination of the pregnancy, at which time the regular cost-sharing rules apply. (Refer to paragraph (f) of this section.)

(g) Other special situations which may arise requiring a determination of whether or not the maternity case should be cost-shared on an inpatient or outpatient basis shall be referred to the Director, OCHAMPUS (or a designee), who shall make such determinations in keeping with the intent expressed in paragraph (c)(3)(xi) of this section.

(xii) *Complications of pregnancy.* For the purpose of CHAMPUS the following have been determined to be complications of pregnancy when commencing or exacerbating during the term of the pregnancy. The Director, OCHAMPUS (or a designee), may determine what other conditions qualify under paragraph (c)(3)(i) of this section on the basis of individual consideration.

(a) Cesarean delivery; hysterotomy.

(b) Pregnancy terminating before expiration of 26 weeks, except a voluntary abortion.

(c) False labor or threatened miscarriage.

(d) Nephritis or pyelitis of pregnancy.

(e) Hyperemesis gravidarum.

(f) Toxemia.

(g) Aggravation of a heart condition or diabetes.

(h) Premature rupture of membrane.

(i) Ectopic pregnancy.

(j) Hemorrhage.

(k) Other conditions as may be determined by the Director, OCHAMPUS (or a designee).

NOTE.—Postpartum psychosis (as its name implies), does not occur during the term of the pregnancy and therefore for the purposes of CHAMPUS does not qualify as a complication of pregnancy.

NOTE.—The special maternity cost sharing rules set forth in paragraph (c)(3)(xi) and (xii) of this section, shall also be applied where appropriate to services and/or supplies set forth under other paragraphs of this section, except for paragraph (d)(3)(v) of this section.

(xiii) *Nonavailability statements related to maternity.* When a beneficiary resides in an area where Nonavailability Statements are required and receives inpatient maternity care from a civilian source without having secured the required Nonavailability Statement, CHAMPUS benefits are not available for any services and supplies related to that maternity case.

NOTE.—If it is anticipated that any part of the maternity care is expected to be obtained from a civilian source (even if the beneficiary plans to deliver on an outpatient basis), as soon as the pregnancy has been established, the beneficiary is encouraged to obtain a Nonavailability Statement, if one is required in her geographic area. This will protect the beneficiary from incurring expenses in connection with unforeseen inpatient maternity care without having obtained a Nonavailability Statement.

(xiv) *Private duty (special) nursing.* Benefits are available for the skilled nursing services rendered by a private duty (special) nurse to an individual beneficiary/patient requiring intensified skilled nursing services, which can only be provided with the technical proficiency and scientific skills of an R.N. The specific skilled nursing services being rendered are controlling, not the condition of the patient nor the professional status of the private duty (special) nurse rendering the services.

(a) Inpatient private duty (special) nursing services are limited to those rendered to an inpatient in a hospital which does not have an intensive care unit. In addition, under certain circumstances, private duty (special) nursing in the home setting is also covered.

(b) The private duty (special) nursing care must be ordered and certified to be medically necessary by the attending physician.

(c) The skilled nursing care must be rendered by a private duty (special) nurse who is not a member of the immediate family or is not a member of the beneficiary/patient's household.

(d) Private duty (special) nursing care does not, except incidentally, include services which primarily provide and/or support the essentials of daily living, or involve acting as a companion or sitter.

(e) If the private duty (special) nursing care services being performed are primarily those which could be rendered by the average adult with minimal instruction and/or supervision, the services would not qualify as covered private duty (special) nursing services regardless of whether performed by an R.N., regardless of whether or not ordered and certified to by the attending physician, and regardless of the condition of the patient.

(f) In order for such services to be considered for benefits, a private duty (special) nurse is required to maintain detailed daily nursing notes, whether the case involves inpatient nursing service or nursing services rendered in the home setting.

(g) Claims for continuing private duty (special) nursing care should be submitted at least every 30 days (i.e., monthly). Each claim will be reviewed and the nursing care evaluated as to whether it continues to be appropriate and eligible for benefits.

(h) In most situations involving private duty (special) nursing care rendered in the home setting, benefits will be available for only a portion of the care, i.e., providing benefits only for that time actually required to perform medically necessary skilled nursing services. In the event that full time private duty (special) nursing services are engaged (usually for convenience and/or to provide personal services to the patient), CHAMPUS benefits are payable only for that portion of the day during which skilled nursing services are rendered, but in no event is less than one (1) hour of skilled nursing care payable in any twenty-four (24) hour period during which nursing services are determined to have been rendered. Such situations are often better accommodated through use of visiting nurses. This allows the personal services, which are not coverable by CHAMPUS, to be obtained at lesser cost from other than an R.N. Skilled nursing

services provided by visiting nurses are covered.

NOTE.—Where the services of an R.N. are not available, benefits may be extended for the otherwise covered services of an L.P.N. or L.V.N.

(d) *Other benefits*—(1) *General.* Benefits may be extended for the reasonable charge of those other covered services and supplies described in this paragraph (d) which are provided in accordance with good medical practice and established standards of quality by those other authorized providers described in § 199.12, "Authorized Providers." Such benefits are subject to any and all applicable definitions, conditions, limitations, and/or exclusions as may be otherwise set forth in this or other sections of this regulation. In order to be considered for benefits under this paragraph (d), the described services or supplies must be prescribed and ordered by a physician.

(2) *Billing practices.* To be considered for benefits under this paragraph (d), covered services and supplies must be provided and billed for by an authorized provider as set forth in § 199.12, "Authorized Providers." Such billing must be fully itemized and sufficiently descriptive, to the satisfaction of CHAMPUS. Whenever continuing charges are involved, claims should be submitted to the appropriate CHAMPUS Contractor at least every 30 days (i.e., monthly), either by the beneficiary (or sponsor) or directly by the provider.

(3) *Other covered services and supplies*—(i) *Blood.* If whole blood or plasma (or its derivatives) are provided and billed for by an authorized institution, in connection with covered treatment, benefits are extended as set forth in paragraph (b) of this section. If blood is billed for directly to a beneficiary, benefits may be extended under this paragraph (d) in the same manner as a medical supply.

(ii) *Durable medical equipment.*—(*a*) *Rental.* Rental of durable medical equipment (for the specific use of the beneficiary/patient) is covered: *Provided,* Such equipment meets the following criteria:

(*1*) It must be medically necessary for the treatment of an illness or injury.

(2) It must improve the function of a malformed, diseased or injured body part and retard further deterioration of the patient's physical condition.

(3) It must be person-particular and cannot be an item which could be useful to any other person in the absence of illness or injury.

(*4*) It must be primarily and customarily used to serve a medical purpose rather than primarily for transportation, comfort, or convenience.

NOTE.—A wheelchair is not considered to be primarily transportation in the sense of this paragraph (d)(3)(ii)(*4*) of this section. It qualifies as durable medical equipment under paragraph (d)(3)(ii)(2) of this section above, because by providing basic mobility it retards further deterioration of the patient's physical condition. Mobility beyond that basic mobility provided by a wheelchair is considered to be primarily transportation. For example, cart-type vehicles (such as the "Amigo") do not qualify as durable medical equipment.

(5) It must withstand repeated use and will be provided on a one-at-a-time basis only (based on the lifetime of the specific item of durable medical equipment).

(*6*) It must be other than spectacles, eyeglasses, contact lenses or other optical devices, hearing aids or other communication devices.

(*7*) It cannot be beyond the minimum level of performance and quality required under the circumstances (i.e., non-luxury, non-deluxe). However, this is not intended to preclude a special fitting of equipment to accommodate a particular disability (such as fitting a wheelchair for a one-armed individual).

(*8*) It must be ordered and/or prescribed by the attending physician.

(*9*) It is not for a patient in a facility which provides or can provide such equipment.

(*10*) It is not available for loan from a local Uniformed Services medical treatment facility.

(*11*) The reasonable charge of the item must be more than $100.00.

(*b*) *Lease/purchase.* In those situations where the lease/purchase of such durable medical equipment will be less costly to the CHAMPUS Program then continued monthly rental, lease/purchase arrangements will be entered into. Lease/purchase agreements must be limited in payments to the CHAMPUS-determined reasonable charge for the equipment with equal monthly payments proportionate to the CHAMPUS-determined reasonable charge for monthly rental. Such agreements do not include ordinary time payment plans or revolving charge accounts. When lease/purchase is authorized, benefits may also be extended for the reasonable charges related to the repair, replacement and adjustment of the purchased item of durable medical equipment. Durable medical equipment obtained through lease/purchase arrangements must meet the same criteria as rental items. (Refer to paragraph (d) (3) (ii) of this section.)

(iii) *Medical supplies and dressings (consumables).* Medical supplies and dressings (consumables) are those which do not withstand prolonged, repeated use. Such items must be directly related to an appropriate and verified covered medical condition of the specific beneficiary for whom the item was purchased, and obtained from a medical supply company, a pharmacy, or authorized institutional provider. Examples of covered medical supplies and dressings are disposable syringes for a known diabetic, colostomy sets, irrigation sets, Ace bandages, etc. An external surgical garment specifically designed for use following a mastectomy is considered a medical supply item.

NOTE.—Generally, the reasonable charge of a medical supply item will be under one hundred ($100.00) dollars. Any item in excess of this amount must be reviewed to make sure it would not qualify as an item of durable medical equipment. If it is, in fact, a medical supply item and does not represent an excessive charge, it can be considered for benefit.

(iv) *Oxygen.* Oxygen and equipment for its administration. Benefits are limited to providing a tank unit at one location, with oxygen limited to a 30 day supply. Repair and adjustment of CHAMPUS-purchased oxygen equipment is also covered.

(v) *Ambulance.* Local professional ambulance service to, from and between hospitals when medically necessary and in connection with otherwise covered services and supplies and a covered medical condition. For the purpose of CHAMPUS, ambulance service is always an outpatient service (including in connection with maternity care). A professional ambulance means a specifically designed and equipped land vehicle which contains at a minimum a stretcher, linens, first aid supplies, oxygen equipment and such other life-saving equipment required by state law or applicable local law, and manned by personnel trained to render first aid treatment.

(*a*) Voluntary ambulances or such vehicles as medicabs and ambicabs do not qualify for benefits for the purpose of CHAMPUS.

(*b*) Local service shall be that for which the reasonable charge does not exceed one hundred dollars ($100.00). Any professional ambulance service which exceeds that amount is considered long distance ambulance service and benefits are not available except as described in paragraph (d)(3)(v)(*d*) of this section.

(*c*) Ambulance service cannot be used in lieu of taxi service and is not payable when the patient's condition would have permitted use of regular private transportation; nor is it payable when transport or transfer of a patient is primarily for the purpose of having the patient nearer to home, family, friends and/or personal physician.

(*d*) Exceptional circumstances where the charge may exceed one hundred ($100.00) dollars and the ambulance service may still be considered for benefits under this section are limited to the following:

(*1*) The patient is being transported from a rural or remote area to the nearest hospital for treatment; or

(2) The patient is being transferred from one hospital which does not have the necessary facilities to treat the patient, to the nearest hospital which does have the necessary facilities.

(*e*) Air ambulance is specifically excluded except if used under the specific circumstances set forth in paragraph (d)(3)(v)(*d*) of this section. Even under such circumstances, air ambulance must be medically necessary and utilized as a last resort.

(vi) *Prescription drugs and medicines.* Prescription drugs and medicines which by law of the United States require a physician's or dentist's prescription and which are ordered or prescribed for by a

physician or dentist (except that insulin is covered for a known diabetic, even though a prescription may not be required for its purchase) in connection with an otherwise covered condition or treatment, including Rhogam.

(a) Drugs administered by a physician or other authorized individual professional provider as an integral part of a procedure covered under paragraphs (b) and (c) of this section (such as chemotherapy) are not covered under this subparagraph inasmuch as the benefit for the institutional services or the professional services in connection with the procedure itself also includes the drug used.

(b) CHAMPUS benefits may not be extended for drugs not approved by the Food and Drug Administration for general use by humans (even though approved for testing with humans).

(vii) *Phosthetic devices.* The purchase of prosthetic devices is limited to artificial limbs and eyes, except those items which are surgically inserted inside the body as an essential and integral part of an otherwise covered surgical procedure are not excluded.

NOTE.—In order for CHAMPUS benefits to be extended, any surgical implant must be approved for use in humans by the U.S. Food and Drug Administration.

(viii) *Orthopedic braces and appliances.* The purchase of leg braces (including attached shoes), arm braces, back braces and neck braces are covered. Orthopedic shoes, arch supports, etc., including special-ordered, custom-made built-up shoes or regular shoes subsequently built-up, are not covered.

(e) *Special benefit information.*—(1) *General.* There are certain circumstances, conditions and/or limitations which impact the extension of benefits and which require special emphasis and explanation. This paragraph (e) sets forth those benefits and/or limitation areas recognized to be in this category. The benefits and/or limitations herein described are also subject to any and all applicable definitions, conditions, limitations, exceptions and/or exclusions as set forth in this or other sections of this Regulation, except as may be otherwise specifically provided in paragraph (e) of this section.

(2) *Abortion.* Benefits under the CHAMPUS Basic Program are available for otherwise covered services and supplies provided in connection with abortion, when legally performed in accordance with the applicable rulings of the United States Supreme Court in *Doe* v. *Bolton*, 410 U.S. 179 (1973), *Roe* v. *Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Missouri v. Danforth*, —— U.S. ——, 96 S.C.T. 2831 (1976).

NOTE.—Covered abortion services are limited to medical services and/or supplies only and do not include abortion counseling or referral fees.

(3) *Family planning.* It is considered essential that CHAMPUS-eligible families have access to information and services that will allow freedom to choose the number and spacing of their children within the dictates of individual conscience. The scope of the CHAMPUS family planning benefit is as follows:

(i) *Birth control* (i.e., contraception).—(a) *Benefits provided.* Benefits are available for services and supplies related to preventing conception, including the following:

(1) *Surgical insertion, removal and/or* replacement of, intrauterine devices.

(2) Measurement for, and purchase of, contraceptive diaphragms (and subsequent remeasurement and replacement).

(3) Prescription oral contraceptives.

(4) Surgical sterilization (either male or female).

(b) *Exclusions.* The Family Planning benefit does not include the following:

(1) *Prophylactics* (condoms).

(2) Spermicidal foams, jellies, sprays, etc., not requiring a prescription.

(3) Artificial insemination including any costs related to donors and/or semen banks.

(4) Reversal of a surgical sterilization procedure (male or female).

(ii) *Genetic testing.* Genetic testing is essentially preventive rather than related to active medical treatment of an illness or injury. However, under the Family Planning benefit, genetic testing is covered when performed in certain high risk situations. For the purpose of CHAMPUS, genetic testing includes tests to detect developmental abnormalties as well as purely genetic defects.

(a) *Benefits provided.* Benefits may be extended for genetic testing performed on a pregnant beneficiary under the following prescribed circumstances. The tests must be appropriate to the specific risk situation and must meet one of the following criteria:

(1) The mother-to-be is 35 years of age or older; or

(2) The mother and/or father-to-be have (has) had a previous child born with a congenital abnormality; or

(3) Either the mother or father-to-be has a family history of congenital abnormalities; or

(4) The mother-to-be contracted rubella during the first trimester of the pregnancy; or

(5) Such other specific situations as may be determined by the Director, OCHAMPUS (or a designee) to fall within the intent of this paragraph (e)(3)(ii).

(b) *Exclusions.* It is emphasized that routine or demand genetic testing is not covered. Further, genetic testing does not include the following:

(1) Tests performed to establish paternity of a child.

(2) Tests to determine the sex of an unborn child.

(4) *Alcoholism.* Inpatient hospital stays may be required for detoxification services during acute stages of alcoholism when the patient is suffering from delirium, confusion, trauma, unconsciousness and severe malnutrition, and is no longer able to function. During such acute periods of detoxification and physical stabilization (i.e., "drying out") of the alcoholic patient, it is generally accepted that there can be a need for medical management of the patient; i.e., there is a probability that medical complications will occur during alcohol withdrawal, necessitating the constant availability of physicians and/or complex medical equipment found only in a hospital setting. Therefore, inpatient hospital care, during such acute periods and under such conditions, is considered reasonable and medically necessary for the treatment of the alcoholic patient and thus covered under CHAMPUS. Active medical treatment of the acute phase of alcoholic withdrawal and the stabilization period usually takes from 3 to 7 days.

(i) *Rehabilitative phase.* An inpatient stay for alcoholism (either in a hospital or through transfer to another type of authorized institution) may continue beyond the 3 to 7 day period, moving into the rehabilitative program phase. Each such case will be reviewed on its own merits to determine whether an inpatient setting continues to be required.

Example. If a continued inpatient rehabilitative stay primarily involves administration of antabuse therapy and the patient has no serious physical complications otherwise requiring an inpatient stay, the inpatient environment would not be considered necessary and therefore benefits could not be extended.

(ii) *Repeated rehabilitative stays: Limited to 3 episodes.* Even if a case is determined to be appropriately continued on an inpatient basis, repeated rehabilitative stays will be limited to 3 episodes (lifetime maximum); and any further rehabilitative stays are not eligible for benefits. However, inpatient stays for the acute stage of alcoholism requiring detoxification/stabilization will continue to be covered. When the inpatient hospital setting is medically required, a combined program of detoxification/stabilization and rehabilitation will normally not be approved for more than a maximum of 3 weeks per episode.

(iii) *Outpatient psychiatric treatment programs.* Otherwise medically necessary covered services related to outpatient psychiatric treatment programs for alcoholism are covered and continue to be covered even though benefits are not available for further inpatient rehabilitative episodes, subject to the same psychotherapy review guidelines as other diagnoses. (Refer to paragraph (c) of this section; also refer to § 199.13, "Claims Submission, Review and Payment.")

(iv) *Review Guidelines and Criteria.* The Director, OCHAMPUS (or a designee), will issue specific instructions, guidelines and criteria for review of claims for services and supplies related to alcoholism.

(5) *Organ transplants.* CHAMPUS Basic Program benefits are available for otherwise covered services and/or supplies in connection with an organ transplant procedure: *Provided*, Such transplant procedure is generally in accordance with accepted professional medical standards, and is not considered to be experimental.

(i) *Recipient costs.* CHAMPUS benefits are payable for recipient costs when

the recipient of the transplant is a beneficiary, whether or not the donor is a beneficiary.

(ii) *Donor costs.* (*a*) Donor costs are payable when both the donor and recipient are CHAMPUS beneficiaries.

(*b*) Donor costs are payable when the donor is a CHAMPUS beneficiary but the recipient is not.

(*c*) Donor costs are payable when the donor is the sponsor and the recipient is a beneficiary. (In such an event donor costs are paid as a part of the beneficiary/recipient costs.)

(*d*) Donor costs are also payable when the donor is neither a CHAMPUS beneficiary nor a sponsor, if the recipient is a CHAMPUS beneficiary. (Again, in such an event donor costs are paid as a part of the beneficiary/recipient costs.)

(iii) *General limitations.* (*a*) If the donor is not a beneficiary, CHAMPUS benefits for donor costs are limited to those directly related to the transplant procedure itself and do not include any medical care costs related to other treatment of the donor, including complications.

(*b*) In most instances, for costs related to kidney transplants, Medicare (not CHAMPUS) benefits will be applicable. (Refer to paragraph (e)(3)(vi) "Eligibility.")

(*c*) Donor transportation costs are excluded whether or not the donor is a beneficiary.

(*d*) Where the organ transplant is performed under a study, grant or research program, no CHAMPUS benefits are payable for either recipient or donor cost.

(iv) *Kidney acquisition.* With specific reference to acquisition costs for kidneys, each hospital which performs kidney transplants is required for Medicare purposes to develop for each year separate standard acquisition costs for kidneys obtained from live donors and kidneys obtained from cadavers. The standard acquisition cost for cadaver kidneys is compiled by dividing the total cost of cadaver kidneys acquired by the number of transplants using cadaver kidneys. The standard acquisition cost for kidneys from live donors is compiled similarly using the total acquisition cost of kidneys from live donors and the number of transplants using kidneys from live donors. All recipients of cadaver kidneys are charged the same standard cadaver kidney acquisition cost and all recipients of kidneys from live donors are charged the same standard live donor acquisition cost. The appropriate hospital standard kidney acquisition costs (live donor or cadaver) required for Medicare must in every instance be used as the acquisition cost for purposes of providing CHAMPUS benefits.

(6) *Eyeglasses, spectacles, contact lenses or other optical devices.* Eyeglasses, spectacles, contact lenses or other optical devices are excluded under the CHAMPUS Basic Program except under very limited and specific circumstances.

(i) *Exception to general exclusion.* Benefit for glasses and lenses may be extended only in connection with the following specified eye conditions and circumstances:

(*a*) Eyeglasses or contact lenses which perform the function of the human lens, lost as the result of intraocular surgery or ocular injury.

(*b*) "Pinhole" glasses prescribed for use after surgery for detached retina.

(*c*) Lenses prescribed as "treatment" in lieu of surgery for the following conditions:

(*1*) Contact lenses used for treatment of infantile glaucoma.

(2) Corneal or scleral lenses prescribed in connection with treatment of keratoconus.

(3) Scleral lenses prescribed to retain moisture in cases where normal tearing is not present or is inadequate.

(*4*) Corneal or scleral lenses prescribed to reduce a corneal irregularity other than astigmatism.

(ii) *Limitations.* The specified benefits are further limited to 1 set of lenses related to one of the qualifying eye conditions set forth in paragraph (e)(6)(i) of this section. If there is a prescription change requiring a new set of lenses (but still related to the qualifying eye condition), benefits may be extended for a second set of lenses, subject to specific medical review.

(7) *Transsexualism or hermaphroditism.* All services and supplies directly or indirectly related to transsexualism (or such other conditions as gender dysphoria) or hermaphroditism are excluded under the CHAMPUS Program. This exclusion includes, but is not limited to, psychotherapy, prescription drugs, intersex surgery, etc., which may be provided in connection with transsexualism or hermaphroditism. There is only one very limited exception to this general exclusion: notwithstanding the definition of congenital anomaly, CHAMPUS benefits may be extended for surgery performed on a child ten (10) years of age or under to correct sex gender confusion (i.e., ambiguous genitalia).

(8) *Cosmetic, reconstructive and/or plastic surgery.* For the purposes of CHAMPUS, cosmetic, reconstructive and/or plastic surgery is that surgery which can be expected primarily to improve physical appearance and/or which is performed primarily for psychological purposes and/or which restores form, but does not correct or materially improve a bodily function.

NOTE.—If a surgical procedure primarily restores function, whether or not there is also a concomitant improvement in physical appearance, the surgical procedure does not fall within the provisions set forth in this section.

(i) *Limited benefits under CHAMPUS.* Benefits under the CHAMPUS Basic Program are generally not available for cosmetic, reconstructive and/or plastic surgery. However, under certain limited circumstances, benefits for otherwise covered services and supplies may be provided in connection with cosmetic, reconstructive and/or plastic surgery, as follows:

(*a*) Correction of a congenital anomaly; or

(*b*) Restoration of body form following an accidental injury; or

(*c*) Revision of disfiguring and extensive scars resulting from neoplastic surgery.

(*d*) Generally, benefits are limited to those cosmetic, reconstructive and/or plastic surgery procedures performed no later than December 31 of the year following the year in which the related accidental injury or surgical trauma occurred. However, special consideration for exception will be given to cases involving children, which may require a growth period.

(ii) *General exclusions.* (*a*) For the purpose of CHAMPUS, dental congenital anomalies such as absent tooth buds, malocclusion, etc., are specifically excluded. Also excluded are any procedures related to transsexualism or hermaphroditism, except as otherwise specifically provided in paragraph (e)(7) of this section.

(*b*) Cosmetic, reconstructive and/or plastic surgery procedures performed primarily for psychological reasons or as a result of the aging process are also excluded.

(*c*) In addition, whether or not they would otherwise qualify for benefits under paragraph (e)(8)(i) of this section, the breast augmentation mammoplasty, surgical insertion of prosthetic testicles and the penile implant procedure are specifically excluded.

(iii) *Non-covered surgery: All related services and supplies excluded.* When it is determined that a cosmetic, reconstructive and/or plastic surgery procedure does not quality for CHAMPUS benefits, all related services and supplies are excluded, including any institutional costs.

(iv) *Preauthorization required.* In order for CHAMPUS benefits to be extended for cosmetic, reconstructive and plastic surgery procedures which might qualify under paragraph (e)(8) of this section, preauthorization is required from the Director, OCHAMPUS (or a designee).

(*a*) Such preauthorization requests must include full details of the proposed cosmetic, reconstructive and/or plastic surgery procedure, including photographs of the defect to be surgically corrected.

(*b*) When a preauthorization request is approved, it is for a specific surgical procedure and is valid for only 90 days from date of issuance.

(*c*) If the approved cosmetic, reconstructive and/or plastic surgical procedure is not performed within the 90 day period, a new preauthorization is required.

(*d*) Preauthorization is required for each specific procedure even though a series of surgical procedures is related to the correction of one defect or condition (for example, one which requires that the corrective surgery be done in steps). A preauthorization is not valid for any surgical procedure except as specifically stated in the preauthorization.

NOTE.—If a surgical procedure primarily restores function, whether or not there is a concomitant improvement in physical appearance, there is no requirement for preauthorization. However, if a surgical procedure only marginally improves function or if there is any question on the part of the surgeon or beneficiary (or sponsor), OCHAMPUS should be contacted for a determination prior to performing the surgery.

(v) *Examples of non-covered cosmetic, reconstructive* and/or *plastic surgery procedures.* The following is a partial list of cosmetic, reconstructive and/or plastic surgery procedures which Do Not Qualify for Benefits under CHAMPUS. This list is for example purposes only, and is not to be construed as being all-inclusive.

(*a*) Any procedure performed for personal reasons, to improve the appearance of an obvious feature or part of the body which would be considered by an average observer to be normal and acceptable for the patient's age and/or ethnic and/or racial background.

(*b*) Cosmetic, reconstructive and/or plastic surgical procedures which are justified primarily on the basis of a psychological or psychiatric need.

(*c*) Augmentation mammoplasties.

(*d*) Face lifts and other precedures related to the aging process.

(*e*) Reduction mammoplasties (unless there is medical documentation of intractable pain not amenable to other forms of treatment, as the result of increasingly large, pendulous breasts).

(*f*) Panniculectomy; body sculpture procedures.

(*g*) Repair of sagging eyelids (without demonstrated and medically documented significant impairment of vision).

(*h*) Rhinoplasties (without evidence of accidental injury occurring within the previous 6 months which resulted in significant obstruction of breathing).

(*i*) Chemical peeling for facial wrinkles.

(*j*) Dermabrasion of the face.

(*k*) Revision of scars resulting from surgery and/or a disease process, except disfiguring and extensive scars resulting from neoplastic surgery.

(*l*) Removal of tatoos.

(*m*) Hair transplants.

(*n*) Electrolysis.

(*o*) Any procedures related to Transsexualism or Hermaphroditism, except as specifically provided in paragraph (e) (7) of this section.

(*p*) Penile implant procedure.

(*q*) Insertion or prosthetic testicles.

(9) *Complications (unfortunate Sequelae) resulting from non-covered initial surgery/treatment.* Benefits are available for otherwise covered services and supplies required in the treatment of complications resulting from a non-covered incident of treatment (such as non-adjunctive dental care, transsexual surgery, cosmetic surgery, etc.), but only if the subsequent complication represents a separate medical condition such as a systemic infection, cardiac arrest, acute drug reaction, etc. Benefits may not be extended for any subsequent care or procedure related to the complication that is essentially similar to the initial non-covered care. Examples of complications similar to the initial episode of care (and thus not covered) would be repair of facial scarring resulting from dermabrasion for acne or repair of a prolapsed vagina in a biological male who had undergone transsexual surgery.

(10) *Dental.* The CHAMPUS Program does not include a dental benefit. Under very limited circumstances, benefits are available for dental services and supplies when the dental services are adjunctive to otherwise covered medical treatment.

(i) *Adjunctive dental care: Limited.* Adjunctive dental care is limited to that dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition.

(*a*) Elimination of a non-local oral infection (such as cellulitis or osteitis) which is clearly exacerbating and directly affecting a medical condition currently under treatment would be an example of adjunctive dental care.

(*b*) Another example of adjunctive dental care would be where teeth and tooth fragments must be removed in order to treat and repair facial trauma resulting from an accidental injury.

NOTE.—The test of whether or not dental trauma is covered is whether or not the trauma is solely dental trauma. Dental trauma must be related to, and an integral part of, medical trauma in order to be covered as adjunctive dental care.

(ii) *General exclusions.* Generally, preventive, routine, restorative, prosthodontic and/or emergency dental care are not covered by CHAMPUS.

(*a*) Dental care which is essentially preventive and (even if performed to prevent a potential medical condition) which is not an integral part of the treatment of a medical (not dental) condition, does not qualify as adjunctive dental care for the purposes of CHAMPUS. An example would be routine dental care provided a rheumatic heart patient as a "preventive" measure.

(*b*) Adjunctive care does not include dental services which involve only the teeth and/or their supporting structure, even if the result of an accident. An example would be the child who falls and breaks, chips or loosens a tooth.

(*c*) Adjunctive dental care does not include restoration or peridontal splinting of teeth and/or dental prosthesis, whether permanent or temporary and whether required as a result of an accidental injury or whether injured, affected or fractured during the medical or surgical management of a medical condition.

(*d*) Adjunctive dental care does not include treatment of peridontal disease and/or the consequence of peridontal disease; nor does it include such dental services as filling cavities or adding or modifying bridgework to assist in mastication whether or not related to gastrointestinal or hematopoietic diseases.

(*e*) All orthodontia is specifically excluded, except when directly related to and as an integral part of, surgical correction of cleft palate congenital anomaly.

(iii) *Preauthorization required.* Adjunctive dental care, in order to be covered, requires prior approval and written preauthorization from the Director, OCHAMPUS (or a designee).

(*a*) The preauthorization request must include a detailed statement from the dentist as to the dental procedure to be performed and its cost, and a statement from the attending physician providing the medical evidence as to its relationship to a medical condition currently under treatment.

(*b*) Such preauthorization is for specific dental service and is valid for only 90 days from date of issuance.

(*c*) If the approved adjunctive dental care is not rendered within the 90 day period, a new preauthorization is required. However, unless some unusual medical circumstance occurs, the fact that the dental care was not rendered during the specified time limit will raise significant question as to whether it was, in fact, adjunctive.

(*d*) Preauthorization is required for each specific adjunctive dental service or appliance (i.e., each instance of dental care), even though related to an ongoing medical episode. A preauthorization is not valid for any adjunctive dental service or supply except as specifically stated in the preauthorization.

(*e*) Where adjunctive dental care involves an emergency medical (not dental) situation (such as facial injuries resulting from an accident), preauthorization is waived. However, such waiver is limited to the essential adjunctive dental care related to the medical condition requiring the immediate emergency treatment. When claims are submitted for such adjunctive dental care rendered in an emergency situation, a complete explanation along with supporting medical documentation must be submitted.

(iv) *Covered oral surgery.* Notwithstanding the above limitations on dental care, there are certain oral surgical procedures which are performed by both physicians and dentists, and which are essentially medical rather than dental care. For the purposes of CHAMPUS, the following procedures, whether performed by a physician or dentist, are considered to be in this category and benefits may be extended for otherwise covered services and supplies without preauthorization:

(*a*) Excision of tumors and cysts of the jaws, cheeks, lips, tongue, roof and floor of the mouth, when such conditions require a pathological (histological) examination.

(*b*) Surgical procedures required to correct accidental injuries of the jaws, cheeks, lips, tongue, roof and floor of the mouth.

(*c*) Treatment of oral and/or facial cancer.

(*d*) Treatment of fractures of facial bones.

(*e*) External (extra-oral) incision and drainage of cellulitis.

(*f*) Surgery of accessory sinuses, salivary glands or ducts.

(g) Reduction of dislocations of and the excision of the temporamandibular joints, when surgery is a necessary part of the reduction.

(h) Any oral surgical procedure which falls within the cosmetic, reconstructive and/or plastic surgery definition is subject to the limitations and requirements set forth in paragraph (e) (8) of § 199.10, "Basic Program Benefits".

NOTE.—Preparation of the mouth for dentures is not a covered oral surgery procedure. Also excluded are the removal of unerupted or partially erupted, malposed and/or impacted teeth, with or without the attached follicular or development tissues.

(v) *Inpatient hospital stay in connection with nonadjunctive, non-covered dental care.* Institutional benefits specified in paragraph (b) of this section may be extended for inpatient hospital stays related to non-covered, non-adjunctive dental care when such inpatient stay is medically necessary to safeguard the life of the patient from the effects of dentistry because of the existence of a specific and serious non-dental organic impairment currently under active treatment. (Hemophilia is an example of a condition that could be considered a serious non-dental impairment.) Preauthorization by OCHAMPUS is required for such inpatient stay to be covered in the same manner as required for adjunctive dental care described in paragraph (e) (10) (iii) (and its subparts) of this section. Regardless of whether or not the preauthorization request for the hospital admission is approved and thus qualifies for institutional benefits, the professional service related to the non-adjunctive dental care is not covered.

(11) *Drug Abuse.* Under the CHAMPUS Basic Program, benefits may be extended for medically necessary prescription drugs required in the treatment of an illness or injury or in connection with maternity care (refer to paragraph (d) of this section). However, CHAMPUS benefits cannot be authorized to support and/or maintain an existing or potential drug abuse situation, whether or not the drugs (under other circumstances) are eligible for benefit consideration and whether or not obtained by legal means.

(i) *Limitations on who can prescribe drugs.* CHAMPUS benefits are not available for any drugs prescribed by a member of the beneficiary/patient's family or by a non-family member residing in the same household with the beneficiary/patient (or sponsor). CHAMPUS Contractors are not authorized to make any exception to this restriction.

(ii) *Drug maintenance programs excluded.* Drug maintenance programs where one addictive drug is substituted for another on a maintenance basis (such as methadone substituted for heroin) are not covered. Further, this exclusion applies even in areas outside the United States where addictive drugs are legally dispensed by physicians on a maintenance dosage level.

(iii) *Kinds of prescription drugs which are carefully monitored by CHAMPUS for possible abuse situations.*

(a) *Narcotics.* Examples are morphine and demerol.

(b) *Non-Narcotic Analgesics.* Examples are Talwin and Darvon.

(c) *Tranquilizers.* Examples are Valium, Librium, and Meprobamate.

(d) *Barbiturates.* Examples are Seconal and Nembutal.

(e) *Non-Barbiturate Hypnotics.* Examples are Doriden and Chloral Hydrate.

(f) *Stimulants.* Examples are Amphetamines and Methedrine.

(iv) *CHAMPUS contractor responsibilities.* CHAMPUS Contractors are responsible for implementing utilization control and quality assurance procedures designed to identify possible drug abuse situations. The CHAMPUS Contractor is directed to screen all drug claims for potential over-utilization and/or irrational prescribing of drugs, and to subject any such cases to extensive review to establish the necessity for the drugs and their appropriateness on the basis of diagnosis and/or definitive symptoms.

(a) When a possible drug abuse situation is identified, all claims for drugs for that beneficiary and/or provider will be suspended pending the results of a review.

(b) If the review determines that a drug abuse situation does in fact exist, all drug claims held in suspense will be denied.

(c) If the record indicates previously paid drug benefits, the prior claims for that beneficiary and/or provider will be reopened and the circumstances involved reviewed to determine whether or not a drug abuse situation also existed at the time the earlier claims were adjudicated. If drug abuse is subsequently ascertained, benefit payments previously made will be considered to have been extended in error and the amount paid recouped.

(d) Inpatient stays primarily for the purpose of obtaining drugs and any other service and supplies related to drug abuse situations are also excluded.

(v) *Unethical or illegal provider practices related to drugs.* Any such investigation into a possible drug abuse situation which uncovers unethical or illegal drug dispensing practices on the part of an institution or physician will be referred to the professional and/or investigative agency having jurisdiction. CHAMPUS Contractors are directed to withhold payment of all CHAMPUS claims for services and/or supplies rendered by a provider under active investigation for possible unethical or illegal drug dispensing activities.

(vi) *Detoxification.* The above monitoring and control of drug abuse situations shall in no way be construed to deny otherwise covered medical services and supplies related to drug detoxification (including newborn addicted infants) when medical supervision is required.

(12) *Custodial care.* The statute under which CHAMPUS operates specifically excludes custodial care. This is a very difficult area to administer. Further, many beneficiaries (and sponsors) misunderstand what is meant by custodial care, assuming that because custodial care is not covered, it implies the custodial care is not necessary. This is not the case; denial of benefits only means the care being provided is not a type of care for which CHAMPUS benefits can be extended.

(i) *Definition of custodial care.* Custodial Care is defined to mean that care rendered to a patient (a) who is mentally or physically disabled and such disability is expected to continue to be prolonged, and (b) who requires a protected, monitored and/or controlled environment whether in an institution or in the home, and (c) who requires assistance to support the essentials of daily living, and (d) who is not under active and specific medical, surgical and/or psychiatric treatment which will reduce the disability to the extent necessary to enable the patient to function outside the protected, monitored and/or controlled environment. A custodial care determination is not precluded by the fact that a patient is under the care of a supervising and/or attending physician and that services are being ordered and prescribed to support and generally maintain the patient's condition, and/or provide for the patient's comfort, and/or assure the manageability of the patient. Further, a custodial care determination is not precluded because the ordered and prescribed services and supplies are being provided by a R.N. or L.P.N.

(ii) *Kinds of conditions that can result in custodial care.* There is no absolute rule that can be applied. With most conditions there is a period of active treatment before custodial care, some much more prolonged than others. Examples of potential custodial care cases might be a spinal cord injury resulting in extensive paralysis, a severe cerebral vascular accident, multiple sclerosis in its latter stages, or pre-senile and senile dementia. These conditions do not necessarily result in custodial care but are indicative of the types of conditions that sometimes do. It is not the condition itself that is controlling but whether the care being rendered falls within the definition of custodial care.

(iii) *Benefits available in connection with a custodial care case.* CHAMPUS benefits are not available for services and/or supplies related to a custodial care case (including the supervisory physician's care), with the following specific exceptions:

(a) *Prescription drugs.* Benefits are payable for otherwise covered prescription drugs, even if prescribed primarily for the purpose of making the person receiving custodial care manageable in the custodial environment.

(b) *Nursing services: Limited.* It is recognized that even though the care being received is determined to be primarily custodial, an occassional specific skilled nursing service may be required. Where it is determined such skilled nursing services are needed, benefits may be extended for 1 hour of nursing care per day.

(c) *Payment for prescription drugs and limited skilled nursing services does not affect custodial care determination.* The fact that CHAMPUS extends benefits for prescription drugs and limited skilled nursing services in no way affects the custodial care determination if the case otherwise falls within the definition of custodial care.

(iv) *Beneficiary recieving custodial care; Admission to a hospital.* CHAMPUS Benefits may be extended for otherwise covered services and/or supplies directly related to a medically necessary admission to an acute general or special hospital, under the following circumstances:

(a) *Presence of another condition.* When a beneficiary receiving custodial care requires hospitalization for the treatment of a condition other than the condition for which he or she is receiving custodial care (an example might be a broken leg as a result of a fall); or

(b) *Acute exacerbation of the condition for which custodial care is being received.* When there is an acute exacerbation of the condition for which custodial care is being received which requires active inpatient treatment which is otherwise covered.

(13) *Domiciliary care.* The statute under which CHAMPUS operates also specifically exludes domiciliary care. This is another area that is often misunderstood by beneficiaries (and sponsors).

(i) *Defintion of domiciliary care.* Domiciliary care is defined to mean inpatient institutional care provided the beneficiary, not because it is medically necessary, but because the care in the home setting is not available, is unsuitable and/or members of the patient's family are unwilling to provide the care. Institutionalization because of abandonment constitutes domiciliary care.

(ii) *Examples of domiciliary care situations.* The following are examples of domiciliary care for which CHAMPUS benefits are not payable:

(a) *Home care is not available.* Institutionalization primarily because parents work, or extension of a hospital stay beyond what is medically required because the patient lives alone, are examples of domiciliary care provided because there is no other family member or other person available in the home.

(b) *Home care is not suitable.* Institutionalization of a child because a parent or (parents) is an alcoholic who is not sufficiently responsible to care for the child, or because someone in the home has a contagious disease, are examples of domiciliary care being provided because the home setting is unsuitable.

(c) *Family unwilling to care for individual in the home.* A child who is difficult to manage may be placed in an institution, not because institutional care is medically required, but because the family does not want to handle him or her in the home. Such institutionalization would represent domiciliary care, i.e., the family being unwilling to assume responsibility for the child.

(iii) *Benefits available in connection with a domiciliary care case.* Should the beneficiary receive otherwise covered medical services and/or supplies while also being in a domiciliary care situation, CHAMPUS benefits are payable for those medical services and/or supplies in the same manner as though the beneficiary resided in his or her own home. Such benefits would be cost-shared as though rendered to an outpatient.

(iv) *General exclusion.* Domiciliary care is institutionalization essentially to provide a substitute home—not because it is medically necessary for the beneficiary to be in the institution (although there may be conditions present which have contributed to the fact that domiciliary care is being rendered). CHAMPUS benefits are not payable for any costs/charges related to the provision of domiciliary care. While a substitute home and/or assistance may be necessary for the beneficiary, domiciliary care does not represent the kind of care for which CHAMPUS benefits can be provided.

(f) *Beneficiary (or sponsor) liability.* (1) *General.* As stated in the introductory paragraph to this section, the CHAMPUS Basic Program is essentially a supplemental program to the Uniformed Services direct medical care system. In order to encourage use of the Uniformed Services direct medical care system wherever its facilities are available and appropriate, the CHAMPUS Basic Program benefits are designed so that it is to the financial advantage of a CHAMPUS beneficiary (or sponsor) to use the direct medical care system. When medical care is received from civilian sources, a CHAMPUS beneficiary is responsible for payment of certain deductible and cost-sharing amounts in connection with otherwise covered services and supplies. By statute, this joint financial responsibility between the beneficiary (or sponsor) and CHAMPUS is more favorable for dependents of active duty members than for other classes of beneficiaries.

(2) *Dependents of active duty members of the Uniformed Services.* CHAMPUS beneficiary (or sponsor) liability set forth for dependents of active duty members is as follows:

(i) *Annual fiscal year deductible for outpatient services and/or supplies.* A CHAMPUS beneficiary (or sponsor) is responsible for the payment of the first fifty ($50) dollars of the CHAMPUS-determined reasonable costs/charges for otherwise covered outpatient services and/or supplies provided in any one fiscal year. However, when such outpatient services are provided to more than one beneficiary member of a family during the same fiscal year, the aggregate outpatient deductible amount paid by any two or more beneficiary members of the family, who submit claims, shall not exceed one hundred ($100) dollars during any fiscal year.

NOTE.—The Federal Government's current fiscal year runs from October 1 through September 30 of each year. This fiscal year period became effective October 1, 1976. Prior to that time, the fiscal year period ran from July 1 through June 30 of each year. For purposes of applying the CHAMPUS fiscal year outpatient deductible provision, the transitional quarter July 1, 1976 through September 30, 1976, is considered to be a part of the fiscal year commencing July 1, 1975. Thus for the purposes of satisfying the annual fiscal year outpatient deductible, CHAMPUS beneficiaries have the advantage of a one-time 15-month fiscal year, running from July 1, 1975, through September 30, 1976.

(a) In any one fiscal year, if only one beneficiary member of a family files a claim (regardless of the number of beneficiary members actually in the family), that beneficiary member is only required to satisfy a fifty ($50) dollar annual fiscal year deductible for outpatient services and/or supplies as described in paragraph (f)(2)(i) of this section.

(b) In any one fiscal year, if 2 or more beneficiary members of a family file claims, the total amount of which is less than one hundred ($100) dollars, but none of the beneficiary members submit a claim for over fifty ($50) dollars, no CHAMPUS benefits are payable for otherwise covered outpatient services and/or supplies provided such beneficiary members during that particular fiscal year.

(c) For any family, the outpatient deductible amounts will be applied sequentially, as the CHAMPUS claims are submitted.

(d) If the fiscal year outpatient deductible has been met by a beneficiary ($50) or a family ($100 aggregate) through the submission of a claim(s) to a CHAMPUS Contractor in another geographic location from the location where a current claim is being submitted, the beneficiary (or sponsor) must obtain a deductible certificate from the CHAMPUS Contractor where the applicable individual and/or family fiscal year deductible was met. Such deductible certificate must be attached to the current claim being submitted for benefits. Failure to obtain a deductible certificate under such circumstances will result in a second individual and/or family fiscal year deductible being applied. However, this second deductible may be reimbursed once appropriate documentation as described in this paragraph (f)(2)(i)(d) of this section is supplied to the CHAMPUS Contractor applying the second deductible. (Refer to paragraph (a) of § 199.13, "Claims Submission, Review and Payment.")

(ii) *Inpatient cost-sharing.* Dependents of active duty members of the Uniformed Services (or their sponsors) are responsible for the payment of the first twenty-five ($25) dollars of the reasonable institutional costs incurred with each covered inpatient admission to a hospital or other authorized institutional provider (refer to § 199.12 "Authorized Providers"), or the amount the beneficiary/patient (or sponsor) would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

NOTE.—The Secretary of Defense (after consulting with the Secretary of Health, Education and Welfare), prescribes the fair charges for inpatient hospital care provided through Uniformed Services medical facili-

ties. This determination is currently made on an annual basis. The following chart gives the applicable amounts for each calendar year since 1966:

Calendar year	Charge per day
1966	$1.75
1967	1.75
1968	1.75
1969	1.75
1970	1.75
1971	1.75
1972	1.75
1973	1.75
1974	3.50
1975	3.70
1976	3.90
1977	4.10

(a) *Inpatient cost-sharing payable with each separate inpatient admission.* A separate cost-sharing amount (as described in paragraph (f)(2) of this section) is payable for each inpatient admission to a hospital or other authorized institution regardless of the purpose of the admission (i.e., maternity, surgery, etc.), regardless of the number of times the beneficiary/patient is admitted and regardless of whether or not the inpatient admissions are for the same or related conditions; except that successive inpatient admissions shall be deemed one inpatient confinement for the purpose of computing the inpatient cost-share payable, provided not more than 60 days have elapsed between the successive admissions. However, notwithstanding this provision, all admissions related to a single maternity episode shall be considered one confinement, regardless of the number of days between admissions. (Refer to paragraph (b) of this section.)

(b) *Multiple family inpatient admissions.* A separate cost-sharing amount is payable for each inpatient admission regardless of whether or not 2 or more beneficiary members of a family are admitted at the same time and/or from the same cause (such as an accident). A separate beneficiary inpatient cost-sharing amount must be applied for each separate admission of each beneficiary member of the family.

(c) *Newborn: Patient in his or her own right.* When a newborn infant remains as an inpatient in his or her own right (usually after the mother is discharged), the newborn child becomes the beneficiary/patient and the extended inpatient stay becomes a separate inpatient admission. In such a situation a new, separate inpatient cost-sharing amount is applied. If a multiple birth is involved (i.e., twins, triplets, etc.), and 2 or more newborn infants become patients in their own right, a separate inpatient cost-sharing amount must be applied to the inpatient stay for each newborn child who has remained as an inpatient in his or her own right.

(iii) *Outpatient cost-sharing.* Dependents of active duty members of the Uniformed Services (or their sponsors) are responsible for payment of 20 percent of the CHAMPUS-determined reasonable cost/charge in excess of the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services and/or supplies provided on an outpatient basis by authorized providers. (Refer to § 199.12, "Authorized Providers.")

(3) *Retirees; dependents of retirees; dependents of deceased active duty members; and dependents of deceased retirees.* CHAMPUS beneficiary liability set forth for retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees is as follows:

(i) *Annual fiscal year deductible for outpatient services and/or supplies.* The annual fiscal year deductible for otherwise covered outpatient services and/or supplies provided retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees is identical to the annual fiscal year outpatient deductible applicable to dependents of active duty members. (Refer to paragraph (f)(2)(i) of this section.)

(ii) *Inpatient cost-sharing.* Retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees are responsible for the payment of 25 percent of the CHAMPUS-determined reasonable costs/charges for otherwise covered services and/or supplies provided on an inpatient basis by an authorized provider.

(iii) *Outpatient cost-sharing.* Retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees are responsible for payment of 25 percent of the CHAMPUS-determined reasonable costs/charges in excess of the annual fiscal year deductible amount (as described in paragraph (f)(2)(ii) of this section) for otherwise covered services and/or supplies provided on an outpatient basis by authorized providers.

(4) *Amounts in excess of CHAMPUS-determined reasonable costs/charges.* It is the responsibility of the CHAMPUS Contractor to determine reasonable costs for services and supplies provided by hospitals and other institutions and reasonable charges for services and supplies provided by physicians, other individual professional providers, and other providers. Such CHAMPUS-determined reasonable costs/charges are made in accordance with the provisions of paragraph (e) of § 199.12, "Authorized Providers." All CHAMPUS benefits, including calculation of the CHAMPUS and/or beneficiary cost-sharing amounts, are based on such CHAMPUS-determined reasonable costs/charges. The effect on the beneficiary when the billed cost/charge is in excess of the CHAMPUS-determined reasonable amount is dependent upon whether or not the applicable claim was submitted on a participating basis on behalf of the beneficiary/ patient or submitted directly by the beneficiary on a non-participating basis. This provision applies to all classes of CHAMPUS beneficiaries.

NOTE.—In any situation where the provider "forgives" or "waives" any beneficiary liability such as amounts applicable to the annual Fiscal Year deductible for outpatient services and/or supplies, or the inpatient or outpatient cost-sharing as previously set forth in this section, the CHAMPUS-determined reasonable charge/cost allowance (whether payable to the CHAMPUS beneficiary or sponsor, or to a participating provider) shall be reduced by the same amount.

(i) *Participating provider.* Under CHAMPUS, an authorized provider has the option of participating on a claim-by-claim basis. If a provider elects to participate, the provider signs the applicable CHAMPUS claim form(s) and submits it to the appropriate CHAMPUS Contractor. (In the case of an institution or medical supplier, the claim must be signed by an individual having such authority.) This signature certifies that the provider has agreed to accept the CHAMPUS-determined reasonable charge/cost as payment in full for the medical services and supplies listed on the specific claim form; and further has agreed to accept the amount paid by CHAMPUS and/or the CHAMPUS payment combined with the cost-sharing amount paid by (or in behalf of) the beneficiary/patient, as full payment for the covered medical services and/or supplies. Therefore, when costs/charges are submitted on a particiapting basis, the patient is not obligated to pay any amounts disallowed as being in excess of the CHAMPUS-determined reasonable cost/charge for authorized medical services and/or supplies.

(ii) *Non-participating providers.* Non-participating providers are those providers who do not sign the CHAMPUS claim form and thereby do not agree to accept the CHAMPUS-determined reasonable costs/charges as the full charge. For otherwise covered services and supplies provided by such non-participating CHAMPUS providers, payment is made directly to the beneficiary (or sponsor) and the beneficiary is liable under applicable law for any amounts in excess of the CHAMPUS-determined reasonable costs/charges. CHAMPUS shall have no responsibility for any amounts in excess of reasonable costs/charges as determined by CHAMPUS.

(g) *Exclusions and limitations.* In addition to any definitions, requirements, conditions and/or limitations enumerated and described in other sections of this regulation, the following are specifically excluded from the CHAMPUS Basic Program:

(1) *Not medically necessary.* Services and supplies which are not medically necessary for the diagnosis and/or treatment of a covered illness or injury.

(2) *Unnecessary diagnostic tests.* X-ray, laboratory and pathological services and machine diagnostic tests not related to a specific illness or injury or a definitive set of symptoms.

(3) *Institutional level of care.* Services and supplies related to inpatient stays in hospitals or other authorized institutions above the minimum level required to provide necessary medical care.

(4) *Computer-Assisted Tomography Scanning (CAT Scanning).* Except as specifically provided in paragraph (b)(5)(viii) of this section.

(5) *Diagnostic admission.* Services and supplies related to an admission primarily to perform diagnostic tests, examinations and procedures that could have been and routinely are, performed on an outpatient basis.

NOTE: If it is determined that the diagnostic X-ray, laboratory and pathological services and machine tests performed during such admission were medically necessary and would have been covered if performed on an outpatient basis, CHAMPUS benefits may be extended for such diagnostic procedures, but cost-sharing will be computed as if performed on an outpatient basis.

(6) *Unnecessary post-partum inpatient stay: Mother or Newborn.* Postpartum inpatient stay of a mother for purposes of staying with a newborn infant (usually primarily for the purpose of breast feeding the infant) when the infant (but not the mother) requires the extended stay; or continued inpatient stay of a newborn infant primarily for purposes of remaining with the mother when the mother (but not the newborn infant) requires extended post-partum inpatient stay.

(7) *Therapeutic absences.* Therapeutic absences from an inpatient facility; those absences which do not exceed 72 hours are not automatically excluded.

(8) *Custodial care.* Custodial care regardless of where rendered.

(9) *Domiciliary care.* Inpatient stays primarily for domiciliary care purposes.

(10) *Rest or rest cures.* Inpatient stays primarily for rest or rest cures.

(11) *Amounts above reasonable costs/charges.* Costs of services and supplies to the extent amounts billed are in excess of the CHAMPUS-determined reasonable cost/charge, as provided for in paragraph (e) of § 199.12, "Authorized Providers."

(12) *No legal obligation to pay: No charge would be made.* Services and/or supplies for which the beneficiary (or sponsor) has no legal obligation to pay; or for which no charge would be made if the individual was not an eligible beneficiary.

(13) *Furnished without charge.* Services and/or supplies furnished without charge.

(14) *Furnished by local, state or federal government.* Services and supplies paid for, or eligible for payment directly or indirectly by a local, state or Federal government, except as provided under the CHAMPUS Program or by government hospitals serving the general public, or medical care provided by a Uniformed Service medical care facility, or benefits provided under Title XIX of the Social Security Act (Medicaid). (Refer to § 199.14, "Double Coverage.")

(15) *Study, grant or research programs.* Services and supplies provided as a part of or under a scientific or medical study, grant or research program.

(16) *Not in accordance with accepted standards: Experimental.* Services and supplies not provided in accordance with accepted professional medical standards; or related to essentially experimental procedures or treatment regimens.

(17) *Immediate family: household.* Services or supplies provided or prescribed by a member of the beneficiary/patient's immediate family, or a person living in the beneficiary/patient's (or sponsor's) household.

(18) *Double coverage.* Services and supplies which are (or are eligible to be) payable under another medical insurance or program, either private or governmental (such as coverage through employment, Medicare, etc.). (Refer to § 199.14, "Double Coverage.")

(19) *Nonavailability statement required.* Services and supplies provided under circumstances and/or in geographic locations requiring a Nonavailability Statement (DD 1251), when such a statement was not obtained.

(20) *Preauthorization required.* Services or supplies provided in connection with an institution and/or circumstances which require preauthorization in order for CHAMPUS benefits to be extended, for which preauthorization was not obtained; or where preauthorization was obtained but the services and/or supplies it covered were not obtained within the prescribed time limit (usually a 90 day period).

(21) *Psychoanalysis and/or psychotherapy: Part of education.* Psychoanalysis and/or psychotherapy provided to mediate family, that is credited toward earning a degree or furtherance of the education or training of a beneficiary (or sponsor), regardless of diagnosis or symptoms that may be present.

(22) *Runaways.* Inpatient stays primarily to control and/or detain a runaway child, whether or not admission is to an authorized institution.

(23) *Court orders: Court directed inpatient stays.* Court ordered services and supplies; inpatient stays directed by or agreed to with the Court as an alternative to incarceration for a criminal act (i.e., jail, reform school, etc.) whether or not admission is to an authorized institution. It is intended that inpatient stays paid by CHAMPUS be directed only by an authorized physician provider.

(24) *Service connected.* Services and supplies related to military service-connected illness or injury.

(25) *Work-related (Occupational) disease or injury.* Services and supplies required as a result of occupational disease or injury for which any benefits are payable under a workman's compensation or similar law, whether or not such benefits have been applied for or paid; except if benefits provided under such laws are exhausted, as specifically provided for in paragraph (g) of § 199.14 "Double Coverage."

(26) *Cosmetic, reconstructive and/or plastic surgery.* Services and supplies in connection with cosmetic, reconstructive and/or plastic surgery except as specifically provided in paragraph (e) of this section.

(27) *Surgery: Psychological reasons.* Surgery performed primarily for psychological reasons (i.e., psychogenic).

(28) *Electrolysis.*

(29) *Dental care.* Dental care or oral surgery, except as specifically provided in paragraph (e) of this section.

(30) *Obesity: Weight reduction.* Services and supplies related to obesity and/or weight reduction; the intestinal or stomach bypass procedures, the stomach stapling procedure, wiring of the jaws, or any procedure of similar purpose, are also excluded regardless of the circumstances under which performed.

(31) *Transsexualism or hermaphroditism.* Services and supplies related to transsexualism (or other conditions such as gender dysphoria) or hermaphroditism (including but not limited to intersex surgery, psychotherapy, prescription drugs, etc.), except as specifically provided in paragraph (e) of this section for children ten (10) years of age or under.

(32) *Sexual dysfunctions or inadequacies.* Sex therapy; or other services or supplies provided in connection with sexual dysfunctions or inadequacies; sex behavior modification.

(33) *Corns, calluses and toenails.* Removal of corns or calluses or trimming of toenails, and other routine podiatry services, except those required as a result of a diagnosed systemic medical disease affecting the lower limbs, such as severe diabetes.

(34) *Minimal brain dysfunction.* Services and supplies related to minimal brain dysfunction (MBD), also sometimes called Organic Brain Syndrome, Hyperkinesis, Learning Disorder, etc.

(35) *Dyslexia.*

(36) *Sterilization: Reversal.* Surgery to reverse surgical sterilization procedures.

(37) *Artificial insemination.* Services and supplies related to artificial insemination (including semen donors and semen banks).

(38) *Non-prescription contraceptives.*

(39) *Tests to determine paternity or sex of a child.* Diagnostic tests to establish paternity of a child; or tests to determine sex of an unborn child.

(40) *Preventive care.* Preventive care, i.e., routine, annual or employment-requested physical examinations; routine screening procedures; immunizations; except that the following are not excluded: (i) Newborn examination (including PKU).

(ii) Rabies shots.

(iii) Tetanus shot following an accidental injury.

(iv) Rhogam.

(v) Genetic tests as specified in paragraph (e) of this section.

(vi) Immunizations and physical examinations provided when required in the case of dependents of active duty military personnel who are traveling outside the United States as a result of an active member's duty assignment and such travel is being performed under orders issued by a Uniformed Service.

(41) *Well baby care.* Services and supplies related to providing well baby care, except that newborn examinations, PKU tests and newborn circumcisions are not excluded.

(42) *Chiropractors and Naturopaths.* Services of chiropractors and naturo-

paths whether or not such services would be eligible for benefits if rendered by an authorized provider.

(43) *Counselors: Counseling.* Services of counselors, except Marriage and Family Counseling as specifically provided in § 199.12 in this Regulation, "Authorized Providers."

(44) *Acupuncture.* Acupuncture, whether used as a therapeutic agent or as an anesthetic.

(45) *Hair transplants: Wigs or hairpieces.*

(46) *Education/Training.* Educational services and supplies, training, non-medical, self care/self help training and any related diagnostic testing or supplies. (This exclusion includes such items as special tutoring, remedial reading, natural childbirth classes, etc.)

(47) *Occupational therapy.* Occupational therapy, and other similar modalities except when rendered as a part of treatment related to an otherwise covered inpatient stay.

NOTE.—This is not intended to exclude medically necessary outpatient physical therapy rendered by a licensed, registered physical therapist.

(48) *Exercise.* General exercise programs, even if recommended by a physician and regardless of whether or not rendered by an authorized provider. In addition, passive exercises and range of motion exercises are also included except when prescribed by a physician and rendered by a physical therapist concurrently with, and as an integral part of, a comprehensive program of physical therapy.

(49) *Audiologist; Speech therapist.* Services of an audiologist or speech therapist except when prescribed by a physician when rendered as a part of treatment addressed to the defect itself and not to any educational or occupational deficit.

(50) *Miscellaneous ancillary therapy modalities.* Art, music dance therapy; play, recreation or similar ancillary therapy modalities; unless specifically approved as an incidental part of an otherwise covered inpatient treatment plan.

(51) *Mind expansion.* Services provided primarily for the purpose of mind expansion (i.e., increasing consciousness), including, but not limited to, Gestalt Therapy, Transactional Analysis, EST (Erhard), Rolfing, Transcendental Meditation, Z-therapy, etc.

(52) *Vision care.* Eye exercises or visual training (orthoptics).

(53) *Eye and hearing examinations.* Eye and hearing examinations except when rendered in connection with medical or surgical treatment of a covered illness or injury.

(54) *Prosthetic devices.* Prostheses, except artificial limbs and eyes, or if an item is surgically inserted in the body as an integral part of a surgical procedure. All dental prostheses are excluded, except for those specifically required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.

(55) *Orthopedic shoes.* Orthopedic shoes, arch supports, etc., and including special-ordered, custom-made built up shoes or regular shoes subsequently built up.

(56) *Eyeglasses.* Eyeglasses, spectacles, contact lenses or other optical devices, except as specifically provided under paragraph (e) of this section.

(57) *Hearing aids.* Hearing aids or other auditory sensory enhancing devices.

(58) *Telephonic services.* Services or advice rendered by telephone or other telephonic device, including remote monitoring.

(59) *Air conditioners, humidifiers, dehumidifiers, and purifiers.*

(60) *Elevators or chair lifts.*

(61) *Alterations.* Alterations to living spaces and/or permanent features attached thereto, even where necessary to accommodate installation of covered durable medical equipment or to facilitate ingress or egress.

(62) *Clothing.* Items of clothing or shoes, even if required by virtue of an allergy (i.e., cotton fabric vs. synthetic fabric, and vegetable-dyed shoes, etc.).

(63) *Food: Food substitutes.* Food, food substitutes, vitamins or other nutritional supplements, including those related to prenatal care.

(64) *Enuresis.* Enuretic devices; enuretic conditioning programs.

(65) *Bio-feedback.*

(66) *Autopsy/Post Mortem.*

(67) *Camping.* All camping, even though organized for a specific therapeutic purpose (i.e., diabetic camp or a camp for emotionally disturbed children), and even though offered as a part of an otherwise covered treatment plan or offered through a CHAMPUS-approved facility.

(68) *Housekeeper: Companion.* Housekeeping, homemaker or attendant services; sitter or companion.

(69) *Non-covered condition: Unauthorized provider.* All services and supplies (including inpatient institutional costs) related to a non-covered condition or treatment; or provided by an unauthorized provider.

(70) *Comfort and/or convenience.* Personal comfort and/or convenience items (such as beauty and barber services), radio, television and telephone.

(71) *"Stop Smoking" programs.* Services and supplies related to "stop smoking" regimens.

(72) *Megavitamin psychiatric therapy: Orthomolecular psychiatric therapy.*

(73) *Transportation.* All transportation except by ambulance, as specifically provided under paragraph (d) of this section.

(74) *Travel.* All travel even though prescribed by a physician and even though for the purpose of obtaining medical care, except as specified in subparagraph (a)(6) of this section in connection with a CHAMPUS-required physical examination.

(75) *Institutions.* Services and supplies provided by other than a hospital unless the institution has been specifically approved by OCHAMPUS. Nursing homes, intermediate care facilities, halfway houses, homes for the aged, or institutions of similar purpose are excluded from consideration as approved facilities under the CHAMPUS Basic Program.

NOTE.—In order to be approved under CHAMPUS an institution must, in addition to meeting CHAMPUS standards, provide a level of care for which CHAMPUS benefits are payable.

(76) *Supplemental diagnostic services.* Diagnostic services including clinical laboratory examinations, X-ray examinations, pathological examinations, and machine tests which produce hard copy results performed by civilian providers at the request of the attending Uniformed Service medical department physician (active duty or Civil Service) is not a benefit under CHAMPUS.

(77) *Supplemental consultation.* Consultations done by civilian providers at the request of an attending Uniformed Service medical department physician (active duty or Civil Service) is not a benefit.

(78) *Not specifically listed.* Services and supplies not specifically listed as a benefit in this Regulation. However, this exclusion is not intended to preclude extending benefits for those services and supplies specifically determined to be covered within the intent of this regulation by the Director, OCHAMPUS (or a designee) even though not otherwise listed.

NOTE.—The fact that a physician may prescribe, order, recommend or approve a service or supply does not, of itself, make it medically necessary or make the charge an allowable expense, even though it is not specifically listed as an exclusion.

§ 199.11 Program for the handicapped.

(a) *General.* The Program for the Handicapped is essentially a program of financial assistance for military personnel on active duty whose spouses or children may be moderately or severely mentally retarded or seriously physically handicapped and in need of specialized institutional care, training, or rehabilitation and the required services are not available from public institutions or agencies. The Program for the Handicapped was established by Congress to be a source of financial assistance in those instances where an active duty member's handicapped dependents have, by virtue of residency laws, been excluded from appropriate publicly-operated programs or institutions for the handicapped. There is, therefore, a requirement that all local resources must be considered and those determined to be adequate, utilized first, before an application for coverage under the Program for the Handicapped will be acted on by the Director, OCHAMPUS (or a designee). There is a further requirement that all institutional care otherwise authorized be provided in not-for-profit CHAMPUS approved institutions. Coverage for any services or supplies under the Program for the Handicapped requires prior approval.

(1) *Physical or mental examinations.* The Director, OCHAMPUS (or a designee), may request a beneficiary to submit to one or more appropriate medical (including psychiatric) examinations in order to determine the beneficiary's entitlement to benefits for which application has been made or for otherwise authorized services and supplies required in the proposed management plan for the handicapped individual. When such an examination has been requested, CHAMPUS will withhold payment of any pending claim(s) or preauthorization requests for that particular beneficiary. If the beneficiary (or sponsor) does not agree to the requested examination, or unless prevented by a medical reason acceptable to CHAMPUS, the examination is not performed within 90 days of the initial request, all pending claim(s) for services and supplies will be denied. A denial of payments for such services and/or supplies provided prior to, and related to the request for a physical examination, is not subject to reconsideration. The cost of the examination(s) will be at the expense of CHAMPUS (including any related beneficiary transportation costs). The examination(s) may be performed by a physician(s) in a Uniformed Services medical facility or by an appropriate civilian physician(s), as determined and selected by the Director, OCHAMPUS (or a designee), who is responsible for making such arrangements as are necessary.

(2) *Right to information.* As a condition precedent to the provision of benefits hereunder, OCHAMPUS and/or CHAMPUS Contractors shall be entitled to receive information from a physician or hospital or other person, institution, and/or organization (including a local, state or Federal Government agency) providing services or supplies to the beneficiary for which claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance, testing, monitoring, or examination or diagnosis of, or treatment rendered, or services and supplies furnished to, a beneficiary and shall be necessary for the accurate and efficient administration of CHAMPUS benefits. In addition, before a determination on a request for preauthorization or claim for benefits, a beneficiary or sponsor must provide particular additional information relevant to the requested determination when necessary. The recipient of such information shall in every case hold such records confidential except when: (i) Disclosure of such information is specifically authorized by the beneficiary; (ii) disclosure is necessary to permit authorized Governmental officials to investigate and prosecute criminal actions; or (iii) disclosure is specifically authorized or required under the terms of the Privacy Act and/or Freedom of Information Act (refer to paragraph (m) § 199.7, "General"). For the purposes of determining the applicability of and implementing the provisions of §§ 199.12 and 199.15, "Double Coverage" and "Federal Medical Recovery Act", respectively, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS and/or CHAMPUS Contractors may, without consent or notice to any beneficiary (or sponsor), release to any insurance company or other organization, Government agency, provider or other entity any information with respect to any beneficiary when such release constitutes a routine use duly published in the FEDERAL REGISTER in accordance with the Privacy Act (5 U.S.C. 552a.). Before an individual's claim for benefits will be adjudicated, the individual must furnish to CHAMPUS that information which may reasonably be expected to be in his or her possession and which is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim.

(3) *Timely filing of claims.* All claims submitted for benefits under this section must be filed with the appropriate CHAMPUS Contractor no later than December 31 of the calendar year following the one in which the covered service or supply was provided. Failure to timely file a claim automatically waives all rights to any benefits for otherwise covered services and/or supplies. (Refer to § 199.12 "Claims Submission, Review and Payment".)

(4) *Eligibility for benefits*—(i) *Eligibility criteria.* Eligibility criteria for CHAMPUS generally are contained in § 199.9. However, coverage of the Program for the Handicapped includes and is further limited to:

(*a*) The dependents, as defined in § 199.9, of a member of one of the Uniformed Services who is under call or order to active duty that does not specify a period of 30 days or less who are moderately or severely mentally retarded or who have a serious physical handicap; or

(*b*) The dependents of a deceased active duty service member who died after January 1, 1967, while eligible for receipt of hostile fire pay or from a disease or injury incurred while eligible for such pay, who are under 21 years of age, and who otherwise meet the criteria of paragraph (a)(4)(i)(*a*) of § 199.9, and were receiving benefits under the Program for the Handicapped at the time of said member's death.

(ii) *Sponsor Ceases to be Active Duty Member.* When the sponsor ceases to be an active duty member because of death, benefits under the Program for the Handicapped may be continued up through the last day of the calendar month following the month in which the sponsor's death occurred. When the sponsor ceases to be an active duty member for any other reason, i.e., retirement, separation or deserter status, benefits under the Program for the Handicapped cease as of 12:01 a.m. of the following day the status of the sponsor changes. Exception is made only for those spouses and children under 21 years of age of deceased members qualifying for continued benefits under provisions of paragraph (a)(4)(i)(*b*) of § 199.9. Any support or aid for the handicapped individual after CHAMPUS benefits cease are the responsibility of the sponsor (or parent or guardian).

(iii) *Scope of benefits.* Subject to the conditions and limitations set forth in this regulation, the Program for the Handicapped provides financial assistance toward the purchase of services and/or supplies necessary for the following:

(*a*) Diagnosis. (*b*) Inpatient, outpatient and home treatment. (*c*) Training, rehabilitation and special education. (*d*) Institutional care in private not-for-profit or public and state institutions and facilities. (*e*) When appropriate, transportation to and from such institutions and facilities.

(b) *Cost-sharing.* The sponsor is required to pay a portion of the costs for each month in which the dependent receives benefits under the Program for the Handicapped. The amount the sponsor pays is based upon the pay grade. The amounts required of members in each pay grade are as follows:

Member's pay grade:	*Share amount*
E-1 through E-5	$25
E-6	30
E-7 and O-1	35
E-7 and O-2	40
E-9, W-1, W-2, and O-3	45
W-3, W-4, and O-4	50
O-5	65
O-6	75
O-7	100
O-8	150
O-9	200
O-10	250

Except as specifically set forth in paragraph (b)(3) of this section, the Government's share of the cost of any benefits provided under the Program for the Handicapped cannot exceed $350 per month. Any amount remaining after the Government's maximum share has been reached is again the responsibility of the active duty member. In ascertaining the total charges against which the sponsor's and the Government's shares will be computed, certain considerations are made:

(1) *Charges/costs must be reasonable.* The charges/costs must be reasonable for the services and/or supplies provided. The cost-share computations will be made on the amount determined to be reasonable under the method used in the operation of the Basic Program (Refer to § 199.12, "Authorized Providers") and equivalent to a monthly billing unit.

(2) *CHAMPUS share limit.* The CHAMPUS share of the reasonable charges/costs of all benefits: *Provided,* The handicapped beneficiary in a given month will not exceed three hundred fifty ($350) dollars per month, except when there are two or more handicapped dependents in the same family, as described in paragraph (b)(3) of this section.

(3) *Two or more handicapped dependents.* In those instances where an active duty member has two or more dependents incurring expenses in a given month, the active duty member's monthly obligation will not be greater than he or she would be required to pay

if he or she had but one such dependent receiving benefits under the Program for the Handicapped. Such active duty member will be charged on the basis of the handicapped dependent incurring the least expense under the Program for the Handicapped in any given month. The active duty member is, however, obligated to pay at least the amount indicated for his or her applicable pay grade shown in paragraph (b) of this section. When the cost for one dependent is less than the amount shown for the applicable pay grade, the active duty member is obligated to pay such additional amount as is required to meet the cost shown for his or her pay grade in paragraph (b) of this section toward satisfying the bill of the second dependent receiving benefits under the Program for the Handicapped.

(4) *No prepayment of services.* In no case will payment be made in advance for services not yet rendered.

(5) *Absence from an institution: Cost-sharing implications.* As a general rule, CHAMPUS will not cost-share any costs incurred during a period the handicapped dependent is absent from an institution with the following exceptions:

(i) *Illness or injury requiring hospitalization.* When the handicapped dependent requires hospitalization, benefits under the Program for the Handicapped may be continued up to the last day of the calendar month following the calendar month in which the hospital inpatient stay began.

(ii) *Emergency situations.* Benefits under the Program for the Handicapped may be continued in bona fide emergency situations, such as serious illness or death in the immediate family, but in no case longer than 7 days including travel time.

(iii) *Therapeutic absences.* When a handicapped dependent leaves an institution for a therapeutic absence, benefits under the Program for the Handicapped may be continued for a period not to exceed 72 hours, including travel time.

(iv) *Holiday or school vacation.* When a handicapped dependent leaves an institution for a recognized holiday or school vacation during the school term, benefits under the Program for the Handicapped are limited to not more than 7 days each, including travel time, except that one such absence of up to 15 days, including travel time, is authorized each year. Payments for holiday and vacation absences are authorized only when all paying patients in the facility are charged for the absence.

(v) *Recording of absences.* All absences must be noted on the claim form and a detailed statement attached to the claim form explaining the duration and reason for the absence. Failure to do so will result in termination of benefits.

(c) *Criteria for qualifying for the program for the handicapped benefits*—(1) *General requirements.* To be considered for benefits, the applicant must be medically determined to be moderately or severely retarded or seriously physically handicapped to the following extent:

(i) *Duration of handicap.* The condition is expected to result in death; or has lasted, or is, with reasonable certainty, expected to last for a minimum of 12 months; and

(ii) *Extent of handicap.* The disability caused by the handicap is of such severity as to preclude the handicapped individual from engaging in substantially basic productive activities of daily living expected of unimpaired persons of the same age group.

(2) *Management plan.* The services and supplies provided the individual under the Program for the Handicapped must be appropriate to the individual's disability and should, to the maximum extent possible, benefit the individual through the treatment of the disabling condition or by enhancing the individual's ability to cope with or overcome the disability. The primary goal of the Program for the Handicapped is to maximize the potential of the individual to achieve as nearly a normal life style as possible and to maintain the individual in or to return the individual to, the home, public school and community environment whenever possible.

(3) *Purchase limitations.* Such services and supplies as may be authorized for purchase under the Program for the Handicapped are limited to appropriately functional and utilitarian services and supplies. Utility and economy will be given primary consideration in approval of equipment.

Example. Where basic mobility is required, a manual wheelchair will be authorized unless the physical disability is such that only an electric wheelchair is suitable.

(4) *Application approval.* The Director, OCHAMPUS (or a designee), is vested with the final approval authority on all applications for coverage under the Program for the Handicapped. This includes the determination as to the severity of the handicap and the appropriateness of the supplies or services to the handicapping condition for which coverage is requested. The Director, OCHAMPUS (or a designee), will request such information as is deemed necessary to make these determinations before issuing approvals or denials. Failure to supply such information will be cause for deferral or denial of an application.

(i) *Deferral of application.* In those situations where there has been a deferral of an application for coverage under the Program for the Handicapped because of inadequate information, but where the application is subsequently approved, such subsequent approval may be applied retroactively (i.e., for any otherwise covered care provided prior to actual approval) but limited to the period from the date the initial preauthorization request was received at OCHAMPUS.

(ii) *Denial of application.* In those situations where there has been denial of an application for coverage under the Program for the Handicapped, for any reason, and a subsequent application received and approved, the subsequent application is considered a new application and benefits may not be extended retroactively except as specifically provided for in paragraph (c)(4)(i) of this section.

(d) *Mental retardation*—(1) *Definition.* The term "mental retardation" refers to subnormal general intellectual functioning and is associated with impairment of either learning and social adjustment or maturation, or both. The diagnostic classification of moderate and severe mental retardation relates to IQ as follows:

(i) *Moderate.* Moderate mental retardation—IQ 36–51.

(ii) *Severe.* Severe mental retardation—IQ 35 and under.

NOTE.—It is recognized that the intelligence quotient should not be the only criterion used in making a diagnosis of mental retardation or in evaluating its severity. It should serve only to help in making a clinical judgment of the patient's adaptive behavioral capacity. This judgment should also be based on an evaluation of the patient's developmental history and present functioning, including academic and vocational achievement, motor skills, and social and emotional maturity.

(2) *Acceptable tests to measure intelligence.* The Wechsler Pre-School and Primary Scale of Intelligence, the Wechsler Intelligence Scale for Children (WISC) or Wechsler Adult Intelligence Scale (WAIS) are the CHAMPUS instruments of choice to determine IQ; however, a Stanford-Binet will be accepted. A person who cannot be tested by an age-appropriate instrument listed above can be tested by another test, provided that an acceptable explanation of why one of the listed tests could not be used is furnished to OCHAMPUS, along with a detailed explanation of "scoring" the test, for the purpose of statistical comparison with one of the above tests. IQ tests must be interpreted by a qualified psychologist certified by the state where the test is administered, or in states where certification is not required, the psychologist must have at least a Master's Degree in psychology. In states which certify "psychometrists" to administer and interpret IQ tests, that certification will suffice.

(e) *Serious physical handicap.*—(1) *Definition.* The term "serious physical handicap" means a medical condition of the body, which meets the following criteria:

(i) *Duration of handicap.* The condition is expected to result in death, or has lasted, or with reasonable certainty is expected to last, for a minimum of 12 months; and

(ii) *Extent of handicap.* The condition is of such severity as to preclude the individual from engaging in substantially basic productive activities of daily living expected of unimpaired persons of the same age group. For example:

(*a*) Persons older than high school age must be generally unable to engage in gainful pursuits because of the handicap.

(*b*) Persons of school age, up to and through high school age, must be unable to be provided an education through the public school system because of the handicap.

(2) *Examples of conditions which may cause serious physical handicaps.* Conditions which may result in serious physi-

eal handicaps include, but are not limited to, the following listed categories:

(i) *Visual impairment: Age seven (7) and over.* A vision impairment will be considered serious in persons seven (7) years of age and older if:

(*a*) The remaining vision in the better eye after best correction is 20/200 or less; or

(*b*) The contraction of visual fields is to 10 degrees or less from the point of fixation; or

(*c*) So the widest diameter subtends an angle no greater than 20 degrees; or

(*d*) The visual efficiency of the better eye after best correction is 20 percent or less; or

(*e*) Other conditions impairing visual function such as complete homonymous hemianopsia, or total bilateral ophthalmoplegia; and

(*f*) Which have reached the point where individual requires assistance to support the essentials of daily living.

(ii) *Vision Impairment: Under age seven (7).* A visual impairment in children under 6 years of age will be considered serious (even if correctable with lenses) in those cases where the visual impairment is manifested by 20/60 vision or less.

(iii) *Deafness: Age seven. (7) and over.* Deafness will be evaluated in terms of the person's ability to hear and distinguish speech. The degree of functional hearing loss is that loss of hearing and discrimination for speech which is not restorable by a hearing aid. A hearing impairment will be considered serious in those cases where the hearing impairment (not correctable by a hearing aid) is manifested by:

(*a*) Absence of air and bone conduction in both ears (auditory perception of not more than one pure tone at high volume will be considered as absence of air and bone conduction); or

(*b*) No more than 40 percent discrimination for speech (i.e., ability to hear and understand no more than 40 out of 100 words of special test lists of words using a speech audiometer or hearing aid); and

(*c*) Which have reached a point where the individual requires assistance to support the essentials of daily living.

(iv) *Deafness: Under age seven (7).* A hearing impairment in children under 6 years of age will be considered serious (even if correctable by a hearing aid) in those cases where the hearing impairment is manifested by a 30 decibel or more air conduction hearing loss in at least one ear.

(v) *Epilepsy: Major.* Major motor seizures (grand mal or psychomotor) substantiated by EEG, occurring more frequently than once a month in spite of prescribed treatment. With:

(*a*) Diurnal episodes (loss of consciousness) and convulsive seizures; or

(*b*) Nocturnal episodes which show residuals interfering with activity during the day; and

(*c*) Which has reached the point where the individual requires assistance to support the essentials of daily living.

(vi) *Epilepsy: Minor.* Minor motor seizures (petit mal or psychomotor) substantiated by EEG, occurring more frequently than once weekly in spite of prescribed treatment. With:

(*a*) Alternation of awareness or loss of consciousness; and

(*b*) Transient postictal manifestations of unconventional or antisocial behavior; and

(*c*) Which has reached the point where the individual requires assistance to support the essentials of daily living.

(vii) *Paralysis Agitans (Parkinson's Disease).* With:

(*a*) Tremor, rigidity, and significant impairment of mobility (e.g., festination); and

(*b*) Which has reached the point where the individual requires assistance to support the essentials of daily living.

(viii) *Cerebral Palsy.* With:

(*a*) IQ of 83 or less; or

(*b*) Abnormal behavior patterns, such as destructiveness, or emotional instability; or

(*c*) Significant interference in communication due to speech, hearing, or visual defect; or

(*d*) Significant motor deficit in two extremities; and

(*e*) Which has reached a point where the individual requires assistance to support the essentials of daily living.

(ix) *Multiple Sclerosis.* With:

(*a*) Significant motor deficits in two extremities; and

(*b*) Ataxia substantiated by appropriate cerebellar signs or proprioceptive loss; and

(*c*) Which has reached the point where the individual requires assistance to support the essentials of daily living.

(x) *Muscular Dystrophy.* With:

(*a*) Significant motor impairment and restricted mobility; and

(*b*) Flexion deformities of both lower extremities; or

(*c*) Significant weakness or paralysis of muscles of the shoulder girdle or of neck, with abduction of both arms at shoulder restricted to less than 90 degrees; and

(*d*) Which has reached the point where the individual requires assistance to support the essentials of daily living.

(xi) *Degenerative neurological diseases.* Other degenerative neurological diseases (i.e., Huntington's chorea, Friedreich's ataxia, spinocerebellar degeneration, etc.) which have reached the point where the individual requires assistance to support the essentials of daily living.

(xii) *Musculoskeletal system.* Serious impairments of the musculoskeletal system which have reached the point where the individual requires assistance to support the essentials of daily living.

(xiii) *Respiratory system.* Serious impairments of the respiratory system which have reached the point where the individual requires assistance to support the essentials of daily living.

(xiv) *Trauma.* Serious impairments resulting from trauma which are at a level that requires assistance to support the essentials of daily living.

(xv) *Diabetes Mellitus.* Severe physical limitations resulting from diabetes mellitus occurring in children (i.e., under 18 years of age) which have reached the point where the individual requires assistance to support essentials of daily living.

(xvi) *Multiple conditions.* In some instances, there are two or more conditions involving separate body systems, neither condition in itself seriously handicapping, but which, in combination, are of such severity as to delimit activities in a seriously handicapping manner and have resulted in the individual requiring assistance to support the activities of daily living. Each such multiple condition case will be reviewed on its own merits.

(f) *Procedures for obtaining benefits.* Active duty members seeking benefits under the Program for the Handicapped for a dependent spouse or child must secure authorization from OCHAMPUS for such benefits in advance. Payments will not be made for any services or supplies under the Program for the Handicapped received/obtained prior to approval of the application by the Director, OCHAMPUS (or a designee).

(1) *Completed application.* Application is made by completing a CHAMPUS Form 190a, "Request for Health Benefits Under the Program for the Handicapped" (as may be amended), and mailing it to the Director, OCHAMPUS, Denver, Colorado 80420.

(2) *Additional required information.* The applicant will also submit along with the required CHAMPUS Form 190a, the following:

(i) *Statement of Dependent's Condition.* A medical statement of the dependent's condition, giving a specific diagnosis, using the most current ICDA, history of mental retardation or physical handicap, present condition, prognosis, and a proposed, detailed management plan for the handicapping condition, including estimated charges/costs. This statement must be signed by the supervising physician. The medical report may be submitted directly by the physician if so desired.

(ii) *Use of Other Than Public Facilities.* Within the United States, if the management plan proposes to use other than public facilities, a statement is required from a cognizant public official certifying to the fact that public facilities are or are not available or are or are not adequate to meet the needs of the the handicapped individual, and that public funds are or are not made available for support of the needs of the handicapped individual in alternative facilities deemed adequate.

NOTE.—Inasmuch as there is great diversity in the types of public programs and institutions offering services to the handicapped, it is impossible to list in detail the cognizant public officials in each state, county, or local community. As a general rule, the cognizant public official is associated with a public program who has broad knowledge of and authority for providing the services related to the types of handicap, for which CHAMPUS benefits are being requested. For example, in the case of a mentally retarded

school-age child who needs to be placed in a special class for the educable handicapped, the cognizant public official could be the Director of Special Education for the local school district rather than the principal of the nearest school. In some states where special educational programs are managed at the state level, the cognizant public official may have to be the State Director of Special Education. In still other cases where some kind of vocational rehabilitation is required, the cognizant public official may be an official in the State Department of Vocational Rehabilitation, while in another state all vocational rehabilitation programs may be controlled by the Department of Human Resources or the Department of Social Services. It is the sponsor's responsibility to determine the appropriate cognizant public official.

(iii) *Information on available programs.* OCHAMPUS will assist a sponsor to obtain information from those agencies that are possible sources of assistance for the specific condition.

(iv) *Application review procedure.* A review of the Program for the Handicapped applications will be done by the Director, OCHAMPUS (or a designee), who will:

(*a*) Determine if the individual's degree of mental retardation or physical disability (as documented by a physician) is such as to qualify for benefits;

(*b*) Evaluate the proposed management plan to determine if it is appropriate to the handicapping condition and if the charge/cost is reasonable; or if the services to be provided can be obtained more effectively and economically in another CHAMPUS-approved facility providing the same services; and

(*c*) Evaluate the cognizant public official's statement if the management plan proposes the use of private facilities.

(*d*) If, in the opinion of the Director, OCHAMPUS (or a designee), the statement of the cognizant public official is inadequate or inappropriate, additional information will be required and the sponsor will be required to contact the agency or official determined to be most cognizant of programs for the handicapped in the sponsor's community and obtain a statement as to availability or nonavailability of appropriate public facilities.

NOTE.—Due to both the wide variety of handicapping conditions and the large number of public institutions and agencies which operate independently of each other, the Director, OCHAMPUS (or a designee), will establish contact with these institutions and agencies and offer information and assistance to CHAMPUS beneficiaries so that they can obtain access to those public programs to which they have a legal entitlement. This will include information on such matters as the Interstate Compact, in which many states participate, state laws regarding the right to education, services under the Rehabilitation Act, and similar programs. Approval for Program for the Handicapped benefits will be issued only when it has been determined to the satisfaction of the Director, OCHAMPUS (or a designee), that the required services are not available from public sources and that the proposed plan of management will be beneficial to the handicapped person.

(v) *Application approval: Limitations.* The application approval will be specific as to the approved facility, management plan and/or services and supplies being authorized under the Program for the Handicapped as well as the specific period of time for which authorization is being made. The application approval may also list other requirements (such as a specific reevaluation requirement in 6 months).

NOTE.—The approved application is valid for only 90 days. If admission to the approved facility is not accomplished and/or the management plan is not commenced within 90 days of the date the application is approved, a new application must be submitted for evaluation.

(vi) *Periodic review and reevaluation.* A periodic review and reevaluation of the status of individuals who have been approved for coverage under the Program for the Handicapped will be conducted by the Director, OCHAMPUS (or a designee), under the following circumstances:

(*a*) *At least annually.* The supervising physician's report, a completed CHAMPUS Form 141, "Diagnostic Evaluation, Program for the Handicapped," a new, updated management plan, and a new cognizant public official's statement will be submitted reflecting any changes which may have occurred in the 12 month period.

NOTE.—The Director, OCHAMPUS (or a designee) may require that any specific case be reviewed more often than annually.

(*b*) *Change of institution.* When a dependent handicapped beneficiary is removed from an institution which was the basis for the issuance of an approval under the Program for the Handicapped, placement in a new institution requires a new application.

(*c*) *Sponsor reassignment.* A sponsor who is reassigned to another location within the United States will be required to determine within 60 days from the date of reporting to a new duty assignment, if public facilities appropriate to the needs of the handicapped dependent are available. If they are not, it will be necessary to substantiate this fact with a new cognizant public official's statement. Failure to take such action will result in termination of coverage under the Program for the Handicapped on the 61st day following the date the sponsor reported to the new duty assignment.

NOTE.—If it is determined that public facilities are available at the new location, the Director, OCHAMPUS (or a designee) may determine that the handicapped beneficiary may continue to receive benefits for inpatient care at the former location under the PPTH until the end of the current school year.

(g) *Use of public facilities.* To qualify for benefits under the Program for the Handicapped, public facilities and/or state funds must be used to the maximum extent they are available or adequate.

(1) *Statement of school official or other cognizant public official.* For dependents for whom special educational benefits are requested, the sponsor must submit a statement from the superintendent of the local public school district, or designee, to the effect that the public school district is aware in detail of the individual's tested educational handicaps and that an adequate educational opportunity is or is not available for the individual, either in the public schools or through public resources. A statement must be made by certificate as to whether or not applicable law requires public funds to help defray the cost of private schooling in the event public schooling is not available or adequate; and if the law requires such funding. If there is a waiting list for "adequate" public care, the anticipated length of wait must be stated. A new statement from the superintendent of the local public school district, or a designee, will be required at the beginning of each school year, or more frequently, as determined by the Director, OCHAMPUS (or a designee).

(2) *Determination that public facility is adequate.* A certified statement by a cognizant public official that a public facility or service is or is not available and is or is not adequate to meet the needs of the handicapped spouse or child is prima facie evidence of the facts stated. The Director, OCHAMPUS (or a designee), has final authority in determining whether a facility is available and adequate. CHAMPUS benefits will not be extended in those situations where the beneficiary (or sponsor) elects not to use the public facilities which have been determined to be available and adequate.

(3) *State contracts with private facilities.* As an exception, when a state (but not a county or municipality) government contracts for institutional care in private facilities, payment to the state is authorized since the care provided in such facilities or homes is considered to be state institutional care. In such case, the following 4 requirements must be met and appropriate documentation submitted:

(i) *Determination of State responsibility.* A determination must be made by the state that it has a responsibility for providing care for the dependent's handicapping condition.

(ii) *Determination that Public facility placement cannot be made.* The state or other local jurisdiction must determine that the dependent cannot be placed in a public facility and no state funds are available for such care.

(iii) *State must make placement.* The state must make the placement, or determine that it is responsible for a dependent already placed.

(iv) *Acceptable billing and financial procedure.* The state must be billed for the services provided by the private facility. The state may not simply act as an "intermediary" or a conduit for billing and payment purposes; and CHAMPUS cannot be billed by the state for a greater amount than that billed to other non-CHAMPUS patients in like circumstances.

(h) *Covered services and supplies—*

(1) *General.* As a general rule, the services and supplies covered under the Program for the Handicapped are those services and supplies which contribute directly to the habilitation or rehabili-

tation of the handicapped individual. This may include institutional care when the severity of the disability requires protective custody in an institutional setting. Active medical or surgical treatment of an acute illness may be considered under the CHAMPUS Basic Program where such treatment is not included as a part of the management plan or a routine part of the institutional services approved under the Program for the Handicapped. Notwithstanding, all services, supplies, and equipment required by and directly related to the handicapping condition, including those services and supplies approved under the management plan, shall be considered for benefits only under the Program for the Handicapped, whether or not under other circumstances Basic Benefits could apply. The only exception to this requirement is a serious, acute exacerbation of the handicapping condition requiring an inpatient hospital stay. In such case, Basic Program benefits are applicable for the required period of hospitalization.

Examples. (i) A mentally retarded child in an institution for the retarded becomes ill with appendicitis and is admitted to a general hospital for surgery. The charges related to the inpatient episode in a general hospital for the acute appendicitis are considered under the Basic Program.

(ii) Another individual with a neurological disability, such as Parkinson's disease, is placed, under the Program for the Handicapped, in an institution for individuals similarly afflicted. The institutional charges are all-inclusive and all residents receive routine medications, diet supplements, periodic medical examinations, etc., and those services and supplies are part of the total management plan. This situation would be cost-shared under the Program for the Handicapped and benefits would not be available under the CHAMPUS Basic Program.

(iii) In the third situation, an individual, placed in an institution under the Program for the Handicapped because of Huntington's Chorea, experiences an acute episodic period which warrants admission to a hospital for medical treatment of the acute phase and which was not included as a part of the approved management plan. This inpatient hospital care would be considered for benefits under the Basic Program.

(2) *Extent of covered services and supplies.* Subject to such other definitions, conditions, limitations and exclusions enumerated in this and other sections of this regulation, the following services and supplies (including durable equipment) are covered under the Program for the Handicapped (PFTH):

(i) *Diagnostic evaluation.* Diagnostic evaluation on either an inpatient or outpatient basis by a physician. This includes hospitalization or institutionalization solely for the purpose of conducting diagnostic studies performed by or under the supervision of a physician if such an inpatient setting is medically necessary to perform the diagnostic evaluation. Diagnostic evaluations do not require prior approval, but are payable only in those cases resulting in approval of the handicapped beneficiary under the PFTH. If the diagnostic evaluation is done on an inpatient basis, any benefits for the inpatient stay related to such evaluation will not exceed 5 days of an inpatient stay.

(ii) *Durable equipment.* The purchase of durable equipment may be authorized where certified by a physician as necessary in the treatment, habilitation or rehabilitation of a handicapped beneficiary. Except under extremely unusual situations (which would require individual review and consideration), durable equipment required by an institutionalized handicapped beneficiary must be provided by the institution as a part of the management plan and included in the monthly institutional charges.

(*a*) In order to qualify as durable equipment under the PFTH, the item will be evaluated against the following criteria:

(*1*) It must be clearly related to and necessary for the habilitation, treatment, or training of beneficiaries with the given handicap.

(2) It must improve the function of a malformed body member or retard further deterioration of the handicapped beneficiary's physical condition.

(3) It cannot be useful to anyone in the absence of a physical or mental disability.

(*4*) It must be primarily and customarily used to serve a medical or habilitative purpose rather than primarily for transportation, comfort or convenience.

NOTE.—A wheelchair is not considered transportation in the sense of this paragraph (h)(2)(ii)(*a*)(*4*) of this section. It qualifies as durable medical equipment under paragraph (h)(2)(ii)(*a*)(2) of this section, because by providing basic mobility, it retards further deterioration of the patient's physical condition. Mobility, beyond that basic mobility provided by a wheelchair is considered to be primarily transportation. For example, cart-type vehicles, (such as the "Amigo") do not qualify as durable medical equipment.

(*5*) It cannot be beyond the minimum level of performance and quality required under the circumstances (i.e., nonluxury, non-deluxe). However, this subdivision is not intended to preclude special fitting of equipment to accommodate a particular disability (such as fitting a wheelchair for a one-armed individual).

(*6*) It is not available for loan from a local Uniformed Services medical treatment facility.

(*7*) Only one similar item of durable equipment will be purchased during any one period of time; and benefits include repair of durable equipment purchased under the PFTH and its subsequent replacement if it is determined that the previous item is no longer usable.

(*8*) There must be written preauthorization by OCHAMPUS prior to the date of purchase of durable equipment. Such authorization is specific as to the item of durable equipment being approved. Further such authorization is only valid for 90 days from date issued. If the item of durable equipment is not purchased within the time limit, a new preauthorization is required. Purchase of durable equipment may not be approved retroactively.

(*9*) Benefits may also be extended for the reasonable changes for repair and replacement parts (such as batteries), including adjustment of durable equipment purchased under the Program for the Handicapped. Such repair or part replacement or adjustment does not require preauthorization unless the charge is $50.00 or more. In the case of an emergency, a charge above that amount may be considered without preauthorization, subject to special review.

(*b*) *Cost-sharing of durable equipment purchases.* Durable equipment will normally be cost-shared in the month that the purchase is made. However, where the price of durable equipment is high charge/cost item, the sponsor has the option of spreading the purchase price evenly over a consecutive 6 month period, beginning with the month of purchase: *Provided,* That no payments will be made by CHAMPUS beyond the termination of eligibility as a CHAMPUS beneficiary. No other payment option is available.

(iii) *Prescription drugs and medicines.* Prescription drugs and medicines; and insulin for a known diabetic are covered. Drugs and medicines are limited to those approved for general use by humans (other than testing) by the U.S. Food and Drug Administration.

(iv) *Outpatient treatment.* Such outpatient treatment as may be appropriate to the treatment and habilitation of the handicapped person related to the handicapping condition is coverable. Such services would include, but not be limited to, physical therapy, occupational therapy, vocational training, speech therapy, and special educational services.

(v) *Home treatment.* Certain services authorized by this section may be provided to the handicapped individual in the home if that setting is considered the most reasonable and appropriate. Such services would include, but not be limited to, physical therapy, occupational therapy, vocational training, speech therapy, and special educational services.

(vi) *Institutional care (inpatient).* Institutional care within the PFTH is primarily long-term residential (inpatient) care for the handicapped individual in private nonprofit, public, or state institutions and facilities. Such institutions include, but are not limited to, schools for the deaf and blind and institutions for the physically and/or mentally handicapped persons.

(vii) *Special optical devices.* Certain special optical devices necessary to ameliorate the handicapping condition are covered, but are limited to the following:

(*a*) Contact lenses necessary to correct a visual handicap which qualifies under paragraph (e)(2)(i) of this section.

(*b*) Subnormal visual corrective devices such as telescopic and isoiconic lenses.

(*c*) Optical aids such as hand-held optical devices for reading.

(viii) *Prosthetic devices and orthopedic appliances.* Such prosthetic devices and orthopedic appliances as are

needed to correct or overcome a physical disability are covered. This includes artificial limbs and orthopedic braces.

(ix) *Professional services.* The services of a wide variety of both medical and educational professionals are covered. Their services may be provided on either an inpatient or an outpatient basis subject to the following criteria:

(*a*) Services of professional personnel include, but are not limited to, the services of physicians, dentists, optometrists, speech pathologists, audiologists, physical therapists, occupational therapists and nurses. Such professional personnel must be licensed within the jurisdiction in which the services are provided and must otherwise be in compliance with applicable Federal and state laws regarding the practice of their specialty. Where there is no license requirement, they must be eligible for membership in the state or national association setting the standards for their respective group.

(*b*) Services of teachers of the handicapped who meet the standards of the school system in the jurisdiction in which located and who provide special education such as, but not limited to, remedial reading, speech training, or special classes for seriously physically handicapped or moderately or severely mentally retarded children.

(*c*) Services of vocational instructors who teach physically handicapped or mentally retarded persons a trade or occupation, e.g., teaching a blind person to be a mechanic or typist. These instructors must meet the standards in the school system where the training is being conducted.

(*d*) The Director, OCHAMPUS (or a designee), is the final authority as to whether a professional (either as an individual or as a class) is approved as an authorized professional provider under the PFTH.

(x) *Related therapy.* Therapy, such as family counseling, for parents of a handicapped child, is authorized when needed as an integral part of the treatment for the child, as determined by the Director, OCHAMPUS (or a designee), and approved as a part of the management plan.

(xi) *Special tutoring.* Tutoring by qualified individuals provided on an outpatient basis or in the patient's home to individuals who are either physically handicapped or moderately or severely mentally retarded is an authorized benefit. Tutors must meet qualifications outlined in paragraph (h)(2)(i) (*a*), (*b*), and (*c*) of this section. Private tutoring to supplement a public education or special education enhancement programs, or training program for a child temporarily disabled due to acute illness or injury, is not covered under the Program for the Handicapped.

(xii) *Surgery and medical care.* When necessary to treat or correct a handicapping condition, as defined in this § 199.11 by the terms "mental retardation" (moderate or severe) or "serious physical handicap," surgery and medical care may be authorized on either an inpatient or outpatient basis. Where appropriate and approved as a part of the management plan, this may include authorized adjunctive dental care.

(xiii) *Training and special education.*

(*a*) Education or training needed to alleviate, overcome or adjust to a serious physical handicap or moderate or severe mental retardation is an authorized benefit provided it is included as a part of the approved management plan. This includes, but is not limited to, remedial reading, speech training, use of artificial aids, and education provided physically handicapped and mentally retarded persons on either an inpatient or outpatient basis.

(*b*) Training and special education also includes special vocational training or education wherein a physically handicapped or mentally retarded person is taught a trade or occupation to aid in overcoming or adjusting to his condition (e.g., teaching a blind person to be a mechanic or typist), but in no event beyond high school level.

(xiv) *Transportation.* (*a*) Transportation is authorized for medically eligible handicapped dependents by Government, commercial, public or private means to and from approved facilities in which the dependent is to receive or has received institutional care for which benefits have been approved under the Program for the Handicapped. Transportation must be necessary and justified by the attending physician.

(*b*) Transportation benefits may be requested in conjunction with an application for other benefits under the Program for the Handicapped, or a request for approval of transportation benefits may be submitted separately.

(*c*) If other than local public transportation or transportation by privately-owned vehicles is to be used, a request for approval must be supported with evidence that a less expensive means of transportation is not available, or that the means to be used is medically necessary.

(*d*) With respect to local transportation, if more than two round trips daily are necessary, supporting justification must be submitted. In every instance where Government transportation is available, it must be used.

(*e*) When distant transportation is medically necessary, Government transportation will be used in every instance, when available. Under very unusual circumstances, if determined to be medically necessary and also certified by the attending physician, transportation for a medical attendant may be approved.

(xv) *Transportation restrictions.* (*a*) Transportation benefits are subject to the $350 per month limitation on Government cost under the Program for the Handicapped and must be applied during the month the transportation actually occurs. The cost may not be prorated over a period of months. Any transportation cost shall be added to any other cost of care under the Program for the Handicapped for that month.

(*b*) Reimbursement for travel costs will be made on the basis of actual transportation costs when transportation is by privately-owned vehicle or the ticket costs in the case of other kinds of travel, plus other reasonable transportation costs, such as airport limousine, in connection with medically necessary air travel. Receipted bills must be obtained for any transportation costs not covered by a ticket. The cost of meals, motels, tips, etc., that may be related to transportation is not an authorized benefit.

(*c*) When commercial transportation is used, the least expensive form only is authorized, e.g., coach or tourist class rather than first-class accommodations must be utilized. Travel outside the United States is not authorized.

(*d*) Transportation is payable only to or from a public or private nonprofit facility. Transportation costs to or from a proprietary facility will not be paid.

(*e*) Carpooling will be required whenever possbile when two or more handicapped dependents are seeking reimbursement of travel costs by private vehicle to and from the same location. Only the owner/operator of the vehicle used in the carpool may be reimbursed. Reimbursement is limited to actual transportation costs or $0.155 per mile, whichever is lower.

(i) *Utilization review/quality assurance.* It is the intent of this Regulation that before any benefits may be extended, any services and supplies furnished by any provider shall be subject to utilization review and quality assurance standards, norms and criteria issued by the Director, OCHAMPUS (or a designee).

(j) *General limitations.* All services and treatment received under the Program for the Handicapped must be in connection with the handicapping condition. Medical or surgical services required, but not in connection with the handicapping condition, can be considered for benefits under the Basic Program. In such a situation the active duty service member is responsible for cost-sharing under both programs. The following services are not covered under the Program for the Handicapped:

(1) *Academic education.* Specialized academic education for those with educational or learning disabilities normally provided in a public school system or institution of higher learning are not covered benefits under the Program for the Handicapped. These learning disabilities include dyslexia, perceptual handicaps, hyperkinetic behavior syndrome, neurological dysfunction, reading disability and minimal brain dysfunction. (This does not exclude learning disabilities which are derived from or related to moderate or severe mental retardation or a serious physical handicap.)

(2) *Alternations.* Alternations to living spaces and permanent fixtures attached thereto even when necessary to accommodate installation of covered durable equipment or to facilitate ingress or egress, not authorized for payment under the Program for the Handicapped.

(3) *Custodial care.* Custodial care in the home, including homemaker, sitter and/or companion services are not covered.

(4) *Dental care.* Dental care, except for adjunctial dental care required in the treatment of a handicapping condition, is not authorized. Orthodontic treatment is not authorized under any circumstance.

(5) *Non-approved drugs and medications.* Drugs and medications not approved for general use by humans by the U.S. Food and Drug Administration, whether or not legally available outside the United States. However, if a drug or medicine is listed in the "U.S. Pharmacopeia, and/or "National Formulary" and requires a prescription, it is not excluded by this provision even if it is under investigation by the U.S. Food and Drug Administration as to its effectiveness.

NOTE: In areas outside the United States standards similar to those of the U.S. Food and Drug Administration is the CHAMPUS objective.

(6) *Outside the United States.* Facilities outside the United States are not eligible as an approved facility under the PFTH regardless of whether otherwise qualified. In addition, any excursions outside the United States are not eligible for benefits even though part of a program offered by an approved facility in the United States.

(k) *Authority to determine eligibility under program for the handicapped.* The Director, OCHAMPUS (or a designee) is authorized to review a Basic Program case and make a determination that the particular beneficiary meets the definitions of a moderately or severely retarded and/or seriously physically handicapped dependent as set forth in paragraphs (d) and (e) of this section, whether or not an application for benefits under the PFTH has been submitted by the sponsor. In such event, the Director, OCHAMPUS (or designee) will notify the sponsor that benefits for services and/or supplies related to the handicapping condition(s) are no longer available under the CHAMPUS Basic Program (except under those circumstances as may otherwise be specifically set forth in this section); and further, that the Basic Program case will be transferred to the Program for the Handicapped as of the first day of the second month following the date of such notice.

(l) *Implementing instructions.* The Director, OCHAMPUS (or a designee) shall issue a CHAMPUS Operating Manual and such other instructions, procedures, guidelines, standards and/or criteria as may be necessary to implement the intent of this section, "Program for the Handicapped."

§ 199.12 Authorized providers.

(a) *General.* This paragraph sets forth general policies and procedures that are the basis for the CHAMPUS cost-sharing of medical services and supplies provided by institutions, individuals, or other types of providers.

(1) *Listing of provider does not guarantee payment of benefits.* The fact that a type of provider is listed in this section is not to be construed to mean that CHAMPUS will automatically pay a claim for services or supplies provided by such a provider. CHAMPUS Contractors must also determine if the patient is an eligible beneficiary and whether the services or supplies billed are authorized and medically necessary, regardless of the standing of the provider to the provisions of this section.

(2) *Outside the United States or Emergency Situations within the United States.* Outside the United States, or within the United States and Puerto Rico in emergency situations, the Director, OCHAMPUS (or a designee), may after review of the facts provide payment to or on behalf of a beneficiary who receives otherwise covered services and/or supplies from a provider of service that does not meet the standards described in this regulation.

NOTE: Only the Secretary of Defense, or Secretary of Health, Education, and Welfare (or their designees) may authorize (in emergency situations) payment to civilian facilities in the United States and Puerto Rico which are not in compliance with Title VI of the Civil Rights Act of 1964.

(3) *Conflict of interest.* Federal law (5 U.S.C. 5536) prohibits medical personnel who are active duty members or civilian employees of the Government from receiving additional Government compensation above their normal pay and allowances for medical care rendered. This prohibition applies to CHAMPUS benefits whether the claim for reimbursement is filed by the individual who provided the care, the facility in which the care was rendered, or by the sponsor and/or beneficiary. CHAMPUS payments will also be disallowed to Special Treatment Facilities, Residential Treatment Centers, or other institutional providers that are found to employ (moonlighting) any member or employee of the Uniformed Services, either uniformed or civilian, who, through an official Federal position, has the opportunity to exert directly or indirectly, any influence on the referral of CHAMPUS beneficiaries to that institution. This prohibition is intended to preclude possible conflicts of interest. All such instances coming to the attention of the Director, OCHAMPUS (or a designee), will be referred to the applicable Uniformed Service for investigation and appropriate action. However, any situations in which it appears that CHAMPUS beneficiaries/patients are being channeled to selected individual professional providers in the civilian sector when other similar participating providers are available, will be investigated by the Director, OCHAMPUS (or a designee). If any conflicts or improprieties are found to exist, such cases will also be referred to the appropriate Uniformed Service for appropriate action. A report of the results of the findings and action taken shall be made to the Director, OCHAMPUS (with a copy to the General Counsel of the Department of Defense) by the Uniformed Service having jurisdiction, within 90 days of receiving the referral.

NOTE: Physicians of the National Health Service Corps (NHSC) may be assigned to remote areas where there is a shortage of medical providers. Although these physicians would be prohibited from accepting CHAMPUS payments, the private organizations to which they may be assigned would remain eligible for payment in certain cases, as determined by the Director, OCHAMPUS (or a designee).

(4) *Fraudulent practices or procedures.*—(i) *Provider exclusion CHAMPUS determination.* The Director, OCHAMPUS (or a designee) shall deny payments to any provider (or to a beneficiary for the services rendered by that provider) that has been found knowingly submitting or making any false, fictitious, or fraudulent statement or claim against the Program or assisting any beneficiary in making similar false, fictitious or fraudulent statements or claims. Payment will also be denied for claims resulting from care rendered by a provider subsequent to notice by OCHAMPUS of that provider's disqualification from participation in CHAMPUS. False, fictitious and fraudulent claims include those claims in which the amount has been adjusted to an artificial level (i.e., higher than the usual charge to other patients) to permit the provider to waive the deductible and/or cost-share amounts owed by the beneficiary (or sponsor) but still compensating the provider, without a significant reduction in the full amount normally received for such care. In such cases the Director, OCHAMPUS (or a designee), should also provide notice to the beneficiary population in the locality of the provider for whom payments are being denied, by means of notification to Uniformed Services' facilities and offices.

(ii) *Provider exclusion HEW determination.* Any provider that has been determined by the Secretary of the Department of Health, Education, and Welfare to have furnished supplies or services which were substantially in excess of the needs of individuals, or to be harmful to individuals, or to be of a grossly inferior quality; and the Secretary has on the basis of such a determination terminated the agreement of that provider for purposes of reimbursement under Titles XVIII and XIX of the Social Security Act, will also be denied CHAMPUS reimbursements (or to a beneficiary for services rendered by that provider).

(iii) *For-Profit Institutions Excluded Under Program for the Handicapped.* Public law precludes payment of benefits under the Program for the Handicapped for otherwise covered services and supplies provided by a for-profit institution. (Refer to § 199.11 "Program for the Handicapped.")

(5) *Utilization review/quality assurance.* It is the intent of this Regulation that before any benefits may be extended, any services and supplies furnished by any provider shall be subjected to utilization review and quality assurance standards, norms and criteria issued by the Director, OCHAMPUS (or a designee). (Refer to § 199.10, 199.11 and 199.13 "Basic Program Benefits," "Program for the Handicapped," and "Claims Submission, Review and Payment," respectively.)

(6) *Physician required.* Except as may otherwise be specifically provided in this and other sections of this regulation, in order to be considered for benefits, medical services and/or supplies received from any provider (other than a doctor of medicine or doctor of osteopathy) must be at the direction of, prescribed by and/or ordered by, a physician.

(7) *Participating provider.* Under CHAMPUS, an authorized provider has the option of participating on a claim-by-claim basis. If a provider elects to participate, the provider signs the applicable CHAMPUS claim form(s) and submits it to the appropriate CHAMPUS Contractor on behalf of the beneficiary/patient. (In the case of an institution or medical supplier, the claim must be signed by an individual having such authority.) This signature certifies that the provider has agreed to accept the CHAMPUS-determined reasonable charge/cost as payment in full for the medical services and supplies listed on the specific claim form; and further has agreed to accept the amount paid by CHAMPUS and/or the CHAMPUS payment combined with the cost-sharing amount paid by (or in behalf of) the beneficiary/patient, as full payment for the covered medical services and/or supplies.

(b) *Institutional providers*—(1) *General.* Institutional providers are those providers who bill for services in the name of an organizational entity (e.g., hospital, skilled nursing facility, etc.) rather than in the name of individual. The term "institutional provider" does not include professional corporations or associations qualifying as a domestic corporation under § 301.7701-5 of the Federal Income Tax Regulation nor does it include other corporations that provide principally professional services. Institutional providers may provide medical services and supplies on either an inpatient or outpatient basis.

(i) *Preauthorization.* Except for admissions to those institutions which qualify as hospitals, infirmaries or Christian Science sanitoriums, for purposes of Basic Program benefits, in order for benefits to be extended for inpatient services and supplies, written preauthorization is required in accordance with the CHAMPUS Operating Manual and such other instructions, procedures and guidelines issued or caused to be issued by the Director, OCHAMPUS (or a designee). (Refer to §§ 199.10 and 199.11, "Basic Program Benefits" and "Program for the Handicapped," respectively.)

(ii) *Billing practices.* Institutional billings must be fully itemized and sufficiently descriptive to the satisfaction of CHAMPUS. In the case of continuous care, claims should be submitted to the appropriate CHAMPUS Contractor, at least every 30 days (i.e., monthly), by either the beneficiary (or sponsor) or directly by the institution, on behalf of the beneficiary/patient.

(2) *Nondiscrimination policy.* Except as provided below, payment cannot be made for inpatient or outpatient care provided and billed by an institutional provider found by the Federal Government to practice discrimination in the admission of patients to its services on the basis of race, color or national origin. Further, reimbursement cannot be made to a beneficiary who pays for care provided by such a facility and submits a claim for reimbursement. In the following circumstances, the Secretary of Defense (or a designee) may authorize payment for care obtained in an ineligible facility:

(i) *Emergency care.* Emergency inpatient or outpatient care.

(ii) *Care rendered prior to finding of a violation.* Care initiated prior to a finding of violation and which continues after such violation when it is determined that a change in the treatment facility would be detrimental to the health of the patient and the attending physician so certifies.

(iii) *Other facility not available.* Care provided in an ineligible facility because of the absence of an eligible facility within a reasonable distance.

(3) *Procedures for qualifying as a CHAMPUS-approved institutional provider.* General and special hospitals otherwise meeting the qualifications outlined in paragraph (b)(4)(i), (ii), and (iii) of this section are not required to formally request CHAMPUS approval.

(i) *JCAH accreditation status.* Each CHAMPUS Contractor will keep informed as to the current JCAH accreditation status of all hospitals in its area; and the hospitals' status under Medicare with regard to compliance with Title VI of the Civil Rights Act of 1965 (42 U.S.C. 2000d(1)). All other authorized institutional providers providing services to CHAMPUS beneficiaries must be specifically approved as a source of care by the Director, OCHAMPUS (or a designee).

(ii) *Required to comply with criteria.* Facilities seeking CHAMPUS approval will be expected to comply with appropriate criteria set forth in subparts of this Section. They also are required to complete and submit CHAMPUS Form 200 ("Required Information, Facility Determination Instructions") and provide such additional information as may be requested by OCHAMPUS. An on-site evaluation, either scheduled or non-scheduled, may be conducted at the discretion of the Director, OCHAMPUS (or a designee). The final determination regarding approval, reapproval, or disapproval of a facility will be provided in writing to the facility and the appropriate CHAMPUS Contractor.

(iii) *Surveying of facilities.* The surveying of newly established institutional providers and the periodic resurveying of all authorized institutional providers is a continuing process conducted by OCHAMPUS.

(iv) *Institution not in Compliance with CHAMPUS Standards.* If a determination is made that an institution is not in compliance with one or more of the standards applicable to its specific category of institution, OCHAMPUS shall take immediate steps to bring about compliance or terminate its approval as an authorized institution.

(a) *Minor violations.* An institution determined to be in minor violation of one or more of the standards shall be advised by certified mail as to the nature of the discrepancy(ies) and will be given a grace period of not less than 30 days to effect appropriate corrections.

(1) During such grace period, CHAMPUS will not cost-share on any beneficiary/patients admitted during the grace period.

(2) Any beneficiaries already in the institution (or their sponsors) shall be notified in writing of the minor violations and the grace period granted to the institution to correct them.

(3) If the institution notifies OCHAMPUS (in writing) before the end of the grace period that corrective action has been taken, those beneficiaries in the institution (or their sponsors) will be notified and benefits continued (assuming the case is otherwise covered). Also, for any beneficiary admitted during the grace period, benefits may begin to be extended (if the case is otherwise covered) as of 12:01 a.m. on the day notice of correction is received by OCHAMPUS.

(4) If the institution has not notified OCHAMPUS (in writing) before the end of the grace period that corrective action has been completed, the Director, OCHAMPUS (or a designee) may terminate CHAMPUS approval as an authorized institution.

(b) *Major violations.* A determination that an institution is in major violation of standards significantly detrimental to life, safety and health, or substantially in violation of approved treatment programs, will result in immediate termination as an authorized institution. The institution shall be notified of the termination, by telegram or certified mail, such notice to include the nature of the violations.

(c) *Notice to beneficiary/patients (or sponsor) upon termination of approval as an authorized institutional provider.* Whenever approval as an authorized institutional provider is terminated any beneficiary/patient in the institution (or the sponsor) shall be notified by certified mail of such action at the same time the institution is notified. Notice to the beneficiary (or sponsor) shall also include the nature of the non-compliance violations which resulted in the termination. CHAMPUS benefits may be continued for those cases already approved for benefits for an interim period of up to the last day of the month following the month in which approval of the institution was terminated.

(d) *Reinstatement as an authorized institutional provider.* Any institution that has its approval as an authorized institutional provider terminated because of non-compliance with CHAMPUS standards and/or approved treatment programs may reapply to the Director, OCHAMPUS (or a designee) for approval. However, reapproval cannot be granted until an on-site facility review is conducted.

(4) *Categories of institutional providers.* The following categories of institutional providers may be reimbursed by CHAMPUS for services provided CHAMPUS beneficiaries subject to any and all definitions, conditions, limitations and/or exclusions specified or enumerated in this regulation.

(i) *Hospitals, acute care: General and special.* The term "hospital" means an institution which:

(*a*) Is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for the medical or surgical diagnosis and treatment of illness or injury (including maternity), and

(*b*) Maintains clinical records on all inpatients (and outpatients if the facility operates an inpatient department or emergency room).

(*c*) Has bylaws in effect with respect to its operations and medical staff.

(*d*) Has a requirement that every patient be under the care of a physician.

(*e*) Provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times.

(*f*) Has in effect a hospital utilization review plan that is operational and functioning.

(*g*) In the case of an institution in a state in which state or applicable local law provides for the licensing of hospitals, the hospital:

(*1*) Is licensed pursuant to such law, or

(2) Is approved by the agency of such state or locality responsible for licensing hospitals, as meeting the standards established for such licensing.

(*h*) Has in effect an operating plan and budget.

(*i*) Is accredited by the Joint Commission on Accreditation of Hospitals and/or meets such other requirements as the Secretary of Health, Education, and Welfare or the Secretary of Defense finds necessary in the interest of the health and safety of individuals who are admitted to and furnished services in the institution.

(ii) *Hospitals, psychiatric.* A psychiatric hospital is an institution which is primarily engaged in providing psychiatric services for the diagnosis and treatment of mental illness.

(*a*) There are two major categories of psychiatric hospitals:

(*1*) The private psychiatric hospital category includes both proprietary and the not-for-profit nongovernmental institutions.

(2) The second category are those psychiatric hospitals controlled, financed and operated by departments and agencies of either the Federal, state or local government and are always operated on a not-for-profit basis.

(*b*) In order for the services of a private psychiatric hospital to be covered, the hospital must comply with the provisions outlined in paragraph (b)(4) of this section, except that paragraph (b)(4)(i)(*f*) does not apply. In the case of private psychiatric hospitals, all must be accredited by the JCAH in order for their services to be cost-shared under CHAMPUS.

(*c*) Factors to be considered in determining whether CHAMPUS will cost-share care provided in a psychiatric hospital include, but are not limited to, the following considerations:

(*1*) Is the prognosis of the patient such that care provided will lead to resolution or remission of the mental illness to the degree that the patient is of no danger to others, can perform routine daily activities, and can be reasonably expected to function outside the inpatient setting.

(2) Can the services being provided be more economically provided in another facility or on an outpatient basis.

(3) Are the charges reasonable.

(*d*) Is the care primarily custodial and/or domiciliary in nature. (Custodial or domiciliary care of the permanently mentally ill or retarded is not a coverable benefit under the CHAMPUS Basic Program.)

(iii) *Hospitals, long-term: Tuberculosis, chronic care, rehabilitation, etc.* To be considered a long-term hospital, institutions for individuals with tuberculosis or chronic diseases, etc., must be an institution (or distinct part of an institution) primarily engaged in providing, by and/or under the supervision of a physician, appropriate medical or surgical services for the diagnosis and active treatment of the illness or condition in which the institution specializes.

(*a*) In order for the services of long-term hospitals to be covered, the hospital must comply with the provisions outlined in paragraph (b)(4)(i) of this section. In addition, in order for services provided by such hospitals to be coverable by CHAMPUS, they must be primarily for the treatment of the presenting illness.

(*b*) Custodial and/or domiciliary care is not coverable under CHAMPUS, even if rendered in an otherwise authorized long-term hospital.

(*c*) The controlling factor in determining whether a beneficiary's stay in a long-term hospital is coverable by CHAMPUS is the level of professional care and supervision, and skilled nursing care that the beneficiary/patient requires, in addition to the diagnosis, type of condition, or degree of functional limitations. The type and level of medical services required and/or rendered is controlling for purposes of extending CHAMPUS benefits; not the type of provider or condition of the beneficiary/patient.

(iv) *Skilled nursing facility.* A skilled nursing facility is an institution (or a distinct part of an institution) which is primarily engaged in providing to inpatients, medically necessary skilled nursing care, which is other than a nursing home or intermediate care facility, and which:

(*a*) Has policies which are developed with the advice of (and with provisions for review of such policies on a periodic basis by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical services it provides.

(*b*) Has a physician, a registered nurse, or a medical staff responsible for the execution of such policies.

(*c*) Has a requirement that the medical care of each patient must be under the supervision of a physician, and provides for having a physician available to furnish necessary medical care in case of an emergency.

(*d*) Maintains clinical records on all patients.

(*e*) Provides 24-hour skilled nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (b)(4)(d)(*a*) of this section and has at least one registered professional nurse employed full time.

(*f*) Provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals.

(*g*) Has in effect a utilization review plan that is operational and functioning.

(*h*) In the case of an institution in a state in which state or applicable local law provides for the licensing of this type facility, the institution:

(*1*) Is licensed pursuant to such law, or

(2) Is approved by the agency of such state or locality responsible for licensing such institutions, as meeting the standards established for such licensing.

(*i*) Has in effect an operating plan and budget.

(*j*) Meets such provisions of the most current edition of the Life Safety Code of the National Fire Protection Association as are applicable to nursing facilities; except that if the Secretary of Health, Education, and Welfare has waived, for such periods as deemed appropriate, specific provisions of such code which, if rigidly applied, would result in unreasonable hardship upon a nursing facility.

(v) *Residential Treatment Centers for Emotionally Disturbed Children (RTC's).* Residential Treatment Centers are institutions (or distinct units of an institution) existing specifically for round-the-clock, long-term psychiatric treatment of emotionally disturbed children who have sufficient intellectual potential for responding to active psychiatric treatment, for whom outpatient treatment is not appropriate, and for whom inpatient treatment is determined to be the treatment of choice. RTC's do not provide domiciliary and/or custodial care, but rather, must be able to provide a total therapeutically planned group living and learning situation within which individual psychotherapeutic approaches are integrated. To be approved by CHAMPUS, private RTC's must:

(*a*) Be accredited by the Joint Commission on Accreditation of Hospitals under the Commission Standards for Psychiatric Facilities Serving Children and Adolescents, and

(*b*) Have entered into a Participation Agreement with OCHAMPUS which requires that the RTC will comply with the CHAMPUS Standards for Psychiat-

ric Residential Treatment Centers Serving Children and Adolescents. (The current CHAMPUS Standards for Residential Treatment Centers are provided as Appendix A to this regulation.)

(vi) *Christian Science Sanitoriums.* The services obtained in Christian Science Sanitoriums are by public law covered by CHAMPUS as inpatient care. To qualify for coverage, the sanitorium must be either operated by, or be listed and certified by the First Church of Christ, Scientist. Christian Science Sanitoria are covered without following caveat:

Inasmuch as Christian Science treatment is not medical treatment and the language of the Defense Appropriations Act of 1976 (Sections 751(f)) and 1977 (Section 743(f)) limit CHAMPUS coverage to those services and supplies which are "medically or psychologically necessary to diagnose and treat a mental or physical illness, injury, or bodily malfunction as diagnosed by a physician, dentist or a clinical psychologist," the services of Christian Science Sanitoriums may not be paid by CHAMPUS during FY 1976 and FY 1977. Coverage in the following fiscal years will be dependent upon the language of the Appropriations Act covering that year's appropriation.

(vii) *Infirmaries.* Infirmaries are facilities operated by student health departments of colleges and universities to provide inpatient and/or outpatient care to enrolled students. Charges for care provided by such facilities will not be cost-shared by CHAMPUS if the student would not be charged in the absence of CHAMPUS or if the student is covered by a mandatory student health insurance plan, enrollment in which is required as a part of the student's registration in the school and the charges by the college or university include a premium for the student health insurance coverage. CHAMPUS will cost-share only if enrollment in the student health program and/or health insurance plan is voluntary. (Refer to § 199.14 "Double Coverage.")

NOTE.—An infirmary in a boarding school may also qualify under this provision, subject to review and approval by the Director, OCHAMPUS (or a designee).

(viii) *Other Specialized Treatment Facilities (STF's).* (*a*) Care provided by certain specialized treatment facilities (on either inpatient or outpatient basis), other than those listed above, may be cost-shared by CHAMPUS under specified circumstances.

(*1*) The course of treatment is prescribed by a doctor of medicine or osteopathy.

(2) The patient is under the supervision of a physician during the entire course of the inpatient admission or the outpatient treatment.

(3) The type and level of care and services rendered by the institution are otherwise authorized by this Regulation.

(*4*) The facility meets all licensing and/or other certification requirements which are extant in the jurisdiction in which the facility is geographically located.

(*5*) Is other than a nursing home, intermediate care facility, home for the aged, halfway house, or other institution of similar purpose.

(*6*) Is accredited by the Joint Commission on Accreditation or other CHAMPUS-approved accreditation organization, if an appropriate accreditation program for the given type of facility is available. As future accreditation programs are developed to cover emerging specialized treatment programs, such accreditation will be a prerequisite to coverage by CHAMPUS for services provided by such facilities.

(*b*) In order to assure that CHAMPUS beneficiaries are provided quality care at a reasonable cost when treated by a specialized treatment facility, the Director, OCHAMPUS (or a designee), will retain the right to:

(*1*) Require prior approval of all admissions to specialized inpatient treatment facilities.

(2) Set appropriate standards for specialized treatment facilities in addition to or in the absence of JCAH accreditation.

(3) Monitor facility operations and treatment programs on a continuing basis and conduct on-site inspections on a scheduled and unscheduled basis.

(*4*) Negotiate agreements of participation.

(*5*) Terminate approval of a case when it is ascertained that a departure from the facts upon which the admission was originally based has occurred.

(*6*) Declare a specialized treatment facility not eligible for CHAMPUS payment if that facility has been found to have engaged in fraudulent or deceptive practices.

(*c*) In general, the following disclaimers apply to treatment by specialized treatment facilities:

(*1*) Just because one period or episode of treatment by a facility has been covered by CHAMPUS shall not be construed to mean that subsequent episodes of care by the same or similar facility will be automatically covered.

(2) The fact that one case has been authorized for treatment by a specific facility or similar type of facility shall not be construed to mean that similar cases or subsequent periods of treatment will be automatically extended CHAMPUS benefits.

NOTE.—Other specialized treatment facilities (STF's) also include those facilities which seek approval to provide care authorized under the program for the handicapped. (Refer to § 199.11 "Program for the Handicapped.")

(c) *Individual professional providers of care.*—(1) *General.* Individual professional providers of care are those providers who bill for their services on a fee-for-service basis and are not employed or contracted with by an institutional provider. This category also includes those individuals who have formed professional corporations or associations qualifying as a domestic corporation under § 301.7701–5 of the Federal Income Tax Regulations. Such individual professional providers must be licensed by the local licensing agency for the jurisdiction in which the care is provided; or in the absence of licensure be certified by or be eligible for membership in the appropriate national or professional association which sets standards for the profession of which the provider is a member. Services provided must be in accordance with good medical practice and prevailing standards of quality of care and within recognized utilization norms.

(i) *Licensing required: Scope of license.* Otherwise covered services shall be cost-shared only if the individual professional provider holds a current, valid license to practice his or her profession (or otherwise is legally authorized to practice) required in the jurisdiction where the service is rendered. Further, such service must be within the scope of the license (or other legal authorization).

(ii) *Monitoring required.* The Director, OCHAMPUS (or a designee), is responsible for developing appropriate monitoring programs and issuing guidelines, criteria and/or norms necessary to insure that Program expenditures are limited to necessary medical supplies and services at the most reasonable cost to the Government and beneficiary. The Director, OCHAMPUS (or a designee), will also take such steps as necessary to deter overutilization of services.

(iii) *Christian Science.* Christian Science Practitioners and Christian Science Nurses are recognized by public law to provide services under CHAMPUS. Inasmuch as they provide services of an extra-medical nature, the general criteria outlined above do not apply to Christian Science Services. (Refer to paragraph (c)(3)(iv)(*b*) of this section regarding services of Christian Science Practitioners and Nurses.)

(2) *Interns and residents.* Interns and residents may not be paid directly by CHAMPUS for services rendered to a beneficiary when their services are provided as part of their employment (either salaried or contractual) by a hospital or other institutional provider.

(3) *Types of providers.* Subject to the standards of participation provisions of this Regulation, the following individual professional providers of medical care are authorized to provide services to CHAMPUS beneficiaries:

(i) *Physicians.* (*a*) Doctors of Medicine (M.D.).

(*b*) Doctors of Osteopathy (D.O.).

(ii) *Dentists.* Except for covered oral surgery as specified in paragraph (e) of this section of this regulation, "Basic Program Benefits," all otherwise covered services rendered by dentists require preauthorization.

(*a*) Doctors of Dental Medicine (D.M.D.).

(*b*) Doctors of Dental Surgery (D.D.S.).

(iii) *Other allied health professions.* The services of the following individual professional providers of care are coverable on a fee-for-service basis providing such services are otherwise authorized in this or other sections of this Regulation.

(a) *Clinical psychologists.* A clinical psychologist may provide therapy independent of physician referral and supervision. However, in order to provide therapy, a clinical psychologist must either:

(*1*) Be licensed or certified by the jurisdiction in which practicing, have a doctoral degree in clinical psychology and a minimum of two years of supervised experience in clinical psychology in a licensed hospital, a mental health center, or other appropriate clinical setting as determined by the Director, OCHAMPUS (or a designee), or

(2) Be listed in the National Register of Health Service Providers in Psychology, compiled and published by the Council of the National Register of Health Services Providers in Psychology.

(*b*) *Doctors of Optometry.*

(*c*) *Doctors of Podiatry or Surgical Chiropody.*

(*d*) *Other individual paramedical providers.* The services of the following individual professional providers of care, in order to be considered for benefits on a fee-for-service basis, may be provided only if the beneficiary/patient is referred by a physician for the treatment of a medically-diagnosed condition and a physician must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

(*1*) Licensed Registered Nurses.

(2) Licensed Practical or Vocational Nurses.

(3) Licensed Midwives.

(*4*) Licensed Registered Physical Therapists.

(*5*) Psychiatrist and/or Clinical Social Workers.

(*6*) Audiologists.

(*7*) Speech Therapists (Speech Pathologists).

(iv) *Extramedical individual providers.* Extramedical individual providers are individuals who do counseling or nonmedical therapy and whose training and therapeutic concepts are outside the medical field.

(*a*) *Marriage and family counselors.* The services of certain extramedical marriage and family counselors are coverable on a fee-for-service basis, under the following specific conditions:

(*1*) The CHAMPUS beneficiary must be referred for counseling by a physician.

(2) A physician is providing ongoing oversight and supervision of the counseling services being provided.

(3) The marriage and family counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communications will be made at the end of the treatment or more frequently if required by the referring physician. (Refer to § 199.13, "Claims Submission, Review and Payment.")

(*4*) The counselor must have the following: (*i*) Recognized graduate professional education with the minimum of an earned master's degree from an accredited educational institution in an appropriate behavioral science field, mental health discipline.

(*ii*) The following experience: (*aa*) Either 200 hours of approved supervision of the practice of marriage and family counseling, ordinarily to be completed in a 2–3 year period, of which at least 100hours must be in individual supervision. This supervision will occur preferably with more than one supervisor, and should include a continuous process of supervision with at least three cases, and

(*bb*) 1000 hours of clinical experience in the practice of marriage and family counseling under approved supervision, involving at least 50 different cases; or

(*cc*) 150 hours of approved supervision of the practice of psychotherapy, ordinarily to be completed in a 2–3 year period, of which at least 50 hours must be individual supervision. Plus: At least 50 hours of approved individual supervision of the practice of marriage and family counseling, ordinarily to be completed within a period of not less than one nor more than two years, and

(*dd*) 750 hours of clinical experience in the practice of psychotherapy under approved supervision involving at least 30 cases. Plus: At least 250 hours of clinical practice of marriage and family counseling under approved supervision, involving at least 20 cases; plus,

(*iii*) Possession of a valid state license or certificate as a marriage and family counselor or hold a license or certificate that allows the individual to provide marriage and family counseling in states which require such licensing or certification.

(*b*) *Christian Science Practitioners and Christian Science Nurses.* Public Law 89–614 specifically provides authority for CHAMPUS to cost-share the services of Christian Science practitioners and nurses. In order to bill as such, individuals must be listed or be eligible for listing in the Christian Science Journal at the time the service is provided. These services are covered with the following caveat:

Inasmuch as the Christian Science method of healing is not medical treatment the language of the Defense Appropriations Acts of 1976 (Section 751(*f*)) and 1977 (Section 743(f)) limited CHAMPUS coverage to those services and supplies which are "medically or psychologically necessary to diagnose and treat a mental or physical illness, injury, or bodily malfunction as diagnosed by a physician, dentist or a clinical psychologist." Christian Science practitioners and nurses cannot be paid by CHAMPUS during FY 1976 or FY 1977. Coverage in following fiscal years will be dependent upon the language of the Appropriations Act covering that given year's appropriations.

(d) *Other Providers.* Certain medical supplies and services of an ancillary or supplemental nature are coverable by CHAMPUS subject to certain controls. This category of provider includes the following: (1) *Independent Laboratory.* Laboratory services of independent laboratories may be cost-shared if the laboratory is approved for participation under Medicare and certified by the Social Security Administration.

(2) *Suppliers of Portable X-Ray Services.* Such suppliers must meet the conditions of coverage of the Medicare Program, set forth in 20 CFR 405.1411 through 405.1416 (as amended) or the Medicaid Program in that state in which the covered service is provided.

(3) *Pharmacies.* Pharmacies must meet the applicable requirements of state law in the state in which the pharmacy is located.

(4) *Ambulance Companies.* Such companies must meet the requirements of state and/or local laws in the jurisdiction in which the ambulance firm is licensed.

(5) *Medical equipment firms: Medical supply firms.* As determined by the Director, OCHAMPUS (or a designee).

(e) *Provider reimbursement methods.*—(1) *Hospital and skilled nursing facilities.* The CHAMPUS-determined reasonable cost for reimbursement of a hospital or skilled nursing facility shall be determined on the basis of one of the following methodologies, i.e., whichever is in effect at a specific hospital or skilled nursing facility at the time covered services and/or supplies are provided to a CHAMPUS beneficiary/patient:

(i) *Billed charges/set rates.* The reasonable costs for authorized care shall not exceed the lower of: (*a*) The actual charge for such service made to the general public; or

(*b*) The allowed charge applicable to the policy holders and/or subscribers of the CHAMPUS Contractor for comparable services under comparable circumstances, where extended to CHAMPUS beneficiaries by consent or agreement; or

(*c*) The allowed charge applicable to the citizens of the community or state as established by local or state regulatory authority excluding Title XIX of the Social Security Act or other welfare program, where extended to CHAMPUS beneficiaries by consent or agreement.

(ii) *Cost-related reimbursement.* The Director, OCHAMPUS (or a designee), shall, subject to the approval of the ASD(HA), establish a cost reimbursement method similar to that utilized for reimbursement of institutional providers under Title XVIII of the Social Security Act (generally known as the RCCAC method).

(iii) *Prospective reimbursement.* The Director, OCHAMPUS (or a designee), shall, subject to the approval of the ASD(HA), develop an alternative reimbursement method utilizing a prospective payment concept.

(2) *Reimbursement for other than hospitals and skilled nursing facilities.* The Director, OCHAMPUS (or a designee), shall establish such other methods of determining reasonable cost/charge reimbursement for those institutions, other than hospitals and skilled nursing facilities, as may be required.

(3) *Reimbursement of individual professional providers (including physicians) and other providers.* The CHAMPUS-determined reasonable charge for reimbursement of an individual professional provider (including a physician) or other provider shall be one of the following methodologies, i.e.,

whichever is in effect in the specific geographic location at the time covered services and/or supplies are provided to a CHAMPUS beneficiary/patient. Such methodology in effect at the time covered services or supplies are provided shall be known as the "CHAMPUS Applicable Schedule."

(i) *Reasonable charge method.* The reasonable charge method utilized shall be the Medicare system which is the preferred and primary method for reimbursement of physicians, other individual professional providers, and other providers. The reasonable charge for authorized medical care shall not exceed the lowest of: (*a*) The billed charge for such services;

(*b*) The charge generally made by the physician or other source under similar circumstance, furnishing such service;

(*c*) The prevailing charge level that, on the basis of statistical data and methodology acceptable to the Director, OCHAMPUS (or a designee), does not exceed the 75th percentile of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to July 1 of the year in which the claim is received by the CHAMPUS Contractor; or

(*d*) The charge applicable to the policy holders and subscribers of the CHAMPUS Contractor for comparable services under comparable circumstances.

NOTE: However, arbitrary reduction in charges applicable to policy holders and/or subscribers of the CHAMPUS Contractor, including the CHAMPUS Contractor's failure to update allowed charges in its private business because of inadequate insurance reserves or other reasons, shall not be applicable in determining reasonable charges under this program unless the providers by law or contract agree to accept such reductions as full payment for services provided.

(*e*) A charge that exceeds either the customary charge, prevailing charge, or both, can be determined to be reasonable only where unusual circumstances or medical complications are documented that require additional time, effort, skill, or expense supporting the additional charge, and only if the additional charge made is a customary practice of the medical community within the locality where the medical care was rendered. A reasonable charge may not exceed the billed charge under any circumstances.

(*f*) The Director, OCHAMPUS (or a designee), may establish a variation of the above Medicare methodology system for the determination of reasonable charges in a specific geographic area (for authorized medical care) that is designed to achieve the same or similar results in average charge allowances as obtained by the methodology described above; but only under circumstances where an adequate information base to permit utilizing the above methodology is not available.

(ii) *Alternative Method.* The Director, OCHAMPUS (or a designee), may, subject to the approval of the ASD(HA), establish an alternative method of reimbursement designed to produce reasonable control over health care costs and to assure a high level of acceptance of the CHAMPUS-determined charge by the physicians or other individual sources of care furnishing such services and supplies. Alternative methodology may be established for any clearly defined geographic area by direct negotiation with the providers, or by such other means as may be established by the Director, OCHAMPUS (or a designee), which will produce by agreement or effect average charge allowances not greater than those charged to the general public on July 1, 1976 with an additional allowance representing the demonstrated increase in the cost of doing business for subsequent 12 month periods coincident with the implementation or agreement date for use of the alternative method.

(4) *Outside the United States.* The Director, OCHAMPUS (or a designee), shall determine the appropriate reimbursement method(s) to be used in the extension of CHAMPUS benefits for otherwise covered medical services and/or supplies provided by hospitals or other institutional provider, physicians or other individual professional provider or other providers, outside the United States.

(f) *Implementing Instructions.* The Director, OCHAMPUS (or a designee), shall issue a CHAMPUS Operating Manual and such other instructions, procedures, guidelines, etc. as may be necessary to implement the intent of this section.

§ 199.13 Claims submission, review and payment.

(a) *General.* The Director, OCHAMPUS (or a designee), is responsible for assuring that benefits under the CHAMPUS Program are paid only to the extent described in this Regulation. Before benefits can be paid, an appropriate claim must be submitted which provides sufficient information as to beneficiary identification, the medical services and supplies provided, and double coverage information, in order to permit proper, accurate and timely adjudication of the claim by the CHAMPUS Contractor and/or OCHAMPUS. Subject to such definitions, conditions, limitations, exclusions and requirements as may be set forth in this Regulation, the following are the CHAMPUS claim filing requirements:

(1) *CHAMPUS Identification Card Required.* A patient is responsible for presenting his or her applicable CHAMPUS Identification Card (i.e., Uniformed Services Identification Card) to the authorized provider of care, which identifies the patient as an eligible CHAMPUS beneficiary. (Refer to § 199.9, "Eligibility.")

(2) *Claim required.* No benefit may be extended under the CHAMPUS Basic Program or Program for the Handicapped without the submission of a properly and completely executed appropriate claim form.

(3) *Responsibility for perfecting claim.* It is the responsibility of the CHAMPUS beneficiary (or sponsor) and/or the authorized provider acting on behalf of the CHAMPUS beneficiary/patient to perfect a claim for submission to the appropriate CHAMPUS Contractor. Neither a CHAMPUS Contractor nor OCHAMPUS is authorized to prepare a claim on behalf of a CHAMPUS beneficiary.

(4) *Obtaining Appropriate Claim Form.* The CHAMPUS Program provides specific CHAMPUS forms appropriate for making a claim for benefits for various types of medical services and supplies (i.e., hospital, physician, prescription drugs, etc.). Claim forms may be obtained from the appropriate CHAMPUS Contractor in the state of residence, from the Director, OCHAMPUS (or a designee), or rfom CHAMPUS Advisors located at all Uniformed Services medical facilities.

(5) *Prepayment not required.* A CHAMPUS beneficiary (or sponsor) is not required to pay for the medical services or supplies before submitting a claim for benefits.

(6) *Deductible Certificate.* If the fiscal year outpatient deductible has been met by a beneficiary ($50) or a family ($100 aggregate) through the submission of a claim(s) to a CHAMPUS Contractor in another geographic location from the location where a current claim is being submitted, the beneficiary (or sponsor) must obtain a deductible certificate from the CHAMPUS Contractor where the applicable individual and/or family fiscal year deductible was met. Such deductible certificate must be attached to the current claim being submitted for benefits. Failure to obtain a deductible certificate under such circumstances will result in a second individual and/or family fiscal year deductible being applied. However, this second deductible may be reimbursed once appropriate documentation, as described in this paragraph (a)(6) of this section, is supplied to the CHAMPUS Contractor applying the second deductible. (Refer to paragraph (f) of § 199.10 "Basic Program Benefits.")

(7) *Nonavailability Statements (DD Form 1251).* In some geographic location and/or under certain special circumstances it is necessary for a CHAMPUS beneficiary to determine whether the required medical care can be provided through a Uniformed Service facility. In such instances if the required medical care cannot be provided by the Uniformed Services facility, a Nonavailability Statement (DD Form 1251) will be issued. Where required (except for emergencies), this Nonavailability Statement must be issued before medical care is obtained from civilian sources. Failure to secure such a statement will waive the beneficiary's rights to benefits under CHAMPUS, subject to appeal to the appropriate hospital commander (or higher medical authority).

(i) *Rules Applicable to Issuance of Nonavailability Statement (DD Form 1251).* The Assistant Secretary of Defense (Health Affairs) is responsible for promulgating rules and regulations for the issuance of Nonavailability Statements. Such rules and regulations will change depending on the current situations.

(ii) *Beneficiary Responsibility.* The beneficiary is responsible for ascertaining whether or not he or she resides in a geographic area which requires obtaining a Nonavailability Statement. Information concerning current rules and regulations may be obtained from the appropriate CHAMPUS Contractor, a CHAMPUS Advisor or the Director, OCHAMPUS (or a designee).

(iii) *Rules in Effect at Time Civilian Care is Provided Apply.* The applicable rules and regulations regarding Nonavailability Statements in effect at the time the civilian care is rendered apply in determining whether a Nonavailability Statement is required.

(iv) *Nonavailability Statement (DD Form 1251) Must be Filed with Applicable Claim.* When a claim is submitted for CHAMPUS benefits which includes services for which a Nonavailability Statement is required, such statement must be submitted along with the claim form.

(b) *Information Required to Adjudicate a CHAMPUS Claim.* Claims received, which are not fully completed and which do not provide the following minimum information, may be returned. If sufficient space is not available on the appropriate claim form, the required information must be attached in the form of a separate statement (which should also include patient's name and address and be dated and signed).

(1) *Patient's Identification Information.* The following patient identification information must be completed on every CHAMPUS claim form submitted for benefits before a claim will be adjudicated and processed:

(i) *Patient's Full Name.*

(ii) *Patient's Residence Address.*

(iii) *Patient's Date of Birth.*

(iv) *Patient's Relationship to Sponsor.*

NOTE.—If name of patient is different from sponosr, explain (i.e., stepchild, illegitimate child, etc.).

(v) *Patient's Identification Number.* From DD Form 1173.

(vi) *Patient's Identification Card Effective Date and Expiration Date.* From DD Form 1173.

(vii) *Sponsor's Full Name.*

(viii) *Sponsor's Service and/or Social Security Number.*

(ix) *Sponsor's Grade.*

(x) *Sponsor's Organization and Duty Station.* Home port for ships; home address for retiree.

(xi) *Sponsor's Branch of Service.* Or deceased or retiree's former branch of service.

(xii) *Sponsor's Current Status.* Active duty, retired or deceased.

(2) *Patient Treatment Information.* The following patient treatment information is routinely required relative to the medical services and supplies for which a claim for benefits is being made before a claim will be adjudicated and processed:

(i) *Diagnosis.* A detailed diagnosis is required; standard nomenclature is acceptable. In the absence of a diagnosis, a narrative description of the definitive set of symptoms for which the medical care was rendered must be provided.

(ii) *Source of Care.* Full name of source of care (hospital, physician, etc.) providing the specific medical services being claimed.

(iii) *Full Address of Source of Care.* This address must be where the care was actually provided, not a billing address.

(iv) *Attending Physician.* Name of attending physician (or other authorized individual professional provider).

(v) *Referring Physician.* Name and address of ordering, prescribing and/or referring physician.

(vi) *Status of Patient.* Status of patient at the time the medical services and supplies were rendered (i.e., inpatient or outpatient).

(vii) *Dates of Service.* Specific and inclusive dates of service.

(viii) *Inpatient Stay.* Source and dates of related inpatient stay (if applicable).

(ix) *Physicians or Other Authorized Individual Professional Providers.* For services provided by physicians (or other authorized individual professional providers), the following information must also be included:

(*a*) Date of each service.

(*b*) Procedure code and/or narrative description of each procedure/service for each date of service.

(*c*) Individual charge for each item of service or each supply for each date.

(*d*) Detailed description of any unusual complicating circumstances related to the medical care provided which the physician or other individual professional provider may choose to submit separately.

(x) *Hospital or Other Authorized Institutional Providers.* For care provided by hospitals (or other authorized institutional providers), the following information must also be provided before a claim will be adjudicated and processed:

(*a*) An itemized billing showing each item of service and/or supply provided for each day covered by the claim.

NOTE.—The Director, OCHAMPUS (or a designee), may approve (in writing) an alternate billing procedure for RTC's or other special institutions, in which case the itemized billing requirement may be waived. The particular facility will be aware of such approved alternate billing procedure.

(*b*) Any absences from a hospital or other authorized institution during a period for which inpatient benefits are being claimed must be specifically identified as to date(s) and a detailed statement provided as to the purpose of the absence. Failure to provide such information will result in denial of benefits and in an ongoing case, termination of benefits for the inpatient stay at least back to the date of the absence.

(xi) *Prescription Drugs and Medicines (and Insulin).* For prescription drugs and medicines (and insulin, whether or not a prescription is required), receipted bills must be attached and the following additional information provided:

(*a*) Name of drug.

NOTE.—In those situations where the physician or pharmacist so requests, the name of the drug may be submitted to the CHAMPUS Contractor directly by the physician or pharmacist.

(*b*) Strength of drug.

(*c*) Name and address of pharmacy where drug was purchased.

(*d*) Prescription number of drug being claimed.

(xii) *Other Authorized Providers.* For items from other authorized providers (such as medical supplies), an explanation as to the medical need must be attached to the appropriate claim form. For purchases of durable equipment under the Program for the Handicapped, it is also necessary to attach a copy of the preauthorization.

(xiii) *Non-Participating Providers.* In every case where the beneficiary (or sponsor) submits the claim to the CHAMPUS Contractor (i.e., the provider elects not to participate), an itemized bill from the provider to the beneficiary (or sponsor) must be attached to the CHAMPUS claim form.

(3) *Double Coverage Information.* In those situations where the CHAMPUS beneficiary/patient is eligible for medical benefits coverage through another plan, insurance and/or program, either private or Government, the following information must be provided:

(i) *Name of Other Coverage.* Full name (and address) of double coverage plan, insurance and/or program (i.e., Blue Cross, Medicare, commercial insurance, State program, etc.).

(ii) *Source of Double Coverage.* Source of double coverage (i.e., employment, including retirement, private purchase, membership in a group, law, etc.).

(iii) *Employer Information.* If source of double coverage is employment, give name and address of employer.

(iv) *Identification Number.* Identification number and/or group number of other coverage.

(4) *Right to Additional Information.* As a condition precedent to the provision of benefits under this Regulation, OCHAMPUS and/or CHAMPUS Contractors may request and shall be entitled to receive information from a physician or hospital or other person, institution and/or organization (including a local, State or Federal Government agency) providing services or supplies to the beneficiary for which claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance, testing, monitoring, or examination or diagnosis of, or treatment rendered, or services and supplies furnished to, a beneficiary and as shall be necessary for the accurate and efficient administration of CHAMPUS benefits. In addition, before a determination on a request for preauthorization or claim of benefits, a beneficiary (or sponsor) must provide particular additional information relevant to the requested determination when necessary. The recipient of such information shall in every case hold such records confidential except when: (i) Disclosure of such information is specifically authorized by the beneficiary/patient; (ii) disclosure is necessary to

permit authorized governmental officials to investigate and prosecute criminal actions; or (iii) disclosure is specifically authorized or required under the terms of the Privacy Act and/or Freedom of Information Act (Refer to paragraph (m) of § 199.7, "General"). For the purposes of determining the applicability of and implementing the provisions of §§ 199.14 and 199.15, "Double Coverage" and "Medical Care Recovery Act", respectively, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS and/or CHAMPUS Contractors may, without consent or notice to any beneficiary (or sponsor), release to or obtain from any insurance company or other organization, governmental agency, provider or person any information with respect to any beneficiary when such release constitutes a routine use duly published in the FEDERAL REGISTER in accordance with the Privacy Act (5 U.S.C. 522a). Before an individual's claim of benefits will be adjudicated, the individual must furnish to CHAMPUS that information which may be reasonably expected to be in his or her possession and which is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim.

(c) *Signature on CHAMPUS Claim Form*—(1) *Beneficiary/Patient (or Sponsor) Signature.* Every CHAMPUS claim form must be signed by the beneficiary if he or she is 18 years of age or older. The sponsor may sign for any beneficiary under 18 years of age (or in the absence of the sponsor, the beneficiary/patient or beneficiary/patient's parent or guardian may sign).

(i) *Certification of Identity.* This signature certifies that the patient identification information provided is correct.

(ii) *Certification of Medical Care Provided.* This signature certifies that the specific medical care for which benefits are being claimed were actually rendered to the beneficiary/patient on the dates indicated.

(iii) *Authorization to Release Medical Information.* This signature authorizes the release of medical records and information to the CHAMPUS Contractor and OCHAMPUS.

(iv) *Certification of Accuracy and Authorization to Release Double Coverage Information.* This signature certifies to the accuracy of the double coverage information and authorizes the release of any information related to double coverage. (Refer to § 199.14, "Double Coverage".)

(2) *Provider's Signature.* The provider may elect on a claim-by-claim basis whether to participate and submit a CHAMPUS claim on behalf of a beneficiary/patient. When the provider makes the election to participate, the provider is required to sign the CHAMPUS claim form.

(i) *Certification.* A participating provider's signature on a CHAMPUS claim form:

(a) Certifies that the specific medical care listed on the claim form was, in fact, rendered to the specific beneficiary/patient for which benefits are being claimed, on the specific date(s) indicated.

(b) Certifies that the provider has agreed to participate and that the CHAMPUS-determined reasonable charge/cost will constitute the full charge/cost for the medical care listed on the specific claim form; and further agrees to accept the amount paid by CHAMPUS and/or the CHAMPUS payment combined with the cost-shared amount paid by (or in behalf of) the beneficiary/patient, as full payment for the covered medical services and/or supplies.

(*1*) Thus, neither CHAMPUS nor the sponsor is responsible for any additional charges, whether or not the CHAMPUS-determined charge/cost is less than the billed amount.

(2) Any provider who signs and submits a CHAMPUS claim form and then violates this agreement by billing the beneficiary/patient (or sponsor) for any difference between the CHAMPUS-determined charge/cost and the amount billed, is acting in bad faith and subject to penalties including withdrawal of Program approval as a CHAMPUS provider by administrative action of the Director, OCHAMPUS (or a designee), and possible legal action on the part of CHAMPUS (either directly or as a part of a beneficiary action) to recover monies improperly obtained from CHAMPUS beneficiaries (or sponsors). (Refer to § 199.12, "Authorized Providers".)

(ii) *Physician or Other Authorized Individual Professional Provider.* A physician or other authorized individual professional provider is liable for any signature submitted on his or her behalf. Further, a facsimile signature is not acceptable unless such facsimile signature is on file with, and has been specifically authorized by, the CHAMPUS Contractor serving the state where the physician or other authorized individual professional provider practices.

(iii) *Hospital or Other Authorized Institutional Provider.* The provider signature on a claim form for institutional services must be that of an authorized representative of the hospital or other authorized institutional provider and whose signature is on file with and approved by the appropriate CHAMPUS Contractor.

(d) *Claims Filing Deadline.* In order to be considered for benefits, all claims submitted under the CHAMPUS Program must be filed with the appropriate CHAMPUS Contractor no later than December 31 of the calendar year immediately following the one in which the covered service or supply was rendered. Failure to timely file a claim automatically waives all rights to any benefits for such services and/or supplies provided during the period affected by the claims filing deadline.

(1) *Claims Returned for Additional Information.* When a claim is initially submitted within the claims filing time limit, but is returned (in whole or in part) for additional information, in order to be considered for benefits, the returned claim, along with the requested information, must be resubmitted and received by the appropriate CHAMPUS Contractor no later than the applicable December 31 deadline or 90 days from the date the claim was returned to the beneficiary, whichever is later.

(2) *Exception to Claims Filing Deadline.* The Director, OCHAMPUS (or a designee), may grant exceptions to the claims filing deadline requirements, except that such exception may not be granted for late claims involving services and supplies provided by governmental institutions or agencies (local, state or Federal).

(i) *Types of Exception.*—(a) *Retroactive Eligibility.* Retroactive CHAMPUS eligibility determinations.

(b) *Administrative Error.* Administrative error (i.e., misrepresentation, mistake or other accountable action) of an officer or employee of OCHAMPUS (including OCHAMPUSEUR) or a CHAMPUS Contractor, performing functions under the CHAMPUS Program and acting within the scope of that individual's authority.

(c) *Mental Incompetency.* Mental incompetency of the beneficiary or guardian (or sponsor in the case of a minor child) which includes inability to communicate, even if the result of a physical disability.

(d) *Provider Billings.* Direct billings by participating providers.

(ii) *Request for Exception to Claims Filing Deadline.* Beneficiaries who wish to request an exception to the claims filing deadline may submit such a request to the Director, OCHAMPUS, Denver, Colorado 80240, if the circumstances of the case fall within one of the exception areas described in paragraphs (d)(2)(i)(*a*), (*b*), (c), or (*d*) of this section.

(*a*) Such requests for an exception must include a complete explanation of the circumstances of the late filing, together with all available documentation supporting the request, and the specific claim denied for late filing.

(*b*) Each request for an exception to the claims filing deadline is individually reviewed and considered on its own merits.

(e) *Other Claims Filing Requirements.* Notwithstanding the claims filing deadline described in paragraph (d) of this section, in order to minimize any potential adverse impact on a CHAMPUS beneficiary (or sponsor) which could result from a retroactive denial, the following additional claims filing procedures are recommended or required:

(1) *Continuing Care.* In any situation where medical services and supplies are being rendered on a continuing basis, an appropriate claim(s) should be submitted every 30 days (i.e., monthly), whether submitted directly by the beneficiary (or sponsor) or by the provider on behalf of the beneficiary/patient. Such claims may be submitted more frequently if the beneficiary or provider so elects. The Director, OCHAMPUS (or a designee), may also require more frequent claims submission based on dollars. Examples of

care which may be rendered on a continuing basis are outpatient physical therapy, private duty (special) nursing, or inpatient stays.

(2) *Outpatient Individual and/or Group Psychotherapy.* Any claim for outpatient individual and/or group psychotherapy (or marriage and family counseling) is limited to not more than 8 sessions (visits). All outpatient psychotherapy services are automatically reviewed and evaluated for benefit purposes at the initial 8-session (visit) interval, and at the 24-session (visit) interval. More frequent review and evaluation may be required if indicated by the case. Any outpatient psychotherapy extending (and approved for benefits) for up to 60 sessions must be referred to peer review to determine whether any additional benefits may be provided. This requirement applies whether the services are rendered by a psychiatrist, a psychologist, a psychiatric nurse, clinical social worker or a marriage and family counselor.

(3) *Claims Involving the Services of Marriage and Family Counselors.* Section 743(a) of Pub. L. 94-419, the Appropriations Act for the Department of Defense for Fiscal Year ending September 30, 1977, requires that marriage and family counselors make a written report to the referring physician concerning the CHAMPUS beneficiary's progress. Therefore, each claim for reimbursement for services of marriage and family counselors must include a certification to the effect that a written communication has been made or will be made to the referring physician at the end of treatment, or more frequently, as required by the referring physician.

(f) *Preauthorization.* Where specifically required in other sections of this regulation, preauthorization requires the following:

(1) *Preauthorization Must be Approved Before Benefits Can be Extended.* In those situations requiring preauthorization, such request must be submitted and approved before benefits may be extended. If the beneficiary (or sponsor) elects to proceed to obtain the medical services and/or supplies prior to receiving written approval from CHAMPUS, and the request is subsequently approved, except as otherwise specifically stated, benefits are limited to that period beginning with the date the preauthorization request was received. If the preauthorization request is denied or not submitted as required under this regulation, no benefits are payable for medical services and/or supplies obtained under such circumstances, whether or not otherwise covered.

(i) *Specifically Preauthorized Services.* An approved request specifies the exact services or supplies for which preauthorization is being given. In a preauthorization situation, benefits cannot be extended for services or supplies provided beyond the specific authorization.

(ii) *Time Limit on Preauthorization.* Preauthorizations are valid for specific periods of time, usually 90 days from date of issuance. If the authorized services or supplies are not obtained within the specified time limit, benefits cannot be extended.

(2) *Treatment Plan: Management Plan.* Each preauthorization request must be accompanied by a proposed medical treatment plan (for inpatient stays under the Basic Program) or management plan (for services under the Program for the Handicapped) which shall generally include a diagnosis, a detailed summary of complete history and physical, a detailed statement of the problem, the proposed type and extent of treatment/therapy, the proposed treatment modality (including anticipated length of time the proposed modality will be required), any available test results, consultant's reports and the prognosis. Where the preauthorization request involves transfer from a hospital to another inpatient facility, medical records related to the inpatient stay must also be provided.

(3) *Durable Equipment.* Requests for preauthorization to purchase durable equipment under the Program for the Handicapped must list all items of durable equipment previously authorized under the Program for the Handicapped and state whether the current item of equipment is the initial purchase or a replacement. If it is a replacement item, the date the initial item was purchased must also be provided.

(4) *Claims for Services and Supplies Which Have Been Preauthorized.* Whenever a claim is submitted for benefits under the CHAMPUS Program involving preauthorized services and supplies, the date of the approved preauthorization must be indicated on the claim form and a copy of the written preauthorization must be attached to the appropriate CHAMPUS claim.

(g) *Claims Review.* It is the responsibility of the CHAMPUS Contractor (and/or OCHAMPUS, including OCHAMPUSEUR) to review each CHAMPUS claim submitted for benefit consideration to assure compliance with all applicable definitions, conditions, limitations and/or exclusions specified or enumerated in this regulation. It is also required that before any CHAMPUS benefits may be extended, claims for medical services and supplies will be subject to utilization review and quality assurance standards, norms and criteria issued by the Director, OCHAMPUS (or a designee).

(h) *Benefit Payments.* CHAMPUS benefit payments are made either directly to the beneficiary (or sponsor) or to the provider, depending on the manner in which the CHAMPUS claim is submitted.

(1) *Benefit Payments Made to Beneficiary (or Sponsor).* In those instances where the CHAMPUS beneficiary (or sponsor) signs and submits a specific claim form directly to the appropriate CHAMPUS Contractor and/or OCHAMPUS (including OCHAMPUSEUR), and any CHAMPUS benefit payments due as a result of that specific claim submission will be made in the name of, and mailed to, the beneficiary (or sponsor). In such circumstances the beneficiary (or sponsor) is responsible to the provider for any amounts billed.

(2) *Benefit Payment Made to Participating Provider.* In those instances where the authorized provider elects to participate by signing a CHAMPUS claim form and submitting a specific claim on behalf of the beneficiary/patient to the appropriate CHAMPUS Contractor, any CHAMPUS benefit payments due as a result of that claim submission will be made in the name of and mailed to the participating provider. In this situation, by signing the claim form, the authorized provider agrees to abide by the CHAMPUS-determined reasonable charge/cost (whether or not lower than the amount billed). Therefore, the beneficiary (or sponsor) is responsible only for any required deductible amount and any cost-sharing portion of the CHAMPUS-determined reasonable charge/cost as may be required under the terms and conditions set forth in §§ 199.10 and 199.11, "Basic Program" and "Program for the Handicapped," respectively.

(3) *CHAMPUS Explanation of Benefits (CEOB).* In each instance when a CHAMPUS claim is adjudicated, a CHAMPUS Explanation of Benefits (CEOB) is sent to the beneficiary/patient (or sponsor). A copy of the CEOB is also sent to the provider if the claim was submitted on a participating basis. The CHAMPUS Explanation of Benefits form provides the following information (as a minimum):

(i) *Name and Address of Beneficiary.*

(ii) *Name and Address of Provider.*

(iii) *Services or Supplies Covered by Claim for Which CEOB Applies.*

(iv) *Dates Services or Supplies Provided.*

(v) *Amount Billed; CHAMPUS-Determined Reasonable Charge/Cost; Amount of CHAMPUS Payment.*

(vi) *To Whom Payment (if any) Was Made.*

(vii) *Reasons for Any Denial.*

(viii) *Recourse Available to Beneficiary for Review of Claim Decision.* (Refer to § 199.16, "Appeal and Hearing Procedure.")

NOTE.—The Director, OCHAMPUS (or a designee) may authorize a CHAMPUS Contractor to waive a CEOB to protect the privacy of a CHAMPUS beneficiary.

(4) *Benefit Under $1.00.* If the CHAMPUS benefit is determined to be under $1.00, payment is waived.

(i) *Fraud.*—(1) *Federal Law.* Federal laws (18 U.S.C. 287 and 1001) provide for criminal penalties for knowingly submitting or making any false, fictitious, or fraudulent statement or claim in any matter within the jurisdiction of any department or agency of the United States. Examples of fraud include situations in which ineligible persons knowingly use an unauthorized identification card in filing a claim; or where providers submit claims for treatment, supplies or equipment not rendered to, or used for, CHAMPUS beneficiaries; or where a participating provider bills the beneficiary for amounts over the CHAMPUS-determined reasonable charge/cost.

(2) *Suspected Fraud.* Any person, including CHAMPUS Contractors, who be-

comes aware of a suspected fraud must report the circumstances in writing, together with copies of any available documents pertaining thereto, to the Director, OCHAMPUS (or a designee), who will initiate an appropriate official investigation of the case.

(j) *Erroneous Payments and Recoupment*—(1) *Types of Erroneous Payments.* Erroneous payments are expenditures of Government funds which are not authorized by law or regulation. Examples include mathematical errors, payment for care provided an ineligible person, payment for care which is not an authorized benefit, payment for duplicate claims, inaccurate application of the deductible or co-payment, payment for services not medically necessary, false claims, etc.

(2) *Federal Claims Collection Act of 1966.* Under the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953), each agency of the Federal Government (pursuant to regulations jointly promulgated by the Attorney General and the Comptroller General of the U.S.) must attempt collection of claims of the Federal Government for money arising out of the activities of the agency.

(3) *Recoupment Procedures*—(i) *CHAMPUS Contractors.* When an erroneous payment is discovered, CHAMPUS Contractors will take action to effect recoupment. Such action will be in accordance with the provisions of its CHAMPUS Contract and may include requests for refund or an offset against any other CHAMPUS payment becoming due to the debtor; and in appropriate cases, referral to the Director, OCHAMPUS (or a designee), for review and consideration for submission to the Department of Justice. Request to a beneficiary (or sponsor) or provider for refund or notice of intent to offset shall be made in writing.

(ii) *Uniformed Services.* When an erroneous payment has been made directly to a beneficiary (or sponsor) and no offset is available and there has been no response to a CHAMPUS refund request within 90 days, the Director, OCHAMPUS (or a designee), will submit the case to the appropriate Uniformed Service for recoupment. The Uniformed Services shall submit a monthly report(s) to the Director, OCHAMPUS, as to the status of such recoupment actions. The format and content of such report(s) shall be as determined necessary for Program integrity purposes by the Director, OCHAMPUS (or a designee).

(4) *Claims denials: clarification or change.* In those instances where claim review results in the denial of benefits previously provided but now denied due to a clarification or interpretation of the public law or this regulation; or due to a change in this regulation, no recoupment action need be taken to recover funds expended prior to the date of such determination. (Refer to paragraph (n) of § 199.7, "General.")

(5) *Good faith payment.* It is the responsibility of the Uniformed Services to provide eligible CHAMPUS beneficiaries with accurate and appropriate means of identification. When sources of civilian medical care exercise reasonable care and precaution in identifying persons claiming to be eligible CHAMPUS beneficiaries and furnish otherwise covered services and supplies to such persons in good faith, CHAMPUS benefits may be paid subject to prior approval by the Director, OCHAMPUS (or a designee), notwithstanding the fact that the person receiving the services and supplies is subsequently determined ineligible for benefits. When good faith payments are made by CHAMPUS as the result of (i) the issuance of erroneous identification cards, or (ii) the failure to retrieve identification cards in a timely manner from those persons no longer eligible for CHAMPUS benefits, or (iii) failure to retrieve outdated identification cards and issue new cards when a person's status changes (such as a change from active duty dependent to dependent of a retiree), it is the responsibility of the Uniformed Service to refund such amounts to CHAMPUS. Good faith payments will not be authorized for services and supplies provided by a civilian source of medical care as the result of its own careless identification procedures.

NOTE.—When it is subsequently determined that a person was not a CHAMPUS beneficiary, the CHAMPUS Contractor and/or the civilian source of medical care are expected to make all reasonable efforts to obtain payment or recoup the amount of the good faith payment from the person who erroneously claimed to be a CHAMPUS beneficiary. Where appropriate, legal action will be instituted.

(k) *General assignment of benefits not recognized.* CHAMPUS does not recognize any general assignment of CHAMPUS benefits to another person. All CHAMPUS benefits are payable as described in this and other sections of this regulation.

§ 199.14 Double coverage.

(a) *Introduction.* Since enactment of the 1966 Amendment to the law that eventually became known as CHAMPUS, double coverage has proliferated. Title 10, United States Code is specific that generally where double coverage exists, CHAMPUS benefits for other than dependents of active duty members shall be "last pay." However, application of double coverage rules for dependents of active duty members is left to be established under the broad discretionary authority granted the Secretary of Defense. In recognition that extensive double coverage exists, the following rules and procedures are promulgated to administer the CHAMPUS Program in line with general policies extant in the health and medical insurance industry. The Department of Defense cannot permit payment of CHAMPUS benefits in a manner that would result in the unjust enrichment of CHAMPUS beneficiaries (or sponsors) or providers, or which would result in payment of claims for services and/or supplies for which there is no longer any liability in whole or in part. Neither can other medical benefit plans or programs be permitted to pass to CHAMPUS a financial burden that should by law or contract be shared or borne by the other medical benefits plan or program. CHAMPUS is committed to the careful use of its funds in order that maximum benefits may be extended to the greatest number of beneficiaries possible within the resources provided by the Congress. The following double coverage provisions are designed to prevent duplicate payment of benefits, in keeping with these stated principles:

(b) *Definitions.*—(1) *Coordination of benefits.* "Coordination of Benefits" means the coordination, on a primary/secondary payor basis, of the payment of CHAMPUS benefits with the payments of benefits made by the double coverage plan, to the end that there is no duplication of benefits paid between the double coverage plan and CHAMPUS.

(2) *Double coverage.* "Double Coverage" means a situation in which a CHAMPUS beneficiary also has entitlement to insurance, medical service, health and medical plan, or other government program through employment, law, membership in an organization or as a student (including entitlement by reason of being retired from an organization or group), which in whole or in part duplicates CHAMPUS benefits, but not including entitlement to receive care from the Uniformed Services medical care system.

(3) *Double coverage plan.* "Double Coverage Plan" means the specific organization, insurance policy, government program, etc., under which a CHAMPUS beneficiary has entitlement to medical benefits which in whole or in part, duplicate CHAMPUS benefits. For the purposes of CHAMPUS, the following are not included within the definition of "Double Coverage Plan":

(i) Medicaid; or

(ii) Privately purchased, non-group coverage;

(iii) Coverage specifically designed to supplement CHAMPUS benefits (i.e., covering the deductible and cost-sharing amount not paid by CHAMPUS); or

(iv) Entitlement to receive care from Uniformed Services medical care facilities.

(4) *Initial Payment.* "Initial Payment" means the extension of benefits prior to determination of primary/secondary payor status.

(5) *Last Pay.* "Last Pay" means a double coverage situation where the tests set forth in paragraph (b)(8) of this section do not apply and the specified medical benefits plan (either CHAMPUS or the double coverage) is always the secondary payor.

(6) *Medicaid.* "Medicaid" means those medical benefits authorized under Title XIX of the Social Security Act, as amended, provided to welfare recipients and the medically indigent through programs administered by the various states.

(7) *Medicare.* "Medicare" means those medical benefits authorized under Title XVIII of the Social Security Act, as amended, provided to persons 65 years of age or older, certain disabled persons, or persons with chronic renal disease,

through a national program administered by the Social Security Administration, Bureau of Health Insurance.

(8) *Primary Payor.* "Primary Payor" means the plan or program whose medical benefits are first payable in a double coverage situation, by virtue of the circumstances of the beneficiary's entitlement under either CHAMPUS or the double coverage plan first satisfying one of the three following tests. (Such tests are applied in the order set forth. If both medical benefit plans or programs, including CHAMPUS, meet the first two tests, the third test is applied.)

(i) *Test One.* The beneficiary's entitlement to the medical benefits plan or program, including CHAMPUS, is based upon the fact he or she is an employee, retired person, member of an organization or student; or

(ii) *Test Two.* The beneficiary's entitlement to the medical benefit plan or program, including CHAMPUS, is based upon the fact he or she is a child of a male employee, male retired person, male member of an organization or a male student; or

(iii) *Test Three.* The medical-benefits plan or program, including CHAMPUS, under which the beneficiary has been continuously entitled to benefits for the longest period of time (i.e., earliest effective date of coverage).

(9) *Privately Purchased Plan.* "Privately Purchased Plan" means a privately purchased, non-group medical benefits coverage which the CHAMPUS beneficiary (or sponsor) purchases, provide such entitlement to purchase does not result because of law, employment, membership in an organization or student status.

(10) *Secondary Payor.* "Secondary Payor" means the medical benefit coverage determined not to be the primary payor (i.e., have first pay obligation) by virtue of applying the tests set forth in paragraph (b)(8) of this section.

(11) *Veterans Benefits.* "Veterans Benefits" means those medical benefits authorized under Chapter 17, Title 38, United States Code, available to veterans of the military services with service-connected illnesses or injuries, through programs administered by the Veterans Administration.

(12) *Workmen's Compensation Benefits.* "Workmen's Compensation Benefit" means medical benefits available under any workmen's compensation law (including the Federal Employees Compensation Act), occupational disease law, employers liability law, or any other legislation of similar purpose, or under the maritime doctrine of maintenance, wages and cure.

(c) *Dependents of Active Duty Members.* Coordination of benefits on CHAMPUS claims submitted for otherwise covered services and/or supplies provided to dependents of active duty members, and which involve double coverage, shall be as follows:

(1) *Initial Payment.* CHAMPUS benefits will be extended on an initial payment basis, regardless of whether or not it is known that double coverage entitlement exists.

(i) *After the Fact Determination.* After the fact of payment of the CHAMPUS benefit, the CHAMPUS Contractor or OCHAMPUS (including OCHAMPUS EUR) will determine the primary/secondary payor.

(ii) *Application of Primary Payor/Secondary Payor Rules.* If CHAMPUS, after the initial payment, is determined to be the secondary payor, appropriate reimbursement will be obtained from the double coverage plan determined to be the primary payor.

(iii) *Exception to Initial Payment Rule for Dependents of Active Duty Members.* When it is known by the CHAMPUS Contractor or OCHAMPUS (including OCHAMPUSEUR) prior to adjudication and payment of a CHAMPUS claim that double coverage exists, the CHAMPUS is the secondary payor "and that a benefit payment has already been made by the primary payor", the requirement to pay CHAMPUS benefits on an initial payment basis is waived and any applicable CHAMPUS benefits will be extended on a secondary payor basis. The initial payment requirement is also waived when the double coverage plan is Medicare (refer to paragraph (c)(2) of this section.)

(2) *Title XVIII of the Social Security Act, as Amended: Medicare.* When an active duty dependent is also eligible for Medicare benefits (either under Part A, "Hospital Insurance," or Part B, "Supplementary Medical Insurance") Medicare is always the primary payor and CHAMPUS is always the secondary payor.

(i) *Medicare Lifetime Reserve.* Before CHAMPUS benefits may be extended, the Medicare "lifetime reserve" benefit must be used.

(ii) *Initial Payment Waived.* When Medicare is the double coverage plan, the requirement for initial payment of CHAMPUS benefits described in paragraph (c)(1)(iii) of this section is waived.

(d) *Retirees; Dependents of Retirees; and Dependents of Deceased Active Duty Members or Retirees.* Chapter 55 of Title 10, United States Code, is clear that the CHAMPUS Program is designed as an interim, secondary coverage for retirees, dependents of retirees and dependents of deceased active duty members or retirees. Therefore, CHAMPUS claims submitted for otherwise covered services and/or supplies provided these beneficiary classes, and which involve double coverage, shall be adjudicated as follows:

(1) *CHAMPUS Always "Last Pay".* In any double coverage situations, CHAMPUS benefits shall be "last pay."

(2) *Exclusionary Clause: October 1, 1966 Rule.* Generally if a double coverage plan has an exclusionary clause which precludes payment of benefits as "primary payor" if the insured is covered under a Federal health and medical benefits program, it is not recognized by CHAMPUS (refer to paragraph (h)(2) of this section). However, if the double coverage plan had an exclusionary clause that was in effect prior to October 1, 1966, CHAMPUS becomes primary payor: *Provided*, The following requirements are met:

(i) *Continuously in Effect.* The specific double coverage plan containing such exclusionary clause has been continuously in effect since October 1, 1966, or prior, and

(ii) *Other than FEHBP Plan.* The double coverage plan is other than one of the plans authorized under the Federal Employees Health Benefits Law (FEHBP) Chapter 89, Title 5, United States Code, as administered by the United States Civil Service Commission.

(3) *Title XVIII of the Social Security Act, as Amended: Medicare.*

(i) *Eligible for Part A., "Hospital Insurance."* A retiree, dependent of a retiree and a dependent of a deceased active duty member or retiree loses his or her eligibility for CHAMPUS if, upon reaching 65 years of age, or because of disability or chronic renal disease, he or she becomes entitled to Hospital Insurance Benefits (Part A) of Medicare. (Refer to § 199.9, "Eligibility.")

(*a*) Under the circumstances described in paragraph (d)(3)(i) of this section, CHAMPUS eligibility ceases, even though the person lives outside the United States where Medicare benefits are not available.

(*b*) If upon reaching age 65, a CHAMPUS beneficiary is not entitled to "Hospital Insurance Benefits" (Part A) of Medicare, eligibility for CHAMPUS benefits continues. In such event the CHAMPUS beneficiary must file a Social Security Administration "Notice of Disallowance" (certifying to the fact that he or she does not have entitlement to Part A of Medicare) with the Uniformed Service responsible for the issuance of his or her ID card. A new ID card will then be issued showing continued CHAMPUS eligibility past age 65.

(ii) *1972 Amendments to the Social Security Act: Other Part A Eligibility.* Certain persons over 65 years of age, who were not previously entitled to Medicare Part A, "Hospital Insurance Benefits," became eligible to enroll in Part A after June 30, 1973, under the premium-HI provision of the 1972 Amendments to the Social Security Act. Entitlement to Medicare Part A benefits secured under these circumstances does not result in loss of CHAMPUS eligibility. However, in every such instance of double coverage with Medicare Part A, Medicare is the primary payor and CHAMPUS is the secondary payor, and initial payment of CHAMPUS benefit is not authorized.

(iii) *Eligibility for Medicare Part B, "Supplementary Medical Insurance."* Any person age 65 years or over may elect to purchase Medicare Part B coverage whether or not they are eligible for Part A. Entitlement to coverage only under Medicare Part B does not result in a loss of CHAMPUS eligibility. However, in every instance of double coverage with Medicare Part B, Medicare is the primary payor and CHAMPUS is the secondary payor and initial payment of CHAMPUS benefits is not authorized.

(e) *Title XIX of the Social Security Act, as Amended: Medicaid.* Medicaid is essentially a welfare program, providing medical benefits for persons under various state welfare programs (such as Aid to Dependent Children) or who qualify by reason of being determined to be "medically indigent" based on a means test. It is not the intent of CHAMPUS to require any class of beneficiary to resort to welfare programs before payment of CHAMPUS benefits. Therefore, for the purpose of this section, entitlement to Medicaid is not considered to constitute double coverage.

(1) *Medicaid: CHAMPUS Always Primary Payor.* Whenever a CHAMPUS beneficiary is also eligible for Medicaid, CHAMPUS is in every instance the primary payor. This applies to all classes of CHAMPUS beneficiaries, i.e., dependents of active duty members, retirees, dependents of retirees, dependent of deceased active duty members and dependents of deceased retirees.

(2) *Medicaid Payments Made in Error.* In those instances where Medicaid extends benefits on behalf of a Medicaid eligible person who is subsequently determined to be a CHAMPUS beneficiary, CHAMPUS shall reimburse the appropriate Medicaid agency for such amount as CHAMPUS would have paid in the absence of Medicaid benefits, under the following conditions:

(i) *Reimbursement Requirements.* The documentation required in order for CHAMPUS to make reimbursement to a Medicaid agency shall be established by the Director, OCHAMPUS (or a designee), and must provide sufficient information to permit the proper determination of the applicable CHAMPUS benefit.

(ii) *Time Limit on Reimbursement.* It is the responsibility of the appropriate Medicaid agency to determine such other health and medical coverage under which a Medicaid-eligible person may also seek reimbursement for medical services and supplies. In order to receive reimbursement from the CHAMPUS Program for Medicaid benefits paid in error on behalf of a person subsequently determined to be a CHAMPUS beneficiary, the appropriate Medicaid agency must submit a request for reimbursement no later than December 31 of the year following the year in which the medical service and/or supply was provided.

(f) *Veterans Benefits.* All CHAMPUS benefits are specifically excluded for any medical service and/or supply provided a CHAMPUS beneficiary in the treatment of a military service-connected illness or injury. Medical care for service-connected disabilities is specifically provided for under another Government Program set forth in CHAPTER 17, Title 38, United States Code and administered by the Veterans Administration.

(1) *No Option.* The CHAMPUS beneficiary may not elect to waive his or her veterans benefits in favor of using CHAMPUS.

(2) *Beneficiary Responsibility.* It is the responsibility of the CHAMPUS beneficiary to make application to the Veterans Administration for medical care related to service-connected illness or injury. Failure to make application and/or failure to comply with the procedures established by the Veterans Administration in order to qualify for veterans benefits, does not in any way change the CHAMPUS exclusion for service-connected illness or injury.

(3) *Dispute as to Whether Service-Connected.* The Veterans Administration shall have final authority in the determination of whether or not an illness or injury is, in fact, service-connected. In those disputed cases where it is determined by the Veterans Administration that an illness or injury is not service-connected, CHAMPUS will assume the case and benefits for otherwise covered services and/or supplies may be extended.

NOTE.—Such decisions are limited to cases involving a substantive determination related to the medical condition in dispute. It does not include decisions on nonavailability of veterans benefits because of technical reasons (i.e., non-compliance with required procedures).

(4) *Paid in Error.* Any CHAMPUS benefits extended for medical care subsequently determined to be related to a service-connected illness or injury shall be recouped. (Refer to § 199.13 "Claims Submission, Review and Payment.")

(g) *Workmen's Compensation.* All CHAMPUS benefits are specifically excluded for any medical service and/or supply provided a CHAMPUS beneficiary in the treatment of a work-related (i.e., occupational) illness or injury for which benefits are available under applicable workmen's compensation benefits (whether applied for or paid).

(1) *No Option.* The CHAMPUS beneficiary may not elect to waive his or her workmen's compensation benefits in favor of using CHAMPUS.

(2) *Beneficiary Responsibility.* It is the responsibility of the CHAMPUS beneficiary to make application for workmen's compensation benefits for medical care in connection with a work-related (i.e., occupational) illness or injury. Failure to make application and/or failure to comply with the procedures established to qualify for workmen's compensation benefits does not in any way change the CHAMPUS exclusion for work-related (i.e., occupational) illness or injury.

(3) *Dispute as to Whether Work-Related.* The agency having authority to do so (as designated under the applicable workmen's compensation law, et al.), shall have final authority in the determination of whether or not an illness or injury is, in fact, work-related (i.e., occupational). In those disputed cases where it is determined by the workmen's compensation agency that an illness or injury is not work-related, CHAMPUS will assume the case and benefits for otherwise covered services and/or supplies may be extended.

NOTE.—Such decisions are limited to cases involving a substantive determination related to the medical condition in dispute. It does not include decisions on nonavailability of workmen's compensation benefits because of technical reasons (i.e., non-compliance with required procedures).

(4) *Exhaustion of Workmen's Compensation Benefits.* If a CHAMPUS beneficiary exausts available workmen's compensation benefits, CHAMPUS will assume the case and benefits for otherwise covered services and/or supplies may be extended providing the following conditions are met:

(i) *Written Request Required.* The CHAMPUS beneficiary must furnish such written documentation as is necessary to the fact that the workmen's compensation benefits have been exhausted.

(ii) *Lump Sum Settlement.* The workmen's compensation benefits did not cease to be available because of a lump sum settlement between the CHAMPUS beneficiary and the workmen's compensation agency. If the workmen's compensation case was settled on the basis of an award or a lump sum settlement, whether or not an amount was specified for medical expenses, CHAMPUS benefits will not become available until such time as the CHAMPUS beneficiary furnishes written documentation that he or she has incurred expenses for medical services and/or supplies in connection with the work-related condition for which the lump sum award was made, equal to the amount of the award designated for medical expenses (or, if no such designation was made, equal to the full amount of the award). At that time, CHAMPUS will assume the case and extend benefits for otherwise covered services and supplies.

(5) *Special Assistance Where Length of Time Involved Is Extensive.* In workmen's compensation cases which involve a lengthy investigation by the applicable workmen's compensation agency before a decision can be made as to whether a case is, in fact, work-related, or an unusual delay because the CHAMPUS beneficiary elects to appeal an adverse decision by the workmen's compensation agency, CHAMPUS benefits may be extended for otherwise covered services and supplies when authorized by the Director, OCHAMPUS (or a designee), and provided the following conditions are met:

(i) *Written Request Required.* The CHAMPUS beneficiary makes a request in writing.

(ii) *Agreement with Agency.* The appropriate workmen's compensation agency agrees in writing that in the event a favorable decision is made, CHAMPUS will be reimbursed up to the extent of an award, but not to exceed the amount of benefits provided by CHAMPUS.

(iii) *Preauthorization Required.* Agreement to make such payment is authorized by the Director, OCHAMPUS (or a designee), prior to the extension of CHAMPUS benefits.

(6) *CHAMPUS Benefits Extended in Error.* In those instances where, in error, CHAMPUS initially extends benefits in a case subsequently determined to be

work-related (i.e., occupational) and thus recoverable under the applicable workmen's compensation law, or in such event CHAMPUS payments extended under paragraph (g)(5) of this section (because of administrative error on the part of the workmen's compensation agency) are not refunded to CHAMPUS by the workmen's compensation agency, standard recoupment procedures will be followed.

(h) *General Provisions.* The following general provisions shall be followed in the administration of this § 199.14, "Double Coverage."

(1) *Double Coverage Plan: No Coordination of Benefits (or Similar) Provision.* When a double coverage plan does not contain a coordination of benefits (or similar) provision, such double coverage plan shall automatically be the primary payor and CHAMPUS the secondary payor.

(2) *Exclusionary Clause.* The fact that a double coverage plan has an exclusionary clause which precludes payment of benefits as a "primary payor" if the insured is covered under a Federal health and medical benefits program is not recognized, except as specifically set forth in paragraph (d)(2) of this section, and the other provisions of this section shall be applied in the same manner as in the absence of such exclusionary clause.

(3) *Double Coverage Information.* It is the responsibility of the CHAMPUS beneficiary (or sponsor) to provide complete information related to double coverage in order to permit proper adjudication of claims in accordance with the provisions of this section. (Also refer to § 199.13, "Claims Submission, Review and Payment".)

(4) *Erroneous Payments: Recoupment.* Any CHAMPUS payments made in error relative to double coverage shall be recouped under one of the following procedures:

(i) *Reimbursement from Double Coverage Plan.* In those instances where the double coverage plan has not already made its benefit payment to the beneficiary and/or provider, CHAMPUS contractors or OCHAMPUS will request direct reimbursement.

(ii) *Refund or Offset.* If the double coverage plan has made its benefit payment prior to receiving the CHAMPUS request for reimbursement, the recoupment procedures set forth in § 199.13, "Claims Submission, Review and Payment" will be followed.

(5) *No Option.* A CHAMPUS beneficiary may not elect to waive benefits under his or her double coverage plan and use CHAMPUS. In all instances which are not benefits under both visions of this section will be applied.

(6) *Benefit Application*—(i) *Benefits Not Available Under Both Double Coverage Plans.* Services and/or supplies which are not benefits under both CHAMPUS and the double coverage plan will not be coordinated.

(ii) *Secondary Payor; Limitations.* CHAMPUS cannot pay more as a secondary payor than it would have as a primary payor; nor can CHAMPUS payments be made as a secondary payor for any services or supplies which are not otherwise covered under the Program. Application of double coverage provisions does not extend or add to the CHAMPUS benefits as otherwise set forth in this and other sections of this regulation.

(i) *Program for the Handicapped.* The Program for the Handicapped was established by Congress to be a source of financial assistance in those instances where an active duty member's handicapped dependents have, by virtue of residency laws, been excluded from appropriate publicly operated programs or institutions for the handicapped. There is, therefore, a requirement that all local resources must be considered and utilized first, before CHAMPUS benefits under the Program for the Handicapped may be extended. If a handicapped CHAMPUS beneficiary is eligible for other Federal, state and/or local assistance to the same extent as any other resident or citizen, CHAMPUS benefits are not payable. The sponsor does not have the option of waiving available Federal, state, and/or local assistance in favor of using CHAMPUS benefits.

(j) *Implementing Instruction.* The Director, OCHAMPUS (or a designee) shall issue a CHAMPUS Operating Manual and such other instructions, procedures, guidelines, etc., as may be necessary to implement the intent of this section.

§ 199.15 Federal Medical Care Recovery Act.

(a) *General.* The Federal Medical Care Recovery Act (FMCRA) (42 U.S.C. 2651–2653) provides that in any case in which the United States is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment to a person who is injured or suffers a disease under circumstances creating tort liability in some third person to pay damages for that care, the United States has a right to recover from the third person the reasonable value of the care and treatment furnished or to be furnished.

Example.—A beneficiary is injured in an automobile accident caused by another person and the beneficiary requires medical care. The Government, under FMCRA, may recover from the negligent party the reasonable value of the medical treatment provided. This includes care that may be received by the beneficiary at a Uniformed Services facility or under CHAMPUS, or both in some instances.

(b) *The Relationship Between the Government and the Patient.* The Government's right to recover the amounts expended for the patient's medical care is independent of the right the patient himself has to assert a claim against the third person for damages. The existence of the Government's right, however, is dependent upon establishing liability of the third person under ordinary principles of law; i.e., upon providing that the third person tortiously caused the injury. The attorney for the injured beneficiary may also agree to represent the Government, and join both claims in a single action against the third person. If the attorney for the injured beneficiary does not wish to join the Government's claim with that of his or her client, and court action is required to recover the amount expended for the patient's medical care, intervention or an independent suit will be initiated by the United States for the reasonable value of the care or treatment provided.

(c) *Value of care.* The Office of Management and Budget has established rates for medical care provided by Uniformed Service facilities. For care in civilian facilities, the Government's CHAMPUS payment is used. The patient's share under CHAMPUS would remain the patient's responsibility. Guidance in this area may be obtained from the appropriate Uniformed Service legal assistance officer.

(d) *Responsibility for recovery.* The responsibility for recovering medical expenses incurred by the Government is that of designated appropriate legal officers of the Uniformed Services with the cooperation of the injured party.

(1) *Army.* All major installations have an officer designated Recovery Judge Advocate.

(2) *Navy.* The Naval Legal Service Office responsible for the Claims Region in which the injury occurred.

(3) *Air Force.* Staff Judge Advocate at Air Force installations, General Court Martial jurisdictions at Major Commands and the Claims and Tort Litigation Division, Headquarters USAF/JAGC, Washington, D.C. 20314.

(4) *Coast Guard, Public Health Service, National Oceanic and Atmospheric Administration.* The Regional Attorney, Department of Health, Education, and Welfare.

(e) *CHAMPUS Obligation to Notify Federal Claims Officer.* In those instances where medical care is provided in civilian medical facilities and payment has been made for such care by a CHAMPUS Contractor, the CHAMPUS Contractor will promptly notify the appropriate claims officer in accordance with procedures established by the Director, OCHAMPUS.

(f) *Private Automobile Insurance: Federal Claims Collection Act.* Automobile insurance is not generally considered a medical insurance program although such policies may include payment for medical care. However, any amounts paid by CHAMPUS for medical care arising out of an automobile accident when these same amounts are also payable, in whole or in part, under a policy of automobile insurance, may be subject to recovery under the Federal Claims Collection Act (31 U.S.C. 951 SEQ.) The CHAMPUS Contractor therefore has a legal obligation to report all such cases to the appropriate legal departments of the Uniformed Services for appropriate recovery action.

§ 199.16 Appeal and hearing procedures.

(a) *General.* This section establishes and explains the procedures for review of benefit decisions by OCHAMPUS and by CHAMPUS Contractors who, under con-

tract to OCHAMPUS, perform certain work in administering the CHAMPUS benefits. In the course of administering the CHAMPUS benefits, certain decisions are made by OCHAMPUS and by its CHAMPUS Contractors. Where these decisions affect the rights or liabilities of beneficiaries, their sponsors or participating providers of services, the affected parties may request a reconsideration or appeal in accordance with this section. Actions under this section will be confined to benefit issues arising out of determinations based upon CHAMPUS regulations and relate only to the specific dispute being considered. Actions under this section cannot be used to challenge such Regulations.

(b) *Definitions.* As used in this section, the following definitions apply:

(1) *Days.* "Days" means calendar days.

(2) *Appealing Party.* "Appealing Party" means a CHAMPUS beneficiary (or sponsor), a participating provider of services affected by an initial determition; or their representative. In addition, an appealing party includes a provider (or representative) that has been denied approval by CHAMPUS as an authorized provider.

(3) *Party to a hearing.* "Party to a Hearing" means an appealing party or parties and CHAMPUS.

(4) *Participating provider.* "Participating Provider" means a hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider, which/who furnished services or supplies to a CHAMPUS beneficiary and has agreed, by act of signing and submitting a CHAMPUS claim form, to accept the CHAMPUS-determined reasonable cost/charge as the total charge (even though less than the actual billed amount), whether paid for fully by the CHAMPUS allowance or requiring cost-sharing by the beneficiary (or sponsor).

(5) *Representative.* "Representative" means any person who has been appointed by the appealing party as counsel or advisor, or who is otherwise eligible to serve as the appealing party's counsel or advisor, particularly in connection with a hearing. To avoid conflict of interest situations, an employee or Uniformed Service staff member of the Department of Defense, OCHAMPUS or the Offices of the Army, Navy or Air Force Surgeon General, or Office of the Surgeon General of the U.S. Public Health Service, a CHAMPUS Liaison Officer, a CHAMPUS Advisor or an employee or Uniformed Service staff member of a Uniformed Service legal office (or similar function), subject to the exception in 18 U.S.C. 205, is not eligible to serve as a "Representative".

(6) *Initial Determination.* "Initial Determination" means a formal decision on the part of an individual in a CHAMPUS Contractor's office or in OCHAMPUS who has reviewed a claim or a formal request for benefits under a provision of this Program. An initial determination may be in the form of a payment or rejection (in part or whole) of a claim; or approval or disapproval of an application for a benefit; or a termination of a benefit. There must be an adverse initial determination before a reconsideration and/or appeal can be initiated.

(7) *Amount in Dispute.* "Amount in Dispute" means the amount of money owed by or paid by a CHAMPUS beneficiary for medical services and/or supplies specifically in connection with the appeal situation. In determining the amount, only those charges which are related to potentially coverable services and supplies can be included. Further, in the same computation, only the CHAMPUS-determined reasonable charge/cost amounts will be considered to be in dispute for purposes of determining whether or not an appeal can be filed.

NOTE.—For purposes of this Regulation, a provider appealing a denial by CHAMPUS as an authorized provider, shall always be deemed to have met any required "Amount in Dispute." Further, this same principle will be applied in reviewing an appeal of a denial of a request for preauthorization unless it can be demonstrated by CHAMPUS that the CHAMPUS-determined cost/charge involved in such request would be less than the required level of "Amount in Dispute."

(c) *Types of Initial Determinations.* Initial determinations are made by CHAMPUS Contractors and OCHAMPUS (including OCHAMPUSEUR).

(1) *CHAMPUS Contractors.* CHAMPUS Contractors initially make the following determinations:

(i) *Individual Beneficiary.* With respect to an individual beneficiary:

(*a*) Whether the individual who obtained CHAMPUS benefits under the CHAMPUS Basic Program was an eligible CHAMPUS beneficiary as defined in § 199.9 "Eligibility," at the time services and supplies were obtained;

(*b*) Whether coverage of services and supplies furnished is authorized under either § 199.10 or § 199.11 "Basic Program Benefits" and "Program for the Handicapped," respectively;

(*c*) Whether a physician's certificate is required and where applicable, whether the Treatment Plan (Basic Program Benefits) or Management Plan (Program for the Handicapped) is being properly followed;

(*d*) Whether items or services are excluded from coverage or otherwise limited in terms of coverage;

(*e*) Whether the provider's bill or other evidence of payment due, or made, for authorized benefits received is acceptable; and

(*f*) The amount of an applicable deductible or cost share.

(ii) *Provider of Services and Supplies.* With respect to a provider of services or supplies:

(*a*) Whether the provider is eligible to participate in CHAMPUS, i.e., is licensed and/or certified to practice or conduct business in the state or jurisdiction where the services were provided (refer to § 199.12, "Authorized Providers");

(*b*) Whether the type and duration of care was reasonable and appropriate;

(*c*) Whether the services or supplies were medically necessary;

(*d*) Whether the costs or charges for services and supplies furnished were reasonable;

(*e*) Whether the provider is entitled to payment pursuant to a signed agreement of the appropriate claim form or whether payment is to be made to the beneficiary (or sponsor); and

(*f*) Whether a request to transfer and/or initially admit a beneficiary/patient to a skilled nursing facility is authorized under the terms of this regulation.

(2) *OCHAMPUS.* OCHAMPUS (or a designee) makes the following initial determinations:

(i) *Individual Beneficiaries.* With respect to individual beneficiaries:

(*a*) Whether to approve preauthorization requests for inpatient admissions to authorized institutions other than hospitals and skilled nursing facilities, and for cosmetic, reconstructive and/or plastic surgery, and for adjunctive dental care;

(*b*) Whether to authorize extended inpatient care over 30 days (extended inpatient care is also subject to periodic review as determined by OCHAMPUS); and

(c) Whether to approve all (initial and reapprovals) coverage under the Program for the Handicapped.

(ii) *Insti utional Providers.* With respect to institutional providers, whether to approve Residential Treatment Centers and similar institutions as authorized providers. (Refer to § 199.12, "Authorized Providers.")

(3) *Notice of Determination and Right to Review*—(i) *CHAMPUS Contractors.* Where the initial determination is made by a CHAMPUS Contractor, written notice of this determination shall be mailed to the provider of the care (if participating) and/or the CHAMPUS beneficiary (or sponsor) at the last known address. For those beneficiaries under 18 years of age, notice to the sponsor or guardian constitutes notice to the beneficiary. Payment of a claim, along with the CHAMPUS Explanation of Benefits form (CEOB), constitutes notification. In each instance when a CHAMPUS claim is adjudicated, a CEOB is sent to the beneficiary/patient (or sponsor). A copy of the CEOB is also sent to the provider if the claim was submitted on a participating basis (refer to § 199.13, "Claims Submission, Review and Payment.") Where an initial determination results in the disallowance of a claim in whole or in part, the notice of determination shall inform the beneficiary (and, if participating, the provider) of the right to an informal review if the beneficiary (or sponsor) or participating provider is dissatisfied with the determination and that a request for informal review must be initiated within 180 days. (Refer to § 199.13, "Claims Submission, Review and Payment.") The initial determination becomes final unless an informal review is requested in accordance with paragraph (d) of this section or the determination is reopened by the CHAMPUS Contractor on its own motion for an administrative review.

(ii) *OCHAMPUS (including OCHAMPUSEUR).* Where the initial determina-

tion is made by the Director, OCHAMPUS (or a designee) in response to applications for approval of certain inpatient care, coverage under the Program for the Handicapped or request for approval as a CHAMPUS-approved institution (or in such other instances as may be authorized by the Director, OCHAMPUS or a designee), written notice of this determination, including the reason for the determination and the underlying facts supporting the decision, shall be mailed to the applicant at the last known address. This written notice of determination shall inform each party to the determination of the right to review if the beneficiary (or sponsor) or provider is dissatisfied with the determination. The initial determination becomes final unless the applicant requests a reconsideration. The procedure for requesting a reconsideration is set forth in paragraph (g) of this section.

(d) *Request for informal review of an initial determination made by a CHAMPUS Contractor*—(1) *General.* The request for review may be made by the beneficiary (or sponsor), a participating provider, or their designated representative.

(2) *Procedure for requesting an informal review*—(i) *Written request required.* The request must be in writing, must state the specific matter in dispute and must include a copy of the applicable initial determination made by the CHAMPUS Contractor.

(ii) *Where to submit.* The request must be submitted to the office of the CHAMPUS Contractor where the initial determination was made.

(iii) *Allowed time to file.* The request must be received within 180 days after the date of the notice of the initial determination.

(iv) *Official filing date.* A request for an informal review shall be deemed filed on the date it is received in the office of the CHAMPUS Contractor.

(3) *Informal review.* The informal review process will be conducted by the office making the initial determination and will include a thorough review of the case. Such review must be based on the evidence submitted for the initial determination plus any further evidence that the appealing party or CHAMPUS may submit or obtain. The appealing party will be advised in writing by certified mail as to the result of the informal review, the reason for such determination and the underlying facts supporting the decision. Unless the case qualifies for automatic referral for the reconsideration process (refer to paragraph (d)(4) of this section), the appealing party will be further advised of the right to a reconsideration of the claim if still dissatisfied.

(4) *Automatic referral for reconsideration.* Where the informal review concurs with the initial determination and the amount in dispute is more than $300.00, the case will be automatically referred for the reconsideration process (refer to paragraph (e) of this section), without waiting for a specific request from the appealing party(ies).

(e) *Request for reconsideration of an informal review made by a CHAMPUS contractor.* (1) *General.* The request for reconsideration will be made by the same appealing party(ies) making the original request for informal review.

(2) *Procedure for requesting reconsideration.*—(i) *Written request required.* The request must be in writing, must state the specific matter in dispute and must include a copy of the written determination resulting from the informal review procedure.

(ii) *Where to submit.* The request must be submitted to the office of the CHAMPUS Contractor where the initial determination was made and informal review conducted.

(iii) *Allowed time to file.* The request must be received within 60 days after the date of the notice of the results of the informal review.

(iv) *Official filing date.* A request for a reconsideration shall be deemed filed on the date it is received in the office of the CHAMPUS Contractor.

(3) *Reconsideration process.* The reconsideration process will be a thorough and independent review of the case. It is based on the evidence submitted for the initial determination, the informal review, plus any further evidence that the appealing party or CHAMPUS may wish to submit or obtain in connection with the reconsideration. The reconsideration will be made by a different member of the CHAMPUS Contractor staff from the one who made the initial determination and/or performed the informal review. The appealing party will be advised in writing by certified mail as to the result of the reconsideration, the reasons for such determination and the underlying facts supporting the decision.

(i) *Amount in dispute is $50.00 or less.* This written notice will further advise the appealing party that the results of the reconsideration are final if the amount in dispute is $50.00 or less.

(ii) *Amount in dispute is more than $50.00.* If the amount in dispute is more than $50.00 and the appealing party is still dissatisfied, there is the further right to appeal the case to the Director, OCHAMPUS.

(f) *Appeal to OCHAMPUS of a reconsideration conducted by a CHAMPUS Contractor*—(1) *General.* If a dispute has not been resolved in the course of the CHAMPUS Contractor's Informal Review and Reconsideration procedures, and the amount in dispute is more than $50.00, the appealing party(ies) may appeal to OCHAMPUS. The appeal process within OCHAMPUS consists of two levels. The first level is a review by the Director, Contract Management. The second level is a formal hearing before a hearing officer appointed by the Director, OCHAMPUS.

(2) *Procedure for requesting a review by the Director, Contract Management (First Level Appeal)*—(i) *Written request required.* The request must be in writing, must state the specific matter in dispute and must include copies of the written determination as a result of the informal review and the reconsideration procedures of the CHAMPUS Contractor.

(ii) *Where to submit.* The request must be filed with the Director, Contract Management, OCHAMPUS, Denver, Colorado 80240.

(iii) *Allowed time to file.* The request must be received within 60 days after the date of the notice of the results of the reconsideration.

(iv) *Official filing date.* An appeal shall be deemed filed on the date it is received at OCHAMPUS.

(3) *The appeal process.* The appeal process is a thorough review of the facts in the case furnished or obtained by the appealing parties and CHAMPUS. The Director, Contract Management (or a designee), will conduct the review and as soon as possible will issue a written report of the review findings and conclusions, the reasons for such determination, and the underlying facts supporting the decision. A copy of this report will be sent to the appealing party(ies) by certified mail.

(i) *Amount in dispute is $300.00 or less.* The findings are final if the amount in dispute is $300.00 or less.

(ii) *Amount in dispute is more than $300.00.* If the amount in dispute is more than $300.00 and the appealing party(ies) continues to dispute the matter, there is the right to appeal to the Director, OCHAMPUS, and upon request, have a hearing conducted by a hearing officer.

(4) *Procedure for requesting a hearing (second level appeal).*—(i) *Written request required.* The request must be in writing, must state the specific matter in dispute and must include copies of the written determinations as a result of the informal review and the reconsideration procedures of the CHAMPUS Contractor and the report issued by the Director, Contract Management, from the first level appeal.

(ii) *Where to submit.* The request must be submitted to the Director, OCHAMPUS, Denver, Colorado 80240.

(iii) *Allowed time to file.* The request must be received within 60 days after the date of the report of findings by the Director, Contract Management.

(iv) *Official filing date.* An appeal shall be deemed filed on the date it is received at OCHAMPUS.

(5) *Contents of a request for a hearing.* The hearing request need not be formal but it must be specific as to such issues as continue to be disputed, setting forth the appealing party's contentions as to those issues. If an appeal fails to state the specific grounds upon which it is based, then the appealing party (or the representative) shall be notified by certified mail that it does not comply with the requirement of this regulation, and shall be granted 30 days after the date of mailing such notice to the appealing party within which to file an amended appeal. If within the time permitted the appealing party (or representative) fails to amend said appeal as notified, the appeal shall be dismissed. In such an event, the original

CHAMPUS decision in the case shall be deemed as to be final.

(6) *Merger of successive appeals.* If, at the time any apepal is filed, one or more prior appeals by the same appealing party involving the same or similar issues have not been heard by a hearing officer, such prior appeals may upon notice to the parties to the hearing be combined with the last appeal filed, and the hearing officer may issue a single decision.

(7) *Withdrawal of appeal.*—(i) *Withdrawal by appealing party.* An appeal may be withdrawn by the appealing party (or the representative) by written request at any time before the decision is issued or by oral request at the time of the hearing. If such request is made, the hearing officer shall issue a decision dismissing the appeal, and the original CHAMPUS decision in the case shall be deemed to be final unless paragraph (f)(7)(ii) of this section applies.

(ii) *Reinstatement of appeal.* An appeal so dismissed shall be reinstated by the hearing officer if the appealing party (or the representative) files a written application and shows therein that the requests for withdrawal resulted from misinformation given by OCHAMPUS or the Department of Defense or from fraud or coercion, or other good cause as determined by the hearing officer. An application for reinstatement shall be made within 30 days after personal service or mailing of the decision dismissing the appeal; or, in the event of fraud, within 30 days after discovery of such fraud, but in no event later than 1 year after issuance of the decision dismissing the appeal; otherwise the original CHAMPUS decision in the case shall be deemed to be final.

(8) *Notice and scheduling of hearing.*—(i) *Written notice.* Written notice of the time and place of hearing an appeal shall be mailed to each party to the hearing at least 15 days before the date of the hearing. The time and place of the hearing will be determined by the hearing officer who shall select a reasonable time and location that are mutually convenient to OCHAMPUS and the appealing party.

(ii) *Reasonable time.* Appeals shall be heard as soon as reasonably possible.

(iii) *Records available.* Copies of records furnished by OCHAMPUS to the hearing officer shall be made available to the appealing party for inspection at a reasonable and convenient time.

(9) *Waiver of right to appear.* If all parties to the hearing waive their right to appear before the hearing officer personally or by representation, it will not be necessary for the hearing officer to give notice of or conduct a formal hearing as provided in paragraph (f)(8) of this section. A waiver of right to appear must be in writing and filed with the hearing officer or the Director, OCHAMPUS. When the right to appear has been waived, the hearing officer will decide the case on the records and documents submitted by all parties to the hearing.

(10) *Dismissal of request for hearing.*—(i) *By application of appealing party.* With the approval of the hearing officer, a request for a hearing may be withdrawn or dismissed at any time prior to the mailing of notice of the decision upon the application of the party(ies) (or representative) filing the request for such hearing. A request for dismissal must be in writing and filed with the hearing officer or orally stated at the hearing. When dismissal is entered pursuant to request, it will be final and binding and the original CHAMPUS decision in the case shall be deemed to be final unless the dismissal is vacated in accordance with paragraph (f)(10)(iv) of this section.

(ii) *Dismissal by abandonment.* A hearing officer may dismiss a request for hearing upon abandonment by the appealing party or parties who filed the request. An appealing party will be deemed to have abandoned a request for a hearing, other than where personal appearance is waived in accordance with paragraph (f)(9) of this section, if neither the appealing party nor a designated representative appears at the time and place fixed for the hearing, and if within 10 days after the mailing of a notice by certified mail to the appealing party by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer prior to the time fixed for hearing that an appearance cannot be made. When dismissal by abandonment occurs, the original CHAMPUS decision in the case shall be deemed to be final unless the dismissal is vacated in accordance with paragraph (f)(10)(iv) of this section.

(iii) *Dismissal for cause.* The hearing officer, may on personal motion, dismiss a hearing request, either entirely or as to any stated issue under one of the following circumstances:

(*a*) Where the appealing party requesting the hearing is not a proper party under paragraph (b)(1) of this section, or does not otherwise have a right to a hearing; or

(*b*) Where the appealing party who filed the hearing request dies and there is no information before the hearing officer showing that an individual who is not a party may be prejudiced by the determination of the CHAMPUS Contractor.

(*c*) The amount in dispute is less than required.

(*d*) When a hearing request is dismissed for cause, the original CHAMPUS decision in the case shall be deemed to be final unless the dismissal is vacated in accordance with paragraph (f)(10)(iv) of this section.

(iv) *Vacation of dismissal.* A hearing officer may, on request by an appealing party and for good and sufficient cause shown, vacate any dismissal of a request for hearing at any time within 6 months from the date of mailing notice of the dismissal to the party requesting the hearing at the last known residence address.

(11) *Witnesses and evidence.* All parties to the hearing are responsible for producing witnesses and other evidence in their own behalf at the hearing. Existing law does not authorize the Department of Defense to subpoena witnesses and/or records. The hearing officer may issue invitations and requests to individuals to appear and testify in order that the full facts in the case may be presented.

(12) *Additional parties.* Whenever it appears that other parties should be joined in order to dispose of all issues, the hearing officer may so order and may grant such continuance and hold such additional hearings as may be necessary.

(13) *Consolidation of proceedings.* Any number of proceedings may be consolidated for hearing or decision when the facts and circumstances are similar and no substantial right of any party to the hearing will be prejudiced.

(14) *Severance of Issues.* The hearing officer may, upon the motion of any party to the hearing, or upon personal motion, proceed to the hearing of any issue or issues before the hearing of any other issue in the appeal where it is found that the decision of that issue or issues could abate further proceedings on the appeal.

(15) *Preparation for Hearing.* A party to the hearing appearing at a hearing before a hearing office shall have the case evidence and witnesses present and be ready to proceed. The hearing officer, if it is deemed necessary for preparation for a hearing, may on reasonable notice require all parties to the hearing to submit a written statement of their contentions and the reasons therefor. A copy of such written statement(s) shall be provided prior to the hearing to all parties to the hearing.

(16) *Conduct of Hearing*—(i) *CHAMPUS Determinations First.* The basis of the CHAMPUS determination shall be presented to the hearing officer first. The appealing party (or the representative) will then be given the opportunity to demonstrate why this determination is held to be in error.

(ii) *Testimony.* Testimony shall be taken only on oath, affirmation or penalty of perjury.

(iii) *Right to examine parties to the hearing and their witnesses.* Each party to the hearing shall have the right to call and examine all other parties to the hearing and their witnesses; to introduce exhibits; to question opposing witnesses and parties to the hearing on any matter relevant to the issue even though the matter was not covered in the direct examination; to impeach any witness regardless of which party to the hearing first called the witness to testify; and to rebut any evidence presented.

(iv) *Relevant evidence.* Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil or criminal actions.

(v) *Interrogatories and depositions.* A hearing officer may order the taking of interrogatories and depositions (recog-

nizing that the Department of Defense does not have subpoena power), and assess the expense to the requesting party when the hearing office deems it proper.

(vi) *Questioning and admission of evidence.* A hearing officer may question any party to the hearing or witness and may admit any relevant and material evidence.

(vii) *Conduct of hearing.* The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties to the hearing. Prior to taking evidence, the hearing officer shall identify and state the issues in dispute on the record and the order in which evidence will be received.

(viii) *Appealing party responsibilities.* An appealing party has the responsibility of providing whatever facts are necessary to support the opposition to the CHAMPUS determination.

(ix) *Burden of evidence.* The burden of producing evidence as to a particular fact is on the party to the hearing against whom a finding on that fact would be required in the absence of further evidence.

(x) *Transcript of hearing.* A verbatim taped record will be made of the hearing and made a permanent part of the record. Upon request, the appealing parties will be furnished a duplicate copy of the tape. An actual typed transcript of the testimony will be made only when determined to be necessary by the hearing (or subsequently, if a legal action results). In such event the appealing parties will be furnished a copy without charge. (Corrections will be allowed in the typed transcript by the hearing officer solely for the purpose of conforming the transcript to the actual testimony.)

(xi) *Right to open hearing.* Because of the personal nature of the matters to be adjudicated, hearings will normally be closed to the public. However, the appealing party (or the representative) may request an open hearing. In that event, it will be open except to the extent that other legitimate Government purposes can only be protected by closing portions of the hearing.

(17) *Department Records*—(i) *Hearing Officer Rights.* A hearing officer may order the production or inspection of any records or relevant portions of records in the possession of CHAMPUS when necessary to decide the issues in any proceedings before a hearing officer or to assist an appealing party in preparing for the proceeding.

(ii) *Rights of Appealing Party.* A request by an appealing party (or the representative) for an order to produce or inspect CHAMPUS records shall be in writing and shall state clearly the information desired, the records desired to be produced or inspected, and the reason therefor.

(18) *Continuance of hearings: Further hearing.* A hearing officer may continue a hearing to another time or place on his or her own motion or, upon a showing of good cause, at the request of any party. Written notice of the time and place of the continued hearing, except as provided herein, shall be in accordance with this regulation. When a continuance is ordered during a hearing, oral notice of the time and place of the continued hearing may be given to each party to the hearing present at the hearing. Prior to the decision to continue the hearing, the hearing officer on his or her own motion, or upon a showing of good cause, may order a further hearing. Notice thereof shall be given in accordance with this regulation.

(19) *Continuance for additional evidence.* If, after a hearing has begun, the hearing officer determines that additional evidence is necessary for the proper determination of the case, the following procedures may be invoked:

(i) *Continue hearing.* The hearing may be continued to a later date and any party to the hearing ordered to produce additional evidence; or

(ii) *Close hearing.* The hearing may be closed, but the record held open in order to permit the introduction of additional documentary evidence. Any material submitted after the close of the hearing shall be made available to all parties to the hearing and each party to the hearing shall have the opportunity for rebuttal. The hearing officer may order a further hearing if the nature of the additional evidence or the refutation thereof makes a further hearing desirable.

(20) *Representation at a hearing.* A hearing officer may refuse to allow any person to represent a party to the hearing in any hearing when such person engages in unethical, disruptive or contemptuous conduct or intentionally fails to comply with the proper instructions or order of the hearing officer or the provisions of this Regulation.

(21) *Oral argument and briefs.* At the request of any party to the hearing made prior to the close of the hearing, the hearing officer shall grant oral argument. If written argument is requested, it shall be granted and the parties to the hearing shall be advised as to the time and manner within which such argument is to be filed. The hearing officer may, at personal discretion, require any party to the hearing to submit written memoranda pertaining to any or all issues raised in the hearing.

(22) *Disqualification of Hearing Officer.* A hearing officer shall voluntarily disqualify himself or herself and withdraw from any proceedings in which the hearing officer cannot give a fair or impartial hearing or in which there is a personal interest. A party to the hearing may request the disqualification of a hearing officer by filing an affidavit stating in detail the grounds upon which it is claimed that a fair and impartial hearing cannot be given or that the hearing officer has an interest in the proceeding. The hearing officer shall immediately present the affidavit to the Director, OCHAMPUS (or a designee) who will investigate the allegations and shall advise the complaining party in writing of the decision. A copy of such decision shall also be mailed to any other appealing parties. If the Director, OCHAMPUS (or a designee) can conveniently reassign the case to another hearing officer, no investigation shall be required.

(23) *Decision.* At the conclusion of the hearing, the hearing officer shall take the matter under submission and, as soon as is reasonably possible thereafter, prepare a recommended decision in the case which will be based on the evidence adduced at the hearing or otherwise included in the hearing records. The written record must contain findings of fact and statement of reasons. The recommended decision will be submitted to the Director, OCHAMPUS (or a designee), for review.

(i) *Decision Review, Director, OCHAMPUS.* The recommended decision will be reviewed by the Director, OCAMPUS (or a designee), who may concur without comment or who may prepare a written opinion of the recommendation. However, the Director, OCHAMPUS (or a designee), may not alter the hearing officer's report or effect any change in the recommendations. The Director, OCHAMPUS (or a designee), must within 30 days of receipt, release the hearing officer's report, along with concurrence or a statement of reasons for disagreement.

(*a*) If the hearing officer finds for the appealing party(ies) and the Director, OCHAMPUS (or a designee) concurs, no further review is required and the appealing party(ies) will be so notified by certified mail by the Director, OCHAMPUS (or a designee).

(*b*) If the hearing officer finds against the appealing party(ies), whether or not the Director, OCHAMPUS (or a designee) concurs, or the Director, OCHAMPUS (or a designee) disagrees with the hearing officer's report (whether or not the findings is for or against the appealing party(ies)), the Director, OCHAMPUS (or a designee) will forward the hearing officer's report, along with concurrence and/or a statement giving the reasons for disagreement, to the Assistant Secretary of Defense (Health Affairs) for a final appellate review.

(ii) *Action by ASD(HA).* The ASD (HA) (or a designee) may adopt the recommended decision or the recommended decision may be rejected. In the case of rejection, the ASD(HA) (or a designee) shall prepare a statement outlining the reasons for disagreement with the hearing officer's report and the underlying facts supporting such disagreement. In this circumstance the ASD(HA) (or a designee) can have a revised decision prepared based upon the record, or may remand the matter to the hearing officer to take additional evidence. In the latter instance, the hearing officer thereafter shall submit a new recommended decision in a form that may be adopted as the decision of the ASD(HA).

(iii) *Final Decision.* The decision shall be final upon adoption by the ASD(HA) (or a designee). Copies of the final decision of the ASD(HA) shall be sent by certified mail to the appealing parties and any representative thereof. Such notification shall include the hearing officer's report and any statements by the Director, OCHAMPUS (or a designee) or the ASD(HA) (or a designee), where

there is nonconcurrence with the hearing officer's report.

(24) *Authority of the Hearing Officer.* The hearing officer in exercising the authority to conduct a hearing under this Regulation is to comply with Chapter 55 of Title 10, United States Code, Chapter 5 of Title 5, United States Code and this regulation, as well as with policy statements, manuals, instructions, procedures, and other guidelines issued by the Assistant Secretary of Defense (Health Affairs) and/or by the Director, OCHAMPUS (or a designee) in effect at the time the service and/or supply in dispute was rendered. A hearing officer may not establish or amend policy, procedures or instructions.

(25) *Representatives.*—(i) *Appealing Party Representative.* An appealing party may appoint any individual to act as representative (i.e., designated agent) at the hearing unless such person is disqualified or suspended from acting in administrative proceedings or unless otherwise prohibited by law or this regulation. When the representative is an attorney, in the absence of information to the contrary, a statement that such authority has been delegated will be accepted as evidence of authority to represent a party.

(ii) *Representative's Authority.* The representative will have the same authority as the appealing party and notice required to be given to an appealing party under this regulation will be given to the representative of such appealing party.

(g) *Request for Reconsideration of an Initial Determination Made by OCHAMPUS (Including OCHAMPUSEUR).*—(1) *General.* The request for reconsideration may be made by the beneficiary (or sponsor), the beneficiary's representative, the participating provider, a long-term care facility, or any other party whose rights with respect to the particular decision may be affected by such reconsideration.

(2) *Procedure for requesting reconsideration.*—(i) *Written request required.* The request must be in writing, must state the specific matter in dispute and must include a copy of the applicable initial determination made by OCHAMPUS (or OCHAMPUSEUR).

(ii) *Where to submit.* The request must be filed with the Director, Health Services, OCHAMPUS, Denver, Colorado 80240.

(iii) *Allowed time to file.* The request must be received within 180 days after the date of the notice of the initial determination.

(iv) *Official filing date.* A request should be deemed filed on the date it is received at OCHAMPUS.

(3) *Conduct of reconsideration process.* The reconsideration will be conducted by the Director, Health Services (or a designee) and will be a thorough review of the case. It is based on the evidence submitted for the initial determination plus any further evidence that the requesting party or OCHAMPUS may submit or obtain. The appealing party will be advised in writing by certified mail as to the result of the reconsideration, the reasons for the determinations and the underlying facts supporting the decision and will be further advised of the right to request a formal review of the disputed case by the Director, OCHAMPUS, if dissatisfied with the results of the reconsideration.

(h) *Request for formal review of reconsideration made by OCHAMPUS.*—(1) *Procedure for requesting a formal review.*—(i) *Written request required.* The request must be in writing, must state the specific matter in dispute and must include a copy of the applicable initial determination made by OCHAMPUS (or OCHAMPUSEUR) and the result of the OCHAMPUS reconsideration.

(ii) *Where to submit.* The request must be received within 60 days after OCHAMPUS, Denver, Colorado 80240.

(iii) *Allowed time to file.* The request must be received within 60 days after the date of the reconsideration decision.

(iv) *Official filing date.* The request shall be deemed filed on the date it is received at OCHAMPUS.

(2) *Formal review.* The formal review will be a thorough and independent review of the case. It is based on the evidence submitted for the initial determination and/or the reconsideration, plus any further evidence that the appealing party or OCHAMPUS may wish to submit or obtain. The formal review will be conducted by either the Director or Deputy Director, OCHAMPUS. The appealing party will be advised in writing by certified mail as to the result of the formal review, the reasons for the determination and the underlying facts supporting the decision.

(i) *Amount in dispute is $300 or less.* The results of the formal review by the Director or Deputy Director, OCHAMPUS, are final if the amount in dispute is $300 or less.

(ii) *Amount in dispute is more than $300.00.* If the amount in dispute is more than $300 and the appealing party is dissatisfied, there is the right to appeal to the Director, OCHAMPUS (or a designee), and upon request, have a hearing conducted by a hearing officer in accordance with the procedures set forth in paragraphs (f)(4) through (f)(25) of this section.

(i) *Dismissal of Late Filing.* If a request for informal review or a reconsideration by a CHAMPUS Contractor, or a request for reconsideration or formal review by OCHAMPUS, or an appeal (either first or second level) is filed after the time permitted herein, a decision shall be issued denying or dismissing the request or appeal. Late filing may be permitted only if the appealing party can show to the satisfaction of the CHAMPUS Contractor or the Director, OCHAMPUS (or a designee), that timely filing of the request or appeal was not feasible due to extraordinary circumstances over which the beneficiary had no practical control. Each such late filing situation will receive individual consideration on its own merit.

(j) *Right to Legal Action.* The establishment of this § 199.15, "Appeal and Hearing Procedures," in no way shall be construed to deny the right to initiate legal action. However, before legal action may be instituted, all administrative remedies provided under this section must first be exhausted.

APPENDIX A

CHAMPUS STANDARDS FOR PSYCHIATRIC RESIDENTIAL TREATMENT CENTERS SERVING CHILDREN AND ADOLESCENTS

(a) *Organization and Administration.*—(1) *Governing Body Responsibilities.* (i) The residential treatment center shall have a governing body which is responsible for, and has the authority of, the policies, bylaws and activities of the residential treatment center. In the event the treatment center is owned by a partnership or single owner, the partners or single owner shall be regarded as the governing body. Compliance Requirements:

(a) Corporations shall provide a list of names, addresses, telephone numbers and titles of the members of the governing body to OCHAMPUS on an annual basis. Notification of changes within the governing body shall be made in writing and reported to ing to OCHAMPUS within 7 working days.

(b) The residential treatment center owned by a partnership shall provide the names, addresses and telephone numbers of the partners to OCHAMPUS on an annual basis. Any changes shall be reported in writing to OCHAMPUS within 7 working days.

(c) The residential treatment center that is individually owned shall provide the name, address and telephone number of the sole proprietor on an annual basis. Any change shall be reported in writing to OCHAMPUS within 7 working days.

(d) The residential treatment center which is an agency of a governmental unit shall provide the name, address and telephone number of the individuals responsible for the operation of the program. Any change shall be reported in writing to OCHAMPUS within 7 working days.

(ii) The governing body shall be responsible for the program and standard of service of the residential treatment center. Compliance Requirements:

(a) All policies must be reviewed and approved, and approval must be recorded in the official minutes of the governing body.

(b) The residential treatment center shall maintain continued compliance with state licensing standards and national accreditation standards.

(c) When the residential treatment center is an agency of a governmental unit, the individuals identified in subdivision (a)(1)(i)(d) of this APPENDIX A shall be responsible for the program and standard of service for the residential treatment center.

(iii) The governing body shall establish bylaws/rules and regulations. Compliance Requirements:

(a) Bylaws/rules and regulations shall be in accordance with all legal requirements, and shall assure a high level of quality of care for patients. Bylaws/rules and regulations shall be current and available for review. They shall include, but not be limited to, the following areas: Powers and duties of the governing body, delegated authority and responsibility to the administrative and clinical staff, organizational structure of staff, method of selection for governing body, and regulations under which administrative staff and clinical staff function.

(b) When the residential treatment center is an agency of a governmental unit, the individuals identified in subdivision (a)(1)(i)(d) of this Appendix A shall be responsible for meeting the compliance requirement of this section.

(2) *Objectives and policies.* The residential treatment center shall state its philosophy, objectives, goals, policies and procedures in a written plan of operation. Compliance Requirements:

(i) The residential treatment center shall have a written plan of operation.

(ii) The plan of operation shall include, but not be limited to, the following: Purposes and goals of the program, specific services provided, specific population served, intake and admission process, therapeutic modalities offered, qualifications of staff, resources utilized, methods to involve family members, and geographic areas served.

(3) *Chief Administrator's responsibilities and qualifications.* The governing body shall appoint a chief administrative officer or officers. Compliance Requirements:

(i) Qualifications, authority and duties of the administrative officer shall be defined in the bylaws of the residential facility.

(ii) The Chief Administrative Officer shall have, at a minimum, a Master's degree in Business Administration, Public Health, Hospital Administration, Nursing, Social Work, Psychology, etc., or shall have had at least five years of administrative experience in mental health facilities for children and/or adolescents.

(iii) Medical and psychiatric responsibility for each patient, as well as the treatment program, shall rest with the qualified psychiatrist or physician as described in subdivision (b)(1)(i) (*a*) and (*b*) of this Appendix A.

(4) *Fiscal Accountability.* The residential treatment center shall maintain complete and accurate financial records of income and disbursements which shall be open to inspection upon reasonable notice by the U.S. Government or its authorized agents. Compliance Requirements:

(i) Self Evident. (ii) The residential treatment center shall have a schedule of public rates and charges for all services provided and which shall be made available to all referral sources and families.

(iii) The residential treatment center shall have an insurance program that provides for the protection of the physical resources and adequate comprehensive liability insurance.

(5) *Personnel policies and records.* (i) The residential treatment center shall have written personnel policies and shall maintain personnel records. The personnel policies and practices shall be designed to promote the objectives of the residential treatment center. Compliance Requirements:

(*a*) Personnel policies shall be provided to each employee and shall have statements regarding at least the following: (*1*) Staff qualifications.

(*2*) Sick leave, holidays, vacations, insurance and retirement benefits.

(*3*) Performance Evaluation Procedures.

(*4*) Promotion policies.

(*5*) Conditions of and procedures for dismissal, and procedure for resignation.

(*6*) Orientation and training of new employees.

(*7*) Established grievance procedures.

(ii) There shall be a written description for each position in the residential treatment center and shall include statements regarding the following:

(*a*) Functions.

(*b*) Responsibilities.

(*c*) Supervision.

(*d*) Working days and hours.

(*e*) Academic requirements.

(*f*) Experience.

(iii) Personnel records shall be maintained on each employee of the residential treatment center. Compliance Requirements:

(*a*) These records shall contain information relative to: (*1*) Qualifications for the position.

(*2*) Preemployment references (including character references).

(*3*) Preemployment health examinations to insure that all employees are able to perform duties.

(*4*) Evaluation of performances on at least an annual basis.

(*5*) Dates and subject of inservice training and attendance at conferences, workshops, etc.

(*6*) Beginning date of employment.

(*7*) Date and reason for separation.

(*8*) Forwarding address of separated employee.

(6) *Emergency reports and records.* (i) Any serious occurrence involving a CHAMPUS beneficiary, outside the normal routine of the residential treatment center, shall be reported to OCHAMPUS, Health Resources Division. Compliance Requirements:

(*a*) An incident of a life-threatening accident requiring hospitalization, suicide attempt requiring hospitalization, incident of cruel or abusive treatment, or any equally dangerous situation involving a CHAMPUS beneficiary, shall be reported in writing to OCHAMPUS, Health Resources Division, as soon as possible, but not to exceed 7 working days.

(*b*) The incident and the followup report shall be documented in the patient's clinical record.

(*c*) Notification shall be provided to the parents or legal guardian and, if appropriate, other legal authorities.

(*d*) In the event of a death of any patient, OCHAMPUS, Health Resources Division, shall be notified telephonically, within 24 hours, followed by a comprehensive written report within 7 working days.

(ii) When CHAMPUS beneficiaries are absent without leave and are not located within 10 days, a written report of the incident shall be made to OCHAMPUS, Health Resources Division. Compliance Requirement: The report shall be documented in the patient's clinical record.

(iii) Any disaster or emergency situation, natural or man-made, such as fire, severe weather, etc., shall be reported telephonically within 72 hours, followed by a comprehensive written report within 7 working days to OCHAMPUS, Health Resources Division. Compliance Requirement: Self Evident.

(iv) The governing body or the administrator of the residential treatment center shall submit in writing to OCHAMPUS, Health Resources Division, any significant changes within the residential treatment center within 7 working days. Compliance Requirement: A report shall be made concerning the following items:

(*a*) Any change in administrator or primary professional staff.

(*b*) Any change in purpose, philosophy or any addition or deletion of services or programs.

(*c*) Any licensure, certification, accreditation or approval status change by a state agency or national organization.

(*d*) Any anticipated change in location or anticipated closure.

(*e*) OCHAMPUS and its authorized agents shall have the authority to visit and inspect the residential treatment center at all reasonable times (8 a.m. to 5 p.m., Monday through Friday) on an unannounced basis.

(*f*) The residential treatment center's records shall be available and open for review by OCHAMPUS during normal working hours (8 a.m. to 5 p.m., Monday through Friday) on an unannounced basis. Compliance Requirement: Self Evident.

(7) *Operational, licensure, and accreditation requirements.* (i) The residential treatment center shall be licensed and operational for a period of 6 months before CHAMPUS approval can be obtained. Compliance Requirement: Documentation shall be provided to OCHAMPUS by the residential treatment center that would indicate when the center became licensed and operational.

(ii) The residential treatment center shall maintain continuing accreditation by the Accreditation Council for Psychiatric Facilities Serving Children and Adolescents of the Joint Commission on Accreditation of Hospitals. Compliance Requirement: Self Evident.

(b) *Treating and residential services.*—(1) *Staff composition and organization.* (i) The residential treatment center shall provide the staff necessary to insure the proper care, treatment and safety of all patients.

(*a*) *Psychiatric services.* The staff shall include a person(s) professionally qualified to provide psychiatric services. Compliance Requirements:

(*1*) This person(s) shall be a physician currently licensed to practice in the state in which the center is located and who is a psychiatrist with three years' experience in the assessment and treatment of children and/or adolescents having psychiatric disorders.

(*2*) There shall be a 24-hour coverage each day of the week that the facility is in operation by a psychiatrist, as described in subdivision (b)(2)(i)(*a*)(*1*) of this Appendix A.

(*3*) The ultimate psychiatric responsibility for each patient shall rest with the person(s) described in subdivision (b)(2)(i)(*a*)(*1*) of this Appendix A.

(*4*) The licensed physician(s) described in subdivision (b)(2)(i)(*a*)(*1*) of this Appendix A shall play an active and continuing role in the development and monitoring of the entire treatment program, as well as the individual treatment program for each patient.

(*5*) A resident or intern does not meet the compliance requirement in this section.

(*6*) A physician member of the active duty Military Medical Corps or the U.S. Public Health Service does not meet the compliance requirement in this section.

(*b*) *Medical services (other than psychiatric).* The staff shall include a person(s) professionally qualified to provide medical services. Compliance Requirements:

(*1*) This person(s) shall be a physician (M.D., or D.O.) currently licensed to practice in the state in which the center is located.

(*2*) There shall be a 24-hour coverage each day of the week that the facility is in operation by a physician described in subdivision (b)(2)(i)(*b*)(*1*) of this Appendix A.

(*3*) The ultimate medical (other than psychiatric) responsibility for each patient shall rest with the person(s) described in subdivision (b)(2)(i)(*b*)(*1*) of this Appendix A.

(*4*) A resident or intern does not meet the compliance requirement of this section.

(*5*) A physician member of the active duty Military Medical Corps or the U.S. Public Health Service does not meet the compliance requirement of this section.

(*c*) *Other professional staff.* There shall be a sufficient number of other professional staff to carry out the particular goals and policies of the treatment center, but not necessarily be limited to, Ph.D. clinical psychologists, MSW social workers, nurses (RN's), educators, speech, hearing and language specialists, activity therapists, recre-

ational therapists, etc. Compliance Requirements:

(1) Professional staff shall meet current licensing or certification requirements of the state in which the center is located. Social Workers and psychologists must at a minimum, have a Master's degree. Nurses must be, at a minimum, a registered nurse (RN).

(2) When the above qualified professionals are not available on a full-time basis, they shall be available on a part-time or regular, consistent consultative basis. The use of part-time professionals or consultants shall in no way substitute for full-time staff when a full-time person is essential to the maintenance of adequate clinical care and program development.

(d) *Mental Health and Child Care Staff.* There shall be an appropriate number of mental health or child care workers on duty 24 hours each day the facility is in operation. Compliance Requirements:

(1) There shall be child care workers on duty at all times. The number of child care workers shall be according to the needs of the patients, taking into account age, medical and psychiatric condition and other factors which affect the amount of attention required. Only personnel designated by job descriptions as Mental Health Staff or Child Care Workers may be counted in a child care/patient ratio.

(2) During sleeping hours, all child care workers must be located in a position to provide supervision and availability to patients.

(e) *Other Staff.* There shall be other staff (administrative, maintenance, dietetics and housekeeping personnel, etc.) to carry out the particular goals and policies of the treatment center. Compliance Requirement: Self Evident.

(ii) The residential treatment center shall have a written plan for the administrative and clinical staff organization for each service. Compliance Requirement: The organization will delineate, but not necessarily be limited to, include such items as regular supervision of para-professional staff, utilization review and implementation of policies.

(2) *Staff Development.* The residential treatment center shall provide orientation and professional staff development for all staff. Compliance Requirements:

(i) A written orientation plan shall be maintained for all new employees. Orientation shall provide training relating to the specific job function, as well as appropriate information concerning the operation of the residential treatment center.

(ii) Facility-based staff development and education program shall be planned and conducted on a regular and continuing basis. Sessions shall be documented in writing as to date, subject, attendance and instructor. Attendance at professional workshops and conferences shall also be documented.

(3) *Patients' rights.* (i) The residential treatment center shall provide adequate protection for all individual patients' rights provided under the Constitution of the United States. These rights include, but are not limited to, the following compliance requirements:

(a) The staff of the residential treatment center shall function in a manner so as to allow for privacy for each patient. The center's space and furnishings shall be designed and planned to enable the staff to respect the patient's right to privacy and, at the same time, provide adequate supervision according to the developmental and clinical needs of the patients. Arrangements for individual patients regarding privacy shall be made explicit to the patient and family. Each patient shall have access to a quiet, private area where he or she can withdraw from the group when not specifically engaged in structured activities. A written policy concerning patients' rights shall be provided to the patient and family.

(b) The residential treatment center's policies should allow patient's visits and communication with all members of the family and other visitors. When therapeutic considerations recommended by the responsible physician necessitate restrictions of communications and/or visits, these restrictions shall be evaluated at least weekly by the clinical staff for their continuing effectiveness. These restrictions shall be documented and signed by the responsible physician. The residential treatment center shall make known to the patient, the family and referring agency its policies regarding visiting privileges on and off the premises, correspondence and telephone calls. These policies shall be stated in writing and shall be provided to the patient and family. When limitations on such visits, calls or other communications are indicated by practical reason, e.g., the expense of travel or telephone calls, such limitation shall be determined with participation of the patient's family.

(c) Patients shall be allowed to contact an attorney. This shall be established as written policy, and the policy shall be provided to families and patients.

(d) Patients' opinions and recommendations shall be considered in the development and continued evaluation of the therapeutic program. The residential center shall have written policies to carry out appropriate procedures for receiving and responding to patient communications concerning the total program.

(e) The residential center shall have written policies regarding methods used for control and discipline of patients which shall be provided to the appropriate staff and to the patient's family. These policies shall be approved by the professional clinical staff responsible for the patients and by the governing board. Only staff members shall be allowed to handle discipline. Patients shall not be subject to cruel, severe, unusual or unnecessary punishment. Patients shall not be subject to remarks which ridicule them or their families, or others. Patients shall not be denied food, mail or visits with their families as punishment. Physical restraint will not be used as punishment.

(f) The residential treatment center shall have written policies regarding restraint and seclusion, which shall be provided to appropriate staff and the patient's family. These policies shall be approved by the facility's professional staff. Only in an emergency shall physical holding be employed unless there are physician's orders for a mechanical restraint. Physical holding or mechanical restraints, such as canvas jackets or cuffs, shall be used only when necessary to protect the patient from injury to himself or others. Mechanical restraints must be ordered by the responsible physician. Either procedure must be documented in the patient's clinical record. The need for the type of restraint used and the length of time it was employed and condition of the patient shall be recorded in the patient's record. An order for a mechanical restraint shall designate the type of restraints to be used, the circumstances under which it is to be used and the duration of its use. A patient in a mechanical restraint shall have access to a staff member at all times during the period of restraint.

(g) Seclusion, defined as a placement of a patient alone in a locked room, shall not be employed except on the order of the qualified physician, and shall not be used as punishment. If a seclusion room is used, the qualified physician's orders regarding its use shall be in writing, and shall be made known to all staff members and followed exactly. If a patient remains in seclusion for longer than 24 hours, the qualified physician's orders must be renewed in writing every 24 hours after the physician has observed the patient in seclusion. A staff member shall observe the patient in seclusion no less than on a half-hour basis and more frequently if medically necessary. A log shall be maintained which will record on a half-hour basis the observation of the patient in seclusion, and will also indicate when the patient was taken to the bathroom, when and where meals were served, when other professional staff visited, etc., and shall be signed by the observer. The need or reason for seclusion shall be made clear to the patient and shall be recorded in the patient's clinical record. The length of time in seclusion shall also be recorded in the clinical record, as well as the condition of the patient. A continuing log shall be maintained by the residential center that will indicate by name the patients placed in seclusion, date, time, specified reason for seclusion and length of time in seclusion.

(h) The residential treatment center shall not exploit a patient or require a patient to make public statements to acknowledge his gratitude of the treatment center.

(i) Patients shall not be required to perform at public gatherings.

(ii) The residential treatment center shall not use patients' pictures from which patients can be identified without written consent from the patient and the parents or legal guardian. The signed consent form shall be on file at the treatment center before any pictures from which patients can be identified are used. A signed consent form must indicate how pictures shall be used and placed in the patient's clinical record. Compliance Requirement: Self Evident.

(4) *Research and Human Rights.* A residential treatment center whose goals include clinical research involving human subjects must submit to OCHAMPUS all information concerning the research. All research involving CHAMPUS beneficiaries will comply with the regulations on protection of human subjects of the Department of Health, Education, and Welfare (45 CFR Part 46). Compliance Requirements:

(i) If a CHAMPUS beneficiary is to be used in a project for human research, information pertinent to that research must be submitted to OCHAMPUS for review before approval can be obtained.

(ii) There shall be written policies regarding the clinical research which shall include, but not be limited to, the following areas: (a) Signed consent by parent or legal guardian.

(b) Documented evidence of licensed supervision by qualified child psychiatrist.

(c) If goals or procedures of research projects change, an additional consent must be obtained.

(d) Patients or families of patients may withdraw consent at any time without jeopardy or prejudice.

(e) Reports of projects shall be available to OCHAMPUS at all times during the course of the study, if the study is approved.

(5) *Admission, referral and discharge policies*—(i) *Admission policies.* The residential treatment center shall accept only those patients who meet the conditions outlined in the admission policies of the center and for whom the treatment center has an operational program. Compliance Requirement:

(a) Compliance with conditions for licensure of the center shall be observed, including the age, sex, type and number of patients accepted, as specified in the license.

(b) The admission process shall include a discussion with the patient and the family concerning residential placement. Compliance Requirements:

(1) Discussion must center on reasons for residential treatment.

(2) Family's and patient's expectations.
(3) Patient's understanding of residential treatment and probable length of stay.
(4) Family's or responsible relative's, or legal guardian's understanding of residential treatment, and their involvement in treatment, if deemed necessary, as well as probable length of stay of patient.

(c) Professional staff of the residential center, to include the psychiatrists, shall review the admission assessment and determine whether admission is appropriate. Compliance Requirement: The residential treatment center shall document in policies and procedures the professional personnel responsible for making and reviewing the admission assessment for determining which applicants will be admitted.

(d) When an emergency psychiatric admission is necessitated, and admission assessment must be completed within 5 working days after admission. Compliance Requirements:

(1) The residential treatment center shall document in the clinical record the conditions necessitating the emergency admission.

(2) The treatment center shall document in the clinical record that initial assessment is completed within 5 working days of admission.

(e) The residential treatment center shall have a written plan for orientation of the new patients. Compliance Requirements: Self Evident.

(f) No person shall, on the grounds of race, color, religion or national origin, be denied admission to the residential treatment center. Compliance Requirement: Self Evident.

(ii) *Referral policies.* The residential treatment center shall have written referral policies. These policies shall be discussed with the patient's parents or legal guardian at time of admission. Appropriate consent forms shall be initiated during the admission process. Compliance Requirements:

(a) Referral policies should be consistent with the concept that patients under the care of the center who may have special needs for which the center cannot provide, shall be referred for appropriate examination, assessment or consultation.

(b) Referral policies should include keeping a log of all referrals made to other resources with appropriate entry in the patient's clinical record.

(c) Referral policies should indicate to the extent appropriate whether patient and/or family should be involved in the referral process.

(d) A follow-up report from the referral shall be placed in the patient's clinical record.

(iii) *Discharge policy.* The residential treatment center shall have a written plan concerning the discharge of patients. Compliance Requirements:

(a) All discharge planning shall be documented in the patient's clinical record and should include the requirements for the termination process, as indicated in the center's procedures manual.

(b) Discharge planning shall include the family and shall be documented in the patient's clinical record.

(c) If the patient is not returning to his family, appropriate documentation in the clinical record should indicate the types of preparation made with other persons and/or facilities who will be involved with the patient upon discharge.

(d) There shall be a follow-up and documentation by staff for after care or referral to other sources of care who provide after care services. Follow-up reports shall include a progress report for at least two six-month periods by the facility, either by home visits, telephone contact or by some other agency's findings.

(6) *Assessment and treatment planning*—(i) *Assessment.* The residential treatment center shall be responsible for a current assessment which includes clinical consideration of each of the fundamental needs of the patient to include, but not be limited to, the following: Physical, psychological, general development, family, educational, social, environmental, recreational, etc. Compliance Requirement:

(a) The medical examination shall be the responsibility of the qualified physician identified in Subparagraph (b)(1), and shall include at least the following: (1) A complete medical history.

(2) A general physical.

(3) An assessment of motor development and functioning.

(4) Vision and hearing assessment.

(5) A review of immunization status and completion of immunizations using the schedule as recommended by the American Academy of Pediatrics.

(6) A serology, urinalysis, and other routine blood work as indicated.

(7) A chest X-ray or Tuberculin test with results.

(b) The physical examination shall be included in the patient's clinical record, and shall include all pertinent findings resulting from the assessment.

(1) A complete physical examination shall be started within 24 hours after admission to the facility.

(2) If prior to admission (within 30 days), a complete medical history has been recorded by the patient's physician who was not a member of the facility staff, it may be made part of the patient's clinical record if recorded as acceptable by the responsible staff physician.

(c) There shall be a complete psychiatric assessment. Compliance Requirements: The psychiatric examination shall be the responsibility of the person(s) identified in subdivision (b)(2)(i)(a)(1) of this Appendix A, and shall include at least the following:

(1) A psychiatric histroy.

(2) Psychiatric evaluation and behavioral appraisal.

(3) Evaluation of sensory motor function.

(4) Mental status examination.

(5) Intellectual, projective and personality testing.

(6) Other assessments of self-help, social, affective and visual motor functioning.

(7) Developmental/chronological/age histories, to include coverage from prenatal to present, rate of progress, developmental milestones, developmental problems, current assessment of patient's age and appropriate developmental needs, detailed assessment of patient's peer and group relationships and activities.

(8) Environmental/family/social assessment histories to include evaluation of patient's relationships within the family and community, evaluation of the characteristics of the social peer group and institutional settings from which the patient comes, consideration of patient's family's circumstances, to include the family group, current living situation, social, religious, ethnic, cultural, financial, emotional and health factors, evaluation of past events and current problems that have affected the patient and the family, goals of family regarding patient's treatment, to include their expected involvement and expectations as to the time frame treatment will be required.

(9) An educational assessment, to include patient's current educational needs and functioning, stated interests and skills in relationship to recreational activities and vocational needs, and speech and language assessment.

(ii) *Treatment planning.* The residential treatment center shall have an individual written treatment plan for each patient and approved by the center's psychiatrist, as identified in subparagraph (b)(1) of this Appendix A. Compliance Requirements:

(a) There shall be a Diagnostic and Statistical Manual of Mental Disorders (DSM II) diagnosis, prognosis and estimated length of treatment as part of the treatment plan.

(b) The treatment plan shall specify how the identified needs of the patient, as identified in the assessment, to include an evaluation of strengths in parent, family and support system, shall be met.

(c) The treatment objectives shall include specific instructions and shall be shared with appropriate staff members.

(d) A tentative diagnosis and treatment plan shall be developed and recorded in the patient's clinical record within two weeks of admission. A final treatment plan, to include discharge planning, shall be established within thirty (30) days. This plan shall be reviewed and revised not less than every 90 days.

(e) Dates of staff meetings, where discussion is held relating to the patient's treatment plan, should be recorded in the clinical record.

(f) All specific therapeutic modalities, i.e., individual, group therapy, reality therapy, behavior modification, art therapy, psychodrama, family therapy, educational therapy, medications, therapeutic absences, etc., shall be spelled out in the treatment plan.

(g) The residential treatment center shall have regular staff meetings to include all personnel directly involved with the patient's treatment to discuss ongoing treatment plans and objectives.

(7) *Patient clinical record.* An adequate patient clinical record shall be maintained for each patient. Compliance Requirement:

(i) Individual patient clinical records shall contain all pertinent clinical information and shall contain at least the following information:

(a) Identifying data shall include, but not be limited to, the following items: Consent forms, date of birth, sex, next of kin, school and grade, date of initial contact, legal status, legal documents, religion, current home address, and telephone number of the family.

(b) Source of referral.

(c) Reason for referral.

(d) Record of medical, psychiatric and social functioning assessment.

(e) Initial psychiatric diagnosis and treatment plan based upon assessment.

(f) Current treatment plan and psychiatric diagnosis.

(g) Medication history and all medications prescribed.

(h) Individual record of all medications administered by staff, to include type of medication, dosages, frequency, and who administered medications and stop order for drugs.

(i) Consultation reports to include physicians, dietitians, physical and occupational therapists, etc.

(j) Documentation of treatment and all evaluations and examinations.

(k) Therapy sessions.

(l) Periodic progress reports.

(m) Other information obtained from other sources pertaining to the patient.

(n) Plan for discharge.

(o) Discharge or termination summary.

(p) Plan for followup.

(ii) The residential treatment center shall have written policies regarding the patient's clinical records. Compliance Requirement: Written policies should state how records will be kept confidential, current and accurate; how records shall be safeguarded:

what will be required for release of information.

(8) *Education and vocational training.* The residential treatment center shall assume the responsibility for arranging or providing an educational program appropriate for the individual needs of each patient. Compliance Requirements:

(i) The residential treatment center shall use community education resources, its own resources, or a combination of resources in offering an educational program.

(ii) A residential treatment center not having accreditation from a state agency, or an approved school program, shall make this information clear in its policies, brochures and information given to all applicants.

(iii) If the residential treatment center does have a school program accredited or approved by a state agency, documentation of this accreditation or approval shall be available for OCHAMPUS review.

(iv) Teachers shall meet state/local certification requirements for education and/or special education. Documentation of this shall be on file at the treatment center for OCHAMPUS review.

(v) If the residential treatment center has an organized vocational training program, the program shall meet all applicable local and state legal requirements. This shall be staffed by educational/vocational teachers.

(9) *Recreational Programs.* The residential treatment center shall provide a recreational and social activities program. Compliance Requirements:

(i) A structured, supervised recreational and social activities program shall be provided for all patients. A schedule of activities for leisure time to include daytime, evenings and weekends shall be posted at least one week in advance.

(ii) There shall be a variety of recreational and social activities available to include both indoor and outdoor activities.

(iii) There shall be a written plan to include the use of community resources to enhance the recreational program.

(iv) There shall be a written plan with implementation for patients who desire to participate in religious services and other religious activities within the framework of their individual and family interest and clinical status.

(v) Clinical records shall reflect participation.

(10) *Dietetic Services.* (i) The residential treatment center shall provide properly planned, nutritious and appealing food which meets national nutritional standards. Compliance Requirements:

(a) The dietetic service shall be patient-oriented and shall take into account the variations of eating habits, including cultural and ethnic needs of each individual patient.

(b) The food served shall be nutritionally and calorically adequate, as recommended by the National Nutritional Council, and served attractively.

(c) The dining area shall provide a congenial and relaxed atmosphere.

(d) Snacks shall be available on an informal basis, as appropriate to the clinical program.

(e) Special diets which are medically recommended shall be provided.

(ii) The residential treatment center shall have the services of a qualified dietitian in menu planning. Compliance Requirements:

(a) The dietitian shall be available on a full-time, part-time or consultant basis.

(b) The dietitian's role in the planning of the menus shall be documented. The current week's menu shall be posted in the dining area.

(iii) All dietetic services provided shall meet all applicable local, state and Federal rules and regulations. Compliance Requirements:

(a) Health policies for dietetic employees shall be in compliance with applicable Federal, state and local laws and regulations and health cards posted or filed.

(b) Food preparation, dining and storage areas, as well as equipment and furniture, shall be maintained in a state of cleanliness and good repair.

(c) All food items shall be stored off the floor in covered containers that are labeled and that are insect and vermin proof.

(d) All walk-in refrigerators and freezers shall be capable of being opened from the inside.

(e) All non-food supplies such as cleaning solutions shall be stored in an area separate from that in which food supplies are stored.

(f) Pets or other animals shall not be permitted in the area of food storage, preparation and dining.

(g) Perishable foods shall be stored at proper temperatures.

(h) Adequate hand-washing and drying facilities shall be located in convenient places throughout the food service area.

(i) Thehandling, transferring and disposing of garbage shall be done so as not to create a nuisance or breeding places for insects and rodents, or to cause diseases to be transmitted.

(j) All reusable eating and drinking utensils shall be sanitized after a thorough washing and rinsing which will meet appropriate Federal, state or local regulations.

(k) Chipped or broken dishes or glassware, or chipped porcelain cookware, shall be discarded.

(l) Reports of inspections shall be filed or posted and shall be available for review.

(10) *Pharmacy services.* The residential treatment center shall have arrangements for pharmacy services. There shall be written policies and procedures that govern the safe storage and administration of drugs and shall meet all applicable Federal, state and local laws and regulations. Compliance Requirements:

(i) The center shall have in writing names and signatures of physicians, including their Federal number, who can prescribe drugs and the names and signatures of staff members who can administer drugs. If nonprofessional staff administers drugs, they shall have appropriate inservice education from qualified medical personnel which shall be documented to include information about drugs, side effects, etc.

(ii) All medications administered shall be documented and signed including medication errors and drug reactions.

(iii) Internal and external drugs will be stored separately and outdated drugs will not be stocked.

(iv) Drugs dispensed must meet the standards established by the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or New and Non-official Drugs (N.N.D.).

(v) Drugs will be stored in a locked area, shall be in compliance with Federal regulations, shall be accessible only to the responsible clinical staff, and shall be administered by a safe system.

(vi) An emergency first aid kit shall be readily available to staff, but not accessible to patients.

(vii) All orders for the administration of medications shall have stop orders and shall be written and signed by the licensed physician, reviewed periodically, or rewritten or recertified. Telephone orders for drugs shall be signed by the physician within 72 hours.

(viii) All medications shall be labeled.

(12) *Emergency care and dental care.* The residential treatment center shall have written policies and procedures for obtaining diagnosis and treatment of dental problems. Compliance Requirement:

(i) The residential treatment center shall have written statements or a written, signed contract from a licensed dentist(s) stating what services they are providing to the patients at the treatment center.

(ii) The residential treatment center shall have a written plan to facilitate routine and emergency hospitalization in a licensed medical facility. Compliance Requirement: The residential treatment center shall make available a written statement from a licensed hospital verifying that routine and emergency hospitalization will be provided.

(iii) The residential treatment center shall have a written plan for providing emergency medical and psychiatric care. Compliance Requirements:

(a) There shall be a written plan which shall clearly specify who is available and authorized to provide necessary emergency psychiatric or medical care, or to arrange for referral or transfer to another facility to include ambulance arrangements, when necessary.

(b) There shall be a written plan regarding emergency notification to the parents or legal guardian. This plan and arrangements shall be discussed with all families or guardians of patients upon admission.

(c) *Physical plant.*—(1) *Physical Environment.* (i) Buildings and grounds of the residential treatment center shall be maintained, repaired and cleaned so that they are not hazardous to the health and safety of the patients and staff. All space, supplies, equipment, motor vehicles and facilities, both within the center and those used by patients outside of the facility, shall meet applicable Federal, state and local requirements for safety, fire, health and sanitation. Compliance Requirements:

(a) Equipment and furniture shall be of safe and sturdy construction and free of hazards to residents and staff. Furniture shall be comfortable, attractive, customary and should enhance the dignity of the patient.

(b) There shall be evidence of routine cleaning and ongoing maintenance programs within the residential treatment center.

(c) Repairs to broken items shall be taken care of promptly.

(d) Windows and doors used for ventilation shall be screened and in good repair.

(ii) The residential treatment center shall provide both indoor and outdoor areas where patients can gather for reading, study, relaxation and entertainment or recreation. Compliance Requirement: State licensure requirements shall be met.

(iii) All sleeping areas shall promote comfort and dignity, and provide adequate space and privacy for resident. Compliance Requirements:

(a) State licensure requirements shall be met.

(b) There shall be no more than eight patients in a sleeping room unless written justification on the basis of the program requirements is made.

(c) Linens, blankets, pillows, and towels shall be furnished by the center and shall be changed as often as required for cleanliness and sanitation, but not less frequently than once a week.

(d) Each patient shall have his own bed consisting of a level bedstead and a clean mattress in good condition.

(e) All mattresses shall have fire retardant, water repellent mattress covers or protectors.

(iv) There shall be storage areas for each resident's clothing and personal possessions.

(a) Adequate, securable personal storage shall be available for each patient.

(b) Storage space shall be accessible and within easy reach of each patient.

(v) Privacy shall be provided for personal hygiene. Compliance Requirements:

(a) State licensure standards shall be met.

(b) All toilets shall have secured seats and be kept clean and in good working order, and all toilets will have partitions and doors.

(c) All tub and shower areas shall be appropriately partitioned for privacy.

(d) Bathrooms shall be conveniently located to the sleeping areas.

(e) Bathrooms shall be cleaned thoroughly each day.

(vi) The residential treatment center shall maintain a written policy of personal hygiene for all patients. Compliance Requirements:

(a) Written policy: Self Evident.

(b) Tooth brushes, toothpaste, soap, and other items for personal hygiene shall be provided by the facility if not provided by the patients.

(c) Good quality mirrors shall "be furnished in each bathroom.

(2) *Physical plant safety.* (i) The residential treatment center shall be comprised of permanent construction and maintained in a manner that protects the lives and insures the physical safety of patients, staff and visitors. The center will currently comply with all applicable building codes, fire, health and safety laws and ordinances and regulations in the state where the facility is located. Current inspection reports shall be retained in the residential treatment center files for OCHAMPUS review. Compliance requirements:

(a) It is the responsibility of the treatment center to arrange for the necessary inspections and to comply within the time frame with any resulting recommendations noted in the inspection reports.

(b) The fire inspection shall meet or exceed the regulations set by the local Fire Marshal (as governed by local ordinances). Where applicable, they may never be less than those regulations set by the State Fire Marshal.

(c) The health inspection shall meet or exceed regulations set by the local health ordinances (where applicable) but may never be less than those regulations set by the State Health Department.

(d) Written documentation that all building codes, fire, health, and safety laws, ordinances and regulations are met shall be on file in the residential treatment center.

(e) Levels of lighting shall be maintained throughout the facility appropriate to the purpose of the designated area.

(ii) The number, type, capacity and location of fire extinguishers and/or smoke detectors shall comply with all applicable local fire regulations, or the regulations established by the State Fire Marshal. Compliance requirements:

(a) All staff shall be instructed in the use of fire extinguishers.

(b) All fire extinguishers shall be inspected as regulated by local requirements and shall be serviced as required.

(iii) All fire safety systems shall be kept in good operating condition. Compliance requirement: Fire safety systems shall be inspected regularly as regulated by local requirements, and records of such inspections shall be kept on file.

(iv) The residential treatment center shall provide for safety inspections by a facility personnel committee. Compliance requirements:

(a) Personnel responsible for safety evaluation shall receive appropriate training.

(b) Safety inspections by the safety committee shall be done on a monthly basis, shall be made into a written report, and shall be maintained on file.

(v) Special safety measures shall be provided for areas of the facility that may present an unusual hazard to patients, staff or visitors. Compliance Requirements:

(a) Special consideration shall be given to building features which may cause harm, such as "invisible glass doors," etc.

(b) All stairways shall have hand rails.

(3) *Disaster planning.* The residential treatment center shall have written policies and plans for taking care of casualties arising from internal and external disasters. The center shall rehearse these plans at least every 6 months. Compliance Requirements:

(i) The residential treatment center shall be prepared to handle internal and external disasters such as explosions, fire, tornadoes, etc. The written plan shall incorporate evacuation procedures and shall be developed with the assistance of qualified fire, safety and other appropriate experts.

(ii) The written plans for internal and external disasters shall include, but not be limited to: Instructions related to the use of alarm and smoke detection systems, methods of fire containment, plan for notifying appropriate personnel, posted evacuation routes, etc.

(iii) These plans shall be made available to all center personnel, and shall be posted in appropriate areas within the center.

(iv) There shall be records indicating the nature of disaster/training/orientation programs offered to employees.

(v) Written reports. An evaluation of all drills concerning internal and external disasters shall be made at least every 6 months. If deficiencies are noted, records shall note the deficiencies and the action taken to correct these deficiencies.

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

MARCH 14, 1977.

[FR Doc.77-7834 Filed 4-1-77;8:45 am]

federal register

MONDAY, APRIL 4, 1977
PART III



COMMUNITY SERVICES ADMINISTRATION

■

FEDERAL GRANTS

Uniform Federal Standards

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

PART 1050—UNIFORM FEDERAL STANDARDS

On January 17, 1977, CSA published in the FEDERAL REGISTER interim regulations implementing eleven of the fifteen Uniform Federal Standards promulgated by OMB Circular A–110 and FMC 74–7 to be effective April 1, 1977.

Comments on the interim regulations were invited. Comments were received from the Executive Director, Human Services Inc., Columbus, Indiana; the Director, Finance and Data Processing, Total Action Against Poverty in Roanoke Valley, Roanoke, Virginia; and the Administrator of Sponsored Programs, Georgetown University, Washington, D.C. The questions raised, suggested changes, notations of ambiguities or contradictions, etc., were insightful and most helpful and a number of the policy statements have been revised as a result of these comments and those received from two CSA Regional Directors.

In order to facilitate the public's use of the standards as implemented by CSA, the agency is hereby republishing each of the eleven standards regardless of whether or not a particular policy had been changed subsequent to publication on January 17, 1977.

A. Following are substantive changes made to the interim regulations resulting from comments received.

1. Section 1050.40—Program Income: Wording has been added to section 2.c. of Attachment A to provide flexibility to the CSA administering office to determine in what grant period earned program income will be used therefore clarifying that the income need not be used in the program year that it was earned.

2. Section 1050.50—Cost Sharing and Matching: Wording has been added to allow, under certain circumstances, non-Federal funds contributed to pay salaries in excess of $15,000 to be counted toward the non-Federal share requirement. It is also noted in the revision that general revenue sharing funds now are acceptable for use as matching.

3. Section 1050.60—Standards for Financial Management: Section 1050.61 (a) (8) as published in the interim regulations noted that audits performed by grantees must include an appropriate sampling of CSA grants and other agreements. This has been changed to read Federal grants since that is the intent of the standards. However, it is possible that, due to the legislative requirement that audits be performed at least annually, a grantee may request an auditor to examine CSA agreements only. In this case the audit would be limited to a sampling of CSA agreements. A notation to this effect has also been added to § 1050.61(a) (8).

4. Section 1050.90—Payment Requirements: § 1050.93(c) has been revised to conform to § 1050.10 and now indicates that only in certain instances will separate bank accounts be required when a grantee is issued a letter-of-credit.

5. Section 1050.110(b)—Grant Closeout Procedures: The word "immediately" has been deleted and wording added to require that a check for all unobligated funds accompany the final financial report due 90 days after the termination date of a grant.

B. The following procedural change has been made:

1. Section 1050.90—Payment Requirements: § 1050.93(b) (2) has been changed to require that the written justification requesting special checks be submitted to the appropriate CSA administering office rather than directly to Headquarters. The administering office will review the request and, if approval is recommended, then will submit grantee's request to Headquarters.

C. The following recommendations were carefully reviewed and considered but were not accepted for the reasons noted:

1. Section 1050.115–8(d)—Suspension and Termination Procedures: The recommendation that the policy re place of termination hearings be changed to require that it be at the grantee's main office location is rejected because the present statement does not preclude this location but grants the responsible CSA official flexibility in fixing the time and place.

2. Section 1050.113(b)—Grant Closeout Procedures: The recommendation that the final audit be submitted 180 days after completion of a grant rather than 90 days is not accepted since it is not an annual audit but a final audit and therefore does not require the extensive review of an annual audit. Also the submission date coincides with all other final reporting requirements which are conditions of the grant.

3. Section 1050.22—Length of Retention Period (Retention and Custodial Requirements for Records): Grantee respondent noted that there seems to be no procedure for notifying the grantee that an audit has been satisfactorily closed and therefore there would seem to be no point in time at which the three year retention period would start for records affecting a grant which has audit problems. Grantee official suggests that regulations be included in § 1050.22 to insure that the grantee is notified when an audit is closed. This section is left unchanged as there are procedures in place in each Regional Office whereby a letter is forwarded to the grantee by the appropriate CSA Regional Audit Review Group noting disposition of the questioned items.

4. Section 1050.57(3)—Cost Matching and Sharing: The recommendation that OMB be requested to allow pooling of non-Federal share among all the Federal programs operated by a grantee regardless of funding source is rejected since it is, in the opinion of the CSA General Counsel, not permissible under the provisions of the Economic Opportunity Act.

The final regulations published herein will be forwarded to all CSA grantees in the form of CSA Instructions. They currently are at the printer and should be in the mail within a few weeks. A supply of the new Standard Forms 269, 272, and 272A will accompany that mailing. In the meantime, a small supply is available at each CSA Regional Office.

With the changes noted above the interim regulations are adopted as CSA policy as set forth below.

Effective date: April 1, 1977.

ROBERT C. CHASE,
Acting Director.

45 CFR Chapter X is amended by adding a new Part 1050 entitled "Uniform Federal Standards" and by adding the following to that Part:

1. The table of contents to Part 1050 is revised to read as follows:

Subpart A—Implementation of Uniform Federal Standards by the Community Services Administration

Sec.
1050.1 Applicability.
1050.2 Purpose.
1050.3 Exceptions to the Uniform Federal Standards.
1050.4 Definitions of terms as used in this Part.
1050.5 Implementing schema.

Subpart B—Cash Depositories

1050.10 Physical segregation and eligibility.
1050.11 Letter-of-Credit-Checks paid basis.
1050.12 FDIC insurance coverage.
1050.13 Minority-owned banks.

Subpart C—Bonding and Insurance

1050.15 References.
1050.16 Standard.
1050.17 CSA implementing polices and procedures.

Subpart D—Retention and Custodial Requirements for Records

1050.20 References.
1050.21 Documents affected.
1050.22 Length of retention period.
1050.23 Starting date of retention period.
1050.24 Substitution of microfilm.
1050.25 Access to records.
1050.26 Restrictions on public access.
1050.27 CSA implementing policies and procedures.

Subpart E—Program Income

1050.40 References.
1050.41 Definition of program income.
1050.42 Standard.
1050.43 CSA implementing policies and procedures.

Subpart F—Cost Sharing and Matching

1050.50 References.
1050.51 Definitions.
1050.52 Standards.
1050.53 Qualification.
1050.54 Valuation of grantee in-kind contributions.
1050.55 Valuation of third-party in-kind contributions.
1050.56 Supporting records for in-kind contributions from non-Federal third parties.
1050.57 CSA implementing policies and procedures.

Subpart G—Standards for Financial Management Systems

1050.60 References.
1050.61 Standards.
1050.62 CSA implementing policies and procedures.

Subpart H—Financial Reporting Requirements

1050.70 References
1050.71 Definitions.

Sec.
1050.72 Standard.
1050.73 CSA implementing policies and procedures.

Subpart I—Monitoring and Reporting Program Performance [Reserved]

Subpart J—Payment Requirements

1050.90 References.
1050.91 Definitions.
1050.92 Standard.
1050.93 CSA implementing policies and procedures.

Subpart K—Revision of Financial Plans [Reserved]

Subpart L—Grant Closeout Procedures

1050.110 References.
1050.111 Definitions.
1050.112 Standards.
1050.113 CSA implementing policies and procedures.

Subpart M—Suspensions and Terminations

1050.115–1 References.
1050.115–2 Definitions.
1050.115–3 Failure to comply with grant terms and conditions.
1050.115–4 Suspension.
1050.115–5 Termination for cause.
1050.115–6 Termination for convenience.
1050.115–7 CSA implementing policies and procedures governing suspensions.
1050.115–8 CSA implementing policies and procedures governing termination of assistance.

Subpart N—Standard Form for Applying for Federal Assistance (SF 424)

1050.120 References.
1050.121 Standards.
1050.122 CSA implementing policies and procedures.

Subpart O—Property Management Standards [Reserved]

Subpart P—Procurement Standards [Reserved]

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

2. Subpart A to Part 1050 is revised to read as follows:

Subpart A—Implementation of Uniform Federal Standards by the Community Services Administration (CSA Instruction 6800–1)

§ 1050.1 Applicability.

45 CFR 1050 is applicable to all grants and other agreements made under the Economic Opportunity Act of 1964, as amended, to public and private organizations/agencies, including those serving as delegate agencies, when the assistance is administered by the Community Services Administration.

§ 1050.2 Purpose.

The purpose of Part 1050 is to set forth the Uniform Federal Standards pursuant to OMB Circular A–110 and FMC 74–7 (A–102) and to provide grantees with CSA's policies and procedures implementing those standards the goal of which is to obtain consistency and uniformity among Federal agencies in the administration of grants to, and other agreements with, units of local and State Government, public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations.

§ 1050.3 Exceptions to the Uniform Federal Standards.

(a) *For classes of grantees.* Neither CSA nor any other Federal agency can apply more restrictive or differing requirements on a class of grantees unless (1) a statute expressly prescribes policies or specific requirements that differ from the standards or (2) the agency has received approval from the Office of Management and Budget.

(b) *For certain grantees.* CSA may impose additional requirements on individual grantees if the grantee has a history of poor performance, is not financially stable, or its management system does not meet the standards set forth in Part 1050. In those instances CSA must inform the grantee in writing as to (1) why the additional standards are being imposed and (2) what corrective action is needed. Copies of such notifications must be sent to OMB and other agencies funding the grantee at the same time the grantee is notified.

§ 1050.4 Definitions of terms as used in this part.

(a) The term "grant" means money or property provided in lieu of money paid or furnished by grantees under programs that provide financial assistance or that provide support or stimulation to accomplish a public purpose. The term "other agreements" does not include contracts which are required to be entered into and administered under procurement laws and regulations. Grants and other agreement exclude (1) technical assistance programs, which provide services instead of money, (2) assistance in the form of general revenue sharing, loans, loan guarantees, or insurance, and (3) direct payments of any kind to individuals.

(b) The term "grantee" is used by CSA in lieu of "recipient" and includes the following types of nonprofit organizations that are receiving Federal funds from a Federal agency or through a State or local government:

(1) Public and private institutions of higher education: public and private hospitals; and other quasi-public and private nonprofit organizations such as (but not limited to) community action agencies, research institutes, educational associations, and health centers. In addition, for purposes of this part, it includes private-for-profit organizations funded under Title VII of the EOA. The term does not include foreign or international organizations (such as agencies of the United Nations) and Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large scale programs that are Government-owned, or are designed as federally-funded research and development centers.

(c) The term "delegate agency" is used by CSA in lieu of "subrecipient" and means a public or private agency, institution or organization or a State or other political jurisdiction to which the development, conduct and administration of all or part of a project assisted under the Economic Opportunity Act of 1964, as amended, has been delegated by a grantee or by another agency or organization which has received assistance by or through a grantee, but does not include individuals who ultimately receive benefits under any program or assistance.

§ 1050.5 Implementing Schema.

(a) *Responsibilities.* OMB Circular A–110 and FMC 74–7 (Cir. A–102) require all Federal agencies administering programs that involve grants and other agreements with grantees to issue appropriate implementing regulations.

(b) *Publication formats.* As with all policy statements CSA is issuing its implementing regulations both in the FEDERAL REGISTER and as part of the CSA directives system. However, a separate Part (1050) has been established in the Code of Federal Regulations within which all Uniform Federal Standards and accompanying CSA policies and procedures will be published. Also, in the CSA directives system the 6800 series will be used exclusively for promulgation of the standards. Each standard will be issued as a separate CSA Instruction within that series with accompanying CSA implementing policies and procedures (if required) to be issued as an Attachment to the appropriate Instruction. As a further means of more easily identifying the standards, CSA will deviate from its normal practice of using yellow stock to identify policy statements and will publish the standards on blue stock.

(c) *Cross Reference Index.* Following is an index which provides a cross reference to CSA implementing regulations:

Attachments to—		Title	Implementing regulations	
OMB circular A–110	FMC 74–7		CSA instruction	CFR reference
A	A	Cash Depositories	6800–2	1050.10
B	B	Bonding and Insurance	6800–3	1050.15
C	C	Retention and Custodial Requirements for Records.	6800–4	1050.20
D	E	Program Income	6800–5	1050.40
E	F	Cost Sharing and Matching	6800–6	1050.50
F	G	Standards for Financial Management Systems	6800–7	1050.60
G	H	Financial Reporting Requirements	6800–8	1050.70
H	I	Monitoring and Reporting Program Performance.	6800–9	1050.80
I	J	Payment Requirements	6800–10	1050.90
J	K	Revision of Financial Plans	6800–11	1050.100
K	L	Closeout Procedures	6800–12	1050.110
L	L	Suspension and Termination Procedures	6800–13	1050.115
M	M	Standard Form for Applying for Federal Assistance.	6800–14	1050.120
N	N	Property Management Standards	6800–15	1050.130
O	O	Procurement Standards	6800–16	1050.160

3. This subpart sets forth standards governing the use of banks and other institutions as depositories of funds under grants and other agreements pursuant to OMB Circular A–110 and Federal Management Circular 74–7. In the past CSA has required separate bank accounts for CSA grant funds. This is now changed in that CSA, or any other Federal grant-making agency, can not require segregation for cash depositories. Other provisions in this subpart are in line with past CSA policy. Subpart B to Part 1050 is revised to read as follows:

Subpart B—Cash Depositories (Uniform Federal Standard) (CSA Instruction 6800–2)

§ 1050.10 Physical segregation and eligibility.

Except for situations described in §§ 1050.11, 1050.12 and 1050.13 the Community Services Administration does not:

(a) Require physical segregation of cash depositories for CSA funds which are provided to a grantee.

(b) Establish any eligibility requirements for cash depositories for CSA funds which are provided to a grantee.

§ 1050.11 Letter of credit—checks paid basis.

A separate bank account is required when applicable letter-of-credit agreements provide that drawdowns will be made when the grantee's checks are presented to the bank for payment.

§ 1050.12 FDIC insurance coverage.

Any monies advanced to a grantee which are subject to the control or regulation of the United States or any of its officers, agents or employees' (public monies as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

§ 1050.13 Minority-owned banks.

Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and delegate agencies are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

4. This subpart sets forth bonding and insurance requirements for grants and other agreements with grantees pursuant to Attachment B of Circular A–110 and Attachment B to FMC 74–7. As of the effective date of this subpart public agencies receiving CSA funds for the first initial grant will no longer be required to submit assurance of bonding (except for construction or facility improvements) to CSA. However, as in the past nongovernmental grantees will continue to be required to submit such notice of bonding. Coverage, length of duration, and responsibility vis-a-vis delegate agencies also continue to reflect the policies previously published in OEO Instruction 6809–01. Public grantees should take note of their continuing responsibilities vis-a-vis nongovernmental delegate agencies. Subpart C to Part 1050 is revised to read as follows:

Subpart C—Bonding and Insurance (Uniform Federal Standard) (CSA Instruction 6800–3)

§ 1050.15 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment B).

(2) FMC 74–7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment B).

(3) CSA Instruction 6710–6, Applying for a grant under Title VII of the Community Services Act.

(4) CSA Instruction 6710–8, Preparing a Budget for a Title VII grant under the Community Services Act.

(5) CSA Instruction 6143–1a, Emergency Energy Conservation Program (45 CFR 1061.30).

§ 1050.16 Standard.

(a) In administering CSA grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. CSA will not impose additional bonding and insurance requirements including fidelity bonds, except as provided in (b) through (d) below.

(b) *Construction and facility improvement.* The recipient of a CSA grant which requires contracting or facility improvement (including any CSA grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, CSA may determine that the grantee's bonding provisions adequately protect the Federal Government's interest; otherwise the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Loan guarantees.* Where in connection with a CSA grant, CSA also guarantees the payment of money borrowed by the grantee, CSA may, at its discretion, require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interests of the Federal Government.

(d) *Fidelity bonds.* If the grantee is a nongovernmental organization, CSA requires adequate fidelity bond coverage.

(e) *Source of bonds.* Any bonds obtained pursuant to (b)(1) through (3), (c) or (d) shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

§ 1050.17 CSA implementing policies and procedures.

(a) *Policy.* OMB Circular A–110 permits Federal agencies to require fidelity bond coverage of its nongovernmental grantees if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interest of the Federal Government. Therefore, CSA will require evidence of appropriate bonding or assurance that arrangements have been made to obtain such coverage in line with the following policies and procedures.

(1) *Bond coverage of officials.*—(i) *Assurance of fidelity bond coverage.* (A) Prior to the release of funds to any nongovernmental grantee for the first initial grant CSA must receive written assurance that the grantee has or has made arrangements for appropriate bonding of grantee officials. This assurance will take the form of a letter from a bonding company or agent stating the type of bond, amount and period of coverage, positions covered, and the annual cost of the bond that has been obtained.

(ii) *Coverage.* In all other situations, nongovernmental grantees must either have secured or must take steps to secure fidelity bond coverage in line with the following guides:

(A) Coverage should be secured in the aggregate amount of $25,000 for persons authorized to sign or countersign checks or to disburse sizeable amounts of cash (such as for payrolls). Persons who handle only petty cash need not be bonded. Nor is it necessary to bond officials who are authorized to sign Payment Vouchers, but who are not authorized to sign or countersign checks or to disburse cash.

(B) Grantees normally should obtain a 3 year bond, payable annually, with an option to cancel in the event the program terminates before three years. Such terms are available from most surety companies.

(iii) *Responsibility vis-a-vis delegate agencies.* Grantees—both public and private—are responsible for assuring that appropriate officials of nongovernmental delegate agencies are bonded. Coverage for officials of delegate agencies which are private organizations shall be equal to the average of funds to be expended each month (up to an aggregate amount of $25,000.) If a delegate agency will expend less than $1,000 per month in program funds, on the average, bond coverage is not required.

(b) *Procedures.* Copies of bonds secured by the grantee and by delegate agencies should be filed by the grantee and need not be submitted to CSA.

(c) *Affect of this Subpart on other CSA Policies and Procedures.* (1) OEO Instruction 7570–1, pp. 17 and 18, item

11.(3) Bonding: The three paragraphs are superseded and the sentence "See Instruction 6800–3 regarding applicability of bonding requirements and procedures." should be inserted.

(2) OEO Instruction 7570–2, p. 7, item 8.b: The period at the end of the sentence is deleted and the sentence "(See CSA Instruction 6800–3 regarding applicability of bonding requirements and procedures.)" should be inserted.

5. The purpose of this subpart is to set forth the Uniform Federal Standard for the retention and custody of records in accordance with the provisions of references (1) and (2) of this subpart.

This policy requires the revision of two existing CSA policies, OEO Instruction 6801–1 which currently requires a retention period of five years and CSA Instruction 7050–1 (General Conditions) which requires retention for 3 years after expiration of the grant. This subpart also details the starting date for the retention period and who shall have access to records in order to make audits, examinations, excerpts and transcripts.

This new policy statement does not affect IRS' requirement that all employment tax records be kept for a period of at least four years. (OEO Instruction 6810–1, page 7). Nor does it affect the one year retention requirement of reports filed with the local office of the State employment service as part of the program to assist Vietnam era veterans, (OEO Instruction 6901–2). 45 CFR Chapter X is amended by adding the following:

Subpart D—Retention and Custodial Requirements for Records (Uniform Federal Standard) (CSA Instruction 6800–4)

§ 1050.20 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment C).

(2) FMC 74–7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment C).

(3) CSA Instruction 6800–5, Program Income (Uniform Federal Standard) (45 CFR 1050.40).

(4) CSA Instruction 6800–15, Property Management Standards (Uniform Federal Standard) (45 CFR 1050.130).

(5) OEO Instruction 6801–1, Grantee Fiscal Responsibility and Auditing.

(6) OEO Instruction 6810–1, Grantee Compliance with IRS Requirements for Withheld Federal Income and Social Security Taxes.

(7) CSA Instruction 7050–1, General Conditions Governing CSA Grants Funded Under Titles II, III–B and VII of the EOA of 1964 as amended (45 CFR 1067.5).

§ 1050.21 Documents affected.

Financial records, supporting documents, statistical records, and all other records pertinent to a grant are covered by the requirements in this subpart.

§ 1050.22 Length of retention period.

Except as provided in paragraphs (a) and (b) of this section and reference (6) (employer's tax records), records shall be retained for three years.

(a) If any litigation, claim or audit by or on behalf of the Federal Government involving the records has not been fully resolved before the expiration of the three-year period, the records shall be retained until resolution or until the end of the regular three-year period, whichever is later. In no case, however, will CSA require retention of records relating to any grant with respect to which actions by the United States to recover for diversion of money paid under the grant are barred by the statute of limitations in 28 U.S.C. 2415(b). That statute bars legal actions unless filed within six years after the right of action accrues. The six years excludes any periods in which the circumstances listed in 28 U.S.C. 2416 apply, e.g., material facts cannot be known, or a state of war exists.

(b) In order to avoid duplicate recordkeeping, CSA may make special arrangements with grantees to retain any records which are continuously needed for joint use. CSA will request transfer of records to its custody from grantees when it determines that the records possess long-term retention value. When the records are transferred to or maintained by CSA, the three-year retention requirement is not applicable to the grantee.

§ 1050.23 Starting date of retention period.

(a) *General.* Except for records covered by paragraphs (1) and (2) of this section, where CSA grant support is continued or renewed on an annual basis, the retention period for each year's records starts from the date of submission to CSA of the grantee's annual or last financial report for that year; in all other cases the retention period starts from the date of submission to CSA of the grantee's final financial report.

(1) *Records for non-expendable property.* The retention period for records for non-expendable property required by reference (4) starts from the date of disposition of the property. However, for property that has been replaced pursuant to reference (4), the retention period starts from the disposition of the replacement property.

(2) *Records pertaining to certain classes of income.* For records that relate to classes of program income subject to reference (3), the three-year retention period starts from the date the income is earned.

§ 1050.24 Substitution of Microfilm.

Microfilm copies may be substituted for the original records.

§ 1050.25 Access to records.

(a) CSA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to a specific CSA grant, in order to make audits, examinations, excerpts and transcripts.

(b) In case of a delegation under a CSA grant, CSA, the Comptroller General of the United States, the grantee, any intermediate delegate agency or any of their authorized representatives shall have the right of access, at any time prior to expiration of the retention period, to any books, documents, papers or other records of the ultimate delegate agency which any of them determines are pertinent to the CSA grant, in order to make audits, examinations, excerpts and transcripts.

(c) In the case of a contract (or subcontract) under a CSA grant, CSA, the Comptroller General of the United States, the grantee, any intermediate delegate agency, contractor, or sub-contractor, or any of their authorized representatives shall have the right of access, at any time prior to expiration of the retention period, to any books, documents, papers or other records of the contractor or sub-contractor which any of them determines are pertinent to the CSA grant, in order to make audits, examinations, excerpts and transcripts.

§ 1050.26 Restrictions on public access.

(a) *Private Grantees.* Unless otherwise required by law, CSA will not place restrictions on grantees which will limit public access to records covered by this subpart except when CSA has determined that the records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act if the records had belonged to CSA.

(b) *Public Grantees.* Unless otherwise required by law, CSA will not place restrictions on State and local governments which will limit public access to the State and local governments' records except when records must remain confidential. Following are some of the reasons for withholding records:

(1) Prevent a clearly unwarranted invasion of personal privacy.

(2) Specifically required by statute or Executive Order to be kept secret.

(3) Commercial or financial information obtained from a person or a firm on a privileged or confidential basis.

§ 1050.27 CSA implementing policies and procedures.

(a) Changes to Existing CSA Policy Statements.

(1) Following are changes to be made to OEO Instruction 6801–1, page 10, item 6, second sentence: Everything appearing after the word "retained" is deleted and the following inserted:

* * * for the time period and in the manner prescribed by CSA's policy on retention and custodial requirements for records. (See CSA Instruction 6800–4.)

(2) Following are changes to be made to CSA Instruction 7050–1, page 4, item 12, line 9: Everything appearing after the word "retained" is deleted and the following added:

* * * for the time period and in the manner prescribed by CSA's policy on retention and custodial requirements for records. (See CSA Instruction 6800–4.)

6. The purpose of this subpart is to set forth the Uniform Federal Standard

pursuant to OMB Circular A–110 and Federal Management Circular 74–7 and CSA's implementing policies and procedures relating to program income, interest, and other monetary proceeds resulting from projects funded in whole or in part with CSA grant funds. This subpart reflects past CSA policy regarding the use of interest and program income, i.e. that interest must be returned to the Treasury (exception: States and their instrumentalities), and that program income may be retained by the grantee for specific uses. However, the Federal standards include several policies which CSA has not previously enunciated and which should be noted:

1. A public grantee, after termination or completion of a grant must return to the Federal agency any royalties of $200 or more earned by the Federal share in the absence of other specific agreements between CSA and the grantee.

2. Interest earned will now be reported on a new Standard Form (SF 272) and program income on a new financial report form, SF–269 and on SF–272.

45 CFR Chapter X is amended by adding the following:

Subpart E—Program Income (Uniform Federal Standard) (CSA Instruction 6800–5)

§ 1050.40 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. (Attachment D.)

(2) FMC 74–7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Att. E).

(3) CSA Instruction 6158–3, Small Business Programs Funded by CDCs (45 CFR 1076.20).

(4) CSA Instruction 6800–6, Financial Reporting Requirements (45 CFR 1050.70).

(5) CSA Instruction 6900–15, Property Management Standards (45 CFR 1050.130).

(6) OEO Guidance 6801–1, Grantee Financial Control Techniques.

(7) GSA Instruction 7050–1, General Conditions Governing CSA. Grants Under Titles II, III–B, and VII of the EOA of 1964 as amended (45 CFR § 1067.5).

§ 1050.41 Definition of program income.

Program income represents gross income earned by the grantee from CSA funded activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

§ 1050.42 Standard.

(a) *Interest.* Interest earned on advances of Title II funds shall be remitted to the Community Services Administration except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577).

(b) *Program Income—(1) Sale of Real and Personal Property.* Proceeds from the sale of real and personal property either provided by CSA or purchased in whole or in part with CSA funds shall be handled in accordance with § 1050.130 (CSA Instruction 6800–15).

(2) *Royalties earned from copyrights or patents.* (i) Unless the grant provides otherwise, grantees shall have no obligation to the Community Services Administration with respect to royalties as a result of copyrights or patents produced under the grant. (See references (5) and (7).)

(ii) However, in the case of public grantees, if after termination or completion of the grant, there is an excess of royalties of $200 or more earned annually by the Federal share these sums shall be returned to CSA in the absence of other specific agreements between CSA and the grantee.

(3) *Other program income.* All other program income earned during the project period shall be retained by the grantee and, in accordance with the grant, shall be:

(i) Added to funds committed to the project by the Community Services Administration and the grantee and be used to further eligible program objectives; or

(ii) Deducted from the total project cost in determining the net cost on which the Federal share of costs will be based.

§ 1050.43 CSA implementing policies and procedures.

(a) *Policy—(1) Service fees.* Under limited circumstances CSA may approve the charging of a fee to grantees of services supported with CSA funds. Such approval, however, does not allow the grantee to use Federal funds to produce income for the benefit of the grantee.

(b) *Procedures.—(1) Return of interest.* Interest earned on the investment of CSA funds will be reported on SF–272, item 13.a (see reference (4)) and a check payable to the Treasurer of the United States for the earned interest should be attached to the report and sent to the CSA office responsible for administering the grant.

(2) *Return of royalties.* Public grantees who have royalty fees which must be returned to CSA (see § 1050.42(b)(2)) shall do so by forwarding a check, payable to the Treasurer of the United States, to the CSA office which had been responsible for administering the grant.

(3) *Other program income.* The CSA office responsible for administering the grant will also be responsible for determining the manner and grant period in which income retained by grantees is used within the constraints of the Standard outlined in § 1050.42(b)(3).

(4) *Reporting program income.* Program income will be reported on SF 269, Financial Status Report and on SF 272, Federal Cash Transactions. (See reference (4).)

7. This subpart sets forth criteria and procedures pursuant to OMB Circular A–110 and Federal Management Circular 74–7 (OMB Circular A–102) for the allowability of cash and in-kind contributions made by grantees and delegate agencies and criteria for the valuation of donated contributions such as personal services, property, etc. The Standards set forth in this subpart and the accompanying CSA implementing policies and procedures basically reflect the policy statements previously found in OEO Instruction 6802–1a and CSA Instruction 6802–2 with three major exceptions, i.e. there is no longer a prohibition against counting volunteer time of grantee staff and/or board members as a non-Federal share contribution when the services contributed are not required of individuals in their capacities as board members or staff; and, under certain circumstances, non-Federal funds contributed to pay salaries in excess of $15,000 may be counted toward the non-Federal share requirement; and general revenue sharing funds may now be used as the non-Federal matching share for other Federal grants. 45 CFR Chapter X is amended by deleting § 1068.9–1 through 9–5 and § 1068.10–1 through § 1068.10–9 and adding a new subpart as follows:

Subpart F—Cost Sharing and Matching (Uniform Federal Standard) (CSA Instruction 6800–6)

§ 1050.50 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment E).

(2) Federal Management Circular 74–7 (or OMB Circular A–102) Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment F).

(3) CSA Instruction 6802–3, Non-Federal Share Requirements for Title II, sections 221, 222(a) and 231 Programs (45 CFR § 1068.20).

(4) CSA Instruction 6802–4, Additional Communities Eligible for Waivers of Non-Federal Share Requirement (Puerto Rico, Trust Territories, the Virgin Islands, and Indian Tribes on Reservations (45 CFR § 1068.21).

(5) CSA Instruction 6802–5, Eligibility for Waiver of Increased Non-Federal Share Contribution (45 CFR 1068.22).

(6) OEO Instruction 7641, Waiver of Non-Federal Share of Program Costs for Certain Title I–D Programs.

§ 1050.51 Definitions.

(a) *Project costs.* Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a grantee and the value of the in-kind contributions made by the grantee or third parties in accomplishing the objectives of the grant or other agreement during the project or program period.

(b) *Cost sharing and matching.* In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government.

(c) *Cash contributions.* Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by non-Federal third parties.

(d) *In-kind contributions.* In-kind contributions represent the value of non-cash contributions provided by the grantee and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with

Federal funds be considered as the grantee's in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

§ 1050.52 Standards.

(a) *Costs and contributions acceptable.* (1) Cost sharing or matching may consist of: (i) Charges incurred by the grantee as project costs. (Not all charges require cash outlays by the grantee during the project period: examples are depreciation and use charges for building and equipment.) (ii) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals, except as provided in (*i*) below:

(A) Generally, any funds provided for payment of salaries in excess of $15,000 shall not be counted as a non-Federal share contribution toward a Title II grant per Section 244(2) of the Economic Opportunity Act of 1964 as amended. However, these funds may be counted as a non-Federal share donation in those cases "* * * (particularly in large metropolitan areas) where, because of the need for specialized or professional skills or prevailing local salary levels, application of the * * * restriction would greatly impair program effectiveness or otherwise be inconsistent with the purposes sought to be achieved."[1] Grantees who wish to request such an exception will submit data and written justification to the appropriate CSA Administering Office and the Administering Office's response shall be retained by the grantee for audit purposes.

(B) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.[2]

§ 1050.53 Qualifications.

(a) All contributions, both cash and in-kind, shall be accepted as part of the grantee's cost sharing and matching when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under the applicable cost principles;

(5) Are not paid by the Federal Government under another assistance agreement unless the agreement is authorized by Federal law to be used for cost sharing or matching, e.g., General Revenue Sharing; Title I of the Housing and Community Development Act of 1974, Pub. L. 93-383;

(6) Are provided for in the approved budget when required by CSA; and

(7) Conform to other provisions of this subpart.

§ 1050.54 Valuation of grantee in-kind contributions.

Values for grantee in-kind contributions will be established in accordance with the applicable cost principles.

§ 1050.55 Valuation of third-party in-kind contributions.

(a) *Valuation of volunteer services.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(1) *Rates for volunteer services.* Rates for volunteers should be consistent with those paid for similar work in the grantee's organization or which those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) *Volunteers employed by other organizations.* When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

(b) *Valuation of donated, expendable personal property.* Donated, expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(c) *Valuation of donated, nonexpendable personal property, buildings, and land or use thereof.* (1) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant or other agreement as follows:

(i) If the purpose of the grant or other agreement is to assist the grantee in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(ii) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the Community Services Administration has approved the charges.

(2) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(i) *Land and buildings.* The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the grantee.

(ii) *Nonexpendable personal property.* The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(iii) *Use of space.* The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(iv) *Loaned equipment.* The value of loaned equipment shall not exceed its fair rental value.

§ 1050.56 Supporting records for in-kind contribution from non-Federal third parties.

(a) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees. (See § 1050.-57.)

(b) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented. (See § 1050.57.)

§ 1050.57 CSA implementing policies and procedures.

(a) *CSA Legislative Non-Federal Share Requirements.* Sections 225(c), 235(b), and 714 of the Economic Opportunity Act of 1964 as amended require the contribution of non-Federal share by grantees funded under Sections 221, 222 (a), 235, and 712 of that Act. In addition the Director of the Community Services Administration may administratively require a non-Federal share contribution from grantees funded under other sections of the Act if the grants are administered by Community Services Administration. Policies and procedures implementing the legislative requirements of the Economic Opportunity Act will be found in references (3) through (6) of this subpart.

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[1] Section 244(2) of the EOA of 1964, as amended.

[2] This includes volunteer services of board members. However, to be counted these services must be other than those required of them in their capacities as board members. For example, time spent at board or committee meetings by a board member who is a doctor would not be acceptable but time spent by him/her working in a clinic would be accepted. This also allows volunteer services of staff to be counted as non-Federal share when such services are not required by the positions they hold. (Grantees are reminded that any work performed by staff members which is in line with the normal responsibilities of their positions and is in excess of the normal weekly working hours is covered by the CSA overtime regulations (see OEO Instruction 6900-01) and can not be considered as a non-Federal share contribution.)

(b) *Accounting for the non-federal share.* (1) The Statement of CSA Grant, Form 314, shows the minimum percentage of total program expenditures which non-Federal funds must constitute in the grant period. The grantee is expected to maintain the rate of contribution of the non-Federal share so that throughout the grant period Federal funds will not be used to pay for a substantially larger percentage of project costs than the Federal funds shown on the Statement of CSA Grant constitute.

(2) It is important to note that the Federal share may never exceed either the dollar amount shown on the Statement of CSA Grant or the maximum percentage of the total program expenditures that this constitutes. The grantee must provide only sufficient non-Federal contributions so that the Federal share remains at or below the maximum percentage; however, the grantee may choose to provide additional non-Federal share, to insure a margin of safety, in the event that annual audits disallow some contributions.

(3) The non-Federal share may be provided in one program account for the entire grant or it may be spread among several program accounts. (See reference (3) to this subpart.)

(4) Non-Federal share contributions of cash shall be recorded as they occur. It is not necessary to maintain separate ledger accounts for the expenditures of grantee cash.

(5) All in-kind contributions, including those applicable to delegate agencies, must be recorded in the ledger accounts, either in separate accounts or in separate columns, as grant costs when the in-kind services or goods are performed or received. Records, including required supporting documentation, on in-kind services or goods performed or received must be established and maintained on a current basis.

(6) The non-Federal share is subject to audit, as is the Federal share.

(c) *Required documentation—Volunteered services.* All volunteered services claimed as non-Federal share must be substantiated by time cards or records that are signed by both the volunteer and his supervisor as is required for all other employees. Such records must show the actual hours worked and the specific duties performed .They should also indicate the basis for determining the rate of volunteer's contribution and such documentation must be available for audit.

(8) This subpart sets forth the standards for grantee financial management systems pursuant to the Uniform Federal Standard contained in Attachment F of OMB Circular A-110 and Attachment G of Federal Management Circular 74-7 and outlines CSA procedures to be followed in implementing the standards. The Uniform Federal Standards in this subject area do not conflict with any policies, procedures or other requirements previously imposed by CSA nor do they impose any additional requirements.

Subpart G—Standards for Financial Management Systems (Uniform Federal Standard) (CSA Instruction 6800-7)

§ 1050.60 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment F).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. (Attachment G.)

(3) OEO Instruction 6710-02, Instruction for Defining Cost Categories.

(4) CSA Instruction 6710-7, Amending a Grant Under Title VII of the Community Services Act.

(5) CSA Instruction 6710-8, Preparing a Budget for a Title VII Grant Under the Community Services Act.

(6) CSA Instruction 6800-6, Cost Sharing and Matching (Uniform Federal Standard). (45 CFR 1050-50.)

(7) OEO Instruction 6801-1, Grantee Fiscal Responsibility and Auditing, and Changes 1 and 2 to that Instruction.

(8) OEO Instruction 6803-1a, Allowances and Reimbursements for Members of Policy Making Bodies.

(9) OEO Instruction 6803-2, Allowability of Costs Incurred to Borrow Funds.

(10) OEO Instruction 6806-01, Establishing and Maintaining Program Accounts.

(11) OEO Instruction 6806-04, Accounting for Delegated or Contracted Activities.

(12) OEO Instruction 6807-1, Limitation on CAA Administrative Costs.

(13) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B and VII of the EOA of 1964 as amended. (45 CFR 1067.5.)

(14) OEO Instruction 7570-1, Applying for a New Research or Demonstration Grant Under the Economic Opportunity Act.

(15) OEO Instruction 7570-2, Applying for Continuation of a Research or Demonstration Grant Under the Economic Opportunity Act.

§ 1050.61 Standards.

(a) Following are the standards for financial management systems for grantees. (References (3) through (15) contain CSA's detailed implementing policies and procedures.) CSA will impose no additional standards on grantees unless they are specifically provided for in applicable statutes. Grantees' financial management systems will provide for the following: (1) Accurate, current and complete disclosure of each CSA sponsored project or program in accordance with the financial reporting requirements set forth in § 1050.70 (CSA Instruction 6800-8).

(2) Records that identify adequately the source and application of funds for CSA sponsored projects. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays and income.

(3) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(4) Comparison of actual outlays with budget amounts for each grant or other agreement. Financial information should be related to performance and unit cost data.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns as close as possible to the time of making disbursement.

[See § 1050.90 (Instructions 6800-10) for letter-of-credit procedures.]

(6) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.

(7) Accounting records that are supported by source documentation.

(8) Examinations in the form of audits or internal audits.[1] Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems, and internal procedures that have been established to meet the terms and conditions of the agreements.

It is not intended that each agreement awarded to the grantee be examined. Generally examinations should be conducted on an organization wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of Federal grants and other agreements. Such tests will include an appropriate sampling of Federal agreements.[2] Examination will be conducted with reasonable frequency on a continuing basis or at scheduled intervals but at least annually in accordance with reference (7) and Section 243 of the Economic Opportunity Act of 1964 as amended.

(9) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations, and administrative requirements. The grantee will schedule such audits annually in accordance with reference (7) and section 243 of the Economic Opportunity Act of 1964 as amended.[3]

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[1] Applicable to private grantees only.

[2] Because Section 243 of the Economic Opportunity Act of 1964, as amended, requires more frequent audits, i.e., at least annually, than that prescribed for grants funded by most other Federal agencies, the independent auditor may be requested by the grantee to examine CSA agreements only. In those cases, of course, the audit would limit his/her examination to CSA agreements and would include a sampling of CSA agreements only.

[3] Applicable to public grantees only.

(10) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) *Delegate agencies.* Grantees shall require delegate agencies to adopt the standards in § 1050.61(a) except for the requirement in (5), regarding the use of the letter-of-credit method and that part of (1) regarding reporting forms and frequencies prescribed in § 1050.70 (CSA Instruction 6800–8).

§ 1050.62 CSA implementing policies and procedures.

(See references (3) through (15) of this subpart for CSA's implementing policies and procedures as they relate to the standards set forth in this subpart.)

9. This subpart sets forth the standards for grantee financial reporting as prescribed by Attachment G to OMB Circular A–110 and Attachment H to FMC 74–7 (OMB Circular A–102) and CSA's procedures for completing SF 269, Financial Status Report; SF–271, Outlay Report and Report for Reimbursement of Construction Programs; and SF 272, Federal Cash Transactions Report. OMB Circular A–110 and FMC 74–7 prescribe new financial reporting forms to be used by all Federal agencies with grants-in-aid programs. Consequently, beginning with quarters ending April 30, 1977 CSA will require that grantees submit SF 269, Financial Status Report, to fulfill the quarterly financial reporting requirement in lieu of the currently used CSA Form 315. Grantees also will be required to submit a new form SF–272, Federal Cash Transactions Report at the same time, but not necessarily with, the SF–269. There is an additional form (SF–271, Outlay Report and Request for Reimbursement for Construction Programs) which may be used and/or required under certain circumstances as described in this subpart. Frequency of submission of the financial reports will not change nor will the distribution of such reports. An initial supply of Standard Forms 269 and 272 will be forwarded to grantees. They will accompany the standards when they are distributed in the form of CSA Instructions. Additional supplies of these and other referenced forms are available from the CSA Publications and Distribution Center.

Subpart H—Financial Reporting Requirements (Uniform Federal Standard) (CSA Instruction 6800–8)

§ 1050.70 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment G).

(2) FMC 74–7, (or OMB Circular A–102) Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment H).

(3) OEO Instruction 6807–1, Limitation on CAA Administrative Reports.

§ 1050.71 Definitions.

(a) *Accrued expenditures.* Charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, delegate agencies, and other payees; and (3) amounts becoming owed by the grantee under programs for which no current services or performance are required by the grantee.

(b) *Accrued income.* The earnings during a given period which is a source of funds resulting from (1) services performed by the grantee, (2) goods and other tangible property delivered to purchasers, and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

(c) *Disbursements.* Payments in cash or check.

(d) *Federal funds authorized.* Represents the total amount of the Federal funds (in this case CSA funds) authorized for obligations as established in the grant document. This amount shall include any authorized carryover of unobligated funds from prior fiscal or program year.

(e) *In-Kind contributions.* Represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically indentifiable to the grant program. When authorized by Federal legislation property purchased with Federal funds may be considered as grantee's in-kind contribution.

(f) *Obligations.* The amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

(g) *Outlays.* Represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

(h) *Program income.* Represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from services fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

(i) *Unobligated balance.* The portion of the funds authorized by CSA which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

(j) *Unliquidated obligations.* Represent the amount of obligations incurred by the grantee which have not been paid.

(k) *Program year.* A grantee's 12-month accounting period. For Community Action Agencies this is the funding period for the principal grant that provides funds for most of the grantee's administrative costs. For other agencies funded by CSA, this is their usual 12-month accounting period which may or may not correspond with funding period of their grant(s) from CSA.

(l) *Funding period.* A program account funding period extends from the effective date of a new or refunding action through the termination date, or expiration of the planned number of months for which funds are provided.

§ 1050.72 Standard.

(a) CSA will continue to utilize either the Letter of Credit or the predetermined monthly check issue as the two methods for making funds available to all construction and nonconstruction projects or programs. For the purpose of determining the status of those funds and to insure sound cash management on the part of grantees and delegate agencies CSA requires the submission of the following quarterly reports:

(1) *Reports required.* (A) Financial Status Report, SF 269 (for nonconstruction projects or programs).

(B) Federal Cash Transactions Report, SF 272 (and 272A—Continuation Sheet, if necessary).

(C) Outlay Report and Request for Reimbursement for Construction Programs, SF 271 (for construction programs only).

(2) *Preparation of reports.* Reports may be prepared on either a cash or an accrual basis with the appropriate indication on the report as to the method utilized. In the event that CSA should require all reports to be submitted on an accrual basis grantees will not be required to convert their accounting system, but shall develop such accrual information through estimates based on an analysis of documentation on hand.

(3) *Submission.* Reports are required within 15 working days after the end of each quarter of the grantees program year with a final report due within 90 days after the completion or termination of the grant. Extensions to reporting dates may be approved upon request of the grantee. CSA may require monthly reports from grantees with awards of $1 million or more annually.

(b) *SF 272, report of Federal cash transactions.* (1) CSA will use this report to monitor cash advanced to grantees and to obtain disbursement information for each agreement from the grantees. (2) CSA requires that grantees indicate in the "remarks" section of the SF 272 report the reason(s) for having and the need for retaining a cash balance of Federal funds in excess of current operating needs. For grantees on Letter of Credit current needs will relate to the amount of time required to fully effect a draw down in order to meet daily disbursement requirements. For grantees on monthly check issue current cash needs will mean a cash balance no greater than is necessary to meet operating requirements.

(c) *Additional reporting requirements.* When CSA needs additional information or more frequent reports in order to comply with legislative requirements or to monitor a grantee that has failed to meet the Standard for Financial Management as defined in CSA Instruction 6800–7, CSA will, prior to making any such request, adhere to the requirements imposed by OMB Circular No. A–40.

(d) CSA has the option of shading out any line item on any report that is unnecessary for decision-making purposes.

(e) CSA will accept the identical information from grantees in machine usable format or computer printouts in lieu of prescribed formats.

(f) CSA may provide computer outputs to grantee when it will expedite or contribute to the accuracy of reporting.

(g) CSA is authorized to reproduce these forms.

§ 1050.73 CSA implementing policies and procedures.

(a) *Policy.* (1) If any CSA regulation prescribes policies or requirements that differ from the provisions provided herein, the provisions of this subpart shall govern.

(2) All references to CSA Forms 315 and 315a in other documents will be deemed to mean SF–272 and the SF–269. CSA Forms 315 and 315a will be obsolete after April 30, 1977.

(3) Quarterly financial reports which are due subsequent to April 30, 1977 will be reported on SF–269, Financial Status Report. The SF–272, Federal Transactions Report, will be submitted at the same time.

(b) *General instructions.* (1) These general instructions apply to the preparation of Standard Forms 269, 271, and 272. Detailed instructions for their preparation will be found on the forms themselves.

(i) *How many copies to prepare.* Grantees shall prepare sufficient copies of the reports for each program year to make the distribution as shown below.

(ii) *Where to send reports.* (A) Grantees whose grant is administered by a CSA Regional Office will send one copy to the appropriate Regional Office and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street N.W., Washington, D.C. 20506.

(B) Grantees who have CSA grants administered by both a CSA Regional Office and a Headquarters Office(s) will send one copy to the appropriate Regional Office, one copy to each funding office in the CSA Headquarters, and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(C) Grants receiving funds solely from Headquarters program offices will submit one copy to each funding office and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(iii) *When to report.* (A) Standard Forms 269, 272, (and SF 271 when required for Construction Programs) will be submitted quarterly based upon the grantee's program year. The reports are to be submitted to the appropriate CSA Office 15 working days following the end of each quarter.

(B) Grantees are required to submit a final financial report for all programs with a fixed termination date within 90 days after the termination date. In those situations where the terminated program is the grantee's only CSA-funded program, a check (payable to CSA) for the amount of the unexpended funds should accompany the report.

(iv) *What to report.* CSA grants are to be charged only with those costs related to Community Services Administration sponsored programs.

(v) *Reporting delegate agency data.* When delays do not permit reporting in time to meet the CSA grantee reporting deadlines, expenditures of the delegate agencies should be estimated by the parent organization and incorporated into the grantee quarterly Financial Status Reports. However, these amounts should be identified by an asterisk to show that they include estimates. Adjustments should be made in subsequent quarterly financial reports by netting the effects of the adjustments made into the information reported for the current report quarter; it will not be necessary to amend previously submitted financial reports except in those instances where the error reported was in a final report for a terminated program.

(vi) *Amounts reported.* All amounts are to be rounded to the nearest dollar. Do not report cents.

(vii) *Delegate agency responsibilities.* Delegate agencies are required to provide their parent organizations with all data needed to prepare quarterly financial reports which will include cash balances and expenditures of the delegate agencies.

(2) *Other financial report requirements.* An administrative costs report is required annually. See OEO Instruction 6307–1 for detailed procedures for completing and submitting CSA Form 315d, Administrative Costs Report.

(3) *Availability of forms.* Supply of referenced forms are available upon written request to: CSA Publications and Distribution Center, 5458 3rd Street NE., Washington, D.C. 20001.

10. Subpart I is reserved.

Subpart I—Monitoring and Reporting Program Performance [Reserved]

11. This subpart establishes the required methods of making payments to grantees pursuant to the Uniform Federal Standards contained in Attachment I of OMB Circular A–110 and Attachment J of Federal Management Circular 74–7. These methods will minimize the time elapsing between the disbursement by grantees and the transfer of funds from the United States Treasury to grantees whether such disbursement occurs prior to or subsequent to the transfer of funds. The Uniform Federal Standards allow payments to a grantee by two methods which are currently used by CSA, i.e. Letter of Credit (for total payment of $250,000 or more), and advance by Treasury check (for payments less than $250,000). Therefore, the attached subpart does not make any substantive change to any CSA policy or procedures. (The CSA policies and procedures issued as § 1050.93 of this subpart are those previously found in Instruction 6714–1 and changes thereto which are hereby superseded.)

Subpart J—Payment Requirements (Uniform Federal Standard) (CSA Instruction 6800–10)

§ 1050.90 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment I).

(2) FMC 74–7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment J).

(3) OEO Instruction 6806–05, Limitations on Program Expenditures.

(4) CSA Instruction 6800–12, Grant Closeout Procedures (Uniform Federal Standard) (45 CFR § 1050.110).

(5) CSA Instruction 6800–13, Suspension and Termination Procedures (Uniform Federal Standard) (45 CFR § 1050.120).

(6) CSA Instruction 6710–1, Change 10, "Preparation of CSA Form 314, Statement of CSA Grant."

(7) Treasury Department Circular No. 1075, as revised, "Regulations Governing Withdrawal of Cash From the Treasury for Advance Under Federal Grant and Other Programs."

(8) Treasury Fiscal Requirements Manual, Part VI, "Other Fiscal Matters."

§ 1050.91 Definitions.

(a) *Letter-of-Credit.* A Letter-of-Credit is an instrument certified by an authorized official of a Federal funding agency that authorizes a grantee to draw funds when needed from the Treasury, through a Federal Reserve bank and the grantee's commercial bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.

(b) *Advance by Treasury check.* An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request before outlays are made by the grantee or through the use of predetermined payment schedules.

(c) *Reimbursement by Treasury check.* A reimbursement by Treasury check is a Treasury check paid to a grantee upon request for reimbursement from the grantee.

§ 1050.92 Standard.

(a) Payments can be made to grantees through a letter-of-credit and an advance by Treasury check.

(b) Except for construction grants and other construction agreements for which optional payment methods are authorized, as described in paragraph (d) of this section, the letter-of-credit method shall be used by CSA if all of the following conditions exist:

(1) If there is or will be a continuing relationship between a grantee and CSA for a least a 12 month period and the total amount of advance payments expected to be received within that period from CSA is $250,000 or more, as prescribed by Treasury Circular No. 1075. For joint funded projects the Treasury has authorized a dollar criteria of $120,000.

(2) If the grantee has established or demonstrated to CSA the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) If the grantee's financial management system meets the standards for fund control and accountability prescribed in 45 CFR 1050.60 (CSA Instruction 6800–7, Standards for Financial Management Systems.)

(c) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified

in paragraph (b) of this section, except those in paragraph (b) (1) of this section.

(d) A reimbursement by Treasury check shall be the preferred method if the grantee does not meet the requirements specified in paragraphs (b) (2) and (b) (3) of this section. At the option of CSA this method may also be used on any construction agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, CSA shall make payment within thirty days after receipt of the billing unless the billing is improper.

(e) When the letter-of-credit procedure is used, the grantee shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants and other agreements awarded by the sponsoring agency.

(f) (1) Unless otherwise required by law, CSA shall not withhold payments for proper charges made by grantees at any time during the project or program period unless (i) a grantee has failed to comply with the program objectives, general or special conditions, or CSA reporting requirements; or (ii) the grantee is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States. (See § 1050.110 and § 1050.115 (CSA Instructions 6800–12 and 6800–13) for procedures in cases of closeouts, suspensions and terminations).

(2) Under such conditions, CSA may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

§ 1050.93 CSA implementing policies and procedures.

(a) *Policy.* Federal funds awarded under CSA grants will be made available (advanced) by letter of credit or by check, depending upon the amount of the grant. Funds for grants of less than $250,000 annually will be advanced by the periodic issuance of Treasury checks. Funds for grants of over $250,000 and where there is an anticipated continuing relationship for one year will be made available through the issuance of a Treasury Department Letter of Credit.

(b) *Grants under $250,000 annually.* (1) Fund advances for grants totaling less than $250,000 annually will be made by a monthly check to the grantee. The amount of the monthly check will be computed based upon a grantee's anticipated rate of expenditure over the period of the grant, and subject to adjustment based upon an analysis of the required quarterly financial reports from the grantee. All Treasury checks will reflect the grantee number and the grant action to which the funds pertain. In the event subsequent funding actions result in a grantee's annual funding level to exceed $250,000, he will be notified that his funding procedures are to be changed and the necessary forms for conversion to Letter of Credit procedures will be sent.

(2) *Special checks.* (i) When a grantee anticipates needing cash in excess of that provided by the issuance of a monthly check, he must submit a written justification to the appropriate administering office for review and subsequent submission to the Finance and Grants Management Division, Headquarters, if approval is recommended.

(ii) Before approving issuance of a special check, the Finance and Grants Management Division will review current expenditure rates and cash balances reported on the financial reports. Delays in submission of these reports to CSA will result in delays in approval of special checks.

(c) *Grants over $250,000 annually.* When a letter-of-credit is issued the grantee will not be required to maintain a separate bank account for funds obtained in this manner except in those cases where the letter-of-credit agreement provides that draw downs will be made when the grantee's checks are presented to the bank for payment. Grantees will delay, to the extent possible, all drawdowns on the letter-of-credit until after their organizations have issued checks for disbursements properly chargeable to Federal funds.

(1) *Letter of credit procedure*—(i) *Selection of commercial bank.* (A) Grantees shall select a commercial bank which will agree to receive Payment Vouchers on Letter of Credit (TUS 5401) drawn on the Treasurer of the United States and forward these vouchers to the applicable Federal Reserve Bank or branch. In addition the grantee will assure that they comply with the Uniform Federal Standards applying to cash depositories (See § 1050.10 (CSA Instruction 6800–2).) The grantee shall notify the Finance and Grants Management Division, CSA Headquarters, of the name of the commercial bank, title of the bank account, and location of the applicable Federal Reserve Bank or branch.

(ii) *Authorized signature card.* (A) The Finance and Grants Management Division in Headquarters or Financial Services Branch in the regions will send the grantee three Standard Forms 1194, Authorized Signature Card for Payment Vouchers on Letters of Credit, as part of the grant package. When properly completed by the grantee, these cards will provide the appropriate Federal Reserve Bank or branch with specimen signatures of grantee officials authorized to sign Payment Vouchers on Letter of Credit or withdrawal of funds. A sample copy of SF 1194 and instructions for completion are provided in Exhibit II.

(B) Two copies of the properly completed signature card will be returned, with all other required documents, to the Finance and Grants Management Division, CSA Headquarters, or to the Financial Service Branches in regional offices, depending on whether the grant is administered by CSA Headquarters or by a regional office.

(C) A change of persons authorized to sign payment vouchers or a change in grantee name, address, or commercial bank will require that a grantee submit a new set of signature cards to the Headquarters Finance and Grants Management Division.

Blank signature cards may be obtained from that office or from the Financial Services Branches in the regional offices.

(D) The Finance and Grants Management Division, or the Financial Services Branches for regional grants, will notify the grantee when the signature cards and letter of credit have been sent to the Federal Reserve Bank or Branch via the Treasury Department. The grantee will not present a payment voucher which includes the new or changed information until it has received such notification. The grantee should assure that it has sufficient funds for operating until receipt of the notification.

(E) Each letter of credit must have its own signature card. If there is a need to change a prior signature card for a specific grant, a new signature card must be submitted to the Finance and Grants Management Division, CSA Headquarters.

(F) Grantees must provide signatures for at least two persons in order to enable the proper completion of the payment voucher (Form TUS 5401).

(*1*) *Withdrawal of funds.* (*i*) As funds are needed, the grantee will prepare and submit the original, duplicate, and triplicate copies of the Payment Voucher on Letter of Credit (Forms TUS 5401) to its commercial bank.

The commercial bank will transmit all forms to the Federal Reserve Bank or branch. The recipient organization will retain the quadruplicate copy for its own records. Instructions for preparing the form are provided in Exhibit III.

(*ii*) A supply of Forms TUS 5401 will be sent to each grantee with the letter-of-credit. Additional forms may be obtained by writing to the Finance and Grants Management Division, CSA Headquarters. Payment vouchers are preprinted with CSA's name and station symbol. They cannot be used for withdrawals from letters-of-credit issued by other Federal agencies. Only Forms TUS 5401 received from CSA may be used for withdrawal of funds from CSA letters-of-credit.

(*iii*) *Guidelines for withdrawal.* The U.S. Treasury Department policy provides that withdrawals by grantees shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements needed in carrying out the purpose of the approved program or project. Where a grantee makes advances to a delegate agency, they shall conform substantially to the same standards of timing and amount as applicable to advances to the primary grantee. Grantee drawdowns shall not ordinarily be made more frequently than daily in order to maintain a minimum amount of cash on hand. However, the amount withdrawn may not exceed the dollar limitation placed on the letter-of-credit by CSA without prior CSA approval. Ordinarily, withdrawals should not be made for less than $10,000 nor for more than $1,000,000, and in no case in excess of $5,000,000 unless authorized by CSA, and should never exceed the amount of cash needed to operate for a thirty (30) day period.

6 TREASURY FRM 2000 ATTACHMENT - EXHIBIT I

ISSUING AGENCY	LETTER OF CREDIT	LETTER OF CREDIT NUMBER
Community Services Administration (1) 1200 19th Street NW. Washington, D.C. 20506	Auth: TREASURY DEPARTMENT CIRCULAR No. 1075, Revised	(2) _____ AMENDMENT NUMBER _____ (3)
AGENCY STATION SYMBOL 81-00-9701 (4)	(FOR AGENCY USE) (5)	EFFECTIVE DATE (6)
TO: The Federal Reserve Bank, (7)		BRANCH BANK AT (8)

In accordance with the authorization of the Fiscal Assistant Secretary, Treasury Department, there is hereby authorized for the account and responsibility of the issuing agency a letter of credit:

IN FAVOR OF	FOR DEPOSIT ONLY TO		
(9)	(10) Recipient's ACCOUNT		
AMOUNT AUTHORIZED $ (11)	☐ EACH MONTH ☐ EACH QUARTER ☐ WITHOUT TIME LIMIT ☐ ____(12)____	PRIOR AUTHORIZATION $ (13)	THIS CHANGE Increase $ (14) Decrease $

(15)

☐ The unpaid balance of this letter of credit will remain available until you are advised in writing by the Treasury Department that this letter has been revoked.*

OR

☐ The unpaid balance of this letter of credit is revoked at the end of each period indicated and the full amount reestablished at the beginning of the following period until you are advised in writing by the Treasury Department that this letter has been revoked.*

The amount of this letter of credit is hereby certified to be drawn against, upon presentation to you of Form TUS 5401, Payment Voucher on Letter of Credit, by the official(s) of the recipient organization whose signature(s) appear(s) on the Standard Form 1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, attached hereto or previously or subsequently furnished you through the Treasury Department.

The amount of each payment voucher paid by a Federal Reserve Bank or branch to a designated commercial bank for credit to the account of the recipient organization shall constitute payment to the recipient organization by the United States.

I certify to the Treasury Department that the payments authorized herein are correct and proper for payment from the appropriations or funds legally committed and available for the purpose, when paid in accordance with the terms and conditions cited above.

*This letter of credit is irrevocable to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement.

DATE CERTIFIED _____ (16) _____
AUTHORIZED CERTIFYING OFFICER

_____
TYPED NAME AND TITLE

1193-103

EXHIBIT I

EXPLANATION OF INFORMATION ON LETTER OF CREDIT

1. *Issuing Agency.* Name and address of CSA Headquarters.

2. *Letter of Credit Number.* Number assigned by the agency to identify a particular Letter of Credit.

3. *Amendment Number.* This will represent a change to letter of credit.

4. *Agency Station Symbol.* The No. 81-00-9701 is the number assigned the Treasury Department to identify CSA Letters of Credit. It will appear on all Letters of Credit issued by CSA.

5. *For Agency Use.* Shows grantee identification number and grant action number.

6. *Effective Date.* Effective date of the Letter of Credit.

7. *To the Federal Reserve Bank.* Location of Federal Reserve Bank serving Federal Reserve Branch Bank.

8. *Branch Bank at.* Location of Federal Reserve Branch serving grantee's commercial bank.

9. *In Favor of.* Name and address of grantee, same as shown on the signature card and the CSA Form 314, Statement of CSA Grant.

10. *For Deposit Only to.* Name and address of commercial bank and recipient's account.

11. *Amount Authorized.* This space will be left blank.[1]

12. *Without Time Limit.* This space will be left blank.[1]

13. *Prior Authorization.* This space will be left blank.[1]

14. *This Change.* The amount of increase or decrease authorized by this Letter of Credit amendment.[2]

15. This space will be left blank.[2]

16. *Authorized Certifying Officer.* Signature of authorized CSA official.

[1] Item 11, "Amount Authorized," equals item 13 "Prior Authorization," plus or minus item 14, "This Change."

[2] The Grant Accounting Branch, Finance and Grants Management Division, will complete Items 11, 12, 13, 14, and 15 before submitting a letter of credit to the U.S. Treasury.

ATTACHMENT
EXHIBIT II

Standard Form 1194 U Treasury FRS 1200 Fiscal Service Bureau of Accounts	AUTHORIZED SIGNATURE CARD FOR PAYMENT VOUCHERS ON LETTER OF CREDIT	Letter of Credit Number (1) Federal Reserve Bank (2)
Letter of Credit Issued in Favor of *(Recipient)* (3)		Issued By *(Federal Agency)* (4)
(5) SIGNATURES OF INDIVIDUALS AUTHORIZED TO DRAW ON THE CITED LETTER OF CREDIT		☐ ONLY ONE SIGNATURE REQUIRED ON PAYMENT VOUCHERS or ☐ ANY TWO SIGNATURES REQUIRED TO SIGN OR COUNTERSIGN
Typed Name and Signature (6)		Typed Name and Signature (6)
Typed Name and Signature (6)		Typed Name and Signature (6)
I CERTIFY THAT THE SIGNATURES ABOVE ARE OF THE INDIVIDUALS AUTHORIZED TO DRAW PAYMENT VOUCHERS FOR THE CITED LETTER OF CREDIT. (7) DATE AND SIGNATURE OF AUTHORIZING OFFICIAL (Recipient)		APPROVED (8) DATE AND SIGNATURE OF AGENCY CERTIFYING OFFICER

COMPLETION OF SIGNATURE CARDS

Following are instructions for completing the Signature Cards:

1. *Letter of Credit Number.* When establishing a new Letter of Credit the Finance and Grants Management Division will complete this block prior to sending the forms to the grantee for signatures. To request a change of signatures shown on a previous Form 1194, the grantee should indicate, in this block, the assigned Letter of Credit number.

2. *Federal Reserve Bank.* The name of the Federal Reserve Bank or branch, as the case may be, that will serve the grantee's commercial bank will be entered by the Finance and Grants Management Division.

3. *Letter of Credit Issued in Favor of (Recipient).* Enter full name and address of grantee organization. Include city, state and zip code. This must agree with the information on the Statement of CSA Grant (CSA Form 314). If any of the information on the CSA Form 314 is incorrect, contact the CSA processing unit before completing the Form 1194.

4. *Issued by (Federal Agency).* The Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506; Code 81-00-9701.

5. *Signatures of Individuals, etc.* Mark X in space to indicate "any two signatures required to sign or countersign."

6. *Typed Name and Signature.* Enter the typed names and signatures of at least two (and preferably more than two) individuals authorized to sign payment vouchers (Form TUS-5401) to withdraw funds from Letter of Credit. The typed names must appear exactly as the individuals sign their names.

7. *Certification Block. Date and Signature of Authorized official* (Recipient). Date and sign. The signature should be that of the grantee official authorized to certify that the signatures are those of persons authorized to withdraw funds from the Letter of Credit.

8. *Approved.* Leave this space blank for CSA use.

ATTACHMENT
EXHIBIT III

ORIGINAL—Drawer will forward this form to bank for transmission to Federal Reserve Bank.

FORM TUS 5401 (Rev. 12-67) Dept. of the Treasury 31 CFRM 1000

PAYMENT VOUCHER ON LETTER OF CREDIT
(TO BE COLLECTED AS A NON-CASH ITEM)
The drawer's bank shall be the agent of the drawer for the collection of this instrument and each subsequent collecting commercial bank shall be the subagent of the drawer.

2058742
SERIAL NO.
SYMBOL 17-863

VOUCHER NO. (1)	LETTER OF CREDIT NO. (2)	AGENCY STATION SYMBOL (3)	DATE VOUCHER DRAWN (4)	AMOUNT $ (5)
		81-00-9701		

NAME AND ADDRESS OF DRAWER (6)	NAME AND ADDRESS OF DRAWER'S BANK (7)	FEDERAL RESERVE BANK OR BRANCH (8)

NAME AND ADDRESS OF U. S. AGENCY

COMMUNITY SERVICES ADMINISTRATION
Grant Accounting & Management Branch
1200 19th Street NW.
Washington, D.C. 20506

I certify that this payment voucher has been drawn in accordance with banks and bankers on the terms of credit cited and that the amount has not drawn is properly due thereon to the account of the drawer & its

(9) (Signature) (Title)

(9) (Countersignature) (Title)

Per authorization of Fiscal Assistant Secretary, Treasury Department, debit the general account of the Treasurer of the U. S. and pay to the presenting bank the amount shown above.

FOR FEDERAL RESERVE BANK USE ONLY
(Date Debited) (Authorized Signature)

PREPARATION OF FORM TUS 5401

(1) *Voucher Number.* Grantees will number payment vouchers consecutively beginning with "1". Alphabetical designations will not be used as part of the voucher number. Amendments to the Letter of Credit will not interrupt the consecutive numbering of payment vouchers by the grantee.

(2) *Letter of Credit Number.* Enter the assigned Letter of Credit number. This is the eight-digit number shown on the Letter of Credit received from CSA.

(3) *Agency Station Symbol.* This is an eight-digit code assigned to CSA by the U.S. Treasury Department and is pre-printed on the vouchers sent to grantees.

(4) *Data Voucher Drawn.* Enter the date voucher is prepared and presented to the bank. To facilitate entering this date on a computer, the date must be written as follows:

Date	Write		
February 20, 1977	02	20	77
	Month	Day	Year

(5) *Amount.* Enter the dollar amount to be withdrawn. Round off to hundreds or thousands of dollars.

Example: $35,500.00.

(6) *Name and Address of Drawer.* Complete name and address of grantee, including zip code, as shown on the Letter of Credit.

(7) *Name and Address of Drawer's Bank.* Enter name and address of the bank to which the payment voucher will be presented.

(8) *Federal Reserve Bank or Branch.* Enter name (city) of Federal Reserve Bank or Branch as shown on Letter of Credit.

(9) *Signatures.* Vouchers must be signed by two of the designated signees exactly as their signatures appear on current signature cards.

DISTRIBUTION OF PAYMENT VOUCHERS

Original, duplicate and triplicate: Presented to grantee's bank for payment. The Bank will retain the original and forward the duplicate and triplicate to the Federal Reserve Bank for their records.

Quadruplicate: Retain for grantee files.

12. Subpart K to Part 1050 is reserved.

Subpart K—Revision of Financial Plans [Reserved]

13. This subpart prescribes uniform closeout procedures for all CSA grants pursuant to the Uniform Federal Standards contained in Attachment K of OMB Circular A-110 and Attachment L of Federal Management Circular 74-7. Prior to publication of this subpart CSA had no published policy or procedures dealing with grant closeout procedures per se although many procedures existed which, by their very nature, were applicable and used in closeouts. This subpart notifies grantees of the Uniform Federal Standards covering this subject area, identifies the existing CSA Instructions which impact that subject, and includes a new section on closeout audits.

Subpart L—Grant Closeout Procedures (CSA Instruction 6800-12)

§ 1050.110 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment K).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment L).

(3) OEO Instruction 6302-2, CAAs: Eligibility and Establishment.

(4) OEO Instruction 6730-1, Denial of Application for Refunding.

(5) CSA Instruction 6800-4, Retention and Custodial Requirements for Records. (45 CFR § 1050.20.) (Uniform Federal Standard.)

(6) CSA Instruction 6800-5, Program Income. (45 CFR 1050.40.) (Uniform Federal Standard.)

(7) CSA Instruction 6800-8, Financial Reporting Requirements. (45 CFR § 1050.70.) (Uniform Federal Standard.)

(8) CSA Instruction 6800-9, Monitoring and Reporting Requirements. (45 CFR § 1050.70.) (Uniform Federal Standard.)

(9) CSA Instruction 6800-10, Payment Requirements. (45 CFR § 1050.90.) (Uniform Federal Standard.)

(10) CSA Instruction 6800.11, Revision of Financial Plans. (45 CFR § 1050.100.) (Uniform Federal Standard.)

(11) CSA Instruction 6800-13, Suspension and Termination Procedures. (45 CFR § 1050.115.) (Uniform Federal Standard.)

(12) CSA Instruction 6800-15, Property Management Standards. (45 CFR § 1050.130.) (Uniform Federal Standard.)

(13) OEO Instruction 6801-1, and Changes 1 and 2, Grantee Fiscal Responsibility and Auditing.

(14) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B, and VII of the EOA of 1964 as amended. (45 CFR § 1067.5.)

§ 1050.111 Definitions.

(a) "Closeout"—The closeout of a grant is the process by which CSA determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and CSA.

(b) "Date of completion"—The date of completion is the date on which all work under the grant is completed or the date on the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) "Disallowed costs"—Disallowed costs are those charges to a grant which CSA determines to be unallowable in accordance with the applicable Federal cost principles, other conditions contained in the grant agreement and CSA Instructions.

§ 1050.112 Standards.

The following requirements shall be applicable to the closeout of all CSA grants:

(a) Upon request, CSA shall make prompt payments to the grantee for allowable reimbursable costs under the grant being closed out.

(b) Within 90 calendar days after completion of a grant, the grantee shall refund any balance of unobligated cash that CSA has advanced or paid, and that is not authorized to be retained by the grantee for use in other grants or for other purposes specifically authorized in writing by CSA. A check (payable to CSA) will accompany the final financial report. (See reference (7) for procedures.)

(c) Within 90 calendar days after the completion of a grant, the grantee shall submit to CSA all financial, performance, and other reports required as conditions of the grant. (See references (7), and (8), and (13) for procedures.) CSA may grant extensions when requested by the grantee.

(d) When authorized by the grant agreement, CSA shall make a settlement for any upward or downward adjustment to the Federal share of costs after these reports are received.

(e) The closeout of a grant shall not, of itself, end or otherwise affect: (1) The grantee's responsibility to account for any property acquired with Federal funds, or received from the Government, in accordance with the provisions of § 1050.130 (CSA Instruction 6800-15) Property Management Standards;

(2) The grantee's responsibility to account for program income in accordance with the provisions of § 1050.40 (CSA Instruction 6800-5);

(3) The retention period for, or Federal rights of access to, grant records pursuant to § 1050.20 (CSA Instruction 6800-4).

(f) In the event a final audit has not been performed prior to the closeout of

the grant, CSA retains the right to recover an appropriate amount, after fully considering the recommendations on disallowed costs resulting from any subsequent audit which may be performed. (See reference (13) for CSA audit requirements.)

§ 1050.113 CSA implementing policies and procedures.

(a) *General.* Procedures for various activities to be undertaken in closeouts will be found in references (3) through (14). This subpart provides additional detail on required closeout procedures relating to audits. (See reference (13) for basic procedures.)

(b) *Closeout Audits*—(1) *Scope of Audit.* (i) Within 90 days after the date of completion of a CSA grant, the grantee will be required to submit a final audit of grant operations. This audit will be done in accordance with the Accounting System Survey and Audit Guide, CSA Manual 2410–1. If the grantee will no longer be receiving CSA funds from other grants, the scope of audit should be adjusted as follows:

(A) The independent auditor will not be required to render an appraisal of the grantee's accounting system and internal controls. However, he will be required to review internal accounting controls in accordance with generally accepted auditing standards to ascertain the degree of reliance he can place on them in determining the extent of his audit tests and procedures. Therefore, the audit report will normally contain no comments or recommendations relative to the grantee's accounting system or internal controls.

(B) The independent auditor should explain in his audit report that the grantee will not continue to receive CSA funding and will not be involved in CSA programs as a grantee.

(C) The independent auditor should emphasize in his report any action required to clear the account such as recovery of any unexpended funds or disposition of grant property.

(ii) Where questions arise in regard to the audit of CSA grantees being closed out, independent auditors should contact the cognizant CSA Regional Auditor for guidance.

(2) *Audit disallowances.* The normal CSA audit disallowance procedures as set forth in reference (13) shall be followed for audit disallowances resulting from a final audit. Final audit disallowances can only be satisfied by cash payments to CSA when the grant in question has been or is in the process of being closed out.

14. This subpart prescribes uniform suspension and termination procedures for all CSA grants pursuant to the Uniform Federal Standards contained in Attachment L of OMB Circular A–110 and Federal Management Circular 74–7 (OMB Circular A–102).

CSA's previous policy statement and accompanying procedures re suspension and termination was found in 45 CFR § 1067.1 (OEO Instruction 6730–2) which is superseded by this subpart (CSA Instruction 6800–13). However, most of the policies and procedures found in 45 CFR § 1067.1 have been incorporated into this subpart. Changes in existing CSA procedures include:

General: Terminology has been corrected but very few substantive changes have been made. Procedures have not changed.

Specific: *Suspension*, § 1050.115–7: (1) Length of suspension increased from 21 to 30 days; (2) Regional Directors explicitly added to definition of "responsible CSA official" but only for purpose of suspensions; (3) suspension procedures have been reorganized into two sections—suspension on notice and summary suspension.

Termination, § 1050.115–8—(1) Regional Directors as well as "responsible CSA official" may initiate termination, but Regional Directors may not conduct termination hearing, unless designated by the responsible CSA official, since they are not grant making officials; and (2) a final section entitled "Consequences of Termination" was transferred from CSA Instruction 7050–1, General Condition 14, to subsection 8(j) of this subpart.

45 CFR Chapter X is amended by deleting §§ 1067.1–1 to 1067.1–11 and adding the following:

Subpart M—Suspension and Termination Procedures (Uniform Federal Standard) (CSA Instruction 6800–13)

§ 1050.115–1 References.

(1) 45 CFR 1010 (OEO Instruction 6004–01a) Nondiscrimination in Federally-Assisted Programs of the Office of Economic Opportunity—Effectuation of Title VI of the Civil Rights Act of 1964;

(2) 45 CFR 1067.2 (OEO Instruction 6730–1) Denial of Application for Refunding;

(3) 45 CFR 1050.110 (CSA Instruction 6800–12) Grant Closeout Procedures;

(4) 45 CFR 1069.3 (CSA Instruction 6910–1a) Travel Regulations for CSA Grantees and Delegate Agencies.

§ 1050.115–2 Definitions.

(a) "Termination"—The termination of a grant is the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to its date of completion. The following do not constitute termination:

(1) Withdrawal of funds awarded on the basis of grantee's under estimate of the unobligated balance in a prior grant period;

(2) Failure on the part of CSA to refund a grantee or to make a continuation, extension, supplemental or other additional grant;

(3) Withdrawal of the unobligated balance as of the date of completion of a grant pursuant to the provision of CSA Instruction 6800–12 (45 CFR 1050.110);

(4) Annulment of a grant upon determination that the grant was obtained fraudulently or was otherwise illegal or invalid from inception;

(5) Withdrawal of unobligated funds from a CAA before the date of completion of its grant as a result of opt-out or de-designation proceedings under Section 210 of the Economic Opportunity Act of 1964 as amended, and OEO Instruction 6302–2.

(b) "Suspension"—The suspension of a grant is an action by CSA that temporarily suspends Federal assistance under the grant, pending a decision by CSA to terminate the grant.

§ 1050.115–3 Failure to comply with grant terms and conditions.

When a grantee has materially failed to comply with the terms and conditions of a grant (including all applicable CSA Instructions), CSA may suspend the grant in accordance with § 1050.115–4, terminate it for cause in accordance with § 1050.115–5, or take such other remedies as may be legally available and appropriate under the circumstances.

§ 1050.115–4 Suspension.

When a grantee has materially failed to comply with grant terms and conditions, CSA may suspend the grant, after giving the grantee reasonable notice and opportunity to show cause why the grant should not be suspended. Pursuant to section 604(2) of the Economic Opportunity Act as amended, CSA may summarily suspend a grant without previous notice in an emergency situation. If a grant is suspended, CSA may withhold further payments and prohibit the grantee from incurring further obligations of funds, pending corrective action by the grantee or a decision by CSA to initiate termination proceedings in accordance with § 1050.115–5. CSA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension, provided that they meet the provisions of the applicable Federal cost principles (for public grantees, the applicable provisions are those of Federal Management Circular 74–4).

§ 1050.115–5 Termination for cause.

Whenever it is determined that a grantee has failed to comply with the terms and conditions of its grant, CSA may terminate the grant in whole or in part at any time prior to its date of completion. CSA shall promptly notify the grantee of the determination and the reasons for the termination, together with its effective date. Pursuant to section 604(3) of the Economic Opportunity Act of 1964, as amended, such determination shall not be made unless the grantee has been afforded the opportunity for a full and a fair hearing on the termination of its grant. Payment made to grantees or recoveries by CSA or other Federal grantor agencies under grants terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

§ 1050.115–6 Termination for convenience.

CSA or the grantee may terminate any grant in whole or in part if and only if both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties must agree on the termination conditions, including the effective date, and, in the case of partial

terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated program or portion thereof after the effective date of termination and shall cancel as many outstanding obligations as possible. CSA shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to the effective date of termination.

§ 1050.115–7 CSA implementing policies and procedures governing suspensions.

(a) *Purpose and scope.* (1) This section establishes rules for the suspension of assistance provided under the Economic Opportunity Act of 1964, as amended (hereinafter the Act), if the assistance is administered by the Community Services Administration; a grantee may be suspended for failure to comply with the terms and conditions of its grant, including applicable laws, regulations, CSA Instructions, grant conditions, or approved work programs.

(2) However, this section shall not apply to any administrative action of the Community Services Administration based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964; in case of such violation or alleged violation the provisions of 45 CFR 1010 (CSA Instruction 6004–01a) shall apply.

(3) Pursuant to section 604(2) of the Act and this subpart, the responsible CSA official may suspend a grant under the circumstances outlined in paragraph (a)(1) of this section. There are two kinds of suspension: (i) suspension on notice, as provided for in paragraph (c) of this section, and (ii) summary suspension as provided for in paragraph (d) of this section. Summary suspension may be invoked only when the responsible CSA official determines that an emergency situation exists (see paragraph (d)(1) of this section.)

(b) *Definitions.* (1) The term "responsible CSA official" means the Director, Deputy Director, and any other official who is authorized to make the grant in question, the Regional Director of the Regional Office administering the grant in question, or the designee of any of these officials.

(2) The term "summary suspension" means suspension of a grant without prior notice to the grantee.

(c) *Suspension on notice.* (1) The responsible CSA official shall notify the grantee by letter or telegram that CSA intends to suspend a grant in whole or in part unless good cause is shown why the grant should not be suspended. In such letter or telegram the responsible CSA official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(2) The responsible CSA official shall also inform the grantee of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the grantee may respond an attempt to show why such suspension should not occur. The period of time within which the grantee may submit such written material or request the informal meeting shall be established by the responsible CSA official in the notice of intent to suspend. However, in no event shall the period of time within which the grantee must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend has been sent. If the grantee requests a meeting, the responsible CSA official shall fix a time and place for the meeting, which shall not be less than 5 days after the grantee's request is received by CSA.

(3) In lieu of the provisions of paragraph (c)(2) of this section dealing with the right of the grantee to request an informal meeting, the responsible CSA official may on his own initiative establish a time and place for such a meeting. However, in no event shall such a meeting be scheduled less than 7 days after the notice of intent to suspend is sent to the grantee.

(4) The responsible CSA official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the grantee of any such extension.

(5) At the time the responsible CSA official sends the notification referred to in paragraph (c), (1), (2), and (3) of this section to the grantee, he shall also send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and shall inform such delegate agency that it shall be entitled to submit written material or to participate in the informal meeting referred to in paragraph (c), (2) and (3) of this section. In addition, the responsible CSA official may in his discretion give such notice to any other delegate agency.

(6) Within 3 days of receipt of the notice referred to in paragraphs (c) (1), (2), and (3) of this section the grantee shall send a copy of these regulations to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting with the responsible CSA official contemplated herein (if not afforded a right to participate under the previous paragraphs) may request permission to do so from the responsible CSA official, who may in his discretion grant or deny such permission. In acting upon any such request from a delegate agency, the responsible CSA official shall take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(7) In the notice of intent to suspend assistance the responsible CSA official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(8) The responsible CSA official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraph (c)(2) and (3) of this section as well as any showing that the grantee has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible CSA official concludes that the grantee has failed to show cause why the grant should not be suspended, he may suspend the grant in whole or in part and under such terms and conditions as he shall specify.

(9) Notice of such suspension shall be promptly transmitted to the grantee and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1050.115–8, or unless the responsible CSA official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(10) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible CSA official. Expenditures to fulfill legally enforceable commitments made prior to the notice of susension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the grantee has obligated them by contract or otherwise to a delegate agency.

NOTE.—Willful misapplication of funds may violate section 627 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971(f) or other criminal statutes.

(11) The responsible CSA official may in his discretion modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may in the discretion of the responsible CSA official be reimposed with or without further proceedings: Provided, however, that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1050.115–8, or unless the responsible CSA official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(d) *Summary suspension.* (1) As stated in (a)(3) of this section the responsible CSA official may invoke summary suspension procedures only if he deter-

mines that an emergency situation exists because there is a serious risk of: (i) Substantial injury to or loss of project funds or property, or (ii) violation of a Federal, State or local criminal statute, or (iii) violation of section 603(b) or 613 of the Economic Opportunity Act of 1964, as amended or of CSA Instructions implementing these sections of the Act. He must also determine that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the grantee by letter or by telegram, shall become effective upon delivery to the grantee, and shall specifically advise the grantee of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the grantee to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a grantee solely because the grantee obligated them by contract or otherwise to a delegate agency.

(3) In the notice of summary suspension the responsible CSA official shall advise the grantee that it may request CSA to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the grantee requests such an opportunity, the responsible CSA official shall immediately inform the grantee in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the grantee hold an informal meeting at which the grantee may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible CSA official may proceed to initiate termination proceedings at any time even though the grant has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible CSA official shall nevertheless afford the grantee, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Notices of summary suspension shall also be furnished by the responsible CSA official and by the grantee to delegate agencies in the same manner as notices of intent to suspend as set forth in paragraph (c) (5), (6), and (7) of this section. Delegate agencies shall have the same right to submit written material to the responsible CSA official or to participate in the informal meetings as in the case of intended suspension proceedings set forth in paragraph (c) (5) and (6) of this section.

(5) The effective period of a summary suspension may not exceed 10 days unless termination proceedings are initiated in accordance with § 1050.115–8 or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the grantee in accordance with paragraph (d)(3) of this section requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the grantee requests an opportunity to show cause why a summary suspension action should be rescinded the suspension shall continue in effect until the grantee has been afforded such opportunity and a decision has been made. Such a decision will be made within 5 days after the conclusion of the informal meeting referred in in paragraph (d)(3) of this section. If the responsible CSA official concludes after considering all material submitted to him, that the grantee has failed to show cause why the suspension should be rescinded, the responsible CSA official may continue the suspension in effect for an additional 10 days: *Provided, however,* That if termination proceedings are initiated, the summary suspension shall remain in full force and effect until all termination proceedings have been fully concluded.

(e) *Right to counsel; travel expenses.* In all proceedings under this section whether formal or informal, the grantee and CSA shall have the right to be represented by counsel or other authorized representatives. If the grantee and any delegate agencies which have a right to participate in an informal meeting pursuant to paragraph (d) and (e) of this section do not have an attorney acting in that capacity as a regular member of the staff of the organization, the Boards of Directors of such grantees and delegate agencies will be authorized to designate an attorney to represent their organizations at any termination hearing and transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney. However, such fees shall not exceed $100 per day without the express written approval of CSA. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Government Travel Regulations and 45 CFR 1069.3–1, 1069.3–6 (CSA Instruction 6910–1a). The Board of Directors of the grantee or any delegate agency which has a right to participate in an informal meeting pursuant to paragraph (d) and (e) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Travel Regulations and in 45 CFR 1069.3–1 to 1069.3–6 (CSA Instruction 6910–1a).

§ 1050.115–8 CSA implementing policies and procedures governing termination of assistance.

(a) *Purpose and scope.* (1) This section establishes rules for the termination of assistance provided under the Economic Opportunity Act of 1964, as amended (hereinafter the Act), if the assistance is administered by the Community Services Administration; a grantee may be terminated for failure to comply with the terms and conditions of its grant, including applicable Laws, regulations, CSA Instructions, grant conditions, or approved work programs.

(2) However, this section shall not apply to any administrative action of the Community Services Administration based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964; in case of such violation or alleged violation the provisions of 45 CFR Part 1010 (CSA Instruction 6004–01a) shall apply.

(3) Pursuant to section 604(3) of the Act and CSA Instruction 6800–13, the responsible CSA official may terminate a grant under the circumstances outlined in paragraph (a)(1) of this section.

(b) *Definitions.* (1) The term "responsible CSA official" means the Director, Deputy Director, and any other official who is authorized to make the grant in question.

(2) The term "party" means CSA, the grantee concerned, and any other agency or organization which, by right or by permission of the presiding officer, is a participant in a termination hearing.

(c) *Notice and pre-hearing procedures.* (1) If the responsible CSA official believes a grantee's violation of the terms and conditions of its grant is sufficiently serious to warrant termination, whether or not the grant has been suspended, he shall state that there appear to be grounds which warrant termination and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of a delegate agency, the notice shall identify that delegate agency. The notice shall also advise the grantee that the matter has been set down for hearing at a stated time and place, in accordance with paragraph (d) of this section. In the alternative the notice shall advise the grantee of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the grantee may request such a hearing. (If the grant is Regionally administered, the Regional Director of the grantee's Region may initiate the notice of intent to terminate on behalf of CSA. Any notice initiated by the Regional Director shall inform the grantee of the name and address of the responsible CSA official and shall direct the grantee to address all communications concerning the termination hearing to that official.)

(2) Termination hearings shall be conducted in accordance with the provisions of paragraph (e) and (f) of this section. They shall be scheduled for the earliest practicable date, but not later than 30 days after a grantee has re-

quested such a hearing. Consideration shall be given to a request by a grantee to advance or postpone the date of a hearing scheduled by CSA. Any such hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements specified in paragraph (a) of this section. In any termination hearing, CSA shall have the burden of justifying the proposed termination. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement specified in paragraph (a) of this section, the grantee shall have the burden of proving that such action was timely taken.

(3) If a grantee requests CSA to hold a hearing in accordance with paragraph (c)(1) of this section, it shall send a copy of its request for such a hearing to all delegate agencies which would be financially affected by termination and to each delegate agency identified in the notice pursuant to paragraph (c)(1) of this section. This material shall be sent to these delegate agencies at the same time the grantee's request is made to CSA. The grantee shall promptly send CSA a list of the delegate agencies to which it has sent such material and the date on which it was sent.

(4) If the responsible CSA official pursuant to paragraph (c)(1) of this section informs a grantee that a proposed termination action has been set for hearing, the grantee shall within 5 days of its receipt of this notice send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice pursuant to paragraph (c)(1) of this section. The grantee shall send the responsible CSA official a list of all delegate agencies notified and the date of notification.

(5) If the responsible CSA official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with paragraph (c) of this section, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of CSA and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(6) The results of the proceeding and any measure taken thereafter by CSA pursuant to this section shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(7) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible CSA official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of CSA.

(8) The responsible CSA official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

(d) *Time and place of termination hearings.* The termination hearing shall be held in Washington, D.C., or in the appropriate Regional Office, at a time and place fixed by the responsible CSA official, unless he determines that the convenience of CSA or of the parties or their representatives requires that another place be selected.

(e) *Termination hearing procedures.*—(1) *General.* The termination hearing, the decision on termination and any review thereof shall be conducted in accordance with paragraphs (e), (f), and (g) of this section.

(2) *Presiding officer.* (i) The presiding officer at the hearing shall be the responsible CSA official or, at the discretion of the responsible CSA official an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine. (ii) After the notice described in paragraph (e)(6) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of CSA or the appropriate Regional Counsel: Provided, that the attorney designated to assist him has not represented CSA or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(3) *Presentation of evidence.* Both CSA and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (e)(6) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(4) *Participation.* (i) In addition to CSA, the grantee, and any delegate agencies which have a right to appear, the presiding officer in his discretion may permit the partcipation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material. (ii) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of proposed termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments. (iii) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the grantee, and CSA, and, in the case of denial, a brief statement of the reasons therefor: Provided however, That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted. (iv) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(5) *Filing.* All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(6) *Notice.* The responsible CSA official shall send the grantee and any other party a notice which states the time, place, and nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the CSA requirements which it is contended the grantee has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(7) *Notice of intention to appear.* The grantee and any other party which has a right or permission to participate in the hearing shall give written confirmation to CSA of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(8) *Form and date of service.* All papers and documents filed or sent to a party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: Provided however, that the effective date of the notice that there appear

to be grounds which warrant termination shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of CSA.

(9) *Prehearing conferences.* Prior to the commencement of a hearing the presidign officer may, subject to the provisions of paragraph (e)(2)(ii) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(10) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this section but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(11) *Depositions.* If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(12) *Official notice.* Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of CSA. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(13) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of paragraph (f)(1) of this section.

(f) *Decisions, termination notices, and review by the director.* (1) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to paragraph (e)(13) of this section. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or reqiurements with which it is found that the grantee has failed to comply.

(2) The decision of the presiding officer may provide for continued suspension or termination of the grant in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(3) If the hearing is held by an independent hearing examiner rather than by the responsible CSA official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible CSA official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible CSA official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own decision thereon, including the reasons therefor. The decision of the responsible CSA official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(4) Whenever a hearing is waived, a decision shall be made by the responsible CSA official and a written copy of the final decision of the responsible CSA official shall be given to the grantee.

(5) The grantee may request the Director to review a final decision by the responsible CSA official which provides for termination. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Director or his designee shall consider the reasons stated by the grantee for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible CSA official or remand the matter to the responsible CSA official for further hearing or consideration. The decision of the responsible CSA official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Director or his designee, the grant shall remain suspended under the terms and the conditions specified by the responsible CSA official, unless the responsible CSA official or the Director or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the Director or his designee within 30 days of receipt by the Director of the grantee's request. The Director or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

(g) *Right to counsel: travel expenses.* In all proceedings under this section whether formal or informal, the grantee and CSA shall have the right to be represented by counsel or other authorized representatives. If the grantee and any delegate agencies which have a right to participate in a termination hearing pursuant to paragraph (c) of this section do not have an attorney acting in that capacity as a regular member of the staff of the organization, the Boards of Directors of such grantees and delegate agencies will be authorized to designate an attorney to represent their organizations at any termination hearing and to transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the express written approval of CSA. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Travel Regulation and in 45 CFR 1069.3–1 to 3–6 (CSA Instruction 6910–1a). The Board of Directors of the grantee or any delegate agency which has a right to participate in a termination hearing pursuant to paragraph (e) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Regulations and in 45 CFR 1069.3–1 to 1069.3–6 (CSA Instruction 6910–1a).

(h) *Modification of procedures by consent.* The responsible CSA official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this section with the consent of the grantee and, in the case of a termination hearing, with the consent of all delegate agencies that have a right to participate in the hearing pursuant to paragraph (c)(5) of this section. Such consent must be in writing or be recorded in the hearing transcript.

(i) *Other remedies.* The procedures established by this section shall not preclude CSA from pursuing other remedies authorized by law.

(j) *Consequences of termination.* Upon termination, the disposition of unexpected Federal funds and of property

purchased with program funds shall be according to the provisions of CSA Instruction 6800–12, Grant Closeout Procedures. Termination shall not affect expenditures or legally binding commitments made prior to the grantee's receipt of notice of the termination, provided such expenditures were made in good faith and are otherwise allowable. Funds shall not be considered to be legally committed solely by virtue of a grantee's contract or other commitment to a delegate agency.

15. The purpose of this subpart is to notify grantees of the requirements in OMB Circular A–110 and FMC 74–7 that Standard Form 424 be used by both public and private non-profit grantees and contractors to fulfill certain requirements. CSA previously implemented the requirements of this standard when it published 45 CFR 1067.10 (CSA Instruction 6710–3a). Policies and procedures found in that subpart (and Instruction) continue to be in effect. Overprinting of the SF–424 as shown in 45 CFR 1067.10 was approved by the Office of Management and Budget. 45 CFR Chapter X is amended by adding the following:

Subpart N—Standard Form for Applying for Federal Assistance (SF 424) (Uniform Federal Standard) (CSA Instruction 6800–14)

§ 1050.120 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment M).

(2) FMC 74–7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment M).

(3) CSA Instruction 6710–3a, Project Review and Notification System. (45 CFR 1067.10.)

(4) OEO Instruction 6710–1, Applying for a CAP Grant and Changes thereto.

(5) CSA Instruction 6710–6, Applying for a Grant Under Title VII of the Community Services Act. (45 CFR 1067.15.)

(6) CSA Instruction 6143–1a, Emergency Energy Conservation Program. (45 CFR 1061.30.)

(7) OEO Instruction 7570–1, Applying for a new Research or Demonstration Grant Under EOA.

(8) OEO Instruction 7570–2, Applying for Continuation of a Research or Demonstration Grant.

§ 1050.121 Standards.

(a) Standard Form 424 will be used by public agencies and private organizations as a face sheet for applications when applying for any CSA grant.

(b) The SF–424 will be used to fulfill the requirements of OMB Circular A–95 for a notification of intent from applicant to clearinghouse(s) that assistance will be applied for from CSA in those instances where clearinghouses do not require other forms.

(c) The SF 424 will also be used by CSA funding offices to report to the clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A–95, and to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082.

§ 1050.122 CSA implementing policies and procedures.

(a) Detailed CSA policies regarding the uses of the SF 424, including information on completing the form, will be found in reference (3).

(b) Detailed policies and procedures for applying for grants under the Economic Opportunity Act will be found in references (4) through (8).

16. Subpart O to Part 1050 is reserved.

Subpart O—Property Management Standards [Reserved]

17. Subpart P to Part 1050 is reserved.

Subpart P—Procurement Standards [Reserved]

[FR Doc.77–9882 Filed 3–30–77;2:00 pm]